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| REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO | CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A |
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| TO: CITY COUNCIL | FROM (ORIGINATING DEPARTMENT): Real Estate Assets | DATE: 2/13/2015 |
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SUBJECT: Approval of a Five Year Percentage Lease between the City of San Diego and the Soledad Club located at 5050 Soledad Road, San Diego CA

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| PRIMARY CONTACT (NAME, PHONE): Charmaine Gillis, 619-236-6020 MS-51A | SECONDARY CONTACT (NAME, PHONE): Patti Phillips, 619-236-6766 MS 51A |
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COMPLETE FOR ACCOUNTING PURPOSES

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|-----------------------|------|------|------|------|------|
| FUND | | | | | |
| FUNCTIONAL AREA | | | | | |
| COST CENTER | | | | | |
| GENERAL LEDGER ACCT | | | | | |
| WBS OR INTERNAL ORDER | | | | | |
| CAPITAL PROJECT No. | | | | | |
| AMOUNT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |



| | | | | | |
|-----------------------|------|------|------|------|------|
| FUND | | | | | |
| FUNCTIONAL AREA | | | | | |
| COST CENTER | | | | | |
| GENERAL LEDGER ACCT | | | | | |
| WBS OR INTERNAL ORDER | | | | | |
| CAPITAL PROJECT No. | | | | | |
| AMOUNT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

COST SUMMARY (IF APPLICABLE): N/A

ROUTING AND APPROVALS

| CONTRIBUTORS/REVIEWERS: | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-------------------------|---------------------------|--------------------|-------------|
| Environmental Analysis | ORIG DEPT. | Thompson, Cybele | 02/18/2015 |
| Financial Management | CFO | | |
| Comptroller | DEPUTY CHIEF | | |
| | COO | | |
| | CITY ATTORNEY | Ferbert, Heather | |
| | COUNCIL PRESIDENTS OFFICE | | |

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to execute a Percentage Lease between the City of San Diego and Soledad Club.

2. Determine that activity is categorically exempt from CEQA in accordance with State CEQA Guidelines section 15301 (Existing Facilities).

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| STAFF RECOMMENDATIONS: Approve the resolution. | |
| SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION) | |
| COUNCIL DISTRICT(S): | 01 |
| COMMUNITY AREA(S): | La Jolla |
| ENVIRONMENTAL IMPACT: | This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities.) |
| CITY CLERK INSTRUCTIONS: | DO NOT RECORD OR FURTHER EXECUTE FOR SIGNATURES-Please call: Charmaine Gillis, Real Estate Assets Department (MS-51A), 619-236-6986 for document pick up. Thank you |

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 2/13/2015

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Approval of a Five Year Percentage Lease between the City of San Diego and the Soledad Club located at 5050 Soledad Road, San Diego CA

COUNCIL DISTRICT(S): 01

CONTACT/PHONE NUMBER: Charmaine Gillis/619-236-6020 MS-51A

DESCRIPTIVE SUMMARY OF ITEM:

The Soledad Club, a nonprofit organization located at 5050 Soledad Road, San Diego has been leasing from the City since 1977. They are requesting approval for a five year percentage lease with one five year option.

STAFF RECOMMENDATION:

Approve the resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The Soledad Club (Club) has been providing civic, social, fund raising, cultural, recreational and philanthropic work and activities for the benefit of the public and the community at this La Jolla location, for over thirty years. In 1961 the Pacific Beach Women's Club (PBWC) built and leased the facility from the City for 15 years. In 1977 former members of PBWC formed the Soledad Club, a nonprofit organization, and executed a five year lease agreement with the City. In 1982 the Soledad Clubs' lease was extended for 15 years. In 1999 the Soledad Club entered into a new 15 year lease. This lease has been on holdover since March 2014.

The Club operates and maintains the premises and makes rental rooms available at rental rates, to adult group members and the public. The Club is open seven days a week for a variety of events, which include bridge tournaments, exercise classes, quilting and other social gatherings. The Soledad Club has provided many services to the community as well as continued maintenance of the facilities.

