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SAN DIEGO, CALIFORNIA

ORIGINAL

PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

ALPS HOSPITALITY INC.,
a California corporation

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PERCENTAGE LEASE

(8110 Aero Drive, San Diego, CA 92123)

This PERCENTAGE LEASE (this "**Lease**") is entered into as of the date it is signed and approved as to form by the San Diego City Attorney's Office ("**Effective Date**"), between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and ALPS HOSPITALITY INC., a California corporation ("**Lessee**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND LESSEE AGREE AS FOLLOWS:

1. PURPOSES. At the Effective Date, Landlord owns the Premises (defined in Section 2 below, specifically described in **EXHIBIT A**, and depicted in **EXHIBIT B**), which comprises an approximately 19.27-acre parcel of land (the "**Land**"), on which is improved certain hotel facilities, currently commonly known as the Four Points by Sheraton San Diego hotel, addressed at 8110 Aero Drive, San Diego, CA 92123 (the "**Hotel**" and together with the Land, the "**Property**").

1.1 As of October 17, 1983, the City and Montgomery Airport Hotel, Ltd., a Texas limited partnership (the "**Original Lessee**"), entered into that certain Percentage Lease filed in the Office of the San Diego City Clerk on October 17, 1983, as Document No. RR-259434 (as amended, the "**Prior Lease**"). The original term of the Prior Lease was for fifty (50) years – until October 31, 2033.

1.2 As of July 28, 2003, the Prior Lease was amended by that certain First Amendment to Lease Agreement filed in the Office of the San Diego City Clerk on July 29, 2003, as Document No. RR-259434-9.

1.3 As of April 6, 2012, the Prior Lease was further amended by that certain Second Amendment to Percentage Lease filed in the Office of the San Diego City Clerk on March 20, 2012, as Document No. RR-307331 (the "**Second Amendment**"), which, among other things, extended the term of the Prior Lease by forty (40) years from the effective date of the Second Amendment – until May 1, 2052.

1.4 Following intermediate assignments of the Original Lessee's interest in the Prior Lease, R&D Properties LLC, a California limited liability company, and Ralph Burni, Trustee of the Ralph Burni Trust, jointly assigned to 8110 Aero Drive Holdings, LLC, a California limited liability company (the "**Prior Lessee**") all of their right, title, and interest as lessee in, to, and under the Prior Lease pursuant to that certain Assignment of Lease dated January 1, 2012, and filed in the Official Records of the San Diego County Recorder's Office on May 8, 2012 as Document No. 2012-0268812.

1.5 The Prior Lessee assigned the Prior Lease to Lessee pursuant to that certain Assignment and Assumption of Lease dated June 29, 2023 ("**Assignment**"), which Assignment was recorded in the Official Records of San Diego County, California on July 3, 2023 as Document No. 2023-0174115, and which Assignment was consented to by Landlord under that certain

Consent to Assignment of Percentage Lease dated June 29, 2023. July 3, 2023 is the effective date of the Assignment ("**Assignment Effective Date**").

1.6 Lessee has occupied the Premises, operated the Hotel, and been obligated to pay and has paid Rent to Landlord under the Prior Lease since the Assignment Effective Date.

1.7 In connection with the Assignment, Lessee borrowed $10,000,000 (as refinanced, the "**Acquisition Loan**") from Puerto Loreto, LLC, in exchange for a lien against Lessee's leasehold interest in the Lease, which encumbrance was consented to by Landlord under that certain Landlord Consent and Estoppel Agreement dated June 29, 2023, recorded on July 3, 2023 in the Official Records of San Diego County, California, as Document No. 2023-0174118. Lessee refinanced the Acquisition Loan with a $10,600,000 loan from Wells Fargo Bank, National Association ("**Wells Fargo**"), which refinance and transfer of encumbrance on Lessee's leasehold interest in the Lease was consented to by Landlord under that certain Landlord Consent and Estoppel Agreement dated February 21, 2025.

1.8 Lessee desires to upgrade the Hotel from the "Sheraton" brand to the more prestigious "Tribute" brand, which will require significant work, including, without limitation, renovating interior spaces (including Hotel rooms), upgrading landscaping, painting structures, refurbishing the golf course, installing solar panels in the parking lot and on the roof of the Hotel, and undertaking other maintenance and replacement work, according to the General Development Plan (defined in Section 2) (the "**Project**"). Landlord is supportive of the Project, because it will ultimately result in greater revenues and greater economic value for the Airport, the surrounding community, and the City at large.

1.9 To support Lessee's efforts to complete the Project, Landlord agrees to defer a portion of the Minimum Rent (defined in Section 2) for the first forty (40) months of the Term, repayable with interest from the forty-first (41st) month over a period of ten (10) years (the "**Deferred Rent Loan**"). As set forth in this Lease and the promissory note attached as **EXHIBIT C** ("**Note**"), the Deferred Rent Loan will be a *bona fide* loan, bearing interest at eight percent (8%), compounded monthly, which the Parties acknowledge and agree constitutes a fair market interest rate.

1.10 The purpose of this Lease is to supersede and replace in its entirety the Prior Lease with this Lease that will provide, among other things, for the Lessee to make certain improvements to the Premises as described herein. Landlord and Lessee desire to enter into this Lease to establish the Parties' respective rights and duties with respect to the Premises.

2. DEFINITIONS. All defined terms or words indicated by initial capitalization in this Lease and not specifically defined in a particular section of this Lease are defined below.

2.1 Additional Rent. All sums including, but not limited to Percentage Rent and late fees, that this Lease requires Lessee to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Minimum Rent.

2.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. Affiliated shall have the correlative meaning.

2.3 Annual Revenue Statement. Defined in Section 7.3.2.

2.4 Application. Each application, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Lessee to pursue or obtain an Approval for Construction this Lease allows or an Approval to use or operate the Premises in accordance with this Lease.

2.5 Approval. All licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the use, occupancy, maintenance, or operation of the Premises in accordance with this Lease.

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

2.7 Business Day. Monday through Friday, except City holidays when City offices are closed.

2.8 Casualty. Any material damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable. Casualty shall not include ordinary wear and tear.

2.9 Certifying Party. Defined in Section 34.

2.10 City. City of San Diego.

2.11 City Attorney. City Attorney of the City of San Diego, California.

2.12 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), or any judgment.

2.13 Commencement Date. The first day of the calendar month following the date on which this Lease is approved as to form by the City Attorney, as shown on the signature page to this Lease.

2.14 Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

2.15 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Effective Date, because of or as compensation for a Condemnation, including: (a) an award made for improvements that are the subject of the Condemnation; (b) the

full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation.

2.16 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

2.17 Construction. Any alteration, construction, demolition, excavation, fill, grading, development, expansion, installation, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including new construction.

2.18 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person or bind such Person, whether by ownership of Equity Interests, by contract, or otherwise.

2.19 Controlling and Controlled. Exercising or having Control.

2.20 Council. The City Council for the City of San Diego.

2.21 County. The County of San Diego, California.

2.22 CPI. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego-Carlsbad Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

2.23 Default. Any Monetary Default or Non-Monetary Default.

2.24 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest, if any, that Law allows under the circumstances.

2.25 Deferral Period. Defined in Section 7.1.1.

2.26 Deferred Rent Loan. Defined in Sections 1.9 and 7.1.1.

2.27 Depository. Bank of America, N.A., a Federal chartered bank.

2.28 Director. The then current director of Landlord's Economic Development Department, Airports, or such Person's successor in function.

2.29 Effective Date. Defined in the first paragraph of this Lease.

2.30 Environmental Condition. Any of the following events relating to the Premises that arise during the Term of this Lease: (a) an actual violation by Lessee of any Environmental Law; (b) a Government-alleged violation by Lessee of any Environmental Law; or (c) a Hazardous Substance Discharge.

2.31 Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

2.32 Equipment. All fixtures incorporated in the Premises by either Landlord or Lessee, and used, useful, or necessary to operate the Premises. Equipment does not include Lessee's trade fixtures.

2.33 Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

2.34 Estoppel Certificate. A written certification of each of the following: (a) the nature of the Certifying Party's interest in the Premises and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease is in full force and effect, as modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, and to the current, actual knowledge of Sharad Khandwala or Saahil Khandwala, in the case of Lessee, each without any duty of inquiry or investigation), there are no uncured breaches, Defaults or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Defaults or failures claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

2.35 Event of Default. Defined in Section 29.1.

2.36 Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

2.37 Federal. Relating or under the authority of the federal government of the United States of America.

2.38 Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

2.39 Fee Lender. Any Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument is not a Fee Lender.

2.40 Fee Security Instrument. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Fee Lenders) and containing no provisions (and securing no document containing any provisions) inconsistent with the Statement of Priorities; (c) otherwise complying with this Lease; (d) a copy of which (recorded or unrecorded) is promptly, after being signed, delivered to Lessee and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by a Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

2.41 FF&E. All movable furniture, equipment, trade fixtures, and other personal property of Lessee or anyone claiming through Lessee (excluding Equipment) used in operating the Premises for the Permitted Use that may be removed, without material damage to the Premises, and without materially adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes, without limitation, items such as furniture, furnishings, rugs, vehicles, mats, carpeting, appliances, devices, engines, telephones and other communications equipment, all guest room furnishings, lobby and public area furnishings, all artwork and lighting fixtures, office equipment and furnishings, kitchen, lounge, meeting room, and restaurant equipment and furnishings (including, without limitation, all tables and chairs, podiums and staging platforms, and linens), audio visual equipment and sound systems, laundry and dry cleaning equipment, pool chairs and equipment, safes, safety deposit boxes, employee lockers, cable and video equipment, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer and reservation systems, equipment and related software, and peripherals. FF&E also includes, without limitation, items such as china, glassware, stemware, bath mats, bath rugs, shower curtains, tools, linens, towels, uniforms, bedding, silverware, cutlery, engineering, maintenance, laundry, cleaning and housekeeping inventory and supplies, food and beverage inventory, office supplies and stationary, matches and ashtrays, fuel, soap and other toiletries, stationary, menus, directories, advertising and other printed materials, all other similar supplies and materials owned by Lessee or anyone claiming through Lessee.

2.42 Foreclosure Event. Each transfer of title to any estate through any: (a) judicial or nonjudicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Security Instrument; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding). Each situation described in clauses "(a)" through "(e)" of this Section 2.42 is a Foreclosure Event whether the transferee is a Lender, a Person claiming through a Lender, or a Third Person.

2.43 General Development Plan. Defined in Section 11.1 and attached as **EXHIBIT D**.

2.44 General Development Plan Commencement Date. The first date on which Lessee has: (a) satisfied the General Development Plan Commencement Conditions; and (b) started the Construction under the General Development Plan.

2.45 General Development Plan Completion Date. The date when Lessee delivers a Notice of Completion to Landlord stating that the Construction under the General Development Plan is complete.

2.46 General Development Plan Commencement Conditions. The following conditions precedent to the Construction under the General Development Plan:

2.46.1 *Approvals*. Lessee gives Landlord copies of all Approvals required by Law for Lessee to start and complete the Construction under the General Development Plan, including all Approvals (building permits, grading permits, demolition permits, etc.) for any associated, grading, excavation, or demolition, prior to commencement of any part of the Construction;

2.46.2 *Improvement Surety*. Lessee gives Landlord the Improvement Surety for the Construction under the General Development Plan;

2.46.3 *Insurance*. Lessee delivers to Landlord written evidence of all insurance coverage this Lease requires for the Construction under the General Development Plan;

2.47 Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other Person having or claiming jurisdiction over the Premises (or any activity this Lease allows), including whistleblowers (as defined under applicable State or Federal Law), the Federal government of the United States of America, the State and County governments and their subdivisions and municipalities, including Landlord (in Landlord's governmental capacity), any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Premises or any activities on or at the Premises.

2.48 Gross Revenue. Defined in Section 7.2.

2.49 Guarantor. Sharad Khandwala, an individual.

2.50 Guaranty. Defined in Section 7.1.2.

2.51 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance or waste defined by those or similar terms or regulated as such under any Law, any matter, waste or substance subject to any Law regulating, relating to or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or form of energy from whatever source; provided, however, Hazardous Substance shall not include any prepackaged supplies, cleaning materials and products, and petroleum products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

2.52 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into or from the Premises, or relating to transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property) during the Term, or arising at any time from Lessee's use, occupancy, or operation of the Premises or any activities conducted at, on, under or in the Premises whether or not caused by a Party and whether occurring before the Commencement Date during Lessee's occupancy of the Premises under the Prior Lease (but not prior to such occupancy) or during the Term.

2.53 Immaterial Loss. A Casualty or Condemnation resulting in a Loss of two hundred fifty thousand dollars ($250,000) or less.

2.54 Improvement Surety. Payment and performance bonds that guarantee payment of subcontractors, suppliers, and laborers and that implementation and completion of the General Development Plan (excluding the installation of FF&E) will be pursued and completed in accordance with the plans for the Construction under the General Development Plan. Such bonds will be in form and substance reasonably acceptable to Landlord, for an amount of money not less than (a) for the payment bond, one hundred percent (100%) and (b) for the performance bond, fifty percent (50%) of the Minimum Improvement Costs, for the benefit of Lessee, with Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in State Code of Civil Procedure section 995.120, with an underwriting limitation, under State Insurance Code section 12090, greater than the contract amount of the bond. Each bond will by its express terms, remain in full force and effect, until the General Development Plan Completion Date. If the provider of any bond regarding the Construction under the General Development Plan becomes the subject of a Bankruptcy Proceeding, Lessee will promptly provide a substitute bond to Landlord regarding the Construction. The Improvement Surety will be in addition to any public improvement security required by any Government regarding the Construction under the General Development Plan.

2.55 Improvements. All improvements, including but not limited to buildings, hardscape, structures, and swimming pools, on the Premises from time to time.

2.56 Indemnify. Where this Lease states that any Indemnitor shall "Indemnify" any Indemnitee from, against, or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise), including all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation regarding the Claim. "Indemnified," "Indemnification," or similar terms shall have the correlative meanings.

2.57 Indemnitee. A Person entitled to be Indemnified under this Lease.

2.58 Indemnitor. A Person agreeing to Indemnify any other Person under this Lease.

2.59 Institutional Lender. Any of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust

capacity); (c) insurance company; (d) credit union; (e) savings bank (State or Federal); (f) pension, welfare, or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing mortgage loans; (i) a Federal or State regulated investment bank; (j) a Fortune 500 company; (k) a wholly-owned subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); (l) any private financing entity, investment firm, investment fund, or other Person that, in the ordinary course of business, makes, purchases, participates in, or otherwise provides loans or extensions of credit to commercial borrowers for business, investment or commercial purposes, and not primarily for personal, family or household use; or (m) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clauses "(a)" through "(l)" of this Section 2.59.

2.60 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

2.61 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the entire Fee Estate occurs (in all cases in compliance with this Lease), the transferor shall be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

2.62 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 29.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

2.63 Landlord Parties. Collectively, Landlord, its City Council, elected and appointed officials, officers, employees, and agents.

2.64 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

2.65 Law. All laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any Government affecting the Premises, this Lease, or the Permitted Use, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental condition affecting, the Premises, or the Permitted Use, or relating to any taxes, or otherwise relating to this Lease, the Premises, the Permitted Use, or any Party's rights, obligations, or remedies under this Lease, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.66 Lease Impairment. Any of the following, whether expressly provided for in this Lease or resulting from any future agreement between the Parties or from the unilateral action of either Party: (a) a Modification of this Lease; (b) subordination of this Lease to any Fee Security Instrument or other encumbrance on the Fee Estate; (c) making or material Modification of any encumbrance affecting the Fee Estate that is senior in recording priority to this Lease; (d) Lessee's

consent (or failure to object) to: (i) any of the foregoing; or (ii) any sale of the Fee Estate in a Bankruptcy Proceeding; (e) delivery of any Notice that impairs or may impair, or purports to limit the exercise of, any Permitted Leasehold Lender's rights or remedies under its Permitted Leasehold Security Instrument or this Lease; or (f) Lessee's exercise of any right to treat this Lease as terminated under 11 U.S.C. § 365(h).

2.67 Lease Year. Each of: (a) the period from the Commencement Date through the day before the first anniversary of the Commencement Date; and (b) every subsequent period of twelve (12) calendar months beginning on an anniversary of the Commencement Date and ending on the day before the immediately following anniversary of the Commencement Date during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," etc.

2.68 Leasehold Estate. Lessee's leasehold estate in the Premises, and all Lessee's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.

2.69 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested by the other Party; (d) requirement or request that such Person or its employees act as a witness in any proceeding regarding this Lease or the other Party; or (e) review or approval that the other Party requests of such Person. All references to Legal Costs of Landlord shall include the salaries, benefits and costs of the City Attorney in representing Landlord and the lawyers employed in the City Attorney's office who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord (if any) for any matter.

2.70 Lender. A holder of any Security Instrument allowed under this Lease and its successors and assigns.

2.71 Lender Protections. For any Lender, all rights, protections, and privileges of the Lender under this Lease, if any, including: (a) any right to receive Notices or to cure Defaults (including, in the case of a Permitted Leasehold Lender, all Permitted Leasehold Lender's Cure Rights); (b) in the case of a Permitted Leasehold Lender, any requirement for Permitted Leasehold Lender's Consent and all provisions for a New Lease; and (c) all other rights, remedies, protections, privileges, and powers of the Lender and anyone claiming through or under the Lender, including (in the case of any Permitted Leasehold Lender) any New Tenant and any Post-Foreclosure Tenant.

2.72 Lessee. Alps Hospitality, Inc., a California corporation, and its permitted successors or assigns under this Lease.

2.73 Lessee Improvements. Improvements to be installed on the Premises by or for the benefit of Lessee.

2.74 Lessee Parties. Collectively, Lessee, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Lessee.

2.75 Lessee Party. Individually, Lessee, its directors, officers, members, managers, partners, employees, agents, attorneys, or owners of Equity Interests in Lessee.

2.76 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

2.77 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

2.78 LWO. The City's Living Wage Ordinance (SDMC section 22.4201 through 22.4245), as further defined and described in **EXHIBIT I**.

2.79 Maintenance Deficiency. Defined in Section 10.3.

2.80 Maintenance Standard. Defined in Section 10.2.

2.81 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date, considered: (a) as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value shall be determined as if the Term were to continue until the Scheduled Expiration Date.

2.82 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Lessee.

2.83 Minimum Improvement Costs. Defined in Section 11.4.

2.84 Minimum Rent. One Hundred Fifty-Seven Thousand Five Hundred Dollars ($157,500.00) per calendar month, as adjusted under Section 7.

2.85 Mixed Martial Arts Events. Defined in Section 9.3.

2.86 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

2.87 Modify. Agree to, cause, make, or permit any Modification.

2.88 Monetary Default. Any failure by Lessee, following Notice and the running of any applicable cure period as provided herein, to: (a) pay, when and as this Lease requires, any Rent, including Additional Rent, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Lessee to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Liens set forth in Section 14; or (d) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage when and as this Lease requires.

2.89 New Lease. A new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term, through and including the Scheduled Expiration Date, considered as if this Lease was not terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly states.

2.90 New Lease Delivery Date. The first date on which both New Tenant and Landlord have entered into (or are deemed to have entered into) a New Lease.

2.91 New Lease Option Period. If any Expiration Date occurs (except because of: (a) the Scheduled Expiration Date; (b) a Casualty Termination; or (c) a Substantial Condemnation), a period beginning on the Expiration Date and ending three (3) months after Landlord Notifies all Permitted Leasehold Lender(s) of the Expiration Date. The New Lease Option Period will be tolled and extended: (i) during any Bankruptcy Proceeding affecting either Party to the extent the Bankruptcy Proceeding prevents exercise of the New Lease option or entry into the New Lease by the Permitted Leasehold Lender entitled to a New Lease at the time, under Section 25; (ii) during any period when the right of the Permitted Leasehold Lender entitled to a New Lease at the time, under Section 25, to require Landlord to enter into a New Lease is otherwise materially restricted or impaired, other than because of the Permitted Leasehold Lender's act or omission; and (iii) for thirty (30) days after the conclusion of an event described in either clause "(i)" or "(ii)" of this Section 2.91. All Permitted Leasehold Lenders, considered as a group, will have only a single New Lease Option Period. No individual Permitted Leasehold Lender will have a separate or sequential New Lease Option Period.

2.92 New Tenant. Either: (a) the Permitted Leasehold Lender that is entitled to and requests (or obtains) a New Lease; or (b) another Person designated by the Permitted Leasehold Lender described in clause "(a)" of this Section 2.92 in a Notice to Landlord, which Person is required to make all disclosures to Landlord described in San Diego Charter section 225 and is subject to Landlord's prior written consent, in Landlord's reasonable discretion, before becoming a New Tenant. Notwithstanding anything to the contrary in this Lease, under no circumstances, will a Prohibited Transferee be or become a New Tenant. Any New Tenant will have all the same rights and obligations of Lessee under this Lease, subject to the definition of a New Lease, the occurrence of the New Lease Delivery Date, and the provisions of Section 25.

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

2.94 Note Interest Rate. Defined in Section 7.1.1.

2.95 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices shall be delivered, and shall become effective, only in accordance with Section 31.

2.96 Notify. Give a Notice.

2.97 Parties. Collectively, Landlord and Lessee.

2.98 Party. Individually, Landlord or Lessee, as applicable.

2.99 Payment Schedule. Defined in Section 7.1.2 and attached to and incorporated within **EXHIBIT C**.

2.100 Percentage Rent. "**Percentage Rent**" means and refers to rent in an amount equal to the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

Percentage of Gross Revenue	Business Activity
Eight percent (8%)	Gross Revenue from Room Rental and related charges such as room cancellations, resort fees, and room attrition
Seven and Three Tenths Percent (7.3%)	Gross Revenue from Lessee's sale of food or non-alcoholic beverages
Six percent (6%)	Gross Revenue from Lessee's sale of alcoholic beverages (including beer and wine)
Twelve and Three Tenths Percent (12.3%)	Gross Revenue from Banquet Room Rental
Five percent (5%)	Gross Revenue from Banquet Service Charge
Twenty-five percent (25%)	Gross Revenue from commissions or any other compensation by Lessee for installation and maintenance of credit card/coin-operated vending, game, or service machines or devices on the Premises
Ten percent (10%)	Gross Revenue from Lessee's sale of retail goods or services
Ten percent (10%)	Gross Revenue from Lessee's operation of any Landlord-authorized activity (other than those described above) conducted on the Premises, including Special Events ("**Catch-All Category**")
One hundred percent (100%)	Any unauthorized use of the Premises, including unauthorized Sublease operations

For the avoidance of doubt, the Catch-All Category shall apply to Gross Revenue received by Lessee not derived from one of the specific activities described above it. For example, if Lessee receives a fee under a contract with a Mixed Martial Arts Event producer, that fee would be subject to the 10% Catch-All Category. Likewise, if Lessee receives a percentage of revenue derived from a third-party vendor's sale of food and non-alcoholic beverages at a Mixed Martial Arts Event, such revenue would be subject to the 10% Catch-All Category, because it is not food and non-alcoholic beverages sold by Lessee (which would be subject to the 7.3% rate). It is not the intent of the Parties to concurrently apply two different percentages to the same source of revenue.

