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REPORT TO HONORABLE MAYOR AND COUNCILMEMBERS

PRELIMINARY ANALYSIS OF PROPOSED LEASE FOR KETTNER AND VINE SITE

### **INTRODUCTION**

On July 22, 2024, the San Diego City Council (Council) will consider approving the proposed Lease Agreement (Lease),<sup>1</sup> attached, which would allow the City of San Diego to occupy and use the real property located at 3554-3590 Kettner Boulevard in San Diego (Property) for a homeless services center containing approximately 1,000 shelter beds.<sup>2</sup> The Property is currently improved with an approximately 64,939 square-foot abandoned building, an outdoor courtyard, and parking spaces on an approximately 1.8-acre parcel.

This Report provides a preliminary analysis of the main risks associated with the potential approval of the Lease and flags legal issues that this Office has identified to date. This Office normally would also provide a summary of the key Lease terms and their material consequences to help the Council and the public understand the proposed deal terms before a decision is made. That could not occur, however, because the Lease, once finalized, was expeditiously docketed for a Council vote.<sup>3</sup> This Office will provide a more comprehensive analysis of the Lease for the Council's review if afforded sufficient time.

In addition to reviewing this Report, the Council should carefully read the entire Lease, the staff report accompanying the Lease (Staff Report), the report issued by the Independent Budget Analyst (IBA) on July 15, 2024, the proposed resolution approving the Lease, and all related docket materials.

This Report does not offer an in-depth analysis of due diligence efforts undertaken to date by the City due to time constraints. The Council could request additional due diligence information from City staff, including an up-to-date preliminary title report for the Property and an appraisal showing the current fair market value of the Property in terms of both lease and sale scenarios. If the Lease is consummated, the City should obtain a title insurance policy protecting its long-term leasehold interest against title defects that may impede the City's future use and operation of the Property.

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<sup>1</sup> Unless otherwise specified, all section references in this Report are to specific sections in the Lease.

<sup>2</sup> All capitalized terms in this Report have the same meaning ascribed to them in the Lease.

<sup>3</sup> The City's negotiators reached final terms on July 12, 2024; the deal terms and Lease provisions leading up to July 12, 2024, frequently changed.

## **BRIEF OVERVIEW OF PROPOSED LEASE AND ITS PURPOSE**

The Lease is a proposed contract between the City and Kettner Vine Creative House, LLC, a California limited liability company (Landlord), an entity that acquired fee title ownership of the Property in April 2024. Landlord's principal is Douglas Hamm, a commercial real estate investor with no apparent track record of any high-profile transactions or any transactions with a public agency.

Section 3.1 states that the permitted use of the Property under the Lease is for "general office, warehouse, homeless services and/or homeless shelter purposes, and for any lawful purposes ancillary thereto." The City envisions transforming the Property into the "Hope @ Vine Campus," consisting of approximately 1,000 shelter beds in a traditional congregate-style setting and various support services and amenities to be used as a temporary shelter for individuals experiencing homelessness.

The Lease term is 30 years and commences on the "Effective Date" (i.e., the date on which both parties have signed the Lease). This Lease term includes the initial construction phase for tenant improvements to create the Hope @ Vine Campus, during which the City will be unable to occupy the Property. The Lease offers base rent abatement<sup>4</sup> in the total amount of \$2,405,989 during the first 19 months of the Lease term to reflect the City's presumed non-occupancy of the Property for that timeframe. The Lease also offers full or partial base rent abatement beyond the first 19 months of the Lease term if substantial completion of the tenant improvements at the Property is delayed due to Landlord's fault. Commencing in month 20 after the Effective Date (except if a work delay is due to Landlord's fault), the Lease requires the City to pay monthly base rent for the Property at the initial rate of \$1.95 per square foot of building space, thereafter escalating by 3.5 percent each year. The Lease is styled as a triple-net lease, meaning that the City generally must pay, as additional rent, all costs associated with maintenance and operations, insurance, and property taxes throughout the entire 30-year Lease term (with no initial abatement period). The City also is responsible for all repairs and necessary alterations at the Property, except where the Lease expressly provides otherwise.

The Lease contains two provisions that will severely limit the City's recourse against Landlord if the City sustains any damages or losses. First, Section 1.1 states that the City is accepting possession of the Property in its "as-is" condition, including all known or unknown defects, subject to Landlord's completion of the initial tenant improvements. Second, Section 11.5 states that Landlord will not be liable to the City for any consequential, special, or punitive damages for any reason, regardless of the nature of Landlord's conduct leading to damages. Various other provisions in the Lease similarly impose restrictions, obligations, and risks on the City, which is why the Council should read the entire Lease carefully.

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<sup>4</sup> "Rent abatement" means that the City will not pay rent (in this case, base rent) for a specified period of time.