This will be a five year percentage lease with one five year option, provided that the Lessee is not in default. This lease will allow the Soledad Club to continue providing these many services to the community at this facility. The current rent is a minimum annual rent of \$5,531 or 7% of the gross income, whichever is greater. The new minimum annual rent will increase to \$6,000 or 7% of the gross income, whichever is greater.

FISCAL CONSIDERATIONS:

The current agreement with Soledad Club is a Percentage Lease with a current minimum annual rent of \$5,531 or 7% of gross income from member dues and rentals of the facility, whichever is greater. Lessee is to provide documentation of Gross Revenue within 60 days of year end and pay the greater amount of the minimum rent or percentage rent on or before April 30th.

City has received rent from Lessee in the amount of \$5,598 in year 2013, \$6,919 in year 2014 and \$7,878.in year 2015, totaling \$20,395. in the last three years. The new percentage Lease will have a minimum annual rent of \$6,000 or 7% of gross income. The rent revenue will be deposited to the general fund.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708). This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This will be heard at SGLU committee prior to Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The La Jolla community areas and all of the City of San Diego areas.

Thompson, Cybele

Originating Department

Deputy Chief/Chief Operating Officer



**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

Soledad Club,
A CALIFORNIA 501(c)(7) NONPROFIT MUTUAL BENEFIT CORPORATION

CITY OF SAN DIEGO PERCENTAGE LEASE

[APN 416-110-01]

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and Soledad Club, a California 501(c)(7) nonprofit mutual benefit corporation ("LESSEE"), as lessee, to be effective as of (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney as follows:

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

1. Premises. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY. The "Premises" shall mean that certain real property located at 5050 Soledad Road, San Diego, which is comprised of a building of approximately 8,420 square feet (Building) and adjacent parking lot, as more particularly depicted on the attached **Exhibit A**: "Aerial map of the Premises".
2. Allowed Uses. The Premises are leased to LESSEE solely and exclusively for the purposes of operating and maintaining the Premises for the LESSEE to engage in civic, social, educational, cultural, recreational, or philanthropic work or activities for the benefit of the public and the community, including maintenance and rental of public meeting rooms ("Allowed Uses"). The use of the Premises for any unauthorized purpose shall subject this Lease to termination at the sole option of the CITY. LESSEE covenants and agrees to use the Premises for the above-specified Allowed Uses and to diligently pursue rental of the public meeting rooms at the Premises for Allowed Uses throughout the term of this Lease. LESSEE shall use the Premises as allowed by this Lease to benefit the general public to CITY's reasonable satisfaction.
3. Competent Management. Throughout the Term, LESSEE shall provide competent management of the Premises to CITY's reasonable satisfaction. For purposes of this paragraph, "competent management" shall mean management practices generally considered acceptable for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a responsible manner.
4. CITY's Consent, Discretion. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise required by law or expressly provided herein.
5. Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at commencement of the term, or if LESSEE is temporarily dispossessed through action or

claim of a title superior to CITY's, then this Lease shall be voidable nor shall CITY be liable to LESSEE for any loss, burden, or resulting damages, but there shall be determined and stated in writing by CITY a proportionate reduction of the minimum rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

6. Reservation of Rights.
 - a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due under this Lease, so long as the easement and right-of-way do not interfere with the Allowed Uses as defined in Section 2 of this Lease.
 - c. Repairs. CITY may at all reasonable times, after reasonable prior written notice to LESSEE, and in no event less than 24 hours, except in the case of an emergency, enter the Premises for the purpose of making repairs to or developing municipal resources and services.
 - d. Noninterference. CITY shall not substantially or unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for physical damage, if any, to the pre-approved permanent improvements located on the Premises directly caused by CITY's exercising of its rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
7. Rates and Charges. LESSEE's rates and charges for use of facilities on the Premises shall not exceed those generally considered reasonable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses.
8. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.
9. Public Use. The general public shall have access to the Premises during LESSEE's hours of operation for the uses allowed under this Lease.
10. Signs. Signage that has received CITY's prior written approval and is currently installed on the Premises may remain in place. LESSEE shall not erect or display any other banners,

pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after written notice by CITY, if the item can reasonably be removed within said time period. If the item cannot be reasonably removed within said time period, then LESSEE shall commence removal within said time period and diligently pursue removal to completion, or CITY may thereafter remove the item at LESSEE's sole cost.

