

CITY OF SAN DIEGO

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE ("Consent") is provided by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective upon approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY, as lessor, and HOUSE OF HOSPITALITY ASSOCIATION, INC., a California nonprofit corporation ("LESSEE"), as lessee, are parties to that certain CITY OF SAN DIEGO NON-PROFIT LEASE (the "Master Lease") filed in the Office of the San Diego City Clerk as Document No. RR-289141 on September 8, 1997, and relating to the House of Hospitality Building (the "Master Lease Premises") within Balboa Park, located at 1549 El Prado, San Diego, California. The Master Lease Premises also include the Upper Dining Terrance as further described in the Master Lease.
- B. On February 26, 2009 a Certificate of Amendment of Articles of Incorporation was signed that changed the corporate name of LESSEE to BALBOA PARK CENTRAL. The Certificate of Amendment was filed in the office of the Secretary of State of the State of California on March 5, 2009.
- C. Effective July 1, 2014, LESSEE merged with BALBOA PARK CONSERVANCY, a California nonprofit corporation, and continued its existence under the name BALBOA PARK CENTRAL, which was the "surviving" corporation under the Agreement of Merger.
- D. On June 22, 2014, LESSEE filed Restated Articles of Incorporation changing its corporate name from BALBOA PARK CENTRAL to BALBOA PARK CONSERVANCY.
- E. LESSEE is currently doing business under the name BALBOA PARK CONSERVANCY.
- F. LESSEE, as sublessor, and The Putnam Foundation, a non-profit California corporation, dba TIMKEN MUSEUM OF ART ("SUBLESSEE"), as sublessee, have requested CITY to consent to a Rental Agreement and First Amendment to Rental Agreement (collectively the "Sublease") allowing SUBLESSEE to sublease a portion of the Master Lease Premises commonly known as Basement Storage, as more particularly described in the Sublease, attached hereto.
- G. The Master Lease requires City to consent to all subleases of the Master Lease Premises.

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated into this Consent by this reference, and for valuable consideration the receipt and sufficiency of which is acknowledged, CITY hereby consents to the Sublease subject to the following provisions:

1. Subject to the terms and conditions herein, City hereby consents to LESSEE's request to enter into the Sublease for use of a portion of its right, title and/or interest in and to the Master Lease to SUBLESSEE. By giving this Consent, City is merely consenting to the Sublease. All terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in any license or agreement executed between LESSEE and SUBLESSEE, except as otherwise approved herein; and
2. City's Consent is conditioned upon SUBLESSEE's written agreement that it will assume all rights and obligations as "Lessee" under the Master Lease, as applicable; and
3. City does not release, discharge or modify LESSEE's obligations to City under the Master Lease. As set forth in applicable law, LESSEE's obligations under the Master Lease shall survive said Sublease and shall continue through the termination dates of the Master Lease, as set forth therein; and
4. This Consent does not constitute consent to any subsequent sublease to use of any right, title and/or interest in and to the Master Lease; and
5. LESSEE agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent; and
6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Sublease. 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.

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

THE CITY OF SAN DIEGO, a California municipal corporation

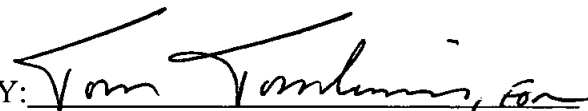
Date: 3/28/18

By: 
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

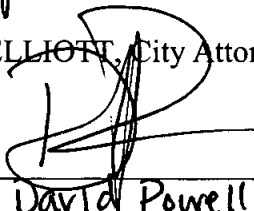
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities).