2.101 Percentage Rent Due Date. Defined in Section 7.1.

2.102 Permitted Exceptions. Each of the following matters: (a) taxes not on rolls; (b) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (c) all adverse claims based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created; (d) zoning, environmental, municipal, building, and all other Laws imposed by any Federal, State, municipal, or local government or any public or quasi-public board, authority, or similar agency having jurisdiction over the Premises; (e) all Applications made at Lessee's

request or all Approvals issued because of such Applications; (f) matters consented to in writing or otherwise caused by Lessee; and (g) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record.

2.103 Permitted Leasehold Lender. A Lender holding a Permitted Leasehold Security Instrument, including Wells Fargo. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord will not be bound by the assignment or change of address, unless and until the affected Permitted Leasehold Lender(s) has/have given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be a Permitted Leasehold Lender or affect Landlord in any way (only the "lead" Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Lender may be replaced at any time upon Notice from that Lender, but only the designated lead Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender).

2.104 Permitted Leasehold Lender's Consent. Any matter expressly referring to "Permitted Leasehold Lender's Consent" means Permitted Leasehold Lender's prior (or, at Permitted Leasehold Lender's option, simultaneous or subsequent) written consent to the matter. If this Lease requires Permitted Leasehold Lender's Consent for a particular matter, then Permitted Leasehold Lender may only reasonably withhold consent; provided, however, Permitted Leasehold Lender will be entitled to withhold its consent in its sole discretion, if the matter: (i) materially increases or decreases Landlord's obligations or materially decreases Landlord's rights under this Lease; (ii) materially increases or decreases Lessee's obligations or materially decreases Lessee's rights under this Lease; (iii) eliminates or modifies any Lender Protections; or (iv) will result in a termination of this Lease. When no Permitted Leasehold Lender exists, references to Permitted Leasehold Lender's Consent will be disregarded. Nothing in this definition will require Landlord to obtain (or to confirm that Lessee obtained) any consent from any Permitted Leasehold Lender, except where this Lease expressly requires "Permitted Leasehold Lender's Consent."

2.105 Permitted Leasehold Lender's Cure. Subject to and in accordance with this Lease, any Permitted Leasehold Lender's: (a) actions taken to cure a Default, whether or not successful; or (b) cure of a Default.

2.106 Permitted Leasehold Lender's Cure Rights. All rights of Permitted Leasehold Lender(s) under this Lease to effectuate any Permitted Leasehold Lender's Cure.

2.107 Permitted Leasehold Security Instrument. Each Security Instrument: (a) encumbering the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Leasehold Security Instruments) and containing no provisions (and securing no other document containing any provisions) inconsistent with the Statement of Priorities; (c) complying with the provisions of this Lease; and (d) solely held by a Permitted Leasehold Lender that is an Institutional Lender. Lessee will provide Landlord with a copy of each Permitted Leasehold Security Instrument (recorded or unrecorded) promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and Notice

address. The leasehold deed of trust held by Wells Fargo as collateral for the Acquisition Loan is a Permitted Leasehold Security Interest.

2.108 Permitted Use. Operating a hotel, including amenities such as, without limitation, a golf course, golf simulation, entertainment venues and devices, conference, meeting and event rooms, gift shops, restaurants and bars, fitness centers, pools, gardens, courtyards and other outdoor spaces, dry cleaning, sale of retail goods and services (with the right to sell alcohol at any of the aforementioned places on the Premises, as applicable, subject to Lessee obtaining the appropriate Approvals), room and/or catering services, Special Events (defined below) approved by Landlord, Pre-Approved Special Events (defined at Section 9.3), and other activities and uses ancillary or incidental to the operation of a hotel that are customary in the industry ("**Incidental Uses**"). If an Incidental Use, Special Event, or any other proposed lawful use that would support the Hotel's operations and that is not facially a Permitted Use is (a) inherently dangerous, (b) poses a risk to public health or safety, or (c) requires that Lessee obtain separate Government Approval(s), then Lessee may only carry out such use after first obtaining prior written approval at least thirty (30) calendar days before commencing such use in the form of an email or letter from the Director, which approval may be in the form of an email and shall not be unreasonably withheld, conditioned or delayed. Installation and maintenance of solar panels on the Premises shall be a Permitted Use under this Lease. Uses under any sublease or license by Lessee must be a Permitted Use under this Lease as a condition precedent to the validity and enforceability of such sublease or license.

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

2.110 Post-Foreclosure Tenant. Any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including a Permitted Leasehold Lender, which Person is required to make all disclosures to Landlord described in San Diego Charter section 225 and is subject to Landlord's prior written consent, in Landlord's reasonable discretion, before becoming a Post-Foreclosure Tenant. Notwithstanding anything to the contrary in this Lease, under no circumstances will a Prohibited Transferee be or become a Post-Foreclosure Tenant. Any Post-Foreclosure Tenant will have all the rights and obligations of Tenant under this Lease.

2.111 Premises. That certain real property located at 8110 Aero Drive, San Diego, California, 92123, and more particularly described in **EXHIBIT A** and depicted on **EXHIBIT B**, as of the Commencement Date.

2.112 Prevailing Wage Law. Defined in **EXHIBIT I**, Section 1.

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

2.114 Prior Lease. Defined in Section 1.1.

2.115 [Reserved].

2.116 Prohibited Lien. Any (i) deed of trust, mortgage, or other security instrument securing repayment of money encumbering the Leasehold Estate not previously approved in writing or otherwise expressly permitted by this Lease, or (ii) any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien recorded against the Leasehold Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Lessee (or anyone claiming through Lessee).

2.117 Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer to such Person is made or is to be made by Lessee, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

2.118 Project. Defined in Section 1.8.

2.119 Property Insurance. Defined in **EXHIBIT E**.

2.120 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Landlord, Lessee, or Depository, excluding proceeds of Lessee's business interruption insurance exceeding Rent.

2.121 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Equipment or other facility owned by Lessee and used in the operation of the Premises, or the rent or income received by Lessee from the Premises, or any use or occupancy of the Premises by Lessee (or any Person

claiming by or through Lessee). Lessee acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Lessee may be subject to payment of property taxes levied on such interest. Any such possessory interest tax imposed shall be solely a tax liability of Lessee and shall be paid before delinquency by Lessee, unless such tax is contested in good faith by Lessee through appropriate legal proceedings. If at any time during the Term, the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

2.122 Reduced Minimum Rent. Defined in Section 7.1.1.

2.123 Rent. Collectively, Minimum Rent and all Additional Rent.

2.124 Repayment Period. Defined in Section 7.1.1.

2.125 [RESERVED].

2.126 Requesting Party. Defined in Section 34.

2.127 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially equivalent to their condition before the Loss, to the extent reasonably practicable and subject to any changes in Law limiting the foregoing.

2.128 Restoration Funds. Any Loss Proceeds (and deposits by Lessee) to be applied to Restoration.

2.129 Restore. Accomplish a Restoration.

2.130 Scheduled Expiration Date. 11:59 p.m. on the day preceding the fiftieth (50^{th}) anniversary of the Commencement Date.

2.131 SDMC. Defined in Section 9.6.

2.132 Security Deposit. Defined in Section 7.6.

2.133 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more security

instruments are consolidated or restated as a single lien or held by the same Lender, then all security instruments so consolidated or restated will constitute a single Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.134 Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, the term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien to the specified Security Instrument. Priority of liens will be determined under Section 26.1. If only one Security Instrument of a particular type exists, then it will be the "Senior" Security Instrument of that type.

2.135 Sign. Defined in Section 9.13.

2.136 Special Event. One-time or recurring event on the Premises, whether private (by invitation only, such as a wedding or private party) or open to the public (free or by ticketed admission for a fee), whether organized and hosted by Lessee or by a Third Person. Examples of Special Events include live entertainment, shows, music concerts, performances, exhibitions and other similar public and private events.

2.137 State. The State of California.

2.138 Statement of Priorities. A statement, in or relating to any Security Instrument, substantially in the form and substance of Sections 2.138 through 2.138.2 as applicable to Fee Security Instruments or Leasehold Security Instruments, respectively. The following statement forms reflect the definitions in this Lease and should be modified in each Security Instrument to reflect the Security Instrument definitions.

2.138.1*For Fee Security Instruments*. Any Fee Security Instrument attaches solely to the Fee Estate. Any Fee Security Instrument will be subject and subordinate to, and will not encumber or attach to or otherwise affect any of the following (and by accepting its Fee Security Instrument, each Fee Lender unconditionally and irrevocably subordinates and agrees to subordinate its Fee Security Instrument to all the following), unless and until the New Lease Option Period expires without a Permitted Leasehold Lender entitled to request a New Lease requesting a New Lease: (a) this Lease, any New Lease, and the Leasehold Estate under either of them (whether held by Tenant, a Post-Foreclosure Tenant, or a New Tenant); (b) any estate directly or indirectly arising from this Lease or any New Lease; (c) Lessee's, Post-Foreclosure Tenant's, New Tenant's, and any Permitted Leasehold Lender's rights and remedies under this Lease, whether accruing before or after any Foreclosure Event under a Fee Security Instrument; and (d) any Modification of any of the items described in the foregoing clauses "(a)" through "(c)" of this Section 2.138.1, whether or not Fee Lender joins in or consents to it. Upon any Foreclosure Event under a Fee Security Instrument, the resulting owner of the Fee Estate will succeed only to the Fee Estate, subject to the items described in clauses "(a)" through "(d)" of this Section 2.138.1 and, if this Lease terminates, all Subleases.

2.138.2*For Leasehold Security Instruments*. Any Leasehold Security Instrument that attaches solely to the Leasehold Estate. A Leasehold Security Instrument does not encumber the

Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Lender's interest in the Fee Estate, or any reversionary interest in the Premises. Any Foreclosure Event under a Permitted Leasehold Security Instrument will not convey, transfer, extinguish, terminate, or otherwise adversely affect the Fee Estate, any Fee Security Instrument, or the rights or remedies of any Fee Lender as against Landlord or the Fee Estate. Nothing contained in this Section 2.138.1 will impair a Permitted Leasehold Lender's Cure Rights or rights to a New Lease, as provided in this Lease. This Section 2.138.1 will be subject to all applicable written agreements by and among a Permitted Leasehold Lender and a Fee Lender, except to the extent that any agreement would cause, allow, or result in a Leasehold Security Instrument becoming a Fee Security Instrument or otherwise encumbering the Fee Estate.

2.138.3*For All Security Instruments*. Each Security Instrument is subject to all terms and conditions of this Lease. Notwithstanding anything to the contrary in any Security Instrument, no Lender may receive any Loss Proceeds, except to the extent (and under the conditions) payable to the Lender under this Lease. Upon any Foreclosure Event under any Security Instrument, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) will have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease, unless and until the owner signs, acknowledges, and delivers to the other Party to this Lease an instrument, in recordable form, by which the owner assumes all obligations of Landlord or Lessee under this Lease, as applicable, subject to the other terms and conditions of this Lease. Such instrument of assumption will be delivered: (a) promptly following completion of the Foreclosure Event; and (b) in any event, before taking possession of the Premises or exercising any rights under this Lease.

2.139 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Lessee's reasonable determination renders the remainder of the Premises Uneconomic.

2.140 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

2.141 Term. Defined in Section 4.

2.142 Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, director, officer, shareholder, member, principal, partner, manager, owner of an Equity Interest, employee, or agent of a Party.

2.143 Transfer. Any of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Lessee's legal, beneficial, or equitable interest in this Lease; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Lessee by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Lessee even though Lessee is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other Party to this Lease has received Notice of such event)

relating to any Equity Interest: (i) that constitutes a mere change in form of ownership with no material change in beneficial ownership of Lessee; (ii) to any Person or such Person's Affiliate that, as of the Commencement Date, holds an Equity Interest in the Person or such Person's Affiliate whose Equity Interest is being transferred; (iii) as to Sharad Khandwala ("**Khandwala**"), any Transfer of an Equity Interest held directly or indirectly in Lessee to (A) any other Affiliate Controlled by Khandwala, or (B) any Immediate Family Member of Khandwala; or (iv) the Transfer, whether in a single or multiple transactions, of fifty percent (50%) or less of all Equity Interests in Lessee, provided that Khandwala and/or one or more Immediate Family Members of Khandwala continue to directly or indirectly Control Lessee. For purposes of this Section 2.143, "Immediate Family Member" shall mean Khandwala's marital partner at the time of Transfer, his children, his siblings, and his parents.

2.144 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, Casualty, war, acts of terrorism, riots, Government action or inaction (except City action or inaction, in its proprietary capacity as Landlord under this Lease), regional natural disasters, or inability to obtain materials, except for the payment of money, unless the delay in the payment of money is due to one of the causes described above that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

2.145 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the Permitted Use; (c) are subject to material impairment of access to, required parking facilities, or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Lessee reasonably estimates in writing would exceed one million dollars ($1,000,000.00) above and beyond any Property Insurance Proceeds received; (e) do not comply with the operating requirements under a necessary Approval held by Lessee; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

3. **LEASING AND HIRING**. Landlord leases the Premises to Lessee and Lessee hires the Premises from Landlord, subject to the Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

4. **TERM**. The term of this Lease ("**Term**") shall be fifty (50) years and shall: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

5. **QUIET ENJOYMENT**. During the Term, Landlord covenants that Lessee shall and may peaceably and quietly enjoy the Premises for the Term, without molestation, hindrance, or disturbance by or from Landlord (or any other party claiming by or through Landlord), subject to the terms and conditions of this Lease. The covenant of quiet enjoyment under this Lease is limited to Lessee's interest in the Leasehold Estate, use and occupancy of the Premises and express rights

under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to limit Landlord's governmental police or regulatory powers.

6. PREMISES DELIVERY CONDITION.

6.1 Delivery. Landlord shall deliver exclusive possession of the Premises to Lessee on the Commencement Date subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, LESSEE ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD OR ANY LANDLORD PARTY) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. LESSEE ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) LESSEE HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES LESSEE IS ENTITLED TO CONDUCT ON THE PREMISES; (B) EXCEPT FOR ANY LANDLORD REPRESENTATIONS OR WARRANTIES IN THIS LEASE, LESSEE HAS RELIED AND WILL RELY ENTIRELY ON LESSEE'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (C) LESSEE ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (D) TO THE EXTENT LESSEE'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE LESSEE TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, LESSEE ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE LESSEE WITH RESPECT TO SUCH MATTERS. LESSEE'S SIGNATURE ON THIS LEASE CONSTITUTES LESSEE'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT LESSEE RECEIVED ASSURANCES ACCEPTABLE TO LESSEE BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO LESSEE'S ENTRY INTO THIS LEASE AND THAT LESSEE IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. LESSEE HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR

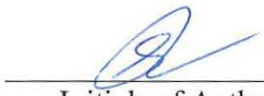
IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD SHALL HAVE NO LIABILITY TO LESSEE OR LESSEE'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH LESSEE WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD OR ANY LANDLORD PARTY.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, LESSEE WAIVES AND RELEASES LANDLORD AND ITS REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, LESSEE WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, LESSEE IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE BY LANDLORD OR ANY LANDLORD PARTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.



Initials of Authorized
Lessee Representative(s)

6.6 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Lessee acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Lessee shall disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915. Lessee shall Indemnify Landlord against all Claims arising from or relating to the existence of asbestos on the Premises and Lessee's use or occupancy of the Premises, except to the extent arising from or relating to the established active negligence or willful misconduct of Landlord or any Landlord Party.

6.7 Asbestos Remediation. If Lessee makes improvements, alterations, or repairs to the Improvements, Lessee shall be responsible for performance of all associated asbestos removal, management, remediation, or containment to the extent required by applicable Laws and all costs associated with such activities. Asbestos removal, management, remediation, or containment with respect to the Improvements shall be conducted only with Landlord's prior written consent of Lessee's work plan (which consent shall not be unreasonably withheld, conditioned or delayed) and in accordance with all applicable Laws.

6.8 Prior Lease Release and Waiver. BY ENTERING INTO THIS LEASE, LANDLORD WAIVES AND RELEASES LESSEE, THE LESSEE PARTIES AND THEIR RESPECTIVE REPRESENTATIVES FROM ANY AND ALL CLAIMS RELATING TO THE PRIOR LEASE AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT THAT THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, LANDLORD IS NOT RELEASING LESSEE FROM ANY OBLIGATIONS OF LESSEE ARISING OR ACCRUING UNDER THE PRIOR LEASE THAT EXPRESSLY SURVIVE THE TERMINATION OF THE PRIOR LEASE. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.8, LANDLORD WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

JR

Initials of Authorized
Landlord Representative(s)

7. **RENT**.

7.1 Rent. As part of the consideration to Landlord leasing the Premises to Lessee under this Lease, Lessee shall pay to Landlord on or before the fifth (5^{th}) calendar day of each month the Minimum Rent for that calendar month. On or before the last day of the calendar month following the calendar month in which the Gross Revenue was attributable (the "**Percentage Rent Due Date**"), Lessee shall deliver to Landlord a schedule of Lessee's Gross Revenue for such month, together with a statement of Percentage Rent calculated for that month. If the Percentage Rent calculated for any given month is greater than the Minimum Rent paid for that month, Lessee shall pay Landlord, concurrent with the delivery of the Gross Revenue schedule and Percentage Rent statement, the Percentage Rent, less the Minimum Rent already paid for that month; otherwise, Lessee shall pay nothing further for that month.

7.1.1 Deferred Rent Loan. To account for and accommodate the reduced revenues Lessee will realize during Construction of the Project and execution of the General Development

Plan, Landlord agrees to provide Lessee a loan in the form of partially deferred Minimum Rent in the total principal amount of Three Million Four Hundred Nine Thousand Six Hundred Four Dollars and Seventy-Two Cents ($3,409,604.72) (the "**Deferred Rent Loan**"). The Deferred Rent Loan comprises the future value of $74,166.67 per month for the first forty (40) months of the Initial Term ("**Deferral Period**"), accruing compounded interest at an annual rate of eight percent (8%). This aggregate amount shall be repayable on a monthly basis beginning with the forty-first (41st) month of the Term over the ensuing period of ten (10) years following such forty-first (41st) month (the "**Repayment Period**"), as evidenced by a promissory note attached to this Lease as **EXHIBIT C** (the "**Note**"). During the Deferral Period, Lessee shall pay a reduced Minimum Rent of $83,333.33 per month ("**Reduced Minimum Rent**"). During the Repayment Period, the Deferred Rent Loan shall continue to accrue interest at a rate of eight percent (8%) per annum, compounded monthly ("**Note Interest Rate**"). The Parties acknowledge and agree that the Note Interest Rate constitutes a fair market interest rate as of the Commencement Date of this Lease.

7.1.2 Repayment of Deferred Rent Loan; Personal Guaranty. After the conclusion of the Deferral Period, in addition to paying regular Minimum Rent or Percentage Rent as the case may be, Lessee shall repay (as Additional Rent) the Deferred Rent Loan in monthly installments during the Repayment Period according to the repayment schedule attached to the Note ("**Payment Schedule**"). For the avoidance of doubt, each monthly payment (each, a "**Monthly Payment**") paid by Lessee according to the Payment Schedule shall be paid on the first (1st) calendar day of each month, beginning with the forty-first (41st) month of the Lease Term ("**Initial Payment Date**") and continuing on or before the first (1st) calendar day of each month thereafter (each, a "**Payment Date**") during the Repayment Period. Any Monthly Payment made by Borrower after a Payment Date but before the fifth (5th) calendar day of each month shall be timely, but Borrower shall pay any incremental interest amount due, as calculated by Landlord. Lessee may pre-pay, without charge or penalty, all (*i.e.*, principal plus accrued interest to the date of such payment) of the Deferred Rent Loan on the Initial Payment Date or on any Payment Date during the Repayment Period, in accordance with the "End Loan Balance" amounts set forth in the Payment Schedule. Full repayment of the Deferred Rent Loan, with interest, shall be personally guaranteed by Guarantor in accordance with the separate guaranty provided by Guarantor ("**Guaranty**").

7.1.3 Percentage Rent During Deferral Period. If, during the Deferral Period, the Percentage Rent calculated for any given month is greater than the Minimum Rent, Lessee shall pay Landlord, concurrent with the delivery of the Gross Revenue schedule and Percentage Rent statement for such prior month, the Percentage Rent, less the Minimum Rent; otherwise, Lessee shall pay nothing further beyond the Reduced Minimum Rent for that month. By way of illustration only, assume Lessee pays Reduced Minimum Rent for the first month of the Deferral Period. At the end of the second month of the Deferral Period, Lessee delivers the Gross Revenue schedule and Percentage Rent statement for the first month, which shows Percentage Rent due and owing of $160,000. Since $160,000 is greater than the regular Minimum Rent (of $157,500), Lessee would pay to Landlord the difference of $2,500. If, however, Percentage Rent is less than Minimum Rent (but greater than Reduced Minimum Rent), Lessee would pay nothing beyond the Reduced Minimum Rent for that first month.

7.2 Gross Revenue. "**Gross Revenue**" means and refers to all revenue derived from all uses and occupancy of the Premises, including without limitation all revenue derived from subleases and licenses, whether received by or to become due to Lessee. Gross Revenue includes

all revenue received by Lessee from internet sales related to the Premises (for example, if using a website such as Groupon, Gross Revenue would include all payment received by Lessee from a Groupon sale with respect to the Premises). Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue.

7.2.1 Gross Revenue Exclusions. 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 an applicable Government and accompanied by a tax return or statement as required by Law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenue; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (g) receipts from public telephones, stamp machines, public toilet locks, or vending machines installed in non-public areas intended solely for use by Lessee's employees; (h) income from sales of fixtures, equipment or property which are not stock in trade; (i) gift certificates or like vouchers until such time as the same shall have been converted into a sale by redemption; (j) voluntary or mandatory tips or gratuities which are paid to Lessee's employees by Lessee's customers, whether directly by customers or indirectly by Lessee, beyond the basic price for services; (k) revenue generated by and paid to third-party vendors for Mixed Martial Arts Events, other Pre-Approved Special Events, and other Special Events approved in writing by the City under Section 9.3; (l) the amount of discounts or comps granted on sales; (m) fully comped meals to employees; and (n) house account sales to employees at a discount (but only to the extent of such discount) in accordance with Lessee's standard employee discount policy. Lessee shall clearly indicate the amount of all such taxes and refunds on its books and records. Any items excluded from Gross Revenue must be separately stated and shown in Lessee's Schedule of Gross Revenue for each calendar month, as well as in its regularly maintained books and records.

7.2.2 Third-Party Vendors for Special Events. The Parties agree that the revenue generated by and payable to third-party vendors for Special Events (defined at and approved by Landlord pursuant to Section 9.3) through on-site or off-site admission ticket sales, souvenirs and other merchandise shall be excluded from Gross Revenue for Percentage Rent calculation purposes. However, all payments that Lessee receives in connection with use of the Premises for approved Special Events, including Mixed Martial Arts Events, whether from third-party vendors or otherwise, shall be included in Gross Revenue and subject to 10% Percentage Rent as set forth in Section 2.100.

