

DUPLICATE

FIRST AMENDMENT TO CITY OF SAN DIEGO PERCENTAGE LEASE

This First Amendment to City of San Diego Percentage Lease ("First Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and SHORELINE MISSION BAY, LLC, a Delaware limited liability company, as lessee ("LESSEE"), to be effective as of the date when signed by the parties and approved by the San Diego City Attorney, (the "First Amendment Effective Date").

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

RECITALS

- A. CITY owns that certain real property located in Mission Bay Park at 2688 East Mission Bay Drive, San Diego, California 92109, currently vacant and formerly known as the "San Diego Visitor Information Center," consisting of an approximately 2.158 acres of land improved with a 4,600 square-foot building, landscaping and parking, all as more particularly described in the Lease.
- B. CITY and LESSEE entered into that certain City of San Diego Percentage Lease, filed in the Office of the San Diego City Clerk on April 4, 2017, as Document No. RR-311008 ("Lease").
- C. LESSEE is obligated to invest Three Million Eighty-Three Thousand Nine Hundred Ninety-Three Dollars (\$3,083,993) to redevelop and rehabilitate the Premises within the Redevelopment Period, not later than October 5, 2019, all in accordance with Redevelopment Plan.
- D. LESSEE commenced the redevelopment and rehabilitation of the Premises and as of the First Amendment Effective Date has invested an approximately One Million Two Hundred Forty-Seven Thousand Dollars (\$1,247,000).
- E. During the redevelopment and rehabilitation of the Premises, LESSEE discovered significant damage to the building structure that requires additional time to repair the existing structure, including the tower, and to remove the asbestos and lead paint while preserving the historic nature of the building.
- F. On March 13, 2020, the Mayor of the City of San Diego ("Mayor") issued a proclamation of local emergency in preparation and response to the spread of the COVID-19 Virus in San Diego. On March 16, 2020, the Mayor issued Executive Order 2020-1 that prohibited gatherings, ordered the closing of bars, and prohibited the serving of food and beverage for consumption on restaurant premises. On March 19, 2020, the Governor of California issued Executive Order N-33-20 requiring all individuals in the state to stay home or at their place of residence, subject to certain limited exceptions. On March 30, 2020, the Mayor issued Executive Order No. 2020-2 adding additional provisions that ordered the closure of all City parks, beaches, trails, boardwalk and bays. As a direct result of compliance with the Mayor and Governor orders the LESSEE and hired contractors were unable to provide a full

workforce and abide by the social distancing rules in the small footprint of the premises. The closure of Mission Bay Park and the adjoining parking lots made receiving construction supplies and large material deliveries difficult for the LESSEE and their contractors. These actions caused an unavoidable delay in the redevelopment and rehabilitation of the Premises.

- G. LESSEE is diligently working with CITY to obtain all required permits to complete the redevelopment and rehabilitation of the Premises and requested an extension of the Redevelopment Period for an additional fourteen months with the expiration of Redevelopment Period no later than December 5, 2020.
- H. This First Amendment extends the Redevelopment Period of the Premises for an additional fourteen months and secures LESSEE'S commitment to redevelop the Premises by December 5, 2020.
- I. Unless otherwise defined herein, all capitalized terms as used in this First Amendment shall have the same meanings as given therefor in the Lease.

NOW THEREFORE, in consideration of the above recitals, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the parties agree as follows:

AGREEMENT

- 1. City Council Action Required. LESSEE acknowledges and agrees that this First Amendment is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's failure to grant the Council Authorization.
 - 1.1 LESSEE'S Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF THE CITY COUNCIL'S FAILURE TO GRANT THE COUNCIL AUTHORIZATION.
- 2. Subsection (a) of Section 2 of the Lease is deleted in its entirety and replaced with the following:
 - "(a) Redevelopment Period. 'Redevelopment Period' means up to the first forty-three (43) months of the Term during which LESSEE shall redevelop the Premises in accordance with the Redevelopment Plan. LESSEE shall apply all commercially reasonable efforts to complete the Redevelopment Plan during the Redevelopment Period and be open on the Occupancy Date, as defined below."
- 3. Subsection (b) of Section 2 of the Lease is deleted in its entirety and replaced with the following:

“(b) Occupancy Date. ‘Occupancy Date’ means the first day of the month following the date the Certificate of Occupancy is issued for the Premises, but in no event beyond January 1, 2021.”

