

CITY OF SAN DIEGO
CONSENT TO SUBSUBLEASE
[House of Hospitality]

THE CITY OF SAN DIEGO, a California municipal corporation ("City"), as lessor, and House of Hospitality Association, Inc. ("HOH"), as lessee, are parties to that certain Lease filed in the Office of San Diego City Clerk as Document No. R 289141 on October 1, 1997 (the "Master Lease").

HOH, as sublessor, and SAN DIEGO MUSEUM OF ART, a California non-profit corporation ("SDMA"), as sublessee, are parties to that certain Rental Agreement (the "Sublease") dated January 5, 1999, relating to certain portions of the Master Lease premises. SDMA has entered into a Subsublease with the Balboa Park Cultural Partnership, a 501(c)(3) nonprofit organization (BPCP) dated August 6, 2010 for a portion of the subleased premises, which is on file with the City's Real Estate Assets Department, and which is incorporated by reference into this Consent to Subsublease in its entirety as if restated herein.

CITY hereby consents to SDMA Subsubleasing a portion of the Premises to BPCP, provided all of the following conditions are and remain true throughout the term of the Subsublease:

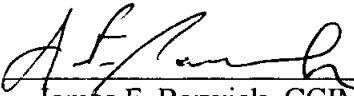
- (a) The subsublease is subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent; and
- (b) CITY is not bound by any term or condition in the Subsublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease; and
- (c) SDMA and BPCP shall not amend the Subsublease to alter any provisions of Section 5 (Insurance), Section 6.3 (Indemnification), or Section 6.4 (Assignment) of the Subsublease in any way that reduces the insurance and indemnification of CITY or permits further assignment or subleasing by BPCP without prior consent by CITY.

If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

Date: 1/12/11

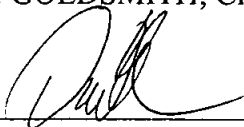
THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 
James F. Barwick, CCIM
Real Estate Assets Director

Date: 1/12/2011

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY: 

David L. Herman
Deputy City Attorney

PP/cb

1-10-11

I:\Support Staff Group\WPO\2011\PHILLIPS\CONSENT TO ASSIGNMENT-HOH 1-10-11 docx

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Agreement") is entered into, effective as of August 6, 2010, by and between the San Diego Museum of Art, a California, USA public benefit corporation located at 1450 El Prado, Balboa Park, P.O. Box 122107, San Diego, California 92112-2107 ("SDMA"), the Balboa Park Cultural Partnership, a 501(c)(3) nonprofit organization, located at 1549 El Prado, Suite 1, CA 92101-1699 ("BPCP"), and House of Hospitality Association, a 501(c)(3) nonprofit organization, located at 1549 El Prado, San Diego, CA 92101 ("HHA") and constitutes the entire agreement between the parties concerning the use of a portion of the office space leased in the House of Hospitality by SDMA ("HoH"), which is delineated in Exhibit A. The parties agree that this Sublease Agreement is subject to that certain City of San Diego - San Diego Museum of Art Balboa Park Lease Agreement ("Master Lease") attached hereto as Exhibit B and incorporated herein by this reference, and to that certain HoH Sublease ("Sublease") attached hereto as Exhibit C and incorporated herein by this reference. BPCP agrees to be obligated pursuant to Master Lease and the Sublease to the extent it is applicable to this Agreement. The parties further agree:

1. TERM: August 1, 2010, through January 31, 2011.
2. FEE: BPCP shall pay SDMA a rental fee of \$1,600 for the use of HoH, which represents the parties' agreed computation of the pro rata share of SDMA's current annual rent paid for the space. Payments to SDMA by BPCP will be \$532 upon execution (first and last months), and \$267 per month, payable in advance (without setoff or deduction) on the first day of each month, commencing September 1, 2010. A 5% late charge shall be applicable to all payments which are more than five days late. All payments hereunder shall be made to SDMA at the above address.
3. FACILITIES USE: Prior to BPCP occupying HoH, the parties will complete a facilities condition report. This report will be used by SDMA and BPCP to ensure that HoH is restored to its current state, or better, at the termination of this Agreement; BPCP agrees to accomplish such restoration at BPCP's sole cost and expense. BPCP shall use HoH as office space and for no other purpose, and in so doing shall comply with all requirements of this Agreement and the Master Lease.
 - 3.1. Delivery of HoH: HoH shall be delivered by SDMA to BPCP in its "as is" condition, and BPCP has no right to request that SDMA do or provide any improvements thereto.
 - 3.2. BPCP agrees to reimburse SDMA for all additional security and janitorial services provided by SDMA for HoH or in connection with the use of HoH during BPCP's use of the premises. Security and janitorial services will be billed monthly to BPCP at the rate SDMA pays for same. BPCP shall also reimburse SDMA for all expenses (including water, gas, electricity, and other services and utilities) to the extent their cost exceeds the amount SDMA would pay for such expenses in the absence of this Agreement. Payment shall be due to SDMA within fifteen days after BPCP is sent an invoice for same.
 - 3.3. BPCP will perform all routine maintenance on the HoH facilities at its own cost and expense.
4. MODIFICATIONS TO HOH: BPCP agrees to make any necessary improvements at its own expense. Any and all improvements made to HoH in general shall become the property of SDMA and shall remain at HoH after the end of the Term. BPCP agrees to remove at its own expense any and all improvements, unless SDMA requests in writing that said improvements remain in place after the BPCP vacates the premises. Prior to making any alterations to HoH, BPCP shall submit written plans and drawings to SDMA and BPC for review and approval. In

addition BPCP will be responsible to reimburse SDMA for all additional security and maintenance escorts and supervision provided by SDMA during the construction and installation periods. BPCP shall be solely responsible and fully indemnify and hold SDMA harmless for any loss or damage incurred by SDMA in any way related to such upgrades.

- 4.1. BPCP shall solely be responsible at BPCP's cost and expense for securing all necessary permits and approvals, and taking all actions necessary to comply with all City of San Diego, regional, state, and national laws and requirements, including but not limited to approval from the Fire Marshall, related to improvements to HoH.
- 4.2. Before commencing any work BPCP shall obtain from SDMA its approval of the general and any sub-contractors that will perform the work, which approval shall not be unreasonably withheld.

5. **INSURANCE:**

- 5.1. Liability Insurance. Throughout the term of this Agreement, BPCP will at its expense, obtain and maintain at its own expense, from an insurance company reasonably acceptable to SDMA and HHA, general liability insurance in an amount not less than USD \$1,000,000 per occurrence and USD \$2,000,000 combined limit.
- 5.2. Additional Requirements. Insurance provided by BPCP under Paragraph 5.1 will collectively be referred to as "Coverage." Coverage must provide for 30 days notice to SDMA, HHA, and the City of San Diego from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination of Coverage. Coverage shall be adequate to protect the interests of SDMA, HHA, the City of San Diego and BPCP and in form, substance and amounts reasonably satisfactory to SDMA and HHA. BPCP shall provide SDMA, HHA, and the City of San Diego with proof of such insurance in force no later than thirty (30) days prior to the beginning of the Term. Coverage may not be cancelled or amended without the prior written consent of SDMA, HHA, and the City of San Diego. The deductible required under any insurance policy shall be at BPCP's expense. SDMA, HHA, and the City of San Diego shall be listed as additional insureds, and SDMA and HHA shall have the right, at their election to require BPCP to obtain from its insurer a waiver of subrogation for the benefit of SDMA, HHA, and the City of San Diego.
- 5.3. Maintenance of Policy. BPCP will (a) keep the Coverage in full force and effect throughout the term of this Agreement and (b) not allow, do, or fail to do anything causing such Coverage to lapse.
- 5.4. SDMA Insurance Policies. BPCP shall not engage in any activity which is in violation of or which would cause an increase in the premiums of SDMA's or HHA's insurance policies in force during the term.

6. **GENERAL TERMS AND CONDITIONS**

- 6.1. Authority. Except as stated in paragraph 8.1.1 each party represents and warrants that it has the full right, power and authority to enter into and perform this Agreement, and that it is not a party to any agreement or understanding which would conflict with this Agreement.
 - 6.1.1. SDMA requires approval from the City of San Diego before this Agreement becomes binding and until such approval is obtained, this Agreement shall have no force or effect.