Date: 3/6/18

BY: 
Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis, Planning Department

Approved as to form this 2nd
day of April, 2018

MARA W. ELLIOTT, City Attorney

BY: 
Name: David Powell
Title: Deputy City Attorney



Date of Notice: February 16, 2018

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease Agreement - Timken Museum of Art

COMMUNITY PLAN AREA: Balboa Park

COUNCIL DISTRICT: 3 (Ward)

LOCATION: 1549 El Prado, San Diego, CA 92101

PROJECT DESCRIPTION: Authorize the Mayor or his designee to sign a Consent to Sublease Agreement between Balboa Park Conservancy, a California non-profit corporation and the Timken Museum of Art to sublease a portion of the Master Lease Premises commonly known as Basement Storage (1203 sq. ft. of storage space) located in the basement of the House of Hospitality, Balboa Park.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined that the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of use. The project does not trigger any of the exceptions to the exemptions listed in CEQA Guidelines Section 15300.2, as no cumulative impacts were identified; no significant effect(s) on the environment was identified; the project is not located adjacent to a scenic highway; the project is not located on a hazardous waste site; and no historical resources would be affected by the action.

CITY CONTACT: Roswitha Sanchez, SR/WA

Supervising Property Agent, Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A

San Diego, CA 92101

PHONE NUMBER: (619) 236-6721

On February 16, 2018, the City of San Diego made the above-referenced environmental determination pursuant to CEQA. This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal CEQA determination to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**March 5, 2018**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 2/16/2018

REMOVED: 3/6/2018

POSTED: E. Pascual

RENTAL AGREEMENT

This Rental Agreement (this "Agreement") is made as of May 1, 2017, by and between BALBOA PARK CONSERVANCY, A CALIFORNIA NONPROFIT CORPORATION ("LANDLORD") and the TIMKEN MUSEUM OF ART ("TENANT").

1. PREMISES

LANDLORD hereby subleases to TENANT and TENANT hereby subleases from LANDLORD, on the terms and conditions hereinafter set forth, that certain real property commonly known as Basement Storage (1203 sq. ft.), located in the basement of the House of Hospitality, Balboa Park, San Diego, California (the "Premises").

2. SUBORDINATION

This Agreement is a sublease of a portion of the premises covered by that certain Nonprofit Lease dated as of September 8, 1997, Document No. RR-289141, between the City of San Diego (the "City"), as landlord, and LANDLORD, as tenant (the "Master Lease"). This Agreement is subject and subordinate to all of the covenants and conditions of the Master Lease notwithstanding any provision hereof contrary to or in conflict with the Master Lease.

3. TERM

The term of this Agreement shall be for 17 months commencing on May 1, 2017, ("Commencement Date"), and terminating on September 30, 2018, ("Termination Date"), unless sooner terminated as hereinafter provided.

4. RENT

TENANT shall pay to LANDLORD the sum of \$1.15 per square foot for year 1 and \$1.20 per square foot during year 2 per month, in advance, on the first day of each month during the term of this Agreement, as monthly rent for the Premises. Rent shall be payable without notice or demand and without any deduction, offset or abatement in lawful money of the United States to LANDLORD at the address stated herein for notices or to such other persons or such other places as LANDLORD may designate to TENANT in writing. The monthly total shall be \$1,383.45 for May 2017 through April 2018 and \$1,443.60 per month for May 2018 through September 2018.

5. USE; ACCEPTANCE

TENANT shall use the Premises solely for the following purpose and for no other purpose without LANDLORD's prior written consent: offices, storage, art education studios, classes and related uses for Balboa Park activities and projects.

TENANT shall not do, bring or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises or Balboa Park Conservancy. If the rate of any insurance carried by LANDLORD is increased as a result of TENANT's use, TENANT shall pay to LANDLORD within ten (10) days after written demand from LANDLORD, the amount of any such increase. TENANT shall comply with all laws, rules, and regulations relating to the condition, use, or occupancy of the Premises by TENANT during the term of this Agreement. TENANT shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance or which shall unreasonably disturb any other tenant. TENANT shall not use the Premises for the sale of intoxicating liquors nor allow intoxicating liquors to be consumed on the Premises or any portion thereof, without the prior written consent of LANDLORD and without first obtaining an

approved policy of insurance for such purpose. TENANT shall not serve foods or drinks from the Premises other than light refreshments, or permit the Premises or any portion thereof to be used for the service of any foods or drinks other than light refreshments, without the prior written consent of LANDLORD.