4. No Other Changes. Except as set forth in this First Amendment, all other terms and conditions of the Lease not addressed in this First Amendment shall remain in full force and effect. Any conflict between the terms and conditions of this First Amendment and those of the Lease shall be resolved in favor of the terms and conditions of this First Amendment.

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

SHORELINE MISSION BAY, LLC, a Delaware
Limited Liability Company

Date: 6/26/2020

By: [Signature]
Name: BRADLEY SCHWELL
Title: CEO

THE CITY OF SAN DIEGO, a California municipal
corporation

Date: 8/3/20

By: [Signature]
Cybele Thompson, RPA, FMA, CCIM, LEED AP
Director, Real Estate Assets Department

Approved as to form this 12th day of August, 2020:

MARA W. ELLIOTT, CITY ATTORNEY

By: [Signature] For Hilda Mendoza
Name: Jane M. Boardman
Title: Deputy City Attorney

RESOLUTION NUMBER R- **313169**

DATE OF FINAL PASSAGE JUL 30 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE EXECUTION OF THE
FIRST AMENDMENT TO CITY OF SAN DIEGO
PERCENTAGE LEASE WITH SHORELINE MISSION BAY,
LLC, FOR THE PROPERTY LOCATED IN MISSION BAY
PARK AT 2688 EAST MISSION BAY DRIVE, FORMERLY
KNOWN AS THE SAN DIEGO VISITOR INFORMATION
CENTER.

WHEREAS, on April 4, 2017, the Council of the City of San Diego approved Resolution R-311008 authorizing that certain City of San Diego Percentage Lease between the City of San Diego (City) and Shoreline Mission Bay, LLC (Lessee), on file with the San Diego City Clerk as Document No. RR-311008 (Lease), for the redevelopment of the leasehold improvements, including a vacant 4,600 square feet building formerly known as the "San Diego Visitor Information Center" located in Mission Bay Park at 2688 East Mission Bay Drive, San Diego, California 92109 (Premises); and

WHEREAS, Lessee commenced the redevelopment process and has invested approximately \$1,247,000 in the improvements, but the Lessee discovered substantial damage to the roof and other components of the building that will require changes to the development plans and additional review and approval by the City; and

WHEREAS, Lessee is diligently working with the City to obtain all required permits to complete the redevelopments of the Premises; and

WHEREAS, as a result of the COVID-19 pandemic, the redevelopment of the leasehold improvements has been unavoidably delayed; and

WHEREAS, Lessee desires an extension of the redevelopment period for an additional term of approximately fourteen months, with an expiration of no later than December 5, 2020, to complete the work; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain First Amendment to City of San Diego Percentage Lease with Shoreline Mission Bay, LLC, on file in the Office of the City Clerk as document No. RR- 313169, under the terms and conditions set forth therein.

APPROVED: MARA W. ELLIOTT, City Attorney

By Hilda R. Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM:nja
05/20/20
Or. Dept: READ
Doc. No.: 2387921

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 07/28/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Connie Patterson
Deputy City Clerk

KEVIN L. FAULCONER, Mayor

Approved: 7/29/20
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 28 2020, by the following vote:

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

Date of final passage JUL 30 2020.

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

AUTHENTICATED BY:

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

(Seal)

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

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313169

Passed by the Council of The City of San Diego on July 28, 2020, by the following vote:

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

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-313169**, approved on **July 28, 2020**. The date of final passage
is **July 30, 2020**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: *Connie Patterson* Deputy