

**ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST
and
FIRST AMENDMENT TO OPERATING AGREEMENT
of
901 SSS OLD TOWN LLC**

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST AND FIRST AMENDMENT TO OPERATING AGREEMENT (this "Assignment and Amendment") is made and entered into effective as of June 30, 2020, by and between (i) Laurie Anne Victoria, Trustee of the Conrad Prebys Trust dated December 17, 1982 ("Assignor") and (ii) the Conrad Prebys Foundation, a California public benefit corporation ("Assignee") (collectively, the "Parties" and individually, a "Party"), with reference to the following:

RECITALS

WHEREAS, 901 SSS Old Town LLC, a California limited liability company (the "Company"), is governed by the terms of that certain Operating Agreement dated July 25, 2018 ("Agreement");

WHEREAS, Assignor is the sole member of the Company holding one hundred percent (100%) of the membership interests in the Company;

WHEREAS, to effectuate a distribution from the Conrad Prebys Trust dated December 17, 1982, to Assignee, Assignor desires to assign its entire membership interest (the "Membership Interest") in the Company to Assignee, and Assignee desires to assume all rights and duties connected with the Membership Interest;

WHEREAS, Section 4 of Article III of the Agreement permits the transfer of the Membership Interest "to any person that is willing and able to serve as a successor member" and provides that "[s]uch person shall be admitted as the sole member of the Company (and all references to the 'Member' in [the] Agreement shall be deemed to refer to such assignee)...."; and

WHEREAS, all Parties hereto wish to document the transfer of the Membership Interest to Assignee as described above and amend the Agreement for the purposes set forth herein, as authorized under the provisions of Section 1 of Article IX, and the provisions of Article X, of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

ASSIGNMENT AND AMENDMENT

1. **Recitals.** The above Recitals shall be incorporated into this Assignment and Amendment in their entirety.

2. **Assignment of Membership Interest.** Assignor hereby assigns, conveys, transfers, and delivers to Assignee the Membership Interest in the Company. Such assignment of the Membership Interest shall be subject to any liabilities associated therewith.

3. **Acceptance of Assignment and Assumption; Consent.**

3.1. Assignee accepts such assignment of the Membership Interest, including any duties and liabilities associated therewith, holding such interest as a successor sole Member.

3.2. Assignee acknowledges having read and understood the Agreement and hereby agrees to be bound by each and every term thereof.

4. **Amendment.** Section 2 of Article I, and Article VIII, in its entirety, of the Agreement are hereby deleted from the Agreement.

5. **Necessary Acts.** Each Party agrees to perform any further acts, and to execute and deliver any further documents that may be reasonably necessary or required to carry out the intent and provisions of this Assignment and Amendment and the transactions contemplated thereby.

6. **Entire Agreement.** This instrument contains the entire agreement between the Parties relating to the rights granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification in writing, signed by the party to be charged.

7. **Captions; Interpretation.** Paragraph headings or captions are inserted as a matter of convenience and reference; and in no way define, limit, extend or describe the scope of this Assignment and Amendment or any provision hereof. No provision in this Assignment and Amendment is to be interpreted for or against either party because that party or the legal representative of that party drafted such provision.

8. **Governing Law; Successors and Assigns.** This Assignment and Amendment shall be governed by, construed and enforced in accordance with, the laws of the State of California.

9. **Successors and Assigns.** This instrument shall bind and inure to the benefit of the respective heirs, personal representatives, grantees, successors and assigns of the Parties hereto.

10. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronically mailed signatures, each of which shall be deemed to be an original by all parties signatory to the counterpart, and all of which shall constitute one and the same instrument. It shall be necessary to account for only one fully executed counterpart in proving this Agreement.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment and Amendment to be executed as of the date first above written.

Assignor:

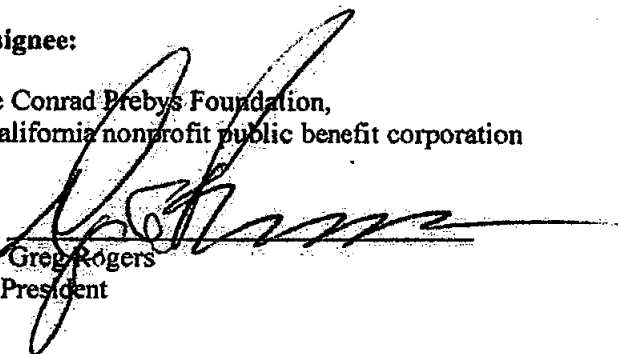


Laurie Anne Victoria, Trustee of the Conrad
Prebys Trust dated December 17, 1982

Assignee:

The Conrad Prebys Foundation,
a California nonprofit public benefit corporation

By:



Greg Rogers

Its: President

CITY OF SAN DIEGO
CONSENT TO ASSIGNMENT OF LEASE

THIS CONSENT TO ASSIGNMENT OF LEASE ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of the later date that this Consent is executed by City and approved by the San Diego City Attorney ("Effective Date").