7.3 Inspection of Records.

7.3.1 Records. Lessee shall, at all times during the Term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions resulting from the Permitted Use. The records must be available in the format required by Landlord for all of its percentage lease tenants and shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, contracts, or other documents (which may be in electronic form)

as necessary to allow Landlord to reasonably determine the Gross Revenue and accuracy of all records.

(a) Any retail sales or charges will be recorded by means of cash registers, other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt, or such other device reasonably approved by Landlord. The registers will be equipped with devices that lock in sales totals and other transaction information that are not resettable. Totals shall be recorded and registered at the beginning and end of each day.

(b) In the event that Lessee hosts an event on the Premises and issues tickets (whether by itself or through a Third Person) in connection with charging admission, Lessee shall keep a record of the number of tickets sold and issued, as well as a record of unissued tickets. Lessee, however, shall not be responsible for tracking tickets sold and issued by Third Persons with whom Lessee has contracted to hold, host, and manage Special Events on the Premises.

7.3.2 Financial Reporting; Landlord's Audit Rights. Within one hundred twenty (120) days after the end of each Lease Year, Lessee shall deliver to Landlord a financial report of all of Lessee's Gross Revenue received and expenses incurred from operation of the Premises during such previous Lease Year (each, an "**Annual Revenue Statement**"). Each Annual Revenue Statement shall be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Annual Revenue Statement shall be certified by an executive level officer of Lessee with substantial knowledge regarding all of Lessee's income from and expenses of operation of the Premises. Each Annual Revenue Statement shall set forth in reasonable detail the Gross Revenue (including any deductions or offsets applied in determining Gross Revenue) of Lessee from the Premises during the immediately preceding Lease Year and certify that the accounting practices of Lessee conform to industry standards and the requirements of this Lease. If such certification cannot be made, then the Annual Revenue Statement shall show such adjustments as are necessary to conform Lessee's accounting practices such that the certification can be made. All such Annual Revenue Statements shall be in customary form reasonably satisfactory to Landlord.

(a) If any such Annual Revenue Statement, as it may be adjusted pursuant to this Section 7.3.2, indicates an underpayment of Percentage Rent for the subject Lease Year, the amount of any such underpayment shall be paid by Lessee to Landlord within thirty (30) days following Notice of such underpayment. Landlord shall credit or refund Lessee for an overpayment of Percentage Rent if determined by an audit, as provided in subsection (d) of this Section 7.3.2.

(b) Each such Annual Revenue Statement shall be conclusive and binding on Landlord and Lessee, unless Landlord commences an audit of Lessee's financial records pursuant to this Section 7.3.2. On fifteen (15) Business Days' Notice (Notice shall not be required during the continuance of a Default), only during Lessee's normal business hours, and (so long as no Default shall have occurred) no more often than once each Lease Year, Landlord's auditor may audit Lessee's financial statements for all periods subsequent to any prior audit, without restriction.

Lessee shall, without charge, reasonably cooperate in such audit, as Landlord's auditor shall reasonably request.

(c) If any audit discloses that Lessee's Gross Revenue was under-reported by five percent (5%) or more on an annual basis for one or more Lease Years, Lessee shall pay to Landlord the cost of the audit, in addition to any deficiency in the Percentage Rent payable for any Lease Year, with interest on such Percentage Rent deficiency amount pursuant to Section 29.7 from the date such amount was originally due, until paid in full.

(d) If any audit by Landlord discloses an overpayment of the Percentage Rent, such amount will be credited (without interest) to Lessee against future Percentage Rent payments becoming due to Landlord under this Lease, until such credit is exhausted. Landlord shall be under no obligation to make payments of any overpayment amount to Lessee during the Term. If this Lease has terminated, Landlord shall pay any overpayment amount to Lessee within sixty (60) days after Landlord's certification of the audit report disclosing such overpayment; provided, however, that Landlord may first apply any such overpayment to any amounts owed to Landlord by Lessee before making any such payment to Lessee. Landlord shall keep all financial information regarding Lessee and its operations confidential to the extent permitted by Law.

7.3.3 Landlord's General Right to Inspect and Audit. Lessee shall maintain and preserve all books of account, records, and supporting documentation described in Section 7.3 throughout the Term and for at least five (5) years from the date of creation of the record and make such records available to Landlord, following Landlord's written request as provided below, in one location within the City of San Diego. Lessee must maintain separate books and records related to Lessee's use of the Premises. Landlord shall, at its discretion and separate from its audit rights under Section 7.3.2, have the right to inspect and audit Lessee's business and all business activity and financial transactions involving Lessee, its agents, sublessees, concessionaires, and licensees operating on and in connection with the Premises, as necessary, in its sole reasonable discretion, to protect Landlord's rights under this Lease, and appropriate for Landlord to determine the amounts of Rent due Landlord in compliance with the requirements of this Lease. At Landlord's written request, Lessee shall promptly provide records within ten (10) Business Days from the date of the request, at Lessee's expense, to include $100/day in liquidated damages (not a penalty) if records are not provided after the 10th Business Day until such records are provided, any and all necessary data in Lessee's possession or control to enable Landlord to fully comply with all requirements of the State or Federal Government for lease information or reports concerning the Premises. Such data will include, if required, all financial records necessary to determine Rent due, including a detailed breakdown of Lessee's receipts and expenses, as well as those of its sublessees and licensees. This provision shall survive the expiration or earlier termination of this Lease.

7.3.4 Close-Out Audit. Landlord (by the City Treasurer's Office) shall conduct a close-out audit ("**Close-Out Audit**") in accordance with all procedures set forth in this Section 7.3 either after the Expiration Date of this Lease or as a condition precedent to Landlord's consent to a Transfer by Lessee that results in the complete divestment of Lessee's interest in the Lease, as applicable. Landlord shall notify Lessee in writing of the results of the Close-Out Audit within ten (10) Business Days following Landlord's certification thereof. If the Close-Out Audit reveals an underpayment by Lessee, Lessee agrees that, in addition to Lessee's obligations under Section 7.3.5, Landlord may satisfy such underpayment from Lessee's Security Deposit (defined in Section

7.6). If the Close-Out Audit reveals an overpayment by Lessee, Landlord shall pay any overpayment amount to Lessee in accordance with and subject to the applicable provisions of Section 7.3.2(d). This provision shall survive the expiration or earlier termination of this Lease.

7.3.5 Audit Deficiency. Any Rent deficiency determined by any audit conducted pursuant to Sections 7.3.2, 7.3.3, or 7.3.4 (each, an "**Audit**") shall be delinquent Rent, subject to all penalties and remedies provided to Landlord for delinquent Rent under this Lease. Lessee shall pay any deficiency determined by such Audit(s), plus interest on such amount as determined by Section 29.7, within thirty (30) days of Notice by Landlord. After the completion of an Audit and finding of deficiency, only the City Treasurer's Office shall have the authority to waive or compromise such deficiency or any part thereof.

7.3.6 Default. Lessee's failure to keep complete and accurate records and make such records available for Landlord inspection shall be, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination following the running of the applicable Notice and cure period. In addition, Lessee must bear the cost of any Audit where Landlord reasonably determines that Lessee has failed to properly maintain complete, accurate, and true books, records, accounts, and supporting source documents as required by this Lease; provided, however, Landlord shall otherwise solely bear the cost of any such Audit except as otherwise expressly provided herein.

7.4 Periodic Increases in Minimum Rent. Effective as of the first day of Lease Year 6 (the first adjustment occurring on such date) and as of the first day of every Fifth (5^{th}) Lease Year thereafter (each, a "**Minimum Rent Adjustment Date**"), the Minimum Rent shall be increased (and never decreased) to the amount equal to the greater of: (a) eighty percent (80%) of the average of the annual sum of the Minimum Rent plus the Percentage Rent (if any) paid by Lessee for each of the immediately preceding three (3) Lease Years, or (b) the Minimum Rent in effect during the immediately preceding Lease Year, multiplied by the greater of: (i) 1.00; or (ii) the CPI on such Minimum Rent Adjustment Date divided by the CPI on the Commencement Date (the "**CPI Adjustment Factor**").

7.4.1 Effectiveness and Notice of Minimum Rent Increase. Following each Minimum Rent Adjustment Date, Landlord shall Notify Lessee of the increased Minimum Rent, with reasonable detail about the calculation of the increased Minimum Rent; provided, however, that Landlord's Notice of increased Minimum Rent shall have no bearing on the effectiveness of such increase, which increase shall go into effect on each Minimum Rent Adjustment Date. Each such Notice may be given by Landlord at any time following an increase in the Minimum Rent pursuant to Section 7.4. Until Landlord gives Lessee Notice of a Minimum Rent increase, Lessee may continue to pay the Minimum Rent in effect prior to delivery of such Notice; provided, however, that upon receipt of Landlord's Notice of such Minimum Rent increase, Lessee shall pay to Landlord all increased Minimum Rent accrued between the Minimum Rent Adjustment Date and Landlord's Notice of such Minimum Rent increase, within thirty (30) days following Notice of the subject increase if such Notice is delivered within thirty (30) days of the subject Minimum Rent Adjustment Date, sixty (60) days following Notice if Notice is delivered between thirty-one (31) and sixty (60) days after the subject Minimum Rent Adjustment Date, ninety (90) days following Notice if Notice is delivered between sixty-one (61) and ninety (90) days after the subject Minimum Rent Adjustment Date, and so on. Notwithstanding the foregoing, in no event shall the adjusted

Minimum Rent, as provided for herein, be less than the Minimum Rent in existence immediately prior to any Minimum Rent Adjustment Date. If the adjusted Minimum Rent is determined to be less than the then current Minimum Rent, then Lessee shall continue to pay the then current Minimum Rent amount until the next scheduled Minimum Rent Adjustment Date.

7.5 Periodic Increase in Percentage Rent. In addition to Minimum Rent adjustments set forth in Section 7.4 above, effective as of the first day of the eleventh (11th) Lease Year and as of the first day of each tenth (10th) Lease Year thereafter (each, a "**Percentage Rent Rate Adjustment Date**"), Landlord shall adjust the Percentage Rent rates for any Gross Revenue business activity described in Section 2.100 (each, a "**Percentage Rent Rate**" and collectively, "**Percentage Rent Rates**") as follows:

7.5.1 Timing. Commencing one hundred eighty (180) days prior to the applicable Percentage Rent Rate Adjustment Date, Landlord and Lessee shall attempt to agree upon the applicable adjustment to the Percentage Rent Rates for the Premises ("**Percentage Rent Rate Adjustment**"), effective from the next occurring Percentage Rent Rate Adjustment Date. If the Parties are unable to agree upon the Percentage Rent Rate Adjustment within one hundred twenty (120) days before the applicable Percentage Rent Rate Adjustment Date ("**Percentage Rent Rate Adjustment Negotiation Deadline**"), then the Percentage Rent Rate Adjustment for any or all of the Percentage Rent Rates shall be established by a qualified appraiser (the "**Appraiser**").

7.5.2 Selection of Appraiser. Within ten (10) Business Days after the expiration of the Percentage Rent Rate Adjustment Negotiation Deadline, Landlord shall provide to Lessee a list of at least three (3) Landlord-approved appraisers (the "**Appraiser List**"). Within ten (10) Business Days after Lessee's receipt of the Appraiser List, Lessee shall Notify Landlord of its preferred Appraiser from the Appraiser List, and such appraiser shall be deemed the mutually agreed upon Appraiser. The Appraiser's determination of the Percentage Rent Rate Adjustment, effective as of the applicable Percentage Rent Rate Adjustment Date, shall be binding on Landlord and Lessee, absent manifest error.

7.5.3 No Decrease. Notwithstanding the foregoing, in no event shall the adjusted Percentage Rent Rate, established by periodic appraisals as provided for herein, be less than the Percentage Rent Rate (for the same Gross Revenue business activity) in existence immediately prior to any Percentage Rent Rate Adjustment Date. If any new Percentage Rent Rate is determined to be less than the then current Percentage Rent Rate for any particular Gross Revenue business activity described in Section 2.100, then Lessee shall continue to pay the then current Percentage Rent Rate amount for that Gross Revenue business activity until the next scheduled Percentage Rent Rate Adjustment Date.

7.6 Security Deposit. Lessee shall pay to Landlord the sum of Four Hundred Seventy-Two Thousand Five Hundred Dollars ($472,500.00) as a security deposit ("**Security Deposit**") before the Commencement Date. The Security Deposit may be provided in the form of cash or an instrument(s) of credit from one or more Institutional Lenders, subject to regulation and insurance by the State or Federal Government, who must pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to Landlord upon written demand by Landlord ("**Credit Instrument**"). If Lessee opts to use a Credit Instrument to satisfy the Security Deposit requirement, the Institutional Lender and the form of any Credit Instrument pledging the

funds must be approved in advance by Landlord, such approval not to be unreasonably withheld, conditioned, or delayed.

7.6.1 Application and Replenishment of Security Deposit. Landlord shall hold any such Security Deposit as security for Lessee's faithful performance of all the terms, covenants, conditions, restrictions, and agreements of this Lease to be observed or performed by Lessee during the Term. If Lessee does not timely perform any Lessee obligation of this Lease, including the provisions relating to payment of Rent, and Lessee fails to cure such breach within any applicable Notice and cure period, Landlord may (but shall not be required to) use, apply, or retain the Security Deposit for the payment of any Rent or other amount not timely paid, for the payment of any amount Landlord may spend or become obligated to spend by reason of Lessee's failure to perform, or to compensate Landlord for any other loss or damage Landlord may suffer by reason of Lessee's failure to perform. If any portion of the Security Deposit is so used or applied, Lessee shall, within seven (7) days after Notice requesting replenishment of the Security Deposit, replenish the Security Deposit in an amount sufficient to restore the Security Deposit to its original amount.

7.6.2 Reduction of Security Deposit During Term. If, during the Term, Lessee fully satisfies its obligations in repaying the Deferred Rent Loan, the Security Deposit shall be reduced to One Hundred Fifty-Seven Thousand Five Hundred Dollars ($157,500.00). If, however, after such reduction, if Landlord uses or applies the Security Deposit pursuant to Section 7.6.1 above, Landlord reserves the right to increase the Security Deposit up to a maximum of the original amount set forth in Section 7.6.

7.6.3 Return of Security Deposit at End of Term. If, during the Term, Lessee fully and faithfully observes or performs every term, covenant, condition, restriction, and agreement of this Lease to be observed or performed by Lessee, the unused balance of the Security Deposit will be returned to Lessee within sixty (60) days after the Expiration Date, subject to Section 7.3.4. Lessee waives all rights regarding the Security Deposit set forth in California Civil Code Section 1950.7, or any similar, related, or successor provision of Law.

7.6.4 Miscellaneous. Landlord shall not be required to keep the Security Deposit separate from its general funds. Lessee shall not be entitled to interest on the Security Deposit.

7.7 Payment. Rent is payable to Landlord's City Treasurer on the date required under Section 7.1 in lawful money of the United States of America. Minimum Rent payments shall be delivered to Landlord as follows:

By first-class mail through the United States Postal Service, unless otherwise Notified by Landlord, with all postage pre-paid and addressed to:	By hand delivery to:
The City of San Diego Office of the City Treasurer P.O. Box 129030 San Diego, California 92112-9030	Office of the City Treasurer Civic Center Plaza 1200 Third Avenue, First Floor San Diego, California 92101

7.8 Required Payment Information. Lessee shall include Landlord's customer account numbers as directed by Landlord (e.g., Contract Account number and Reference Document number) with each Minimum Rent payment so Landlord can apply the payment to Lessee's account. Lessee's failure to include its Landlord customer account number may result in Lessee's payment not being timely applied to Lessee's account and the application of late payment charges. Lessee assumes all risk of loss and responsibility for all Rent payments sent by mail, as well as penalties, including late payment charges or administrative fees under Section 29.7, arising from its failure to include its Landlord customer account number with a Minimum Rent payment. If payments are combined, Lessee shall itemize each payment to identify the correct month/Lease Year. The place of payment may be changed at any time by Landlord upon thirty (30) days' prior Notice to Lessee. Payments shall be considered paid on the date the payment is postmarked by postal authorities, provided Lessee's contract account number(s) are included with such payment as required in this Section 7.8. Checks only constitute payment when collected.

7.9 Invoicing Courtesy. Landlord may invoice Lessee for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Lessee shall make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.10 Additional Rent. In addition to Minimum Rent, Lessee shall pay to Landlord all Additional Rent. Except where this Lease expressly provides otherwise, Lessee shall pay all Additional Rent prior to delinquency.

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

7.12 No Allocation to FF&E. No Rent is allocable to any FF&E, Construction, or Lessee Improvements.

8. ADDITIONAL PAYMENTS BY LESSEE; TAXES.

8.1 Landlord's Net Return. This Lease shall constitute an absolutely "net" lease. The Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Lessee shall pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Restoration or Construction affecting, the Premises, except (a) Landlord's administrative expenses; (b) liability for any Hazardous Substance Discharge by Landlord; and (c) all other obligations, costs and expenses required to be paid by Landlord pursuant to this Lease that do not arise as a result of a Lessee Default.

8.2 Real Estate Taxes. Lessee shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency, except for any Real Estate Taxes that Lessee contests in good faith by appropriate legal proceedings. Lessee shall also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Lessee to pay. Lessee shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Lessee paid all Real Estate Taxes this Lease requires Lessee to pay prior to such Notice. Lessee

acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Lessee shall pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all of Lessee's personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency, except for those personal property taxes that Lessee contests in good faith by appropriate legal proceedings. Lessee shall also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Lessee shall pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code Sections 11911, *et seq.*, as applicable, with respect to entry into this Lease, each Modification to this Lease, each extension of this Lease, each Transfer, or otherwise imposed regarding this Lease or Lessee by applicable Law.

8.5 Transfer of Leasehold Estate. Without limiting the generality of Lessee's obligations to pay Real Estate Taxes and subject to the limitations on Transfers in this Lease, Lessee agrees that it shall pay all increases in Real Estate Taxes resulting from a change in ownership of the Leasehold Estate, except for any such increases in Real Estate Taxes that Lessee contests in good faith by appropriate legal proceedings.

8.6 Utilities. Lessee shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises shall be installed underground and shall be used for Lessee's operations only. Landlord shall have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord shall not be liable for any interference with or disruption of any utilities or services for the Premises, unless and to the extent such interference or disruption results from Landlord's established active negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune under applicable law and subject to any defense to such liability available to Landlord.

8.7 Unauthorized Use Charge. Lessee shall pay Landlord one hundred percent (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Premises that is not a Permitted Use (as defined in Section 2), regardless of any related penalties charged Lessee by any Government ("**Unauthorized Use Charge**"). Any Unauthorized Use Charge shall be payable to Landlord within thirty (30) days after Lessee receives such revenue. The Unauthorized Use Charge shall be considered Additional Rent under this Lease and shall be subject to all costs and penalties for delinquent payments hereunder. Nothing in this Section 8.7 or Landlord's acceptance of any payment under this Section 8.7 is intended to authorize any use of the Premises that is not a Permitted Use, waive Lessee's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

9. **USE.**

9.1 Permitted Use. Lessee shall only use the Premises during the Term for the Permitted Use (as defined in Section 2) in compliance with Law and this Lease, and for no other uses. Lessee shall be solely responsible for operation of the Premises during the Term. Landlord shall have no responsibility for operation of the Premises.

9.2 Premises Operation. Lessee shall operate the Premises in a manner that will provide decent, safe and sanitary facilities to all users of the Premises.

9.3 Pre-Approval of Special Events. Without Landlord's prior approval, Lessee may host Special Events that (a) are within the Permitted Use, (b) are not inherently dangerous, (c) do not pose a risk to public health or safety, and (d) do not require that Lessee obtain separate Government Approval(s) (collectively, "**Pre-Approved Special Events**"). Lessee may contract with third-party vendors in connection with such Pre-Approved Special Events. If a Special Event does not satisfy any one of subsections (a) through (d), then such Special Event shall require the prior written approval of the Director in accordance with Section 2.108. By this Lease, Landlord acknowledges and agrees that Special Events featuring mixed martial arts fighting, also known as MMA fighting ("**Mixed Martial Arts Events**") are Pre-Approved Special Events within Lessee's Permitted Use without the need for Lessee to obtain Landlord's specific prior written approval for each individual Mixed Martial Arts Event or each individual third-party vendor hired by Lessee for such events.

9.4 Competent Management. Lessee shall provide competent management of the Permitted Use to Landlord's reasonable satisfaction. For the purposes of this Section 9.4 the following terms are defined:

9.4.1 "Competent management" means and refers to management practices generally considered acceptable within Lessee's industry for the management and operation of activities substantially similar to the Permitted Use and in compliance with all applicable Law and in a fiscally responsible manner.

9.4.2 "Fiscally responsible manner" means and refers to in accordance with generally accepted accounting principles (GAAP) or other industry accepted sound accounting principles (if Lessee is not a GAAP-reporting company), consistently applied and absent financial malfeasance.

9.5 Trash and Refuse. Lessee shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Lessee shall contract for refuse containers to be emptied on a regular basis and shall use commercially reasonable efforts to prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Lessee shall contract for the contents of all refuse containers on the Premises to be disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.6 Single Use Plastic Reduction Ordinance. Unless an exception applies, Lessee will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code ("**SDMC**") sections 66.0901 through 66.0907. By signing this Lease, Lessee certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

9.7 Limitation on Construction. Except as otherwise provided in Section 11, Lessee shall not perform any Construction on or related to the Premises that is not Restoration or repairs or maintenance required to be performed by Lessee under this Lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

9.8 Continuous Operation. Subject to any Unavoidable Delay, Lessee shall continuously use and operate the entirety of the Premises during the Term for the Permitted Use and no other use. Notwithstanding the immediately preceding sentence, nothing in this Lease shall obligate Lessee to use or operate any affected part of the Premises for any purpose following a Loss (other than an Immaterial Loss), until Lessee has completed Restoration.

9.9 Abandonment. Lessee shall not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term, except to the extent any or all of the Premises are affected by a Condemnation, and except that Lessee may temporarily vacate any portion of the Premises that suffers a Loss until Lessee has completed Restoration.

9.10 No Discrimination or Segregation. Lessee covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Lessee nor any Person claiming under or through Lessee shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the Premises.

9.11 Noise. Lessee shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5.

9.12 Nuisance. Lessee shall not use, nor allow any other Person to use, the Premises for any unlawful purpose and shall not perform, permit or suffer any act or omission upon or about the Premises that results in a nuisance or a violation of Law.