TENANT shall not allow the release of hazardous substances in violation of any law or regulation in, on, under, or from the Premises. A release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into California's list of hazardous substances. A copy of the presently effective EPA and California lists are on file in the Office of the City Clerk as Document 769704-1 and by this reference incorporated herein. In the event of any release of a hazardous substance due to TENANT'S operation on premises, TENANT shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities. TENANT agrees to assume the defense of, indemnify, and hold LANDLORD and the City harmless from any and all claims, costs, and expenses related to environmental liabilities to the extent resulting from TENANT'S operations on the Premises, including but not limited to costs of environmental assessments, cost or remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies. Notwithstanding the foregoing, however, TENANT's obligation to indemnify LANDLORD and the city shall not apply to any claim to the extent arising from or in connection with any negligent or intentional conduct of the indemnified party or of any agent, contractor, employee or invitee of such party.

TENANT shall be required to abide by the omnibus drug legislation passed by United State's Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

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

TENANT shall not use or permit others to use the Premises or any portion thereof for political activities as described in the Master Lease.

6. ACCEPTANCE; AS IS CONDITION

LANDLORD warrants to TENANT that as of the Commencement Date the building has been constructed in full compliance with all laws, regulations and ordinances, including, without limitation, laws pertaining to disabled access and laws pertaining to hazardous substances (as defined in Section 5) in order to make the Premises and the building suitable for public use and occupancy. In addition, LANDLORD warrants to TENANT that as of the Commencement Date, the Premises do not contain any hazardous substances. LANDLORD shall be fully responsible for making all alterations and repairs to the building, at its cost and expense, required in order to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended, or required to remove any hazardous substances discovered to have existed in the Premises prior to the Commencement Date. Subject to the foregoing warranty, TENANT hereby accepts the Premises in the condition existing as of the date that TENANT possesses the Premises, subject to all applicable city, municipal, county and state laws, ordinances and regulations governing the use of the Premises. TENANT has

independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises, and is relying solely on the same in entering into this Agreement. TENANT hereby acknowledges that neither LANDLORD nor LANDLORD's agents have made any representations or warranties to TENANT as to the suitability of the Premises for the conduct of TENANT's activities and business.

7. ALTERATIONS

TENANT shall not, without LANDLORDs and the City's prior written consent, make any alterations, improvements or additions in or about the Premises. Any such alterations, improvements or additions shall be completed in accordance with the Design Manual for the House of Hospitality. LANDLORD may require TENANT to remove any such alterations, improvements, or additions (but not any portion of the Tenant Improvements) at the expiration of the term of this Agreement, and to restore the Premises to condition existing after construction of the Tenant Improvements by giving TENANT written notice prior to or upon the expiration of the term of this Agreement that LANDLORD requires TENANT to remove any such alterations, improvements or additions. Unless LANDLORD requires their removal, all alterations, improvements or additions which are made on the Premises by TENANT shall become the property of the LANDLORD and remain upon and be surrendered with the Premises at the expiration of the term of this Agreement. Notwithstanding the provisions of this paragraph, TENANT's trade fixtures, furniture, equipment and other machinery, other than that which is affixed to the Premises so that it cannot be removed without material or structural damage to the Premises, shall remain the property of TENANT and shall be removed by TENANT at the expiration of the term.

8. INSURANCE

TENANT shall take out and maintain during the term of this Agreement with an insurance carrier acceptable to LANDLORD and the City (a) public liability insurance protecting against loss from public liability arising from the use or condition of, or operations conducted on, the Premises with minimum coverage of \$1,000,000 COMBINED SINGLE LIMIT LIABILITY with minimum coverage of \$250,000. A copy of the policy or policies of insurance shall be filed with LANDLORD and the City and shall name "Balboa Park Conservancy" and the "City of San Diego" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 (thirty) days prior written notice to LANDLORD and to the City by the insurance company.

If TENANT shall fail to procure and maintain such insurance, LANDLORD may, but shall not be required to, procure and maintain the same at the expense of TENANT and the cost thereof, together with interest thereon at the rate of ten percent (10%) per annum, shall become due and payable as additional rent to LANDLORD together with TENANT's next rent installment.

LANDLORD shall be obligated to maintain during the entire term of this Agreement all of the insurance coverage required of lessee in the master lease.