- 6.2. Independent Contractor. Each party will perform its duties under this Agreement as an independent contractor, retaining complete control over its respective personnel and operations, conforming to all applicable labor laws, regulations and orders with respect to its employees. Neither BPCP nor its employees or agents will be SDMA's, HHA's or the City of San Diego's joint venturers, employees or agents, or have any authority to represent or bind SDMA. Neither SDMA nor HHA nor the City of San Diego, nor any of their employees or agents will be BPCP's joint venturers, employees or agents, or have any authority to represent or bind BPCP.
- 6.3. Indemnification. BPCP will indemnify, defend and hold harmless SDMA and HHA and its officers, directors, employees, and agents from and against any and all damages, loss, cost, claim, demand, action, or liability whatsoever, including but not limited to all expenses and costs incidental thereto including attorneys' fees, arising from or in any way connected with this Agreement, including but not limited to property damages, personal injury or death of any person whomsoever, or disputes or claims of any type, except to the extent such damages, loss, costs, claims, demands, activities or liability was/were caused solely and directly by the gross negligence or willful misconduct of SDMA and HHA. BPCP will indemnify, defend and hold harmless City of San Diego and its officials, officers, directors, employees, and agents from and against any and all damages, loss, cost, claim, demand, action, or liability whatsoever, including but not limited to all expenses and costs incidental thereto including attorneys' fees, arising from or in any way connected with this Agreement, including but not limited to property damages, personal injury or death of any person whomsoever, or disputes or claims of any type, except to the extent such damages, loss, costs, claims, demands, activities or liability were caused solely and directly by the gross negligence or willful misconduct of City of San Diego.
- 6.4. Assignment. BPCP agrees not to assign, sublet or otherwise transfer its rights under this Agreement or its rights to use HoH.
- 6.5. Default. Should BPCP default in the performance on any of the terms and conditions of this Agreement, SDMA, in addition to any other rights and remedies, may, at its option, immediately terminate this Agreement, take back possession of the HoH even during a rehearsal or performance and remove all persons and BPCP property therefrom. BPCP shall, in that event, be liable for the full amount of the fees and costs provided for herein, less any expenses reduced by reason of steps taken by SDMA to mitigate its loss. The BPCP shall also be responsible for the cost of removing its property from the HoH. Any deposits made by the BPCP shall be retained by SDMA and applied toward final monies due.
- 6.6. Mediation/Arbitration.
- 6.6.1. The parties agree that if a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, they will endeavor to settle the dispute by nonbinding mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration. The parties shall agree to a mediator and if they are unable to agree, the San Diego office of the American Arbitration Association shall select a mediator who may be rejected by the parties only for bias. The parties shall notify the mediator in writing of the existence of a dispute and the mediator shall have thirty days from receipt of notification to meet with the parties and help them resolve the dispute, unless they mutually agree to an extension of the deadline. The cost of mediation (but

not the attorneys' fees of the respective parties) shall be borne equally between the parties. Neither party can compel arbitration before the end of the thirty day period.

6.6.2. Any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration, which shall constitute the sole and exclusive remedy. Either party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the American Arbitration Association (San Diego Office) with a copy to the other party. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

6.6.2.1. Any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration, which shall constitute the sole and exclusive remedy. Either party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the American Arbitration Association (San Diego Office) with a copy to the other party. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

6.6.2.2. The arbitration will take place in San Diego, California before a single arbitrator. The San Diego Office of the American Arbitration Association shall provide to the parties a list of the available qualified arbitrators to arbitrate such dispute following the demand for arbitration. The parties shall each rank the arbitrators in their respective order of preference (numbered one through the end of the list presented) and present the rankings to the San Diego Office of the American Arbitration Association. The highest ranking arbitrator (as determined by the sum of the numeric rankings given by the parties) shall serve as the single arbitrator.

6.6.2.3. The decision of the arbitrator, including a determination of the amount of any damages suffered, shall be conclusive, final and binding on both parties, their successors and assigns, as applicable and not subject to appeal.

6.6.2.4. The costs of arbitration, including attorneys' fees, administrative fees, fees for a record and transcript, and the arbitrator's fees shall be borne by the party not prevailing in such action as determined by the arbitrator.