9.13 Exterior Signs. No banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising (each, a "**Sign**") may be placed within or on the exterior of the Premises without Landlord's prior written consent, in each instance, which consent may be given or withheld in Landlord's sole and absolute discretion, except for (i) Signs located inside the Improvements and not visible outside the Improvements or Signs required by Law; and (ii) all exterior and interior Signs existing on the Premises as of the Commencement Date, all of which are deemed authorized and approved by Landlord. All Signs on the Premises will be maintained and repaired by Lessee, at its sole cost and expense, in good, clean, and operating condition during the Term. Lessee will remove all of Lessee's Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of such Signs, all at Lessee's sole cost and expense. Lessee shall comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Lessee shall remove the Sign at Lessee's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Lessee does not remove the Sign within such twenty-four (24)-hour period, Landlord may enter the Premises and remove the Sign at Lessee's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.13, Lessee shall reimburse Landlord for all costs and expenses

reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) Business Days after Notice to Lessee of such costs. Any amount of money reimbursable to Landlord by Lessee under this Section 9.13 that is not paid within fifteen (15) Business Days after Notice to Lessee of such amount shall accrue Default Interest from the date incurred until paid.

9.14 No Artist's Rights. Lessee shall not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.15 Availability of Lessee Employees. Lessee agrees to have one or more of its employees who is/are knowledgeable regarding this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises and attend meetings with Landlord's staff or meetings of Landlord's City Council, when requested to do so with reasonable advance Notice to Lessee.

9.16 Compliance with Law. Lessee shall, during the Term, at Lessee's sole cost and expense, in all material respects: (a) comply with all Laws; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord (in its governmental capacity) or any other Government under the authority of current or future Law.

9.17 Accident Reports. Lessee shall, immediately or as soon as practicable and not more than 48 hours after Lessee's General Manager or other Person in charge of day-to-day operations at the Hotel becomes aware of any accident on or around the Premises causing, in Lessee's reasonable opinion, more than ten thousand dollars ($10,000.00) in property damage or injury to any Person, report to Landlord all pertinent information acquired by Lessee at the time, including but not limited to the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, and the names and addresses of all witnesses.

10. MAINTENANCE.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Lessee is performing Construction in compliance with this Lease, Lessee shall during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Lessee to repair or restore. Lessee's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. When installing new or replacement equipment or appliances in the Premises, Lessee shall only install equipment or appliances that are electric and do not consume fossil fuels. Lessee shall remove trash and debris from the Premises and maintain them in a reasonably clean condition. Except as provided in this Section 10.1, Landlord shall have no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Lessee expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Lessee's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other Improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises consistent with the Permitted Use. Lessee's obligation to maintain the Premises described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the Premises with the type of surfacing material originally installed or such substitute as shall in all respects be substantially equal or better in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a reasonably clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing, as determined in Lessee's reasonable discretion, all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, as determined in Lessee's reasonable discretion, such artificial lighting facilities as shall be reasonably required; (f) taking all reasonably appropriate measures to protect the safety of Persons using the Premises; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as Lessee reasonably determines is necessary to maintain the appearance, character and level of quality of the landscaping consistent with the Permitted Use, all at the sole cost and expense of Lessee. Lessee's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Lessee may (but shall not be obligated to) contract with a maintenance contractor or other Third Person to provide for performance of all or part of the duties and obligations of Lessee to maintain the Premises; provided, however, that Lessee shall remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term. Notwithstanding the foregoing, the Parties agree that Lessee shall have no responsibility or liability for (including any obligation to repair or maintain) the bus stop and related improvements and facilities currently located along Aero Drive adjacent to the Premises or any bike paths or any other improvements located within any public easement or right-of-way adjacent to or outside of the boundaries of the Premises.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in material contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Lessee of the Maintenance Deficiency. If Lessee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Lessee's receipt of Notice of the Maintenance Deficiency, Landlord shall have the right (but no obligation) to enter the Premises following five (5) Business Days' advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any reasonable amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3, following the expiration of Lessee's cure period, shall be reimbursed to Landlord by Lessee within thirty (30) days after Notice to Lessee of the amount. Any reasonable amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Lessee within thirty (30) days after Notice to Lessee of such amount shall accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements shall be removed by Lessee by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Lessee discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Lessee discovers or receives Notice of the graffiti, whichever is earlier, if Lessee does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Lessee, Landlord shall have the right (but no obligation) to enter the Premises and remove the graffiti. Any reasonable amount of money expended by Landlord for removal of graffiti from the Premises under this Section 10.4 shall be reimbursed to Landlord by Lessee, within thirty (30) days after Notice to Lessee of such amount. Any reasonable amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord by Lessee within thirty (30) days after Notice to Lessee of such amount shall accrue Default Interest until paid in full.

11. GENERAL DEVELOPMENT PLAN

11.1 General Development Plan. Notwithstanding anything to the contrary contained in this Lease, Lessee shall carry out the Project and make certain Improvements to the Premises as set forth in the General Development Plan, described in **EXHIBIT "D,"** attached hereto and made a part hereof ("**General Development Plan**"). Landlord and Lessee understand, acknowledge and agree that reasonable modifications of the Project and the General Development Plan may be necessary in connection with the processing of Approvals from Governments, including the City of San Diego acting in its regulatory capacity. The Director shall have the authority to approve changes to the Project and General Development Plan involving costs exceeding one million dollars ($1,000,000.00) or more, including changes to the Scheduled Completion Date (defined below in Section 11.3) ("**Material Changes**"), for the purposes of compliance with this Lease, when requested by the Lessee in writing, provided that Lessee will meet the Minimum Improvement Costs as defined in Section 11.4 below for the Project and General Development Plan. Without limiting the foregoing, however, the Director's approval shall not be required for any non-Material Changes so long as Lessee satisfies such Minimum Improvements Costs requirement; provided, however, that Lessee shall provide Notice to Landlord of non-Material Changes to the Project and General Development Plan involving costs exceeding five hundred thousand dollars ($500,000). Any such approval by the Director, when required, shall not be unreasonably withheld, conditioned or delayed. Any failure by the Director to approve or disapprove Lessee's proposed Material Changes to the General Development Plan within ten (10) days after submission thereof by Lessee shall constitute an Unavoidable Delay and shall extend day-for-day the Scheduled Completion Date of the Construction of the Improvements. Lessee shall at all times conduct its Construction operations in a way that does not interfere with the normal operation and use of the Airport by Landlord, with the monitoring and sampling of groundwater, or other monitoring components (as applicable), at the Airport, or with the public's and any other Person's entitled use of the Airport. Lessee shall secure Landlord's prior written approval to commence Construction of the Project set forth in **EXHIBIT "D"** (General Development Plan) as described in Section 11.2.

11.2 Permits and Approvals. Lessee shall, at its sole cost and expense, seek and obtain all necessary Approvals, including (if and as required) environmental clearance for the General

Development Plan, required to commence, perform, and complete Construction of the Improvements pursuant to the General Development Plan. Prior to commencing any Construction on the Premises in accordance with the General Development Plan, Lessee shall, if required, (1) submit detailed Construction plans and specifications to the applicable City departments (e.g., Development Services Department); and (2) secure all required Approvals from all applicable Governments for the commencement, performance, and completion of the Construction of all Improvements set forth in the General Development Plan ("**Final Approvals**"), including final review and approval pursuant to the California Environmental Quality Act ("**CEQA**"). For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives or mitigation measures for purposes of CEQA. If the General Development Plan Commencement Date does not occur in accordance with the General Development Plan within thirty-six (36) months from the Commencement Date of this Lease, then the Parties will promptly meet and confer ("**Initial Meeting Date**") to discuss proposed changes to the General Development Plan (a "**Revised General Development Plan**"). If the Parties mutually agree on a Revised General Development Plan, the Parties shall promptly thereafter enter into a written Modification to this Lease, and upon Council approval, shall execute and deliver the Revised General Development Plan to replace and supersede the General Development Plan. If the Parties are unable to mutually agree on a Revised General Development Plan, as evidenced by a written Modification to this Lease executed and delivered by both Parties, within forty-eight (48) months after the Commencement Date, then either Party may, at any time thereafter, elect to terminate this Lease by giving six (6) months' prior Notice to the other Party, and in that event the Parties shall execute and deliver a lease termination agreement in a form approved by Lessee and by the San Diego City Attorney, without the need for further Council action.

11.3 Scheduled Completion Date; Liquidated Damages. As used herein, (i) "**Scheduled Completion Date**" means the date occurring twenty-four (24) months following the date on which Lessee secures all required Final Approvals for the commencement, performance and completion of Construction of all Improvements set forth in the General Development Plan, as such date may be extended by mutual agreement of the Parties; and (ii) "**materially complete**" means that the Improvements have been substantially completed in accordance with the Approvals, subject to the completion of minor punch-list items that do not materially limit the use or occupancy of the Improvements for their intended purposes. The Parties agree that the damages to Landlord resulting from Lessee's failure to materially complete the Improvements identified in the General Development Plan by the Scheduled Completion Date would be extremely difficult to determine. Therefore, the Parties agree that if Lessee fails to materially complete the Improvements described in the General Development Plan as required by this Lease by the Scheduled Completion Date, as may be extended from time to time by mutual agreement of the Parties, and such failure continues without cure by Lessee for more than sixty (60) days after Landlord's Notice to Lessee, Lessee shall pay to Landlord the amount of One Hundred Dollars ($100) as liquidated damages, and not as a penalty, for each day after the Scheduled Completion Date until material completion of the Improvements, subject in all cases to Unavoidable Delays; provided, however, Lessee shall not be liable for such liquidated damages in the event Lessee was unable to obtain to timely secure all required Final Approvals for the commencement, performance, and completion of the Construction despite Lessee's good faith commercially reasonable efforts. Such liquidated damages shall be deemed Additional Rent due and payable within thirty (30) days of Landlord's written demand therefor.

11.4 Minimum Improvement Costs. Lessee agrees to spend a minimum of Eight Million Dollars ($8,000,000.00) on the Construction of all the Improvements described in the General Development Plan ("**Minimum Improvement Costs**"). Lessee's Minimum Improvement Costs shall include all fees, costs, expenses, charges and other amounts incurred or expended by Lessee, before or after the Commencement Date, in connection with the Construction of the Improvements described in the General Development Plan, including all hard costs and soft costs relating to or for the design, planning, financing, Approvals, construction and other work associated with the Construction of the Improvements. As used herein, "**soft costs**" shall include, without limitation, costs for studies, reports or site assessments, Application and Approval costs, fees and charges, escrow charges, premiums for hazard insurance or other insurance and bonds that are required by Landlord in its governmental regulatory capacity or proprietary capacity as Landlord under this Lease, taxes, title insurance premiums, loan costs, including points, fees, interest and commissions, architectural, engineering, space planning and other design professional fees and costs, attorneys' fees and costs, and other normal costs and expenses incidental to the Construction of the Improvements.

11.5 Landlord's Cost; Indemnity. In addition to all fees, costs, etc., required to be paid by Lessee for the processing of its Construction plans through City's Development Services Department, or any other Government, Lessee shall reimburse Landlord for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by Landlord in approving or disapproving Lessee's plans for any Improvements. Lessee shall be liable for and shall Indemnify Landlord from any Claim arising from Lessee's Construction of any Improvements permitted under this Lease, except and to the extent any such Claim arises from the established active negligence or willful misconduct of Landlord or any Landlord Party.

11.6 Onsite and Offsite Utilities. Landlord shall assist in determining the location of existing utilities by providing Lessee with any surveys on file with Landlord. All utilities required to be installed by Lessee will be installed underground, at Lessee's sole cost and expense, upon prior written approval by Landlord of the utility installation and location thereof.

11.7 Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP). Lessee acknowledges and agrees that the City of San Diego's Zero Emissions Municipal Buildings and Operations Policy ("**ZEMBOP**"), articulated in Council Policy 900-03, as it may be amended from time to time, is hereby incorporated into this Lease by reference, and Lessee agrees to take any action to the extent required by ZEMBOP to achieve zero emissions as provided therein, including but not limited to all provisions related to leased properties at Section III.G of Council Policy 900-03.

Lessee shall, at its sole cost and expense, seek and obtain all necessary Approvals required for Constructing any Improvements on the Premises pursuant to ZEMBOP.

12. **PREVAILING WAGE LAW AND LWO.** The Parties acknowledge that under this Lease, the Deferred Rent Loan provided by Landlord to Lessee, as detailed in Sections 7.1.1 and 7.1.2, to account for and accommodate the reduced revenues Lessee will realize during Construction of the Project and execution of the General Development Plan, shall be repaid by Lessee with market-rate interest during the Repayment Period of the Term. As such, the Project will not be "paid for in whole or in part out of public funds" within the meaning of California Labor Code section

1720(b)(4). Accordingly, it is the mutual intention and understanding of the Parties that the Project is not subject to the Prevailing Wage Law, unless and to the extent (i) otherwise triggered by separate City or State or other Government funding or financial assistance not contemplated in this Lease, (ii) a non-appealable Prevailing Wage Determination is made by State or Federal Government that the Construction of the Project on the Premises as contemplated in this Lease is subject to the Prevailing Wage Law, or (iii) otherwise required by applicable Law. In such event and in the case of any future work that may be subject to the Prevailing Wage Law, Lessee shall comply with the provisions in **EXHIBIT I**. Likewise, the Lease is not subject to the LWO, pursuant to SDMC section 22.4215(a)(6).

13. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. All Improvements, Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall, during the Term, be owned by, and belong to, Lessee, and all benefits and burdens of ownership of such Improvements, Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations shall be and remain in Lessee during the Term.

14. **PROHIBITED LIENS.**

14.1 Lessee's Covenant. Lessee shall Notify Landlord of each Prohibited Lien within twenty (20) days following Lessee's receipt of notice of such Prohibited Lien. Lessee shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after Lessee receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien), cause such Prohibited Lien to be paid, discharged, or bonded over and cleared from title to the Leasehold Estate; provided, however, that if Lessee disputes such Prohibited Lien in good faith, Lessee may maintain an appropriate dispute of such Prohibited Lien without payment, if Lessee records a bond complying with the provisions of California Civil Code Section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Lien. Lessee shall, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord shall promptly Notify Lessee.

14.2 Protection of Landlord. LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING LESSEE ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. LESSEE SHALL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY LESSEE OR ANYONE CLAIMING THROUGH LESSEE AND AGAINST ALL PROHIBITED LIENS.

14.3 No Liens Against Public Property. LESSEE ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. LESSEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. LESSEE SHALL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

15. **INSURANCE**. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, or the Permitted Use, Lessee shall maintain, at its sole expense, throughout the Term, all the insurance coverage described in **EXHIBIT E** attached to this Lease.

16. **LOSSES AND LOSS PROCEEDS.**

16.1 Notice. If either Party becomes aware of any Loss, such Party shall Notify the other Party of such Loss within a reasonable time.

16.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent shall abate, except as provided below, and Lessee shall Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose), subject to any Unavoidable Delay; and (b) Lessee shall be solely responsible for: (i) negotiating and adjusting any Property Insurance Proceeds regarding the Casualty; and (ii) the costs of Restoration. Notwithstanding anything contrary in the foregoing, in the event of a Restoration, the Minimum Rent payable by Lessee shall be abated proportionately with the degree to which Lessee's use of the Premises is impaired, commencing from the date of Loss and continuing during the period of such Restoration. Lessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management. Except for such Rent abatement, Lessee shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises or any inconvenience or annoyance occasioned by such Casualty or Restoration, except and to the extent any such Casualty arises from the established active negligence or willful misconduct of Landlord or any Landlord Party. Notwithstanding anything contrary in the foregoing, if a Casualty occurs within the last thirty-six (36) months of the Term involving a Loss equal to One Million dollars ($1,000,000) or more, Lessee may, at any time after making such determination and on 60 days' Notice, Notify Landlord of Lessee's election to terminate this Lease, including supporting documentation showing assessment and calculation of such Loss. In that event, this Lease shall terminate on the effective termination date specified in Lessee's Notice, and neither Party shall have any further rights or obligations hereunder following such termination date except for those rights and obligations that expressly survive termination of the Lease.

16.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease shall terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Lessee shall settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, neither Landlord nor Lessee shall be required to obtain the consent of the other Party to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award shall be paid to Depository under Section 16.6. For a Substantial Condemnation, Landlord and Lessee shall allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

16.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

16.3.2 *Lessee's Costs*. To reimburse Lessee for Lessee's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

16.3.3 *Lessee's Claim*. Lessee shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

16.3.4 *Landlord's Claim*. Landlord shall receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

16.3.5 *Landlord's Residual Claim*. Landlord shall receive the entire remaining Condemnation Award.

Notwithstanding anything to the contrary in the foregoing, Lessee's right to receive any Condemnation Award separately awarded to Lessee directly in connection with a Condemnation for the taking of its FF&E, Equipment or other personal property, relocation expenses, compensation as a "displaced person" pursuant to California Government Code Section 7262 or other applicable Law, any loss of goodwill as the owner of a business under California Code of Civil Procedure Section 1263.150 or other applicable Law, and/or interests in other than the real property taken and/or the Leasehold Estate shall not be affected in any manner by the provisions of this Section 16.3 or any other provision of this Lease. Subject to the foregoing, Lessee shall have the right to negotiate any such Condemnation Award to be separately awarded to Lessee with the condemning Government.

16.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Lessee shall, at its expense, Restore in compliance with this Lease. After Lessee completes and pays for Restoration, any remaining Condemnation Award shall

be distributed to Landlord and Lessee in accordance with Section 16.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

16.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date with a duration of not more than ten (10) days, then no Rent shall abate under this Lease and this Lease shall not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. However, if a Temporary Condemnation occurs after the Commencement Date with a duration of more than ten (10) days, then Rent shall abate during the remaining duration of the Temporary Condemnation on an equitable basis, taking into account the relative values of the portion of the Premises affected by the Temporary Condemnation as compared to the remaining unaffected portion. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term shall belong to Landlord. Otherwise, Lessee shall receive the Condemnation Award (to the extent attributable to periods within the Term).

16.6 Use of Loss Proceeds. Landlord assigns to Lessee the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds shall be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord shall remit them to Depository. If a Loss is an Immaterial Loss, then Depository shall release all Loss Proceeds to Lessee, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Lessee, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds shall be paid to Landlord and Lessee as provided in Section 16.3. Depository shall first reimburse Landlord and Lessee from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Lessee, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Lessee has completed and paid for Restoration, Depository shall release to Lessee, and Lessee may retain all remaining Loss Proceeds. Until Lessee has completed and paid for Restoration, Lessee shall hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Lessee shall not be entitled to receive any further installment of Loss Proceeds, until Lessee has bonded, satisfied, or otherwise discharged such Prohibited Lien under Section 14.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Lessee shall nevertheless Restore at Lessee's sole cost and expense. Depository shall not release any Loss Proceeds, unless and until Lessee expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord shall reasonably determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

16.7 Continuation of Lease. Except as this Lease expressly provides, this Lease shall not terminate, be forfeited, or be affected in any other manner by any Loss. Lessee waives all right to quit or surrender the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease shall exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Lessee's obligations

under this Lease, including the obligation to pay Rent, shall continue unabated, except as otherwise provided herein.

16.8 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor shall be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease shall be considered any type or form of Condemnation, except as otherwise provided by Law.

17. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Lessee shall not commit or suffer to be committed any waste of the Premises, Improvements, or Equipment. Lessee agrees to keep the Premises, Improvements, and Equipment clean and clear of refuse and trash, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Equipment, or FF&E. Lessee shall promptly Notify Landlord of any waste, Casualty, or damage to the Premises. If waste, Casualty, or damage to the Premises arises from the Permitted Use, at Landlord's election, in Landlord's sole and absolute discretion, Lessee shall make, or cause to be made, full repair of the waste, Casualty, or damage and Restore the Premises to substantially the same condition (to the extent reasonably practicable) existing immediately prior to the waste, Casualty, or damage, as provided in Section 10 of this Lease. Lessee shall commence preliminary steps toward Restoration of the Premises as soon as reasonably practicable, but no later than thirty (30) days after the date the waste, Casualty, or damage occurs. Lessee shall complete all required Restoration of the Premises within ninety (90) days after the date the waste, Casualty, or damage occurs, or, if such Restoration cannot reasonably be completed within such ninety (90)-day period, then as soon as reasonably practicable so long as Lessee diligently and continues to perform the Restoration until completion, subject in all cases to any Unavoidable Delays. Lessee must obtain all Approvals required for Restoration of all waste, Casualty, or damage to the Premises.

18. **ENVIRONMENTAL CONDITIONS**. Lessee shall not cause or permit any Environmental Condition. If Lessee discovers or becomes aware of an Environmental Condition, Lessee shall Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Lessee becoming aware of such Environmental Condition.

18.1 Remediation. If an Environmental Condition occurs during the Term of this Lease, Lessee shall remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Lessee's sole cost and expense, except and to the extent any such Environmental Condition arises from the established active negligence or willful misconduct of Landlord or any Landlord Party, in which event Landlord shall be responsible for remediating the Environmental Condition at its sole cost and expense. If Lessee knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Lessee shall take all actions necessary to alleviate the imminent danger, at Lessee's sole cost and expense.

18.2 Removal. If a Lessee Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Lessee shall remove all such Hazardous Substances from the Premises prior to the Expiration Date and, at Landlord's written request,

provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Landlord may remove Lessee's Hazardous Substances from the Premises, at Lessee's sole cost and expense, (a) during the Term, (i) if Lessee does not remove such Hazardous Substances after at least sixty (60) day's Notice by Landlord, (ii) after the occurrence of a Lessee Default, or (iii) in the case of an emergency; and (b) after the Expiration Date. This provision shall survive the expiration or earlier termination of this Lease.

18.3 Reports. Lessee shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within fifteen (15) Business Days after Notifying Landlord of the Environmental Condition. Lessee shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

18.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Landlord's sole cost and expense, except that, if such assessment determines that an Environmental Condition exists on the Premises that is required to be remediated by Lessee pursuant to this Lease, then the cost and expense of the environmental assessment shall be shifted to Lessee. In that event, Lessee shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within thirty (30) days after Notice to Lessee of the amount of such costs and expenses. Any amount reimbursable to Landlord by Lessee under this Section 18.4 that is not paid within thirty (30) days after Notice to Lessee of such amount, shall accrue Default Interest until paid.