TENANT and LANDLORD each release each other and waive any and all rights of recovery against the other, and against the officers, employees, agents, and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured or is required to be insured by this Agreement. Each party shall cause each insurance policy obtained by it hereunder to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any such policy.

9. INDEMNITY; EXEMPTION FROM LIABILITY

TENANT shall assume the defense of, indemnify and save harmless LANDLORD and the City from all claims, expenses and liability of every nature, to the extent arising from, or alleged to have arisen from, the operations conducted on the Premises, from the condition of the Premises, or from any act or omission of

TENANT, its agents and invitees. LANDLORD shall defend, indemnify and hold TENANT harmless from and against any and all claims for damages, expenses and liability to the extent arising from, or alleged to have arisen from, any act or omission of LANDLORD, its agents and invitees.

Except for LANDLORD's negligent conduct, TENANT hereby agrees that LANDLORD and the City shall not be liable for any injury to TENANT's business or loss of income therefrom or for damage to the goods, wares, merchandise, or other property of TENANT, TENANT's employees, invitees, customers or any other person in or about the Premises; nor shall LANDLORD or the City be liable for injury to the person of TENANT, TENANT's employees, agents, contractors, or invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, air-conditioning, or lighting fixtures, or from any other cause, whether such damage results from conditions arising upon the Premises or upon other portions of the House of Hospitality, or from any other sources or places. LANDLORD shall not be liable to TENANT for any damage arising from any act or neglect of any other tenant of the House of Hospitality.

10. ASSIGNMENT AND SUBLETTING

TENANT shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of TENANT's interest in this Agreement or in the Premises without the prior written consent of LANDLORD and the City. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this Agreement. An assignment by operation of law shall automatically terminate this Agreement.

Regardless of LANDLORD's or the City's consent, no subletting or assignment shall release TENANT of TENANT's obligation to pay the rent and to perform all other obligations to be performed by TENANT hereunder for the term of this Agreement. The acceptance of rent by LANDLORD from any other person shall not be deemed a waiver by LANDLORD of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

11. DEFAULT

(a) EVENTS OF DEFAULT

The occurrence of any one or more the following events shall constitute a default and breach of this Agreement by TENANT:

(i) Failure to pay rent when due, if the failure continues for five (5) business days after written notice has been given to TENANT.

(ii) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to TENANT by LANDLORD. If the default cannot reasonably be cured within said thirty (30) day period, TENANT shall not be in default under this Agreement if TENANT commences to cure the default within the thirty (30) day period and diligently prosecutes the same to completion.

(iii) The making by TENANT of any general assignment, or general arrangement, for the benefit of creditors; the filing by or against TENANT of a petition to have TENANT adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless the same is dismissed within sixty (60) days following the filing of such petition; the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Agreement, where possession is not restored to TENANT within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

Notices given under this paragraph shall specify the alleged default and the applicable provision of this Agreement and shall demand that TENANT perform the provision of this Agreement or pay the rent that is in

arrears, as the case may be, within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Agreement unless LANDLORD so elects in the notice.

(b) LANDLORD'S REMEDIES

LANDLORD shall have the following remedies if TENANT commits a default under this Agreement. These remedies are not exclusive but are cumulative and in addition to any remedies now or hereafter allowed by law.

LANDLORD can continue this Agreement in full force and effect, and the Agreement will continue in effect so long as LANDLORD does not terminate TENANT's right to possession, and LANDLORD shall have the right to collect rent when due. During the period that TENANT is in default, LANDLORD can enter the Premises and relet them, or any part of them, to third parties for TENANT's account. TENANT shall be liable immediately to LANDLORD for all costs LANDLORD incurs in reletting the Premises, including, without limitation, broker's commissions, expenses of remodeling the Premises required by the reletting, costs of repair and like costs. Reletting can be for a period shorter or longer than the remaining term of this Agreement. TENANT shall pay to LANDLORD the rent due under this Agreement on the date the rent is due, less the rent LANDLORD receives from any reletting. No act by LANDLORD allowed by this paragraph shall terminate this Agreement unless LANDLORD notifies TENANT that LANDLORD elects to terminate this Agreement. After TENANT's default and for so long as LANDLORD has not terminated TENANT's right to possession of the Premises, if TENANT obtains LANDLORD's and the City's consent, TENANT shall have the right to assign or sublet its interest in this Agreement, but TENANT shall not be released from liability hereunder. LANDLORD's and the City's consent to the proposed assignment or subletting shall not be unreasonably withheld.