11. Operation of Facilities. LESSEE shall establish and maintain a regular schedule of days and hours of operation to best serve the public, including both bridge club members and non-members, which shall be subject to the prior written approval of the CITY, as described in **Exhibit B "Hours of Operation"**.
12. CITY Use. Upon reasonable prior written notice, CITY may use the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program. After each such use, CITY shall leave the Premises in the same condition found. Such use by CITY shall be at CITY's sole cost and expense.
13. City Council Action Required. LESSEE acknowledges that this Lease is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization to enter into and execute this Lease ("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 modification of the final terms and conditions of this Lease, or the City Council's failure to grant the Council Authorization.
14. Term. The term ("Term") of this Lease shall be five (5) years, commencing on the Effective Date. Provided that LESSEE is not in default of this Lease, an option of an additional five (5) years is available upon a six months advance written notice to the CITY. CITY shall have the option to apply a reasonable increase of percentage rent adjusted by negotiation. LESSEE may terminate the Lease for any reason with a six month advance written notice to the CITY. "Lease Year" shall mean each consecutive twelve (12) month period commencing on each anniversary of the Effective Date succeeding thereafter during the Term, and any extension thereof.
15. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to both adjust the percentage rent to the then fair market value existing at said future time, as determined by qualified staff of CITY's Real Estate Assets Department, and to terminate the holdover tenancy at will.
16. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and

encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, but in no event later than thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and of all of LESSEE's rights in and to the Premises.

17. Rent. LESSEE shall pay rent to CITY in the amount of the greater of: (a) percentage rent (the "Percentage Rent," defined below); or (b) a minimum annual rent ("Minimum Annual Rent," defined below) payable annually in arrears on or before April 30th of each Lease Year. Within sixty (60) days after the end of each Lease Year, LESSEE shall deliver to CITY a schedule of LESSEE's "Gross Revenue" (defined below) for the Lease Year, together with a statement of the Percentage Rent payable for that Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Concurrently with the delivery of such schedule and statement, LESSEE shall pay to CITY the greater of the Minimum Annual Rent or the Percentage Rent for that Lease Year.

17.1 Gross Revenue. "Gross Revenue" shall mean all revenue derived from all CITY approved uses of the Premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, 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 a governmental agency and accompanied by a tax return or statement as required by law; or (b) refunds for goods returned for resale on the Premises or refunds of deposits. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

17.2 Minimum Annual Rent. The "Minimum Annual Rent" for each Lease Year shall be Six Thousand Dollars (\$6,000).

17.3 Percentage Rent. "Percentage Rent" shall mean rent in an amount equal to the percentage of Gross Revenue derived from certain designated business activities, applied as follows:

Percentage of Gross Revenue
Seven Percent (7%)

Business Activities
Gross income from bridge club
members' dues and facility rentals
less deposit and basic interest

If LESSEE requests a use of the Premises in addition to the Allowed Uses, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to such use prior to CITY's approval of the use. Without express, written consent to the proposed use and an express, written agreement regarding the applicable Percentage Rent for said use, the use shall be deemed an unauthorized use and all Gross Revenue therefrom shall be payable to CITY.

17.4 Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not an Allowed Use, and from any other use or any unauthorized sublease for which CITY has not given its prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

17.5 Records. LESSEE shall, at all times as required by this Lease, keep or cause to be kept true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises from the entire lease term and for 5 years thereafter. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

17.5.1 Financial Statements. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner, or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information

reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

17.5.2 CITY'S Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term and for five (5) years thereafter. This section shall survive expiration or earlier termination of this Lease. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease. LESSEE shall make all books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. If required by competent legal authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

17.5.3 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit.