19. **ACCESS AND INSPECTION.** Notwithstanding anything to the contrary in this Lease, but subject to Sections 7.3.2 and 7.3.3 above, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Lessee is complying with this Lease; (b) cure Lessee's Defaults as permitted by this Lease; or (c) perform such tests, borings, or other analyses as Landlord reasonably determines are necessary or appropriate relating to possible noncompliance with Law or possible Hazardous Substance Discharge by Lessee; provided, however, no invasive testing shall be conducted by or for Landlord without Lessee's prior written consent, not to be unreasonably withheld. In entering the Premises, Landlord and its agents shall not unreasonably interfere with Lessee's Permitted Use of the Premises, its guests and any subtenants, and shall comply with Lessee's reasonable instructions. Landlord's entry onto the Premises under this Section 19 shall not entitle Lessee to any rights or remedies, except as expressly provided in this Section 19, and such entry shall not constitute an actual or constructive eviction of Lessee from the Premises, nor shall it entitle Lessee to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Lessee in the event of an emergency or if the giving of Notice would undermine the purpose and efficacy of Landlord's entry onto and inspection of the Premises. All Landlord representatives or agents who enter the Premises shall identify themselves at the main entrance to the Premises and may be accompanied by a Lessee representative, at Lessee's discretion, while on the Premises. If in Landlord's reasonable judgment it is necessary, Landlord shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Lessee with this Lease. Lessee acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of

protecting Landlord's rights under this Lease; (ii) are made solely for Landlord's benefit; (iii) Landlord's inspections may be superficial and general in nature; (iv) are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (v) Lessee shall not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Lessee agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

20. INDEMNIFICATION.

20.1 Lessee Indemnity Obligations. In addition to Lessee's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Lessee shall Indemnify the Landlord Parties against all Claims arising during the Term from: (a) Lessee's use or occupancy of the Premises or this Lease; (b) personal injury (including death) or property damage (to property of Lessee or any other Person) occurring on the Premises; (c) personal injury (including death) or property damage resulting from Lessee's use or occupancy of the Premises; (d) wrongful intentional acts or negligence of one or more of the Lessee Parties; (e) strict liability relating to Lessee's use or occupancy of the Premises; (f) all Applications made at Lessee's request; (g) an agreement that Lessee (or anyone claiming by or through Lessee) makes with a Third Person regarding this Lease or the Premises; (h) services, labor, material, or equipment supplied to, for, or on behalf of Lessee regarding the Premises; (i) a workers' compensation claim by one or more employees or contractors of one or more of the Lessee Parties arising with respect to Lessee's operations at the Premises; (j) a Prevailing Wage Determination arising with respect to Lessee's operations at the Premises, including but not limited to Lessee's Construction of the Project and implementation of the General Development Plan; or (k) an Environmental Condition occurring on or after the Commencement Date and during the Term. Notwithstanding anything to the contrary in this Lease, Lessee's obligations to Indemnify the Landlord Parties excludes Claims to the extent arising from the established active negligence or willful misconduct of Landlord or any other Landlord Party.

20.2 Independence of Insurance and Indemnity Obligations. Lessee's obligations to Indemnify the Landlord Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or Modifying Lessee's insurance or other obligations under this Lease. Lessee's obligations to Indemnify the Landlord Parties under this Lease are independent of Lessee's insurance and other obligations under this Lease. Lessee's compliance with its insurance obligations and other obligations under this Lease shall not in any way restrict, limit, or Modify Lessee's obligations to Indemnify the Landlord Parties under this Lease and are independent of Lessee's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

20.3 Survival of Indemnification Obligations. Lessee's obligations to Indemnify the Landlord Parties under this Lease shall survive the expiration or earlier termination of this Lease, until all actual or prospective Claims subject to Lessee's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

20.4 Indemnification Procedures. Wherever this Lease requires Lessee to Indemnify the Landlord Parties:

20.4.1 *Notice*. The affected Landlord Parties shall Notify Lessee of the Claim within a reasonable time and in any event within such time as not to prejudice Lessee's claims, rights, remedies or defenses.

20.4.2 *Selection of Counsel*. Lessee shall select counsel reasonably acceptable to Landlord's City Council. Even though Lessee shall defend the Claim, the affected Landlord Parties may, in their respective sole and absolute discretion, engage separate legal counsel, at Lessee's expense, to advise them regarding the Claim and their defense. The affected Landlord Parties' separate legal counsel(s) may attend all proceedings and meetings. Lessee's legal counsel shall actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

20.4.3 *Cooperation*. The affected Landlord Parties shall reasonably cooperate with Lessee's defense of the Landlord Parties.

20.4.4 *Settlement*. Lessee may only settle a Claim with the prior written consent of the affected Landlord Parties, in their respective sole reasonable discretion.

20.5 Immediate Duty to Defend. The duty to defend that is within Lessee's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of Lessee or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend the Landlord Parties at any stage of a Claim within the scope of Lessee's obligations to Indemnify the Landlord Parties under this Lease.

20.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Lessee's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Lessee's obligation to Indemnify the Landlord Parties shall be reduced to the extent required to comply with applicable Law.

21. **LANDLORD'S TRANSFERS**. Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord shall Notify Lessee of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the Fee Estate in compliance with this Lease, the grantor shall be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities or obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

22. **FEE SECURITY INSTRUMENTS**. Subject to the terms and conditions of this Lease and the Statement of Priorities, Landlord will have the right, at any time and from time to time during the Term, to make and deliver Fee Security Instrument(s). All Fee Security Instruments will be subject and subordinate to this Lease. Lessee will reasonably cooperate with Landlord and each actual or prospective Fee Lender by providing information reasonably requested by the Fee Lender and entering into agreements or signing and delivering documents reasonably requested by each actual or prospective Fee Lender.

22.1 Protection of Fee Lenders. If Lessee gives Landlord any Notice of a Landlord Default, Lessee will simultaneously give a copy of the Notice to all Fee Lender(s) of which Lessee has received Notice and contact information for delivery of Notices. Such Fee Lender(s) will have the right (but no obligation) to cure the Landlord Default within sixty (60) days following expiration of the cure period allowed to Landlord under this Lease, and with like effect as if Landlord had effected the cure. Lessee's failure to give Fee Lender(s) the Notice required by this Section 22.1 will not be a Default by Lessee, but no Notice by Lessee of any Landlord Default (or any resulting exercise of rights or remedies by Lessee) will be effective against the Fee Lender(s), unless and until Lessee has given the Fee Lender(s) the Notice and opportunity to cure required by this Section 22.1.

23. **LESSEE TRANSFERS**. Lessee shall not have any right to make or allow any Transfer without the prior written consent of Landlord, which may be given or withheld in Landlord's sole and absolute discretion. Lessee acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Lessee further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Lessee, the restrictions in this Lease on Transfers are reasonable.

23.1 Transfer Revenue Sharing with Landlord. If Landlord approves a Transfer, Lessee shall pay to Landlord two percent (2%) of any Gross Revenue received by Lessee in consideration of the Transfer on or before the effective date of the Transfer.

23.2 Transfers to Permitted Leasehold Lenders. At any time, a Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument that existed as of the Effective Date, without Landlord's consent; or (b) a Transferee who obtains an Equity Interest in Lessee or the Leasehold Estate through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written consent, in Landlord's sole reasonable discretion.

23.3 Information on Equity Interests in Lessee. Within ten (10) Business Days' Notice by Landlord, Lessee must certify Lessee's then current ownership structure to Landlord, including the identity of all the then current owners of Equity Interests in Lessee.

23.4 Reasonable Restrictions. Landlord and Lessee agree that the restrictions on Transfers under this Section 23 are reasonable under the circumstances in which this Lease is entered into.

23.5 No Transfers to Prohibited Transferees. Notwithstanding Sections 23 or 23.2 or any other provision of this Lease to the contrary, Lessee will not make any Transfer to a Prohibited Transferee.

23.6 Transfer Taxes. Lessee will pay all transfer and other taxes payable as a result of any Transfer by Lessee.

23.7 Additional Conditions. Each Transfer will be subject to all the following conditions precedent, as applicable:

23.7.1 *Notice and Documentation.* Lessee will Notify Landlord of each proposed Transfer and concurrently provide Landlord with all the following:

(a) A current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with generally accepted accounting principles (GAAP) or other industry-accepted sound accounting principles (if Transferee is not a GAAP-reporting company), sufficiently detailed to allow Landlord to evaluate the proposed Transferee's current assets, liabilities, and the monetary amount by which the total monetary value of all assets of the proposed Transferee exceed the total monetary value of all liabilities of the proposed Transferee;

(b) All written agreements between Lessee and the proposed Transferee effectuating he Transfer, conditioned on Landlord's approval of the Transfer;

(c) A description of all properties owned or operated by the proposed Transferee that are similar to the Premises (if any);

(d) A certification by the Chief Financial Officer or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the laws of the State, that the proposed Transferee is not a Prohibited Transferee;

(e) All other information regarding the proposed Transferee reasonably requested by Landlord.

23.7.2 *No Default.* No Notice of Default to Lessee is outstanding as of the date of Lessee's Notice to Landlord of the Transfer or at any time following the date of Lessee's Notice to Landlord of the Transfer through and including the effective date of the Transfer.

23.7.3 *Estoppel Certificate.* Lessee delivers to Landlord an Estoppel Certificate covering all time periods beginning on the date of Lessee's acquisition of the Leasehold Estate through and including the effective date of Lessee's Notice to Landlord requesting approval of the Transfer. Lessee will update each Estoppel Certificate regarding a Transfer on the effective date of the Transfer to cover all time periods beginning on the date of Lessee's acquisition of the Leasehold Estate through and including the effective date of the Transfer.

23.8 Future Transfers. The provisions of this Section 23 will also apply to all future Transfers by each Transferee previously approved by Landlord under this Section 23.

23.9 Landlord's Costs. Lessee will reimburse Landlord for all reasonable costs (including Legal Costs) Landlord incurs in reviewing and approving each proposed Transfer requiring Landlord's consent under this Lease.

24. LEASEHOLD SECURITY INSTRUMENTS.

24.1 Lessee's Rights. Subject to the terms and conditions of this Lease and the Statement of Priorities, Lessee will have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instrument(s) encumbering this Lease and the Leasehold Estate, provided that all Defaults are cured before or on the effective date of the Permitted Leasehold Security Instrument(s); and (b) assign Lessee's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

24.2 Limitations on Leasehold Security Instruments. Landlord will not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances will the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Lessee or any Person other than Landlord. Permitted Leasehold Security Instruments may secure repayment of financing being applied (i) to pay the cost of Construction under the General Development Plan on the Premises allowed under this Lease; (ii) for any other business purpose of Lessee; or (iii) to refinance any existing Permitted Leasehold Security Interest described in clauses (i) and/or (ii). At no time may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate, in the aggregate, exceed seventy-five percent (75%) of the then current appraised Market Value of the Leasehold Estate. Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Lessee is outstanding under this Lease will not encumber the Leasehold Estate and will be a Default by Lessee, subject to applicable Notice and cure periods, unless all Defaults of Lessee under this Lease are cured concurrent with the grant of the Security Instrument.

24.3 Effect on Landlord. No Permitted Leasehold Security Instrument will affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. Any Lender Protections may be exercised only by, and will only benefit, Permitted Leasehold Lenders, New Tenants, and Post-Foreclosure Tenants. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then the Permitted Leasehold Security Instrument will be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. If this Lease terminates and the New Lease Option Period expires, without any Permitted Leasehold Lender timely requesting and entering into a New Lease, then Permitted Leasehold Lender(s) will no longer be entitled to any Permitted Leasehold Lender's Cure Rights or other Lender Protections. The priority of the Leasehold Estate and the consequences of a Foreclosure Event under a Permitted Leasehold Security Instrument are as described in the Statement of Priorities. Nothing in any Permitted Leasehold Security Instrument shall bind Landlord or impose any obligation or liability on Landlord.

24.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a Foreclosure Event and exercise any other rights or remedies against Lessee and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it will, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Lessee under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) will have any personal liability under this Lease unless and until (and then only so long as) it is Lessee under this Lease.

24.5 Transfer of Escrows, Reserves, Security, and Other Deposits Held by Landlord. Upon any Foreclosure Event or New Lease Delivery Date, the Lessee's right, title, and interest in any Security Deposit, letter of credit (subject to the issuer's consent), reserve account, escrow account (for Real Estate Taxes, insurance premiums, Rent, or any other purpose), security, prepaid Rent, or other amount of money the former Lessee previously paid Landlord under this Lease, any Restoration Funds, and any Improvement Surety (subject to the surety's consent) will automatically be assigned to the New Tenant or Post-Foreclosure Tenant, as applicable. Upon any Foreclosure Event or New Lease Delivery Date, the former Lessee will no longer have any right, title, or interest in or to any deposits, credits, accounts, funds, bonds, or insurance described in the immediately preceding sentence. Instead, New Tenant or Post-Foreclosure Tenant will hold all the rights, free of any claim of the former Lessee. To the extent that on any New Lease Delivery Date, the New Lease requires Lessee to restore the amount of any security deposit, bond, or account, New Tenant's failure to do so will constitute a Monetary Default, subject to all applicable Notices and opportunity to cure, including Permitted Leasehold Lender's Cure Rights.

24.6 Termination of Permitted Leasehold Lender's Rights. If a Permitted Leasehold Lender is entitled to Lender Protections, then that entitlement will not terminate, unless and until either: (a) its Permitted Leasehold Security Instrument is satisfied; (b) the Permitted Leasehold Lender consents in writing to termination of its Lender Protections; or (c) after Landlord complies with all Lender Protections, Landlord validly terminates this Lease, no Permitted Leasehold Lender validly requests (and is entitled to) and enters into a New Lease, and the New Lease Option Period expires. Upon the occurrence of the circumstances described in clause "(c)" of this Section 24.6, the obligations formerly secured by Permitted Leasehold Security Instrument(s) will no longer be secured by Permitted Leasehold Security Instruments and no Permitted Leasehold Security Instrument will encumber the Leasehold Estate.

24.7 Lease Impairments. Any Lease Impairment made or entered into without Permitted Leasehold Lender's Consent will (at the option of the Senior Permitted Leasehold Lender) not be effective and not bind Permitted Leasehold Lenders or any New Tenant or Post-Foreclosure Tenant. Nothing in this Section 24.7 limits Landlord's right to terminate this Lease after an Event of Default and the expiration of all Permitted Leasehold Lender Cure Rights, without cure of the Event of Default, subject to the right of a Permitted Leasehold Lender to obtain a New Lease.

24.8 Permitted Leasehold Lender Notice of Default. Any Landlord right to terminate this Lease following any Event of Default will be conditioned upon Landlord first Notifying each Permitted Leasehold Lender of which Landlord received Notice and an address for service of Notice of the Default giving rise to the Event of Default, and no Permitted Leasehold Lender timely curing the Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 24.9.

24.9 Permitted Leasehold Lender's Cure Rights. If a Default occurs, then any Permitted Leasehold Lender will have the time provided in this Section 24.9 (if the Permitted Leasehold Lender so elects, and no Permitted Leasehold Lender will have any duty to undertake any Permitted Leasehold Lender's Cure of any kind) to take whichever of the actions described below in this Section 24.9 are applicable to the Default:

24.9.1 *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender may, at its option, cure the Monetary Default within seven (7) days after expiration of Lessee's cure period under this Lease for the Monetary Default.

24.9.2 *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender can reasonably cure without obtaining possession of the Premises, provided that Permitted Leasehold Lender has cured all Monetary Defaults, Permitted Leasehold Lender may: (a) Notify Landlord of the Permitted Leasehold Lender's intent to cure the Non-Monetary Default within seven (7) days after expiration of Lessee's cure period for the Non-Monetary Default; (b) within thirty (30) days after expiration of Lessee's cure period for the Non-Monetary Default, commence to cure the Non-Monetary Default; and (c) diligently prosecute the cure of the Non-Monetary Default to completion within a reasonable time.

24.9.3 *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises (including any Construction-related Default), Permitted Leasehold Lender will be entitled (but not required) to do the following (but only so long as, for any Defaults other than a Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises, the Permitted Leasehold Lender exercised or is exercising, within the applicable cure periods, the applicable Permitted Leasehold Lender's Cure Rights):

(a) **Pursue Premises Control**. At any time within thirty (30) days after expiration of the cure period (if any) applicable to Lessee, or if no cure period applies to Lessee, then within thirty (30) days after receiving Notice of the Non-Monetary Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and (subject to any applicable stay in any Bankruptcy Proceeding affecting Lessee or any applicable injunction) then diligently prosecute the proceedings to completion. If a Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control in accordance with this Section 24.9.3(a) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender or Post-Foreclosure Tenant will proceed with reasonable diligence to cure all Non-Monetary Defaults within: (i) thirty (30) days after the Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control; or (ii) if the Non-Monetary Default is not reasonably susceptible of cure within the thirty (30) day period, then within a reasonable time.

(b) **Performance of Lease Obligations**. Perform all of Lessee's covenants and obligations under this Lease that can be performed by the Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

24.10 Landlord's Exercise of Other Rights and Remedies. Whenever a Permitted Leasehold Lender is exercising, or is entitled to exercise, Permitted Leasehold Lender's Cure Rights, Landlord may, notwithstanding anything to the contrary in this Lease, continue to deliver Notices of Default to, collect actual damages from, and seek equitable relief (including a negative or mandatory injunction) against Lessee on account of any Default, and may require Lessee to Indemnify the

Landlord Parties (and other Indemnitees) in each case when, as, and to the extent this Lease requires.

24.11 Permitted Leasehold Lender Exercise of Lessee's Rights. So long as the Permitted Leasehold Lender's Cure Rights (and right to obtain a New Lease) under this Lease have not expired, the Permitted Leasehold Lender may, at any time, exercise all rights or remedies of Lessee under this Lease, subject to all limitations on these rights or remedies. Any exercise of the rights or remedies of Lessee by a Permitted Leasehold Lender will be as effective as if done by Lessee.

24.12 Indemnity for Cure Activities. Notwithstanding anything to the contrary in this Lease, if a Permitted Leasehold Lender desires to enter the Premises to cure a Default, then, as a condition to this entry, the Permitted Leasehold Lender will agree in writing to Indemnify the Landlord Parties against all Claims arising from the Permitted Leasehold Lender, its employees, contractors, or agents pursuing the cure of the Default, except Claims arising solely from the established active negligence or willful misconduct of the Landlord Parties.

24.13 Limited Assignment of Security Instruments. No Permitted Leasehold Lender will assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender holding the Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by the Permitted Leasehold Security Instrument.

25. NEW LEASE.

25.1 New Lease Notice. If the Expiration Date occurs before the Scheduled Expiration Date for any reason (including because of any Default or rejection in a Bankruptcy Proceeding or any Permitted Leasehold Lender's failing to timely exercise its Permitted Leasehold Lender's Cure Rights), but excluding any termination with Permitted Leasehold Lender's Consent because of a Loss or otherwise, then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Permitted Leasehold Lender), Landlord will, within ten (10) Business Days, Notify all Permitted Leasehold Lenders of the Expiration Date. If a Permitted Leasehold Lender requests a New Lease during the New Lease Option Period, then from the Expiration Date to the New Lease Delivery Date, Landlord will not: (a) operate the Premises in an unreasonable manner; (b) terminate Subleases except for the Subtenant's default; or (c) lease the Premises (except Subleases) to anyone other than New Tenant. Upon a Permitted Leasehold Lender's request for a New Lease made during the New Lease Option Period, Landlord will enter into a New Lease with New Tenant, provided that on the New Lease Delivery Date, New Tenant: (i) pays Landlord all monetary amounts then due under this Lease, as if this Lease had not terminated; and (ii) agrees to cure with reasonable diligence all then-uncured Non-Monetary Defaults, within a reasonable period after the New Lease Delivery Date. Nothing in this Lease will prevent Landlord from terminating this Lease in accordance with its terms (after compliance with all Permitted Leasehold Lender's Cure Rights), but any termination will, thereafter, be subject to Permitted Leasehold Lenders' and New Tenant's rights to obtain a New Lease (even if any Permitted Leasehold Lender could have prevented the termination by exercising its Permitted Leasehold Lender's Cure Rights). The following additional provisions will apply to any New Lease:

25.1.1 *Priority*. Any New Lease and New Tenant's Leasehold Estate under the New Lease, and Landlord's obligation to deliver possession of the Premises under any New Lease, will all be subject to: (a) the rights of all Persons in possession of the Premises; (b) any matters that encumbered the previous Leasehold Estate and were senior and prior to the Permitted Leasehold Security Instrument held by the Permitted Leasehold Lender that requested the New Lease; and (c) Permitted Exceptions.

25.1.2 *Adjustment for Net Income*. On the New Lease Delivery Date, Landlord will pay New Tenant an amount of money equal to the revenue received by Landlord from the Premises, less (a) Rent and (b) operating expenses expended or incurred by Landlord, from the Expiration Date to the New Lease Delivery Date, provided that New Tenant simultaneously pays Landlord (or credits Landlord an amount of money equal to) all amounts of money required to be paid Landlord under this Lease upon entry into the New Lease (including any Rent due, but unpaid), and not otherwise paid to Landlord from revenue received by Landlord from the Premises.

25.1.3 *Transfer of Certain Items*. On the New Lease Delivery Date, Landlord will assign and convey to New Tenant, Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Lessee (or Permitted Leasehold Lender) would have been entitled to receive, but for Lessee's Event of Default and Landlord's termination of this Lease; (b) all Subleases under the terminated Lease, except to the extent a Sublease expired or was terminated in compliance with this Lease (which Subleases, upon the assignment by Landlord to New Tenant, will become Subleases under the Leasehold Estate of the New Lease); and (c) security deposits under the assigned Subleases (if any) actually held by Landlord.

25.1.4 *Preservation of Former Subleases*. Between the Expiration Date and the New Lease Delivery Date (or the expiration of the New Lease Option Period, if no Permitted Leasehold Lender requests a New Lease) all Subleases will temporarily be direct leases between Landlord and the former Subtenants, but this circumstance will not impose any obligation on Landlord. On the New Lease Delivery Date, the reinstatement or assignment of the Subleases (or direct leases with former Subtenants) from Landlord to New Tenant will be without warranty from or recourse of any kind whatsoever to Landlord.

25.1.5 *Landlord's Costs and Expenses*. If a Permitted Leasehold Lender requests Landlord enter into a New Lease, then on the New Lease Delivery Date (and as a condition to Landlord's delivery of the New Lease) the Permitted Leasehold Lender will pay all reasonable expenses, including documentary transfer taxes and Legal Costs, incurred or payable by Landlord in connection with any Lessee Event of Default and termination of this Lease, recovery of possession of the Premises, preparation, signature, and delivery of the New Lease, any memorandum of the New Lease requested by New Tenant and recordation of any memorandum, and all other documents New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

25.1.6 *Survival*. All rights of any Permitted Leasehold Lender, and obligations of Landlord, regarding a New Lease will survive termination of this Lease for the duration of the New Lease Option Period.

26. INTERACTION OF MULTIPLE ESTATES.

26.1 Priorities of Multiple Lenders. If more than one Lender of a particular type (Fee or Leasehold) desires to exercise any Lender Protections applicable to the Lender, then the Party against whom the Lender Protections are to be exercised will only be required to recognize either: (a) the Lender desiring to exercise the Lender Protections and whose Security Instrument is most Senior (as against other Security Instruments of like type); or (b) another Lender designated in writing by all Fee Lenders or all Permitted Leasehold Lenders, as applicable, to exercise the Lender Protections. Priority of Security Instruments will be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of the same type (Fee or Leasehold, as applicable); or (ii) first in time recording order shown in a preliminary report or certificate of a title insurance company licensed to do business in the State reasonably acceptable to Landlord. Neither Tenant nor Landlord will be obligated to determine the relative priorities of any Security Instruments.