If LANDLORD elects to relet the Premises as provided in this paragraph, any rent that LANDLORD receives from such reletting shall apply first to the payment of any indebtedness from TENANT to LANDLORD other than the rent due from TENANT to LANDLORD; secondly to all costs, including maintenance, incurred by LANDLORD in such reletting; and third, to any rent due and unpaid under this Agreement. After deducting the payments referred to in this paragraph, any sum remaining from the rent LANDLORD receives from such reletting shall be held by LANDLORD and applied in payment of future rent as rent becomes due under this Agreement. In no event shall TENANT be entitled to any excess rent received by LANDLORD. If, on the date rent is due under this Agreement, the rent received from the reletting is less than the rent due on that date, TENANT shall pay to LANDLORD, as additional rent, in addition to the remaining rent due, all costs, including maintenance, that LANDLORD shall have incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

LANDLORD can, at it's option, terminate TENANT's right to possession of the Premises at any time, if TENANT commits a default under this agreement. No act by LANDLORD other than giving written notice to TENANT shall terminate this Agreement. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on LANDLORD's initiative to protect LANDLORD's interest in this Agreement shall not constitute a termination of TENANT's right to possession. In the event of such termination, LANDLORD has the right to recover from TENANT the following:

- (i) The worth at the time of award of the unpaid rent which had been earned at the time of the termination of this Agreement;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after the date of the termination of this Agreement until the time of the award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;
- (iii) 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 the award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided; and
- (iv) Any other amount necessary to compensate LANDLORD for all detriment proximately caused by

TENANT's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award," as used in (1) and (2) of this paragraph is to be computed by allowing interest at the maximum legal rate. The "worth at the time of the award" as referred to in (3) of this paragraph is to be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one (1%) percent.

If TENANT is in default under the terms of this Agreement, LANDLORD shall have the additional right to have a receiver appointed to collect rent and conduct TENANT's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by LANDLORD to terminate this Agreement.

LANDLORD at any time after TENANT commits a default, can cure the default at TENANT's cost and expense. If LANDLORD at any time, by reason of TENANT's default, pays any sum or does any act that requires the payment of any sum, the sum paid by LANDLORD shall be due immediately from TENANT to LANDLORD at the time the sum is paid, and if paid at a later date shall bear interest at ten percent (10%) per annum from the date the sum is paid by LANDLORD until LANDLORD is reimbursed by TENANT. The sum, together with interest thereon, shall be considered additional rent.

12. SURRENDER

On the last day of the term of this Agreement, or on any sooner termination, TENANT shall surrender the Premises to LANDLORD in good condition, broom clean, ordinary wear and tear excepted. TENANT shall remove all of its fixtures, furnishings and equipment on the Premises, and, if required by LANDLORD, any alterations, improvements and additions made by TENANT to the Premises (except the Tenant Improvements), prior to the expiration of the term of this Agreement. If TENANT fails to surrender the Premises to LANDLORD on the expiration of this Agreement as required by this paragraph, TENANT shall hold LANDLORD harmless from all damages resulting from TENANT's failure to vacate the Premises, including, without limitation, claims made by any succeeding tenant resulting from TENANT's failure to surrender the Premises.

13. HOLDING OVER

If TENANT, with LANDLORD's and the City's consent, remains in possession of the Premises after the expiration or termination of the term of this Agreement, such possession by TENANT shall be deemed to be a tenancy from month-to-month at a rent in the amount of the last monthly rent plus all other charges payable hereunder, and upon all other provisions of this lease.

14. SUCCESSORS AND ASSIGNS

The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors and assigns.