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%), calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

18. Delinquent Payments. If LESSEE fails to make any payment when due, LESSEE shall pay, in addition to the unpaid amount, five percent (5%) of the delinquent amount. If any amount of such payment remains unpaid after fifteen (15) days, LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)), which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

19. Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to the "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, CA 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, CA 92010

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

20. Time of the Essence. Time is of the essence for each term, covenant, and condition of this Lease.

21. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of each of their respective parties.

22. Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without CITY's prior written consent in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consents to assignments and subleases. "Assignment" for the purposes of this section shall include any transfer of any ownership interest in LESSEE by any partners, principals, or stockholders, as the case may be, from the original partners, principals, or stockholders of LESSEE. As a condition to such consent by CITY in each instance, CITY may require that this Lease be revised to comply with then-current standard CITY lease requirements.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease. Pursuant to City Charter section 225, any prospective assignee or subtenant shall make a full and complete disclosure of the name and identity of each and every person or entity directly or indirectly involved in this Lease, and the precise nature of all interests of all such persons. Each and every person or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

23. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.
24. Default and Remedies.
- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
- i. LESSEE fails to make any payment required under this Lease when due and fails to cure the default within five (5) days following written notice thereof from CITY;
 - ii. LESSEE defaults in the performance of any covenant, term or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion;

- iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated as bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.
- b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay/Perform or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:
- i. the worth at the time of award of any unpaid rent that was due at the time of termination;
 - ii. the worth at the time of award of the amount by which the unpaid rent, that would have been earned after termination until the time of award, exceeds the amount of rental loss, if any, that LESSEE affirmatively 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 award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
 - iv. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
 - v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses b(i) and b(ii), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause b(iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts due from LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and

diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is incurable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. Any waiver by CITY of a default by LESSEE shall not be a waiver of any other default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular

right or remedy for any default shall not waive any other right or remedy for the same default, or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a default, or take prompt action to require the cure of any default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

25. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
 - d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

26. Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development, maintenance, restoration, or improvements of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the City for all costs related thereto, including, without limitation, attorneys' fees and costs.

27. Insurance. LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Lease.

27.1 Types of Insurance. At all times during the term of this Lease, LESSEE shall maintain insurance coverage as follows:

27.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

27.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA

00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.

27.2 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

27.3 Acceptability of Insurers.

27.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

27.3.2 CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

27.4 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

27.5 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under this Lease.

27.5.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

27.5.2 Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESSEE.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

- 27.6 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.
- 27.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 27.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 27.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises

under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.

28. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 24, Insurance, hereof.

In the event of flood damage and it becomes evident that the Allowed Use(s) will not be practicable, LESSEE may opt to return the affected portion of the Premises to the CITY and have the leasehold reduced accordingly.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

29. Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined this Lease.
30. Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said Premises, for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the sole expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs

incurred by CITY in having necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

31. Utilities. LESSEE shall order, obtain, and pay for all utilities, including service and installation charges, in connection with the operation of the Premises.
32. Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the entire Premises including the parking lot and all improvements located thereon throughout the Term. LESSEE shall, at LESSEE'S sole cost, make or cause all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all laws.
33. Prevailing Wages. In the event that LESSEE initiates work or procures services in qualifying amounts and which constitute a "public works contract" or a "maintenance contract" pursuant to CITY's "Compliance with State Prevailing Wage Laws" Ordinance (SDMC section 22.3019, which may be amended from time to time), LESSEE shall ensure, including by providing for such in all agreement(s) for such work or services, that the contractor for such services shall comply with said Ordinance and all applicable California Labor Code provisions regarding prevailing wages. LESSEE shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions regarding said Ordinance and applicable California Labor Code provisions, for use by LESSEE in ensuring that such services contractors comply with these provisions.
34. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without the CITY's Real Estate Assets Department prior written approval. Additionally, once completed, LESSEE shall not make any structural or architectural design alterations to approved new improvements, structures, or installations on the Premises without CITY's prior additional written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
35. Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans

approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

36. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises or any part thereof, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
37. Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.
38. Ownership of Improvements; Removal of Improvements and Personal Property.
- a. Improvements. During the Term of this Lease, or until earlier termination thereof, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and shall thereafter be owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

- b. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Subject to applicable California law, any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
 - c. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.
 - d. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
39. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent as required by this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming a delay shall notify the other party in writing within ten (10) calendar days after the beginning of any claimed delay.
40. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.
- b. Hazardous Substance. "Hazardous substances" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- e. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions

necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

41. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

Soledad Club
Attention: President
5050 Soledad Road
San Diego, CA 92109

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101

Any party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent.