26.2 No Merger. Notwithstanding any acquisition of both the Fee Estate and the Leasehold Estate by Lessee, any Post Foreclosure Tenant, a New Tenant, any Lender, or a Third Person, without the written consent of Landlord, Lessee, and all Permitted Leasehold Lenders (the consent of Landlord, Lessee, and Permitted Leasehold Lenders only being required until their respective rights under this Lease are terminated), the Fee Estate and the Leasehold Estate will always remain separate and distinct estates.

27. **SUBLEASING OR LICENSING.** Lessee may not sublease or license use of the Premises without Landlord's prior written consent, which may be given or withheld in Landlord's sole and absolute discretion. The permitted use under any sublease or license must be a Permitted Use under this Lease. Lessee acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Lessee, the restrictions in this Lease on subleasing and licensing are reasonable.

27.1 Sublease Revenue Sharing with Landlord. If Landlord approves a sublease or license of the Premises, Lessee shall pay to Landlord fifty percent (50%) of the Gross Revenue received by Lessee in consideration of the sublease or license within ten (10) days after Lessee receives all or any portion of such Gross Revenue, including up-front payments and periodic payments; provided, however, that Lessee shall not be liable for Percentage Rent on that portion of Gross Revenue payable to Landlord pursuant to this Section 27.1.

28. **LANDLORD'S RESERVATION OF RIGHTS.**

28.1 Government Action. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its police power land use regulatory authority or other police powers or constitute an Approval by Landlord under its police power land use regulatory authority or other police powers. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Use, or otherwise. Lessee shall diligently seek and use commercially reasonable efforts to obtain, at Lessee's sole cost and expense, all Approvals required from Landlord (in its governmental regulatory capacity) and other Governments necessary for the Permitted Use; provided, however, that notwithstanding anything contrary in the foregoing or anything else

contained in this Lease, the Parties acknowledge and agree that Lessee shall have no obligation to obtain any Approvals for (a) any Improvements on the Premises existing as of the Assignment Effective Date (without limiting Lessee's obligation to obtain any required Approvals for any Construction as provided herein), or (b) any defects or conditions in the Improvements or elsewhere in the Premises that exist as of the Commencement Date. Nothing express or implied in this Lease is intended, nor shall be construed or interpreted, to limit, restrict, waive, or vary any Landlord police power land use regulatory authority or other police power.

28.2 Natural Resources. Landlord reserves all right, title, and interest in all natural resources relating to the Premises, including subsurface natural gas, oil, minerals, and water, on or within the Premises; provided, however, that during the Term of this Lease, Lessee shall have the exclusive right, subject to Sections 9 and 10 of **EXHIBIT H**, to use and consume any and all water resources relating to the Premises, including all subsurface water and related rights thereto, so long as such water usage relates to Lessee's business operations at the Premises. Notwithstanding anything to the contrary in the foregoing, however, with respect to any exercise by Landlord or its successors or assigns of any rights reserved under this Section 28.2, (i) Landlord shall, during the Term, have no surface rights over, on, across or through the Premises to access any such natural gas, oil, minerals or water without Lessee's written consent, and (ii) Landlord shall not unreasonably interfere with Lessee's ownership of the Leasehold Estate or its use of or operations at the Premises.

28.3 Access Rights. Upon reasonable Notice to Lessee, Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property; provided, however, that (i) no such easements shall be within any area within the Premises in which buildings or other Improvements then exist without the written consent of Lessee, which consent shall not be unreasonably withheld, conditioned, or delayed, (ii) no such easements shall unreasonably impair or interfere with the Improvements (including Construction thereof in accordance with the General Development Plan), and (iii) no right reserved by Landlord in this Section 28.3 shall be exercised by Landlord as to unreasonably interfere with Lessee's ownership of the Leasehold Estate or its use of or operations at the Premises.

29. EVENTS OF DEFAULT; REMEDIES.

29.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

29.1.1 *Monetary Default.* A Monetary Default that continues for ten (10) days after Notice to Lessee of the Monetary Default.

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

attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

29.1.3 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Section 29.1.2, occurs and Lessee does not cure it within thirty (30) days after Notice to Lessee of the Non-Monetary Default. For a Non-Monetary Default that cannot reasonably be cured within thirty (30) days from the date of such Notice, Lessee will not be in Default if it does all the following: (a) within thirty (30) days from the date of Notice to Lessee of the Non-Monetary Default, advise Landlord of Lessee's intention to take all reasonable steps to cure such Non-Monetary Default; and (b) within a reasonable time under the circumstances, Lessee commences such cure and diligently prosecutes such cure to completion.

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

29.2.1 *Termination of Lessee's Rights*; *Conditional Limitation.* Landlord may serve upon Lessee a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term shall automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Lessee's tenancy no longer exists. Lessee shall then quit and surrender the Premises to Landlord in accordance with Section 30 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this Section 29.2.1. This Section 29.2.1 is intended to establish a conditional limitation and not a condition subsequent.

29.2.2 *Recovery of Damages Following Termination.* If Lessee's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease shall also terminate on the date on which Lessee's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Lessee:

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

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

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Lessee's Event of Default.

(e) The "worth at the time of award" of the amounts referred to in Sections 29.2.2(a) and 29.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 29.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

29.2.3 *Taking Possession.* Landlord may re-enter and take possession of the Premises to the extent permitted by and with process of Law, whether by summary proceedings or otherwise, and remove Lessee, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 29.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Lessee from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Subject to complying with applicable Law, Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord shall apply all rents from any such reletting in the manner provided in Section 29.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 29.2.3 in Landlord's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Lessee shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 29.2.3 shall constitute a termination of this Lease unless Landlord gives Lessee Notice of termination of this Lease.

29.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

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

29.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default, Event of Default, or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Lessee, and no Default or Event of Default, shall be Modified,

except by a written instrument signed by Landlord. No waiver of any Default or Event of Default shall Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

29.2.7 *Damages.* Subject to any obligation of Landlord to mitigate its damages pursuant to applicable Law, Landlord may recover from Lessee all damages Landlord incurs because of Lessee's Default, including reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Lessee's Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Lessee's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Lessee's Default but may bring and prosecute a single combined action for all such Rent or damages.

29.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Lessee's right to possession of the Premises. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Lessee's breach and abandonment and recover Rent as it becomes due, if Lessee has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to maintain Lessee's right to possession of the Premises after an Event of Default, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Lessee acknowledges and agrees that the standards and conditions of this Lease regarding Lessee's right to Transfer this Lease or sublease the Premises are reasonable.

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

29.5 Restoration Funds. Upon any termination of this Lease, to the extent Landlord or Depository then holds any Restoration Funds, such funds shall be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

29.6 Proceeds of Reletting. Landlord shall apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

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

29.6.2 *Preparation for Reletting.* Second, to pay to itself the cost and expense reasonably incurred in securing any new Lessees or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

29.6.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

29.6.4 *Residue*. Fourth, to pay to itself the remaining balance of Lessee's liability to Landlord.

29.7 Delinquent Payments. If Lessee fails to make any payment to Landlord required under this Lease when such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Lessee shall pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Lessee shall pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Lessee to Landlord under either sentence shall be no less than $25. Nothing in this Section 29.7 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 29.7 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Lessee to Landlord under this Section 29.7 are not a penalty or compensation for use of funds and shall not be credited against any other obligation of Lessee under this Lease.

Notwithstanding the foregoing, in the event Landlord's audit(s), if applicable, discloses that Lessee has underpaid Rent in the audited period in excess of five percent (5%) of the total required Rent, then Lessee shall pay Landlord the cost of the audit(s) plus ten percent (10%) per year on the amount said Rent was underpaid, in addition to the unpaid Rent as shown to be due Landlord, as compensation to Landlord for administrative costs and loss of interest. Lessee agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that Landlord will incur from Lessee's late payment. Acceptance of late charges and any portion of late payment by Landlord shall in no event constitute a waiver of Lessee's default with respect to late payment, nor prevent Landlord from exercising any of the other rights and remedies granted to it under this Lease.

29.8 Landlord's Right to Cure. If Lessee, at any time, fails to make any payment or take any action this Lease requires, and such failure continues beyond the applicable Lessee cure period described in Section 29.1, then Landlord, after five (5) Business Days' Notice to Lessee, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Lessee from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit following such Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice of such payment amount, Lessee shall reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 29.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 29.8 from the date paid until the date of reimbursement to Landlord.

29.9 Accord and Satisfaction; Partial Payments. No payment by Lessee or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease shall be deemed to be other than a part payment on account by Lessee. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

29.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises shall relieve Landlord or Lessee of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

29.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Lessee, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

29.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Lessee shall give Landlord Notice of the Landlord Default and thirty (30) days following the effective date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the effective date of Notice of such Landlord Default, the cure period for the Landlord Default shall be extended for such further period as Landlord shall reasonably require to cure the Landlord Default, provided that Landlord shall: (a) within thirty (30) days following the effective date of Notice to Landlord of the Landlord Default, advise Lessee of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Lessee acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default.

30. END OF TERM.

30.1 Surrender. Upon any Expiration Date: (a) all Improvements(s) and Equipment (not including Lessee's FF&E) shall become Landlord's property; (b) Lessee shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss this Lease does not require Lessee to Restore, and except for ordinary wear and tear; (c) Lessee shall surrender to Landlord all right, title, or interest in and to the Premises and deliver such written evidence and confirmation of such surrender as Landlord reasonably requires; (d) Lessee shall deliver the Premises free and clear of all liens, except liens that Landlord directly caused; (e) Lessee shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable warranties then in effect for the Premises; (f) the Parties shall cooperate to achieve an orderly transition of operation of the Premises from Lessee to Landlord (to the extent reasonably possible), without interruption, including, at Landlord's written request, delivery of such books and records (or copies thereof) relating to the Premises or the Lease in Lessee's possession or control, as Landlord reasonably requires; and (g) the Parties shall adjust for expenses and income of the

Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Lessee shall first be applied to cure any Default), provided, however, that Lessee shall be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Lessee for periods after the Expiration Date (if any), Landlord agreeing to reasonably cooperate with Lessee in such efforts, and Landlord shall not be required to pay or credit Lessee for any such amount. Notwithstanding anything to the contrary in this Section 30.1, Lessee may remove from the Premises any FF&E (including any trade fixtures) owned by Lessee, but Lessee must do so, if at all, prior to the Expiration Date. Lessee shall promptly repair all damage to the Premises from Lessee's removal of the FF&E. Lessee's FF&E not removed before the Expiration Date shall be deemed abandoned, unless otherwise agreed by the Parties.

30.2 Quitclaim of Lessee's Interests. Following any Expiration Date, Lessee shall sign, acknowledge, and deliver to Landlord a quitclaim deed acceptable to Landlord conveying all of Lessee's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such quitclaim deed (which Notice may be given thirty (30) days before any Expiration Date or later), accompanied by a form of quitclaim deed prepared by Landlord. If Lessee fails or refuses to sign, deliver, and record such quitclaim deed to Landlord within the provided thirty (30) day period, Lessee appoints Landlord as its attorney-in-fact to sign, deliver, and record such a quitclaim deed, which appointment is irrevocable and coupled with an interest.

31. **NOTICES**. All Notices submitted by a Party to the other Party under or as required by this Lease shall be sent by either messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated in **EXHIBIT F** attached to this Lease. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 31. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is deposited with the United States Postal Service in accordance with this Section 31. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Commencement Date, are set forth in **EXHIBIT F**.

32. **REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS**. When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar Notice required by Law, including any Notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by Section 31 shall replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

33. **NO BROKER.** Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 33.

34. **ESTOPPEL CERTIFICATES.** Each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**"), in connection with any Transfer involving the Requesting Party and otherwise not more than once each Lease Year, to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party shall sign and deliver such Estoppel Certificate, within forty-five (45) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate within the required forty-five (45) day period, then the Certifying Party shall pay the Requesting Party liquidated damages of two hundred fifty dollars ($250.00) per day for each day after the expiration of the forty-five (45) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party shall pay all of the reasonable out-of-pocket expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate.

35. **HOLDOVER.** If Lessee continues to occupy the Premises after the Expiration Date, such occupancy shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Lessee any right in or to the Premises after the Expiration Date. Lessee may not occupy the Premises after the Expiration Date without Landlord's written consent, which may be given or withheld in Landlord's sole and absolute discretion. Lessee's occupancy of the Premises after the Expiration Date with Landlord's consent shall be a month-to-month tenancy and all other terms and conditions of this Lease shall continue in full force and effect, except that Landlord may demand and receive Minimum Rent from Lessee equal to the greater of: a) the fair market rental rate for the Premises, determined as of the Expiration Date by an appraiser selected by Landlord; or b) 150% of the Rent owed under this Lease for the month immediately prior to the commencement of the holdover tenancy. Landlord's acceptance of any Minimum Rent from Lessee after the Expiration Date shall not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

36. **MISCELLANEOUS.**

36.1 Prior Agreement Termination. As of the Commencement Date, all leases, right-of-entry permits, or other agreements between Landlord and Lessee concerning Lessee's entry upon, use, occupancy, or operation of the Premises, other than this Lease, are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date. In addition, any and all prior leases concerning the Premises, including but not limited to the Prior Lease, shall be of no further force or effect except as to any rent 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. For the avoidance of doubt and without limiting the foregoing, the Parties acknowledge and agree that all improvement and development obligations of Lessee under the Prior Lease, and all reversionary rights of Landlord described in Section IV.B.8 of the Prior Lease granting to Landlord the right to retake possession

of Parcel B (as described in the Prior Lease), shall, as of the Commencement Date, terminate and have no further force or effect.

36.2 Compliance with Landlord Standard Contract Provisions. Lessee shall comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

36.3 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor shall be deemed to confer upon any Person, other than Landlord and Lessee, any right to enforce this Lease.

36.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

36.5 Successors and Assigns. This Lease shall bind and benefit Landlord and Lessee and their respective permitted successors and assigns, but this Section 36.5 shall not limit, supersede, or Modify any Transfer restrictions in this Lease.

36.6 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the Parties, or claim made by either Party against the other, arising from this Lease or the landlord-Lessee relationship under this Lease, or either Party's enforcement of this Lease following a Default or Landlord Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party shall be entitled to reimbursement of its Legal Costs, with Default Interest, and all other reasonable costs and expenses incurred in taking any such action and/or curing the other Party's Default or Landlord Default as permitted herein.

36.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party shall not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default shall waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

36.8 Mayor Implementation. Landlord shall implement this Lease through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Lease or reasonably required to implement this Lease, and issue approvals, interpretations (subject to the advice of the City Attorney's Office), or waivers (subject to Section 7.3.5), by email or memorandum, all on behalf of Landlord, to the extent that any such action(s) does/do not materially or substantially (a) increase the monetary obligations of Landlord or (b) decrease the amount of Rent to which Landlord is otherwise entitled. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by action of the City Council. Nothing in this Section 36.8 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 36.8, in the Mayor's sole and absolute discretion, to obtain the City's express and specific authorization on such matter. The specific intent of this Section 36.8

is to authorize certain actions on behalf of Landlord by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.

36.9 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted shall have the right to perform the obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to recover any amount of money paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Default Rate.

36.10 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date shall survive any such Expiration Date.

36.11 Accessibility Assessment. Landlord discloses to Lessee that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or Lessee from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or Lessee, if requested by the lessee or Lessee. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

36.12 Unavoidable Delay.

36.12.1 *Notice*. Performance by either Party under this Lease shall not be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice is timely given under this Section 36.12.1, shall commence on the date the condition causing the Unavoidable Delay commences. If Notice is not timely given under this Section 36.12.1, then the extension of time for the Unavoidable Delay shall commence on the effective date of the Notice of the Unavoidable Delay under this Section 36.12.1 and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

36.12.2 *Assumption of Economic Risks*. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET

CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND

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REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

JR

INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)

INITIALS OF AUTHORIZED LESSEE REPRESENTATIVE(S)

36.13 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

36.14 Counterparts. This Lease may be signed in multiple counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

36.15 Warranty Against Payment of Consideration for Lease. Lessee represents and warrants that: (a) Lessee has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Lessee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Lessee or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 36.15 shall entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Lessee. Upon any such termination of this Lease, Lessee shall promptly refund all payments (if any) made to or on behalf of Lessee by Landlord under this Lease or otherwise related to the Premises, prior to the date of any such termination.

36.16 Relationship of Parties. The Parties each intend and agree that Landlord and Lessee are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

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

36.18 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) shall be personally liable to Lessee, or any successor in interest of Lessee, in the event of any Landlord Default or breach by Landlord under this Lease or for any amount of money that may be or become due to Lessee or any successor in interest of Lessee, on any obligations under the terms or conditions of this Lease.

36.19 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

36.20 Tax Consequences. Lessee acknowledges and agrees that it shall bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Lessee related to this Lease.

36.21 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

36.22 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years shall be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days shall be to consecutive Business Days.

36.23 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, and conditions between the Parties regarding the Premises. The Parties have no other understandings or agreements, oral or written, about the Premises or Lessee's use or occupancy of, or any interest of Lessee in, the Premises.

36.24 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles.

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

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

36.27 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Lessee to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Lessee shall cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Lessee without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

36.28 Reasonableness. Wherever this Lease states that a Party must obtain the consent or approval from the other Party or some other similar phrase, unless stated otherwise in the specific provision: (a) such consent or approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this shall not waive its right to require such consent or approval for any further or similar matter.

36.29 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

36.30 Subject to Federal Aviation Administration (FAA) Regulations. Lessee acknowledges and agrees that, in addition to the foregoing terms and conditions of this Lease, Lessee shall strictly adhere to, and at all times be subject to, the Federal Aviation Administration Lease and Use Agreement Provisions set forth in the attached **EXHIBIT H – Federal Aviation Administration Lease and Use Agreement Provisions**, which by this reference is made a part of this Lease. Failure by Lessee to strictly adhere to the Federal Aviation Administration Lease and Use Agreement Provisions, if not cured after Notice to Lessee and the running of the applicable cure period described in Section 29.1, shall subject this Lease to immediate termination by Landlord upon Notice to Lessee with no liability to Landlord.

36.31 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Premises Legal Description
EXHIBIT B	Premises Site Plan & Aerial View
EXHIBIT C	Promissory Note
EXHIBIT D	General Development Plan
EXHIBIT E	Insurance Requirements
EXHIBIT F	Notice Addresses
EXHIBIT G	Landlord Standard Contract Provisions

EXHIBIT H	Federal Aviation Administration Lease and Use Agreement Provisions
EXHIBIT I	Prevailing Wage and Living Wage Requirements

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SIGNATURE PAGE
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

Landlord and Lessee sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Jorge Rubio
Deputy Director, Chief of Airports
Economic Development Department

Approved as to form on
January 26, 2026.

HEATHER FERBERT,
City Attorney

By: _____
Brian W. Byun, Esq.
Deputy City Attorney

LESSEE:

ALPS HOSPITALITY, INC.,
a California corporation

By: _____
Sharad Khandwala
President

R-316570

EXHIBIT A
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

LEGAL DESCRIPTION

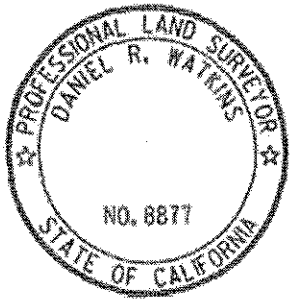
APN: 421-290-11

Those portions of Lease Lots 14 and 15 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

Beginning at the intersection of a point on the northerly right of way of Aero Drive as shown on Record of Survey No. 9642 filed in the office of the County Recorder of said San Diego County on April 12, 1984 as File No. 84-133762 and the easterly line of said Lease Lot 14; Thence along said northerly right of way South 89° 22' 33" West 709.12 feet to the beginning of a non-tangent 1,140.00 foot radius curve, concave northerly, a radial bears South 00°37'56" East; Thence continuing along said right of way along the arc of said curve through a central angle 27°37'33" a distance of 549.67 feet; Thence North 62°56'11" West 27.66 feet to the beginning of a non-tangent 102.00 foot radius curve, concave easterly, a radial bears South 51°06'56" West; Thence northerly along the arc of said curve through a central angle 64°02'35" a distance of 114.01 feet to a point on the easterly right of way of Kearny Villa Road as shown on said Record of Survey 9642; Thence along said right of way North 25°09'31" East 119.61 feet to the beginning of a non-tangent 951.00 foot radius curve, concave westerly, a radial bears South 64°49'54" East; Thence northerly along the arc of said curve through a central angle 21°21'52" a distance of 354.61 feet, said point being the northwesterly corner of said Lease Lot 15; Thence leaving said easterly right of way of Kearny Villa Road and along the northwesterly line of said Lease Lots 14 and 15 North 65°28'49" East 750.42 feet; Thence leaving said northwesterly line and continuing along the easterly line of said Lease Lot 14 South 24°30'53" East 1,096.24 feet to the **Point of Beginning.**

The above described lease lot contains 839,545.48 Square Feet, 19.2733 Acres.

Exhibit 'B', attached and by this reference is made a part hereto.