15. NOTICES

Whenever under this Agreement a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by registered or certified United States mail, postage prepaid, addressed at the addresses as set forth below:

TO LANDLORD AT: Balboa Park Conservancy
1549 El Prado, Suite 1
Balboa Park
San Diego, CA. 92101
(619) 235-3066

TO TENANT AT : Timken Museum of Art

2550 Fifth Avenue, Suite 500
San Diego, CA 92103

Such notice shall be deemed to be received when served, if personally served, and upon the expiration of forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

16. LANDLORD'S RIGHT TO INSPECTIONS

LANDLORD and LANDLORD's agent shall have the right to enter the Premises at all reasonable times after twenty-four (24) hours notice to TENANT for the purpose of inspecting same, and making such alterations, repairs, improvements or additions to the Premises or to Balboa Park Conservancy as LANDLORD may deem necessary or desirable.

17. ATTORNEY'S FEES

In the event of any litigation or arbitration regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

18. NO WAIVERS

No waiver by LANDLORD of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by TENANT of the same or any other provision. LANDLORD's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of LANDLORD's consent to or approval of any subsequent act by TENANT. The acceptance of rent hereunder by LANDLORD shall not be a waiver of any preceding breach by TENANT of any provision hereof, other than the failure of TENANT to pay the particular rent so accepted, regardless of LANDLORD's knowledge of such preceding breach at the time of its acceptance of such rent.

19. TIME

Time is of the essence with respect to all provisions of this Agreement.

20. SEVERABILITY

The unenforceability, invalidity, or illegality of any provision of the Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

21. COVENANTS AND CONDITIONS

Each provision of this Agreement performable by TENANT shall be deemed both a covenant and a condition.

22. ADMINISTRATIVE PROCESSING FEE

TENANT understands that this Agreement is subject to prior approval by the City and shall not be effective unless and until the City gives its approval. Upon execution of this Agreement by TENANT, TENANT shall pay to LANDLORD the sum of Six Hundred Seventy Dollars (\$670.00) which LANDLORD shall in turn pay to the City as an administrative processing fee.

23. NONDISCRIMINATION

The general public shall not be excluded from the Premises or any portion thereof nor shall TENANT discriminate on the basis of race, color, creed, national origin, ancestry, sex, religious creed, marital status, disability or age in its use of the Premises.

TENANT agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (the "ADA"); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. TENANT's compliance shall include but not necessarily be limited to the following:

- (a) TENANT shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of TENANT.
- (c) TENANT shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- (d) Where required by law, TENANT shall comply with the City's disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of TENANT.

24. RULES AND REGULATIONS

TENANT shall comply with all reasonable rules and regulations promulgated by LANDLORD with respect to the House of Hospitality in effect as of the date of this Agreement. LANDLORD reserves the right to promulgate from time to time reasonable rules and regulations concerning the use and occupancy of the House of Hospitality, subject to such approval of the City as may be required provided that TENANT is given a copy of any such rules and/or regulations prior to the effective date thereof.

25. AUTHORITY

The persons executing this Agreement on behalf of LANDLORD and TENANT, respectively, represent and warrant that they have the authority to execute this Agreement on behalf of LANDLORD and TENANT, respectively.

IN WITNESS WHEREOF, LANDLORD and TENANT have executed this Agreement as of the day and year first above written.

LANDLORD: BALBOA PARK CONSERVANCY

By: _____
Signature Date

Printed Name: Thomas Herrera-Mishler

Its: CEO/President

TENANT: TIMKEM MUSEUM OF ART

By: _____
Signature Date

Printed Name: Meagan Pogue
Its: Executive Director

FIRST AMENDMENT TO RENTAL AGREEMENT

This First Amendment to Rental Agreement is executed by and between BALBOA PARK CONSERVANCY ("LANDLORD") and the TIMKEN MUSEUM OF ART ("TENANT").

The parties entered into that certain agreement dated May 1, 2017.

LANDLORD and TENANT hereby agree:

The following sentence shall be added to Section 2 of the lease: TENANT agrees to assume all rights and obligations as "Lessee" under the Master Lease.

LANDLORD: BALBOA PARK CONSERVANCY

Signature: Thomas Herrera Mishler

Name/Title: Thomas Herrera - Mishler, President/CEO

Date: 1/23/18

TENANT: TIMKEN MUSEUM OF ART

Signature: Megan Pogue

Name/Title: Megan Pogue, Exec. Director

Date: 2/7/18