42. Compliance with Law. LESSEE shall at all times in the occupancy, use, development, maintenance, restoration and improvement of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by the Mayor or designee under the authority of any law, statute, ordinance, or regulation.
43. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
44. Equal Opportunity and Contracting. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the CITY, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
45. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
46. Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, 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 (ADA); and any other applicable state and federal

laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:

- a. LESSEE 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 LESSEE.
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - d. Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
 - i. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
 - ii. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.
47. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CAsp).
48. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;

- ii. LESSEE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
49. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
50. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
51. Water Quality – Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE'S responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

52. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or

through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

53. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
54. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
55. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
56. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
57. Entire Agreement and Understanding. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
58. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
59. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole reasonable discretion.
60. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of similar CITY-owned properties.

61. Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payments, "government project"-related benefits, inverse condemnation damages, or any other compensation or award of damages whatsoever from CITY available in law or equity upon termination of this Lease or upon CITY's exercise of any right(s) stated in this Lease, unless expressly stated otherwise herein.
62. Related Governmental Actions and Approvals. By entering into this Lease, the CITY is not obligating itself to any other government agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision-maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.
63. Supersedure. It is mutually agreed that this Lease, upon execution, supersedes that certain lease executed on February 25, 1999, with Soledad Club, filed with the office of the City Clerk as Document No. RR-291300, which is hereafter terminated and of no effect except as to any rentals and fees which may have accrued or any rights, indemnities, and remedies accrued or granted to CITY under said lease.
64. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

SOLEDAD CLUB, a California 501(c)(7) nonprofit mutual benefit corporation

BY: Lynne Batchelor
Name: Lynne Batchelor
Title: President
Date: 1/27/15

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____
Date: _____

Environmental Analysis Section Environmental Clearance:

Date : _____ BY: _____
Name: _____
Title: _____

San Diego City Council Authorizing Resolution No. R. _____ Date of Final passage.

Approved as to form and legality this _____ day of _____, 2015:

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____

Exhibit "A": Aerial Map of Premises

Exhibit "B": Hours of Operations

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Exhibit A: Aerial Map of Premises

[TO FOLLOW BEHIND THIS PAGE]



LOS ALTOS RD

KATE SESSION WY

N208PM001

SOLEDAD RD

N202RD002

PARK DR

Exhibit B: Hours of Operation

The club space is available for rental of approved activities, including bridge games, seven (7) days a week from 8 a.m. to 11 p.m.

LESSEE shall prohibit any use of amplified music beyond 9:30 p.m. on Fridays and Saturdays and on Sunday through Thursday 9:00 p.m. by itself or permittees or sublessees. Amplified music levels, will be reduced after 7:00 p.m., and there will be no outdoor amplified music. The North facing doors must remain closed.

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING EVALUATION

DATE:
May 5, 2015

SUBJECT: Approval of a Five Year Percentage Lease between the City of San Diego and the Soledad Club located at 5050 Soledad Road, San Diego CA

GENERAL CONSULTANT INFORMATION

Recommended Contractor: Soledad Club (Not Certified, M Cauc)

Amount of this Action: \$6,000 (annual rent or 7% of gross income)

Funding Source: Percentage Lease Agreement

Goal: N/A

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Soledad Club is a Non-Profit Organization, and is therefore exempt from Workforce Report analysis. Refer to San Diego Municipal Code Section 22.2703(c).

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action is for approval of a five year percentage lease with one five year option.

MM