6/15/2023

Daniel R. Watkins LS 8877 Date
Senior Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2023

File: 21003181_SHERATON FOUR POINTS_FULL LEASE
IO21003181 – June, 2023

EXHIBIT A
Premises Legal Description

EXHIBIT B
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

PREMISES SITE PLAN AND AERIAL VIEW

[*Attached behind this cover page*]

EXHIBIT 'B'

PREMISES

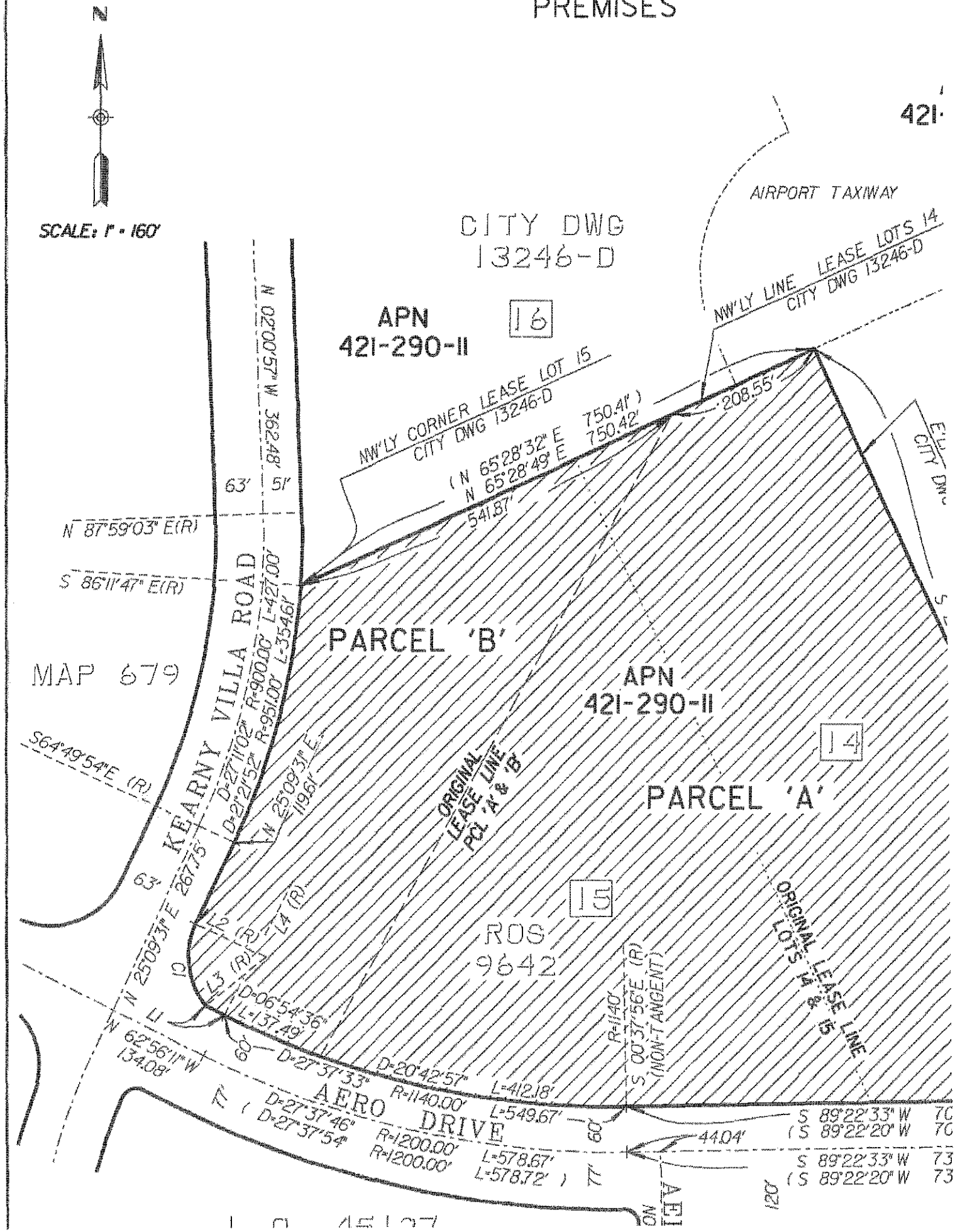


EXHIBIT B

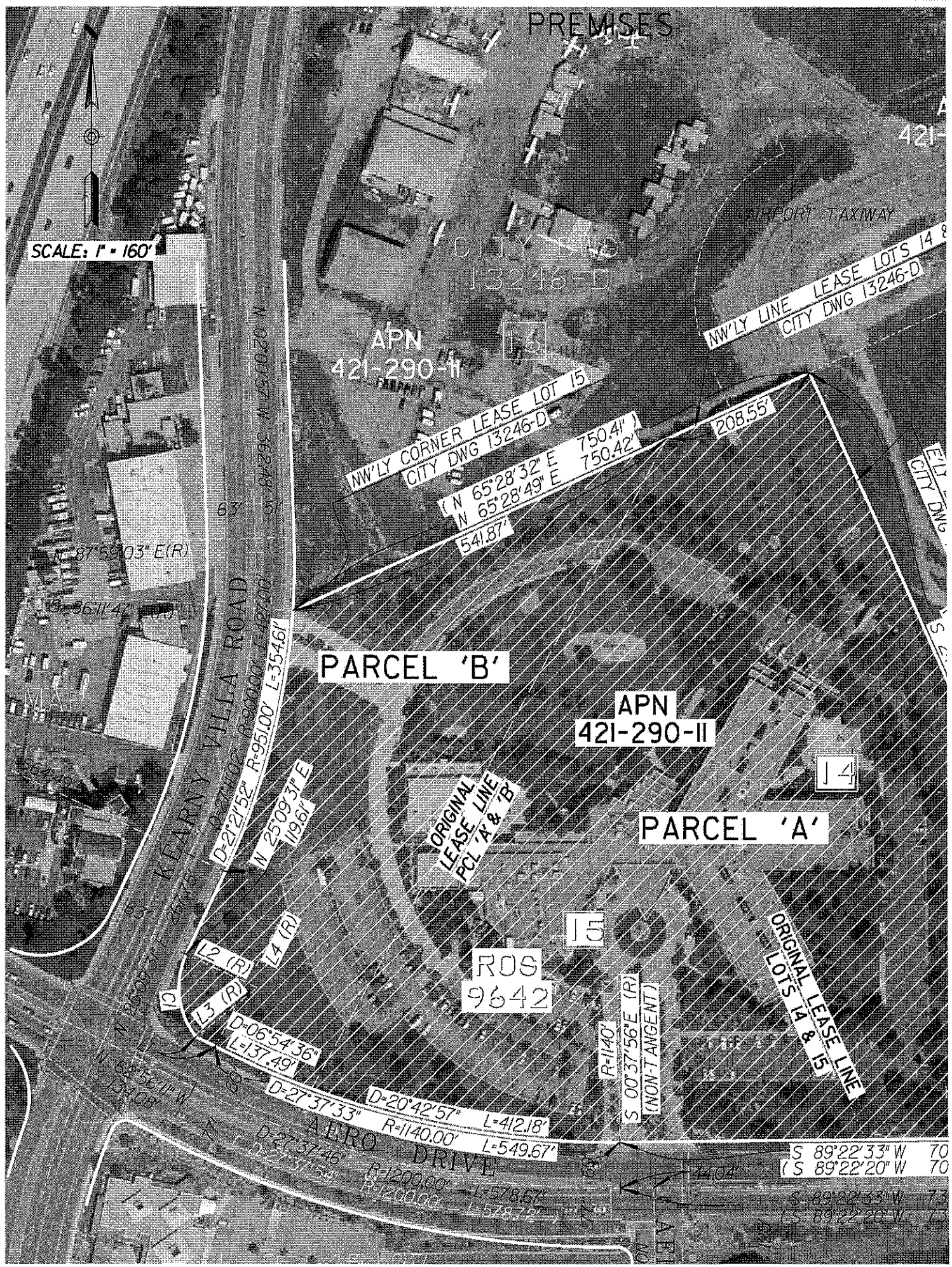

PREMISES
SCALE: 1" = 160'
APN
421-290-11
PARCEL 'B'
APN
421-290-II
PARCEL 'A'
ORIGINAL LEASE LINE PCL 'A' & 'B'
ORIGINAL LEASE LINE LOTS 14 & 15
NW'LY LINE LEASE LOTS 14
CITY DWG 13246-D
NW'LY CORNER LEASE LOT 15
CITY DWG 13246-D
208.55'
N 65°28'32" E 750.41'
N 65°28'49" E 750.42'
541.87'
KEARNY VILLA ROAD
D=21°21'52" R=951.00' L=354.61'
N 25°09'31" E 196'
L2 (R)
L3 (R)
L4 (R)
D=06°54'36"
L=137.49'
D=27°37'33" R=1140.00' L=549.67'
D=20°42'57" L=412.18'
R=1140'
S 00°37'56"E (R)
(NON-TANGENT)
AERO DRIVE
S 89°22'33" W 70
(S 89°22'20" W 70
44.04'
S 87°59'03" E(R)
N 86°11'42" W(R)
N 25°09'31" W 262.70'
S 64°50'29" W
134.08'
63'
60'
ROS 9642
13
14
15

EXHIBIT C

TO

PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

FORM OF PROMISSORY NOTE

[*Attached behind this cover page*]

UNSECURED PROMISSORY NOTE

Principal Amount: Not to exceed Three Million Four Hundred Nine Thousand Six Hundred Four Dollars and Seventy-Two Cents ($3,409,604.72)

Date of Note: January 26 2026

Borrower: Alps Hospitality, Inc., a California corporation

Lender: City of San Diego, a California municipal corporation

Maturity Date: As stated in Section 6 (below)

Interest Rate: As stated in Section 4 (below)

FOR VALUE RECEIVED, the undersigned Alps Hospitality, Inc., a California corporation ("**Borrower**"), whose address is 8110 Aero Drive, San Diego, California 92123, Attn: Sharad Khandwala, President, promises to pay, at the times stated in this Note, to the order of the City of San Diego, a California municipal corporation ("**Lender**"), a principal amount not to exceed Three Million Four Hundred Nine Thousand Six Hundred Four Dollars and Seventy-Two Cents ($3,409,604.72), together with interest on the unpaid principal balance of this Note from time to time outstanding at the annual rate set forth in Section 4 from the date of advance until fully paid at The City of San Diego, Office of the City Treasurer, P.O. Box 129030, San Diego, California 92112-9030, or at such other place as Lender may designate to Borrower in writing.

1. **Reference to Lease**. This Note is made by Borrower to the order of Lender in accordance with that certain Percentage Lease (8110 Aero Drive, San Diego, CA 92123), dated as of January 26, 2026, by and between Borrower and Lender ("**Lease**").

2. **Definitions**. For the purposes of this Note, the following terms shall be defined as follows:

(a) Default. Any of the following shall constitute a "Default" under this Note: (a) Borrower's failure to pay any installment or other sum due under this Note as and when due and payable (whether by extension, acceleration or otherwise) following thirty (30) calendar days' written notice from Lender to Borrower of such failure to pay; or (b) any breach of any other promise or obligation in this Note or the Lease or in any other instrument now or hereafter securing the indebtedness evidenced by this Note, subject to applicable notice and opportunity to cure provisions in the subject instrument or agreement. If the cure of any Default under this Note that is not based on a default under any other document cannot reasonably be made within thirty (30) days and Borrower promptly and diligently commences to cure such default within thirty (30) days, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's Default notice, as long as Borrower diligently and continuously proceeds to cure such Default to Lender's satisfaction.

(b) Default Rate. An annual interest rate (instead of the rate specified in Section 4) equal to the lesser of: (a) ten percent (10%); or (b) the maximum interest rate allowed by law.

3. **Loan Disbursement.** All amounts of principal to be credited to Borrower under this Note shall be credited in accordance with the terms and conditions of the Lease. Lender shall have no obligation to fund any disbursement, credit, deposit, advance or otherwise fund any principal under this Note, if an uncured Default of Borrower exists under this Note.

4. **Interest.** Interest on the unpaid principal balance of this Note, compounded monthly, will accrue from the date of this Note at the rate of eight percent (8%) per month until paid in full.

5. **Method of Calculating Interest.** Interest shall be computed based on a 365-day year and the actual number of days elapsed.

6. **Payment of Principal and Interest.** All principal and interest under this Note shall be due and payable on or before the Maturity Date (defined below in this Section 6). All principal and interest under this Note shall be paid by Borrower in monthly payments (each, a "**Monthly Payment**") to Lender as set forth in the payment schedule attached to this Note and incorporated herein by reference as **Exhibit A** (as may be modified from time to time, "**Payment Schedule**"). Each Monthly Payment becoming due to Lender under this Note shall be paid to Lender as Additional Rent on the first (1st) calendar day of each month, beginning with the forty-first (41st) month of the Lease Term ("**Initial Payment Date**") and continuing on or before the first (1st) calendar day of each month thereafter (each, a "**Payment Date**") for a term of ten (10) years ("**Loan Term**"). Any Monthly Payment made by Borrower after a Payment Date but before the fifth (5th) calendar day of each month shall be timely, but Borrower shall pay any incremental interest amount due, as calculated by Lender. Any unpaid principal amount and all accrued and unpaid interest on such principal amount shall be finally and fully due and payable on the tenth (10th) anniversary of the Initial Payment Date ("**Maturity Date**"). All sums due under this Note are payable in lawful money of the United States.

7. **Transfer.** In addition to and separate from any payments made to Lender under Section 6, upon the Transfer of all or any portion of Borrower's leasehold interest in the Property, all outstanding principal and interest under this Note shall be immediately due and payable to Lender.

8. **Application of Payments.** Each payment under this Note shall be credited in the following order: (a) accrued interest; and then (b) principal due under this Note.

9. **Prepayment.** The principal and interest under this Note may be prepaid only in full, without premium or penalty, on the Initial Payment Date and on any successive Payment Date during the Loan Term, in accordance with the amounts set forth in the "End Loan Balance" column of the Payment Schedule.

10. **Interest on Default.** From and after a Default or the Maturity Date (either as defined in this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance of this Note shall automatically accrue interest at the Default Rate.

11. **Default**. On and following any Default, Lender may, in Lender's sole and absolute discretion, declare this Note (including all accrued interest) due and payable immediately, regardless of the Maturity Date.

12. **Collection Costs**. Borrower agrees to pay the following costs, expenses, and attorney fees paid or incurred by Lender, or adjudged by a court: (a) reasonable costs of collection and costs, expenses and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim regarding this Note; and (c) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce or collect payment of all or any part of any amount due under this Note.

13. **Waiver**. Borrower, endorsers and all other Persons liable or to become liable on this Note waive presentment, protest, demand, notice of protest, demand and dishonor, and all other notices or matters of a like nature. No extension of time for payment of this Note made by agreement between Lender and any Person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part. The provisions of this Note and the obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

14. **Notice**. Any and all Notices and communications required or permitted by this Note shall be in accordance with the Notice provision in the Lease.

15. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note nor any proceeds of this Note, nor assign or delegate any of Borrower's rights or obligations under this Note (other than as permitted by the Lease), without Lender's prior written consent in each instance, which consent may be given, withheld, delayed or conditioned in Lender's sole and absolute discretion. Lender, in Lender's sole and absolute discretion, may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without consent of Borrower, provided Lender gives Borrower sixty (60) days' Notice, and provided further that all payments made on this Note shall continue to be deemed to be and credited as Additional Rent paid by Borrower in accordance with the provisions of the Lease.

16. **Governing Law**. This Note shall be construed and enforceable according to the laws of the State of California for all purposes, without application of conflicts of laws principles.

17. **Usury**. To the extent that the indebtedness evidenced by this Note is determined not to be exempt from the usury laws of the State of California, all agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or any other agreement pertaining to this Note, after timely performance of such provision is due,

shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

18. **Non-Revolving Credit.** This Note evidences a non-revolving loan from Lender to Borrower. The accrued and unpaid interest and principal balance owing on this Note at any time may be evidenced by an unpaid balance acknowledgment of Lender on this Note or by the internal accounting records of Lender regarding this Note or the Lease.

19. **Waiver of Statute of Limitations.** The pleading of any statute of limitations as a defense to the obligations or enforcement of the obligations evidenced by this Note is waived by Borrower to the fullest extent permissible by law.

20. **Time Is of the Essence.** Time is of the essence with respect to all obligations of Borrower under this Note.

21. **Joint and Several Liability.** If more than one Person signs this Note as Borrower, their liability under this Note shall be joint and several.

22. **Cross-Default.** Any Default by Borrower as to any other agreement between or among Lender and Borrower with respect to the Project, including but not limited to the Lease, shall, in Lender's sole and absolute discretion, constitute a Default under this Note.

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

24. **Severability.** If any provision of this Note, or the application of it to any Person or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the

remainder of this Note, and the application of such provision to other Persons or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

25. **Acknowledgment**. Before signing this Note, Borrower has read and understands all of the provisions of this Note and has consulted or had the opportunity to consult with legal counsel of Borrower's independent selection regarding Borrower's obligations under this Note. Borrower agrees to the terms and conditions of this Note and acknowledges receipt of a copy of this Note.

26. **Incorporation of Defined Terms**. All terms, phrases and words indicated to be defined terms by initial capitalization in this Note that are not specifically defined in this Note shall have the meaning ascribed to the same term, phrase or word, respectively, in the Lease.

Made and entered into in San Diego, California, on January 26, 2026.

BORROWER:

ALPS HOSPITALITY, INC.,
a California corporation

By: _____
Sharad Khandwala
President

EXHIBIT A

UNSECURED PROMISSORY NOTE
BY
ALPS HOSPITALITY, INC.

PAYMENT SCHEDULE

[*attached behind this cover page*]

Alps Hospitality
Schedule of Future Values - 8% Interest Rate

(1) Month ①	(2) # of Months ②	(3) Rate (8% / 12 months)	(4) Present Value ③	(5) Future Value ④
1	40	0.67%	$ 74,167.00	$ 96,747.16
2	39	0.67%	74,167.00	96,106.45
3	38	0.67%	74,167.00	95,469.99
4	37	0.67%	74,167.00	94,837.74
5	36	0.67%	74,167.00	94,209.67
6	35	0.67%	74,167.00	93,585.77
7	34	0.67%	74,167.00	92,965.99
8	33	0.67%	74,167.00	92,350.32
9	32	0.67%	74,167.00	91,738.73
10	31	0.67%	74,167.00	91,131.19
11	30	0.67%	74,167.00	90,527.67
12	29	0.67%	74,167.00	89,928.15
13	28	0.67%	74,167.00	89,332.60
14	27	0.67%	74,167.00	88,741.00
15	26	0.67%	74,167.00	88,153.31
16	25	0.67%	74,167.00	87,569.51
17	24	0.67%	74,167.00	86,989.58
18	23	0.67%	74,167.00	86,413.49
19	22	0.67%	74,167.00	85,841.21
20	21	0.67%	74,167.00	85,272.73
21	20	0.67%	74,167.00	84,708.01
22	19	0.67%	74,167.00	84,147.03
23	18	0.67%	74,167.00	83,589.76
24	17	0.67%	74,167.00	83,036.19
25	16	0.67%	74,167.00	82,486.28
26	15	0.67%	74,167.00	81,940.01
27	14	0.67%	74,167.00	81,397.37
28	13	0.67%	74,167.00	80,858.31
29	12	0.67%	74,167.00	80,322.82
30	11	0.67%	74,167.00	79,790.89

Footnotes:

① The month that is being deferred. This can be replaced with the actual months once it is determined when the deferral will start.

② The number of months the present value of $74,167 is being deferred.

③ Monthly amount being deferred.

④ The formula for future value is shown below.

FV = present value x (1+rate/12 months)^number of months

Auditor's Note:

Update column 3 once an interest rate has been determined. 8% was used as an example.

31	10	0.67%	74,167.00	79,262.47
32	9	0.67%	74,167.00	78,737.55
33	8	0.67%	74,167.00	78,216.11
34	7	0.67%	74,167.00	77,698.12
35	6	0.67%	74,167.00	77,183.57
36	5	0.67%	74,167.00	76,672.42
37	4	0.67%	74,167.00	76,164.65
38	3	0.67%	74,167.00	75,660.25
39	2	0.67%	74,167.00	75,159.19
40	1	0.67%	74,167.00	74,661.45
			$ 2,966,680.00	**$ 3,409,604.72** *To: Pymt Sched 8% tab, cell E9*

Alps Hospitality
Amortization of City of San Diego Promissory Note

		(1) BEG LOAN BALANCE ②	(2) 8.00% INTEREST (Col. 1 x Col. 7)	(3) PRINCIPAL PAID (Col. 4 - Col. 2)	(4) TOTAL PAYMENT (Col. 9)	(5) END LOAN BALANCE (Col. 1 - Col. 3)
ORIGINAL BALANCE JAN 1ST		$ 3,409,604.72				
JAN	1ST	$ 3,409,604.72	$ 22,730.70	$ 18,637.21	$ 41,367.91	$ 3,390,967.51
FEB	1ST	3,390,967.51	22,606.45	18,761.46	41,367.91	3,372,206.05
MARCH	1ST	3,372,206.05	22,481.37	18,886.54	41,367.91	3,353,319.50
APRIL	1ST	3,353,319.50	22,355.46	19,012.45	41,367.91	3,334,307.05
MAY	1ST	3,334,307.05	22,228.71	19,139.20	41,367.91	3,315,167.84
JUNE	1ST	3,315,167.84	22,101.12	19,266.79	41,367.91	3,295,901.05
JULY	1ST	3,295,901.05	21,972.67	19,395.24	41,367.91	3,276,505.81
AUGUST	1ST	3,276,505.81	21,843.37	19,524.54	41,367.91	3,256,981.26
SEPT	1ST	3,256,981.26	21,713.21	19,654.70	41,367.91	3,237,326.56
OCT	1ST	3,237,326.56	21,582.18	19,785.73	41,367.91	3,217,540.82
NOV	1ST	3,217,540.82	21,450.27	19,917.64	41,367.91	3,197,623.18
DEC	1ST	3,197,623.18	21,317.49	20,050.42	41,367.91	3,177,572.76
JAN	1ST	3,177,572.76	21,183.82	20,184.09	41,367.91	3,157,388.66
FEB	1ST	3,157,388.66	21,049.26	20,318.65	41,367.91	3,137,070.01
MARCH	1ST	3,137,070.01	20,913.80	20,454.11	41,367.91	3,116,615.90
APRIL	1ST	3,116,615.90	20,777.44	20,590.47	41,367.91	3,096,025.42
MAY	1ST	3,096,025.42	20,640.17	20,727.74	41,367.91	3,075,297.68
JUNE	1ST	3,075,297.68	20,501.98	20,865.93	41,367.91	3,054,431.74
JULY	1ST	3,054,431.74	20,362.88	21,005.03	41,367.91	3,033,426.71
AUGUST	1st	3,033,426.71	20,222.84	21,145.07	41,367.91	3,012,281.64
SEPT	1st	3,012,281.64	20,081.88	21,286.03	41,367.91	2,990,995.60
OCT	1ST	2,990,995.60	19,939.97	21,427.94	41,367.91	2,969,567.66
NOV	1ST	2,969,567.66	19,797.12	21,570.79	41,367.91	2,947,996.86
DEC	1ST	2,947,996.86	19,653.31	21,714.60	41,367.91	2,926,282.26
JAN	1ST	2,926,282.26	19,508.55	21,859.36	41,367.91	2,904,422.90
FEB	1ST	2,904,422.90	19,362.82	22,005.09	41,367.91	2,882,417.80
MARCH	1ST	2,882,417.80	19,216.12	22,151.79	41,367.91	2,860,266.01
APRIL	1ST	2,860,266.01	19,068.44	22,299.47	41,367.91	2,837,966.53
MAY	1ST	2,837,966.53	18,919.78	22,448.13	41,367.91	2,815,518.40
JUNE	1ST	2,815,518.40	18,770.12	22,597.79	41,367.91	2,792,920.61
JULY	1ST	2,792,920.61	18,619.47	22,748.44	41,367.91	2,770,172.16
AUGUST	1ST	2,770,172.16	18,467.81	22,900.10	41,367.91	2,747,272.06
SEPT	1ST	2,747,272.06	18,315.15	23,052.76	41,367.91	2,724,219.30
OCT	1ST	2,724,219.30	18,161.46	23,206.45	41,367.91	2,701,012.84
NOV	1ST	2,701,012.84	18,006.75	23,361.16	41,367.91	2,677,651.68
DEC	1ST	2,677,651.68	17,851.01	23,516.90	41,367.91	2,654,134.77
JAN	1ST	2,654,134.77	17,694.23	23,673.68	41,367.91	2,630,461.09
FEB	1ST	2,630,461.09	17,536.41	23,831.50	41,367.91	2,606,629.59
MARCH	1ST	2,606,629.59	17,377.53	23,990.38	41,367.91	2,582,639.20
APRIL	1ST	2,582,639.20	17,217.59	24,150.32	41,367.91	2,558,488.88
MAY	1st	2,558,488.88	17,056.59	24,311.32	41,367.91	2,534,177.55
JUNE	1st	2,534,177.55	16,894.52	24,473.39	41,367.91	2,509,704.16
JULY	1ST	2,509,704.16	16,731.36	24,636.55	41,367.91	2,485,067.61
AUGUST	1ST	2,485,067.61	16,567.12	24,800.79	41,367.91	2,460,266.81
SEPT	1ST	2,460,266.81	16,401.78	24,966.13	41,367.91	2,435,300.68
OCT	1ST	2,435,300.68	16,235.34	25,132.57	41,367.91	2,410,168.11

(6) Present Value	(7) Interest	(8) # of Periods	(9) Payment
	③		④ ⑤
$ 3,409,604.72	0.67%	120	($41,367.91)

Footnotes:

① Final Payment will need to be adjusted by $.04

② Beginning Loan Balance is the future value determined on the previous schedule.