RECITALS

- A. WHEREAS, CITY, as lessor, and CONRAD T. PREBYS, Trustee under Trust Agreement dated December 17, 1982, as lessee ("LESSEE"), entered into that certain Lease Agreement, dated November 14, 1983 filed in the Office of the City Clerk, San Diego, California, as Document No. RR-259542 ("Lease") for certain premises known as that certain real property as parcel 1, comprising 0.308 acres, or 13,416 square feet of the 4800 Block of Pacific Highway, San Diego, California, 92110, County of San Diego, State of California, shown on **EXHIBIT "A"**, attached hereto ("Premises").
- B. WHEREAS, LESSEE and 901 SSS OLD TOWN LLC ("ASSIGNEE") wish to enter into an Assignment of Lease ("Assignment"), which will assign all of LESSEE's rights, title, and interest in, to, and under the Lease, to the ASSIGNEE.
- C. WHEREAS, Section 4.02 of the Lease requires that CITY consent to the assignment of any portion of LESSEE's right, title, or interest in the Lease.
- D. WHEREAS, ASSIGNEE intends to continue the use and operation of the LESSEE, which is solely and exclusively for the purposes of paving, fencing, landscaping, access, surface storage, and encroachment of storage buildings from LESSEE'S mini-storage operation on adjacent CalTrans property, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

NOW, THEREFORE, CITY provides its consent subject to the following:

1. In reliance upon ASSIGNEE's assumption of all obligations as "Lessee" under the Lease, CITY hereby consents to LESSEE's request to assign all of its right, title, and interest in and to the Lease to ASSIGNEE. By giving this Consent, CITY is merely consenting to the Assignment. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any agreement executed between LESSEE and ASSIGNEE, except as otherwise approved herein; and
2. CITY does not release, discharge, or modify LESSEE's obligations to CITY under the Lease. As set forth in applicable law, LESSEE's obligations under the Lease shall survive said Assignment and shall continue through the termination dates of the Lease, as set forth therein; and
3. LESSEE agrees to pay CITY any applicable processing and/or administrative fee(s) for processing this Consent; and

4. CITY shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Assignment. Further, LESSEE agrees to protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by CITY in resisting any claim for any such brokerage commission or finder's fee.

IN WITNESS WHEREOF, this Consent is executed by CITY acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: _____

BY: _____
Kristin Geitz, Acting Director
Real Estate Assets Department

Date: _____

By: _____
Alyssa Muto, Assistant Director
Planning Department

*Approved as to form this _____ day
of _____ 2020.*

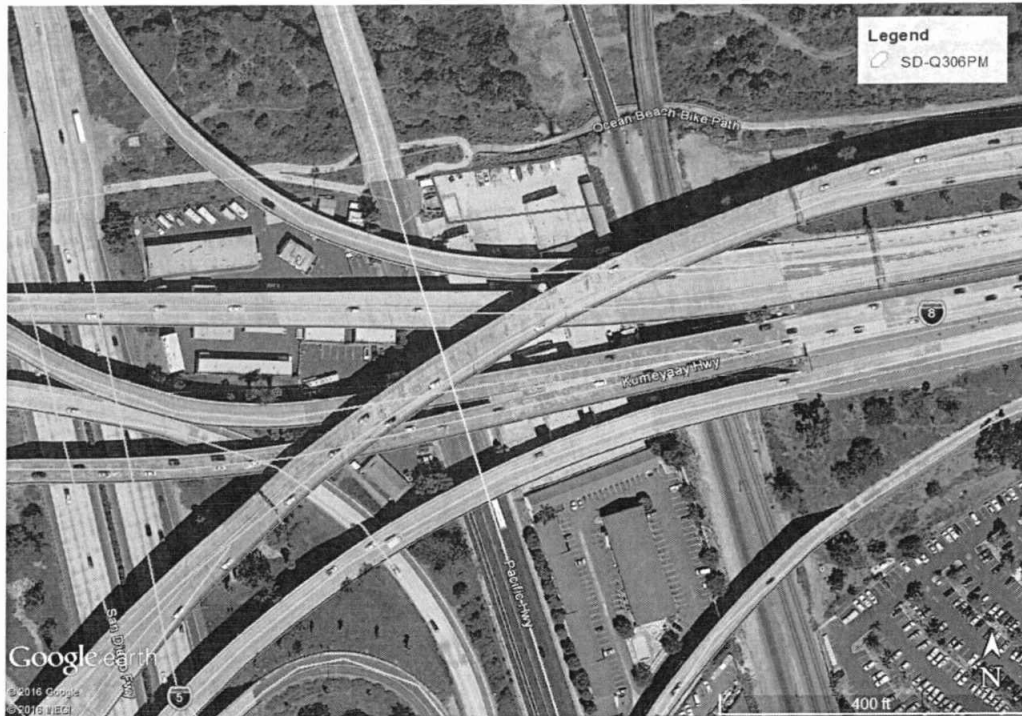
MARA W. ELLIOT, City Attorney

BY: _____

Name: _____

Title: _____

EXHIBIT A- LOCATION



Aerial view of subject property. Property boundaries are approximate.



The property boundaries are approximate. The two encroaching buildings are indicated in the photograph.