6.6.3. Force Majeure. Neither party to this Agreement will be liable for failure to comply with any terms of this Agreement when such failure is caused by an event of war, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party unable to perform its obligations which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing. Fluctuations in currency values shall not be considered a condition of force majeure.

6.7. Notices. All notices, requests, demands and other communications under this Agreement will be in writing and in English and will be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on

the day following delivery of the notice to a reputable overnight courier, provided such delivery is prior to the cut-off time for shipment the day of delivery, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as set forth below.

*Balboa Park Cultural Partnership
1549 El Prado, Suite 1
San Diego, CA 92101.1699
(619) 232-7502
Attention: David Lang, Executive Director*

*San Diego Museum of Art
P.O. Box 122107
San Diego, CA 92112.2107
Attention: Julianne Markow, Deputy Director, Operations and Finance*

*House of Hospitality Association
1549 El Prado
San Diego, CA 92101
Attention: David Kinney, Executive Director*

- 6.7.1. Modification. This Agreement may not be amended or modified except by written agreement between the parties hereto.*
- 7. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law. Should any provision, or portion of any provision of this Agreement be adjudged invalid or unenforceable for any reason, the validity or enforceability of the remaining provisions or of the other portions of the provision(s) so adjudged shall not be affected thereby, and any provisions or portions thereof which are illegal, invalid, or otherwise unenforceable shall be curtailed and restricted only to the extent necessary to bring them within the legal requirements.*
- 8. Entire Agreement. This letter constitutes the entire agreement between the parties hereto and supersedes all prior and contemporary agreements, representations and understandings of the parties as to the subject matter contained in it. This Agreement may not be supplemented, amended or modified except by a writing signed by all parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. This Agreement may be signed in counterparts, all of which taken together shall be deemed an original. Paragraph headings are for convenience only and shall not be referred to in the interpretation of this Agreement.*
- 9. Miscellaneous. This Agreement will be governed by and construed in accordance with the local law of the State of California, United States of America, without regard to conflict of law rules. Should any provision or part of any provision of this Agreement be void or unenforceable, such provision, or part thereof, will be deemed omitted and the rest of this Agreement will remain in full force and effect.*

IN WITNESS WHEREOF, the parties have signed this Agreement in duplicate, intending each duplicate copy to serve as an original.

SAN DIEGO MUSEUM OF ART


Julianne Markow
Deputy Director, Operations and Finance
San Diego Museum of Art
PO Box 122107
San Diego, CA 92112.2107

8-9-10

Date

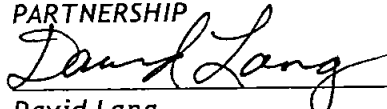
BALBOA PARK CENTRAL


David Kinney
Executive Director
House of Hospitality Association
1549 El Prado
San Diego, CA 92101

8-6-10

Date

BALBOA PARK CULTURAL
PARTNERSHIP


David Lang
Executive Director
Balboa Park Cultural Partnership
1549 El Prado Ste. 1
San Diego, CA 92109

8/6/10

Date

[illegible]

15
(2711.75)

11%
4531 sq. ft.

14
(1008)

Exhibit A
Diagram of Space to be Subleased to BPCP

Hand-drawn floor plan of a building. The plan shows a large central area labeled "TOTAL CLASSROOM 1622 S.F." and "RESTAURANT STOR." with arrows pointing to them. Other areas include "STORAGE", "PLANTER", "ELEVATOR", and "EXIT 1 FOUR EXIT CORRIDOR". A note on the right says "EXIST. STAIR DOES NOT EXIT THROUGH FIRST FLOOR." and a note at the bottom right says "AT DRUGS EXIT".

NOTE: ENTIRE BLDG. IS PROTECTED BY
AN AUTOMATIC SPRINKLER SYSTEM

**FERRIS
JOHNSON
& PERKINS**
BOSTON, MA

WPA Original 91
SAM BUEY
CASE 92101
Q30: 20F.28B

Group Vol. 57:

BY DIVISION

DATE

REVISIONS

1975

House Of Hospitality.

FILE
LOCATION
KEY

EVENT NO.

2

10-10-10

Exhibit B
Master Lease