③ 8% Interest rate divided by 12 to get monthly interest rate

④ Payment is calculated using payment formula which is shown below.

=PMT(Interest, # of Periods, Present Value)

⑤ For the calculation of the payment the present value the loan amount that was the future value determined on the previous schedule.

Auditor's Note:

Once the interest rate is determined all formulas will update accordingly. The months in Col. A will need to be updated to reflect when the deferment starts.

NOV	1ST	2,410,168.11	16,067.79	25,300.12	41,367.91	2,384,867.98
DEC	1ST	2,384,867.98	15,899.12	25,468.79	41,367.91	2,359,399.19
JAN	1ST	2,359,399.19	15,729.33	25,638.58	41,367.91	2,333,760.60
FEB	1ST	2,333,760.60	15,558.40	25,809.51	41,367.91	2,307,951.09
MARCH	1ST	2,307,951.09	15,386.34	25,981.57	41,367.91	2,281,969.52
APRIL	1ST	2,281,969.52	15,213.13	26,154.78	41,367.91	2,255,814.73
MAY	1ST	2,255,814.73	15,038.76	26,329.15	41,367.91	2,229,485.58
JUNE	1ST	2,229,485.58	14,863.24	26,504.67	41,367.91	2,202,980.90
JULY	1ST	2,202,980.90	14,686.54	26,681.37	41,367.91	2,176,299.53
AUGUST	1ST	2,176,299.53	14,508.66	26,859.25	41,367.91	2,149,440.28
SEPT	1ST	2,149,440.28	14,329.60	27,038.31	41,367.91	2,122,401.96
OCT	1ST	2,122,401.96	14,149.35	27,218.56	41,367.91	2,095,183.40
NOV	1ST	2,095,183.40	13,967.89	27,400.02	41,367.91	2,067,783.37
DEC	1ST	2,067,783.37	13,785.22	27,582.69	41,367.91	2,040,200.68
JAN	1ST	2,040,200.68	13,601.34	27,766.57	41,367.91	2,012,434.11
FEB	1st	2,012,434.11	13,416.23	27,951.68	41,367.91	1,984,482.42
MARCH	1st	1,984,482.42	13,229.88	28,138.03	41,367.91	1,956,344.39
APRIL	1ST	1,956,344.39	13,042.30	28,325.61	41,367.91	1,928,018.78
MAY	1ST	1,928,018.78	12,853.46	28,514.45	41,367.91	1,899,504.32
JUNE	1ST	1,899,504.32	12,663.36	28,704.55	41,367.91	1,870,799.77
JULY	1ST	1,870,799.77	12,472.00	28,895.91	41,367.91	1,841,903.85
AUGUST	1ST	1,841,903.85	12,279.36	29,088.55	41,367.91	1,812,815.30
SEPT	1ST	1,812,815.30	12,085.44	29,282.47	41,367.91	1,783,532.83
OCT	1ST	1,783,532.83	11,890.22	29,477.69	41,367.91	1,754,055.13
NOV	1ST	1,754,055.13	11,693.70	29,674.21	41,367.91	1,724,380.92
DEC	1ST	1,724,380.92	11,495.87	29,872.04	41,367.91	1,694,508.87
JAN	1ST	1,694,508.87	11,296.73	30,071.18	41,367.91	1,664,437.69
FEB	1ST	1,664,437.69	11,096.25	30,271.66	41,367.91	1,634,166.03
MARCH	1ST	1,634,166.03	10,894.44	30,473.47	41,367.91	1,603,692.55
APRIL	1ST	1,603,692.55	10,691.28	30,676.63	41,367.91	1,573,015.92
MAY	1ST	1,573,015.92	10,486.77	30,881.14	41,367.91	1,542,134.77
JUNE	1ST	1,542,134.77	10,280.90	31,087.01	41,367.91	1,511,047.76
JULY	1ST	1,511,047.76	10,073.65	31,294.26	41,367.91	1,479,753.50
AUGUST	1ST	1,479,753.50	9,865.02	31,502.89	41,367.91	1,448,250.60
SEPT	1ST	1,448,250.60	9,655.00	31,712.91	41,367.91	1,416,537.69
OCT	1ST	1,416,537.69	9,443.58	31,924.33	41,367.91	1,384,613.36
NOV	1st	1,384,613.36	9,230.76	32,137.15	41,367.91	1,352,476.20
DEC	1st	1,352,476.20	9,016.51	32,351.40	41,367.91	1,320,124.80
JAN	1ST	1,320,124.80	8,800.83	32,567.08	41,367.91	1,287,557.71
FEB	1ST	1,287,557.71	8,583.72	32,784.19	41,367.91	1,254,773.52
MARCH	1ST	1,254,773.52	8,365.16	33,002.75	41,367.91	1,221,770.77
APRIL	1ST	1,221,770.77	8,145.14	33,222.77	41,367.91	1,188,547.99
MAY	1ST	1,188,547.99	7,923.65	33,444.26	41,367.91	1,155,103.73
JUNE	1ST	1,155,103.73	7,700.69	33,667.22	41,367.91	1,121,436.50
JULY	1ST	1,121,436.50	7,476.24	33,891.67	41,367.91	1,087,544.83
AUGUST	1ST	1,087,544.83	7,250.30	34,117.61	41,367.91	1,053,427.22
SEPT	1ST	1,053,427.22	7,022.85	34,345.06	41,367.91	1,019,082.15
OCT	1ST	1,019,082.15	6,793.88	34,574.03	41,367.91	984,508.12
NOV	1ST	984,508.12	6,563.39	34,804.52	41,367.91	949,703.59
DEC	1ST	949,703.59	6,331.36	35,036.55	41,367.91	914,667.04
JAN	1ST	914,667.04	6,097.78	35,270.13	41,367.91	879,396.91
FEB	1ST	879,396.91	5,862.65	35,505.26	41,367.91	843,891.64
MARCH	1ST	843,891.64	5,625.94	35,741.97	41,367.91	808,149.67
APRIL	1ST	808,149.67	5,387.66	35,980.25	41,367.91	772,169.42
MAY	1ST	772,169.42	5,147.80	36,220.11	41,367.91	735,949.30

JUNE	1ST	735,949.30	4,906.33	36,461.58	41,367.91	699,487.72
JULY	1ST	699,487.72	4,663.25	36,704.66	41,367.91	662,783.05
AUGUST	1st	662,783.05	4,418.55	36,949.36	41,367.91	625,833.69
SEPT	1st	625,833.69	4,172.22	37,195.69	41,367.91	588,638.00
OCT	1ST	588,638.00	3,924.25	37,443.66	41,367.91	551,194.33
NOV	1ST	551,194.33	3,674.63	37,693.28	41,367.91	513,501.05
DEC	1ST	513,501.05	3,423.34	37,944.57	41,367.91	475,556.47
JAN	1ST	475,556.47	3,170.38	38,197.53	41,367.91	437,358.94
FEB	1ST	437,358.94	2,915.73	38,452.18	41,367.91	398,906.76
MARCH	1ST	398,906.76	2,659.38	38,708.53	41,367.91	360,198.22
APRIL	1ST	360,198.22	2,401.32	38,966.59	41,367.91	321,231.63
MAY	1ST	321,231.63	2,141.54	39,226.37	41,367.91	282,005.25
JUNE	1ST	282,005.25	1,880.04	39,487.87	41,367.91	242,517.38
JULY	1ST	242,517.38	1,616.78	39,751.13	41,367.91	202,766.25
AUGUST	1ST	202,766.25	1,351.77	40,016.14	41,367.91	162,750.10
SEPT	1ST	162,750.10	1,085.00	40,282.91	41,367.91	122,467.19
OCT	1ST	122,467.19	816.45	40,551.46	41,367.91	81,915.73
NOV	1ST	81,915.73	546.10	40,821.81	41,367.91	41,093.91
DEC	1ST	41,093.91	273.96	41,093.95	41,367.91	(0.04) ①
TOTAL			**$ 1,554,544.90**	**$ 3,409,604.77**	**$ 4,964,149.67**	

EXHIBIT D

TO

PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

GENERAL DEVELOPMENT PLAN

[*Attached behind this cover page*]

EXHIBIT D
General Development Plan

Section 1: Hotel Renovation
Completion Date 24 Months after Final Approvals Secured

Brand Transformation

- Transitioning from Four Points by Sheraton to Tribute Portfolio Hotel
- Complete rebranding requiring comprehensive architectural, interior design, and branding expertise

Guest Room Renovation

- Total renovation of 223 guest rooms
- Complete replacement of all finishes
- Full FF&E (Furniture, Fixtures, and Equipment) update
- Modernization to align with Tribute Portfolio brand standards
- Ground floor pool-facing rooms to receive new patio additions

Public Area Enhancements

Lobby Improvements

- Relocation of existing lobby bar
- Complete lobby redesign and modernization
- Updated furniture and design elements

Fitness Center Upgrade

- Relocation of fitness center to a more prominent, accessible location
- Significant expansion of fitness center square footage
- Installation of state-of-the-art cardio and strength training machines

Restaurant and Food & Beverage Program

- Full renovation of main restaurant
- Creation of new speakeasy cocktail bar

Corridor and Public Restroom Upgrades

- Complete renovation of hotel corridors
- Modernization of all public restrooms
- Consistent design and brand aesthetic throughout

EXHIBIT D
General Development Plan

Banquet Space Modernization

- New finishes in all banquet areas
- Upgraded Audiovisual (AV) systems

Entertainment Transformation

- Conversion of existing 100-seat theater
- Transformation into TopGolf Swing Suites
- Advanced golf simulation technology installation

Pool Area Enhancement

- Complete pool and deck resurfacing
- Updated pool deck design and furnishings
- Installation of seasonal food and beverage service area

Section 2: Outdoor Area Development
Completion Date 24 Months after Final Approvals Secured

Patio and Lawn Enhancements

- Comprehensive upgrade of outdoor event spaces
- Increased capacity for outdoor events
- Improved landscaping and guest amenities

Golf Course Restoration

- Complete renovation of 9-hole golf course
- Full reconstruction of all tee boxes
- Comprehensive green area restoration
- Improved playing surfaces and course conditions

New Recreational Amenities

- Addition of 4 new pickleball courts
- Enhanced guest recreational opportunities

MINIMUM IMPROVEMENT COST is $8,000,000

EXHIBIT E
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.**

1.1. *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Lessee, with minimum limits for bodily injury and property damage of One Million Dollars ($1,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Landlord, which pre-approval shall not be unreasonably withheld.

1.2. *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Five Million Dollars ($5,000,000) for any one occurrence and Ten Million Dollars ($10,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Premises.

1.3. *Property Insurance*. Insurance providing coverage for the Premises and all improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4. *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One

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

2. **Nature of Insurance**. The contents of this EXHIBIT E are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Lessee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

3.1. *Insured*. Liability Insurance policies shall name the Landlord Parties as "additional insured." The coverage afforded to the Landlord Parties shall be at least as broad as that afforded to Lessee regarding the Premises and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Lessee.

3.2. *Primary Coverage*. Any insurance or self-insurance maintained by the Landlord Parties shall be excess of all insurance required to be maintained by Lessee under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Lessee under these Insurance Requirements.

3.3. *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Lessee's Indemnity obligations under this Lease. Lessee's obtaining or failing to obtain such contractual liability coverage shall not relieve Lessee from nor satisfy any Indemnity obligation of Lessee under this Lease.

3.4. *Deliveries to Landlord*. Evidence of Lessee's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to Landlord before the Commencement Date. No later than thirty (30) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Lessee shall deliver to Landlord evidence of Lessee's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage

or in limits, except after sixty (60) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Insurance Requirements.

3.5. *Waiver of Certain Claims*. Lessee shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Lessee obtains an insurance policy covering both the Lessee Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

3.6. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

3.7. *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.

3.8. *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Lessee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

3.9. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Lessee and the Landlord Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.

3.10. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by Landlord. Lessee shall pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Lessee fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion; provided, however, Landlord shall not exercise such payment right except during the continuance of an Event of Default. All amounts of money paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord

Parties under these Insurance Requirements shall be reimbursed to Landlord by Lessee in the same manner that insurance costs are reimbursable to Landlord from Lessee under Section 5 of these Insurance Requirements.

3.11. *No Separate Insurance*. Lessee shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Lessee to carry any insurance coverage required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord shall be entitled to immediate payment from Lessee of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount of money becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amount owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Lessee shall not relieve Lessee of any Default or Event of Default or Lessee's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

EXHIBIT F
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

NOTICE ADDRESSES

Lessee:

Alps Hospitality, Inc.
Attention: Sharad Khandwala, President
8110 Aero Drive
San Diego, California 92123
Telephone: (760) 889-6186
Email: sharad@alpsgroup.com

And

Higgs, Fletcher & Mack LLP
Attention: Kenneth C. Jones
401 West A Street, Suite 2600
San Diego, California 92101
Telephone: (619) 236-1551
Email: jonesk@higgslaw.com

Landlord:

The City of San Diego
Attention: Director, Economic Development Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

And

City of San Diego
Airport Management
Attention: Deputy Director
3750 John J. Montgomery Drive
San Diego, CA 92123
Telephone: (858) 573-1441
E-Mail: JERubio@sandiego.gov

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EXHIBIT G
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

LANDLORD STANDARD CONTRACT PROVISIONS

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

1.1 Lessee Certification for Americans with Disabilities Act ("**ADA**") and State Access Laws and Regulations. Lessee shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Lessee shall comply with the most restrictive requirement (i.e., that which provides the most access). Lessee also shall comply with the Landlord's ADA Compliance/Landlord Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Lessee warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Lease or the Premises will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

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

1.3 Equal Benefits Ordinance Certification. Unless an exception applies, Lessee shall comply with the Equal Benefits Ordinance codified in SDMC section 22.4308.

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

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

1.6 Business Tax Certificate. Unless Landlord's City Treasurer determines in writing that Lessee is exempt from the payment of business tax, Lessee is required to obtain a Landlord business tax certificate and provide a copy of such certificate to Landlord before commencing the Permitted Use.

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EXHIBIT H
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

FEDERAL AVIATION ADMINISTRATION LEASE AND USE PROVISIONS

Lessee shall adhere to the following terms and conditions during the entirety of the time period covered by this Exhibit. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Lease, the terms and conditions contained in the main body of the Lease shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.

b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

1. The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the (Lessee/concessionaire/Landlord).
This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

I. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to lease, in the event of breach of any of the above Nondiscrimination covenants, the Landlord will have the right to terminate the lease and to enter, re-

enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Landlord will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Landlord and its assigns.

D. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (I) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

E. With respect to the lease, in the event of breach of any of the above nondiscrimination covenants, the Landlord will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.*

F. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the Landlord will there upon revert to and vest in and become the absolute property of the Landlord and its assigns.*

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_provisions/.)

2. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the Lessee and without interference or hindrance.

3. The airport owner/sponsor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.

4. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of the Lessee or any occupant to comply with the requirements of any existing or future agreement between the Landlord and the United States,

which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Lessee's rights hereunder.

5. There is reserved to the airport owner/sponsor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.

6. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.

7. The Lessee by accepting this lease agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CPR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Lessee.

8. The Lessee by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.

9. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103(e) and 47107(a)(4).

10. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

11. The Lessee will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

12. The Lessee will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security

breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

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EXHIBIT I
TO
PERCENTAGE LEASE
(8110 Aero Drive, San Diego, CA 92123)

PREVAILING WAGE AND LIVING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Lease cumulatively exceeding $15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Lessee and Lessee's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **Exhibit I** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). As set forth in Section 12 of the Lease, Construction work performed on the Project under the Lease is not subject to the Prevailing Wage Law, and the Lease generally is not subject to the LWO; provided, however, that under Public Utilities Code section 769.2, that portion of the Project involving Construction of the solar panel system on the Premises is subject to the Prevailing Wage Law. If both Prevailing Wage Law and the LWO are applicable to a particular work, Lessee and Lessee's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

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

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

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the

predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

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

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

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

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

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

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Lessee and Lessee's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Lease or any contract

or subcontract, respectively, Lessee and Lessee's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Lessee shall include this certification in all contracts with each contractor or subcontractor.

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

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

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

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

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

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

RESOLUTION NUMBER R- 316570

DATE OF FINAL PASSAGE JAN 21 2026

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A 50-YEAR PERCENTAGE LEASE WITH ALPS HOSPITALITY, INC., FOR APPROXIMATELY 19.27 ACRES OF CITY-OWNED REAL PROPERTY LOCATED AT 8110 AERO DRIVE AT MONTGOMERY-GIBBS EXECUTIVE AIRPORT FOR THE OPERATION OF A HOTEL AND CONSENT TO A 34-YEAR SUBLEASE WITH 8110 AERO SOLAR LLC FOR THE INSTALLATION AND OPERATION OF A SOLAR PANEL SYSTEM ON THE PROPERTY.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. The City of San Diego (City) owns certain real property located within the Montgomery-Gibbs Executive Airport property, at 8110 Aero Drive, San Diego, CA 92123, consisting of approximately 19.27 acres (Premises), on which currently exists a Four Points by Sheraton Hotel (Hotel).

B. The City initially leased the Premises to Montgomery Airport Hotel, Ltd., a Texas limited partnership, under that certain Percentage Lease filed in the Office of the San Diego City Clerk on October 17, 1983, as Document RR-259434 (as amended, the Prior Lease). In 2012, 8110 Aero Drive Holdings, LLC, a California limited liability company (Prior Lessee), assumed the Prior Lease under that certain Assignment of Lease dated January 1, 2012, filed in the Official Records of the San Diego County Recorder's Office (Official Records) on May 8, 2012, as Document No. 2012-0268812.

C. Prior Lessee assigned the Prior Lease to Alps Hospitality, Inc., a California corporation (Lessee), under that certain Assignment and Assumption of Lease, recorded in the

Official Records on July 3, 2023, as Document No. 2023-0174115. Lessee has operated the Hotel under the Prior Lease since that time.

D. The City and Lessee negotiated a ground lease for the Premises (Lease), a copy of which is included in the docket materials accompanying this Resolution.

E. The Lease provides for a 50-year term (Term) and requires Lessee to invest at least $8,000,000 to improve and upgrade the Hotel, as described in the General Development Plan, attached as Exhibit D to the Lease, as well as in the staff report accompanying this Resolution (Project).

F. Under the Lease, Lessee must pay, on a monthly basis, the greater of (i) fair-market minimum rent of $157,500 (subject to periodic adjustment after five years and every five years thereafter) (Minimum Rent) and (ii) percentage rent (subject to periodic adjustment after ten years and every ten years thereafter).

G. The City will partially defer Minimum Rent in the amount of $74,167 per month for the first 40 months of the Term (Deferred Rent Loan) during development of the Project, because Hotel revenues will be lower due to room renovations. Lessee will repay the Deferred Rent Loan, which will accrue interest at a fair market rate of 8% per annum compounded monthly, from the 41st month of the Term over a 10-year period.

H. A separate promissory note, attached as Exhibit C to the Lease (Note), sets forth the terms of the Deferred Rent Loan. Lessee's principal will personally guaranty repayment of the Deferred Rent Loan.

I. The Project includes installation and operation of solar panels on approximately two acres of the Premises and on the Hotel roof. To that end, Lessee seeks the City's consent (Consent) to enter into a 34-year sublease (Sublease) with 8110 Aero Solar LLC, a California

limited liability company (Sublessee), to perform such installation and operation, which will facilitate Lessee's compliance with the City's Zero Emissions Municipal Buildings and Operations Policy (ZEMBOP) by providing renewable, sustainable energy for the Hotel. A copy of the Consent is included in the docket materials accompanying this Resolution. The Consent also provides Sublessee with a non-disturbance and attornment agreement from the City that allows for Sublessee's continued occupancy of the Premises in the event of a termination of the Lease before the expiration of the Sublease.

J. The fee simple market value of the Premises, as disclosed in an appraisal that City staff completed within the past year, is $21,000,000. According to that appraisal, the annual fair market rent for the Premises is $1,890,000, or $157,500 per month.

K. The California Department of Housing and Community Development has determined that the Lease is not subject to, and not a disposition under, the Surplus Land Act (California Government Code sections 54220 to 54234, as amended) because it does not involve any development or demolition.

L. The Office of the City Attorney prepared this Resolution based on the information provided by City staff including information provided by affected third parties and verified by City staff, with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it resolved by the Council of the City of San Diego:

1. The Council approves the Lease.

2. The Council approves the Consent.

3. The Mayor or designee is authorized, on the City's behalf, to sign and deliver the Lease and the Consent and to take all other actions necessary or appropriate to carry out the

intent of the Lease and the Consent. A copy of the Lease, when signed by the City and Lessee, will be filed in the Office of City Clerk as Document No. RR316570-1. A copy of the Consent, when signed by the City, Lessee, and Sublessee, will be filed in the Office of City Clerk as Document No. RR316570-2.

4. The Chief Financial Officer is authorized and directed to accept all of Lessee's payment of rent and all consideration under the Lease and deposit those payments into the Airport Enterprise Fund (Fund No. 7000033).

APPROVED: HEATHER FERBERT, City Attorney

By _____
Brian W. Byun
Deputy City Attorney

BWB:nja
November 12, 2025
Or. Dept: Econ. Dev., Airports Div.
Doc. No. 4250103

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held on JAN 13 2026.

DIANA J.S. FUENTES
City Clerk

By _____
Deputy City Clerk

Approved: 1/20/26 _____
(date) TODD GLORIA, Mayor

Vetoed: _____ _____
(date) TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JAN 13 2026, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Henry L. Foster III	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Kent Lee	☒	☐	☐	☐
Raul A. Campillo	☐	☐	☒	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage JAN 21 2026.

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

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 316570

Passed by the Council of The City of San Diego on Jan 13, 2026, by the following vote:

YEAS:	**LACAVA, CAMPBELL, WHITBURN, FOSTER III, VON WILPERT, LEE, MORENO, & ELO-RIVERA.**
NAYS:	**NONE.**
NOT PRESENT:	**CAMPILLO.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California

(Seal)

By: **Chrystal Rodriguez**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of RESOLUTION NO. **R-316570** approved on **January 13, 2026**. The date of final passage is **January 21, 2026**.

DIANA J.S. FUENTES

City Clerk of the City of San Diego, California

(Seal)

By: _____, Deputy