The City and Landlord are still negotiating a construction agreement, referred to as a “Tenant Work Agreement,” as an exhibit to the Lease. Once final, the Lease will be amended to include that document.<sup>5</sup>

It is our understanding that City staff circulated the “final” Tenant Work Agreement to councilmembers earlier this week which does not adequately protect the City’s interests. For instance, this “final” version allocates to the City the entire risk of cost overruns and change orders, meaning that the City’s financial exposure for the tenant improvements will not be capped at the current budget of nearly \$18.3 million reflected in the Staff Report. This Office has been advised that there may be ongoing negotiations with Landlord to further revise the terms of the Tenant Work Agreement. This Report does not address any legal risks under the unfinished Tenant Work Agreement, which is a significant part of the overall Lease transaction.

### **NEGOTIATIONS TIMELINE**

On January 31, 2024, City staff asked this Office to review Landlord’s initial draft of the proposed Lease for the Property and prepare the Tenant Work Agreement. In February, this Office provided revisions and feedback on the draft Lease and an initial draft of the Tenant Work Agreement. Between February and April, this Office participated in certain Lease negotiations with City staff and Landlord’s representatives. Many of the concerns raised by this Office during those negotiations remain unaddressed.

On four occasions between April and June, the Council met in closed session to provide direction to the City’s negotiating team (consisting of City real estate staff and the City’s outside consultant, Stephen Cushman) on the price and payment terms for the proposed transaction. During this period, the City’s negotiating team did not involve this Office in ongoing negotiations with Landlord, and instead negotiated directly with Landlord. This Office received occasional updates.

On June 30, 2024, City staff forwarded to this Office an updated draft of the Lease, containing many of the same issues and problematic language flagged by this Office in the earlier draft. On July 11, 2024, this Office provided City staff with comprehensive feedback and edits on the Lease to conform to the price and payment terms presented to the Council in closed session on June 24, 2024. Later, on July 11, 2024, this Office met with City staff to provide comments and suggested revisions to the Lease and to ensure consistency with the direction provided by the Council in closed session on June 24, 2024. This Office further addressed issues related to risks the City would incur without acceptance of this Office’s proposed revisions to the Lease. Also, on July 11, 2024, this Office participated in a virtual meeting with the City’s negotiating team and Landlord and his attorneys. During this meeting, this Office learned that the parties were not aligned on many matters, including when base rent would start to increase, how

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<sup>5</sup> The Tenant Work Agreement, once finalized by the parties, will become a binding contract. The main purposes of the Tenant Work Agreement include: (a) providing for Landlord to design and construct City-desired tenant improvements that will make the Property suitable for the City’s intended use; (b) describing the process and timeline for Landlord’s completion of the tenant improvements; and (c) requiring the City to reimburse Landlord’s design and construction costs for the tenant improvements (potentially subject to a to-be-identified dollar threshold).

rent abatement would be characterized and measured, and the extent to which Landlord would be responsible for environmental remediation at the Property. This Office has not participated in any meetings or discussions with Landlord or his attorneys on the Lease since July 11, 2024.

On July 12, 2024, Landlord's attorney forwarded to the City's negotiating team a revised "final" draft of the Lease, signed by Landlord, restoring many of the provisions previously flagged as problematic. City staff confirmed that they viewed the lease as "final" as of July 12, 2024.

### **PRELIMINARY ANALYSIS OF PROPOSED LEASE**

The City has strong negotiating leverage because it is a creditworthy tenant, has no recent history of defaulting on any debts or contractual obligations, and will be the sole tenant of the Property. Landlord's financial risk with the Lease will be very low in comparison to many other common leasing scenarios, such as the occupancy of different parts of a building by different tenants or the occupancy of building space by a tenant with a weak credit rating.<sup>6</sup> Despite the City's strong negotiating leverage, the Lease provisions favor Landlord<sup>7</sup> in several ways: (a) by imposing unreasonable or inequitable burdens or risks on the City; (b) failing to provide flexible options for the City in its future use of the Property; and (c) including vague and ambiguous Lease provisions that invite future disputes. We address each category in turn below.<sup>8</sup>

#### **I. UNREASONABLE OR INEQUITABLE IMPOSITION OF BURDENS OR RISKS**

##### **A. Potential Payment of Rent for Unoccupied Space**

Paragraph 5 in the Summary of Lease Provisions provides the City with base rent abatement for the first 19 months of the Lease term but compels the City to start paying base rent in month 20 unless a delay in completion of the tenant improvements at the Property is attributable to the fault of Landlord or its contractors. It is highly likely that Landlord will deny fault and attribute any delay in completion of the tenant improvements to the City or claim force majeure events, both of which are broadly-defined concepts in the Lease. If Landlord's denial of

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<sup>6</sup> The City's bargaining position has been weakened in several ways: (a) holding a press conference at the Property on April 4, 2024, to announce that the parties had struck a good deal for the City when the proposed terms strongly favored Landlord and did not take into account direction from the Council on price and payment terms; (b) informing Landlord that City staff would bring an initial, Landlord-signed form of the Lease to the Council's Land Use and Housing Committee on April 18, 2024, then reneging, resulting in a complete reopening of negotiations; (c) issuing a public memorandum on July 12, 2024, stating that the administration opposes the use of eminent domain to acquire alternative homeless shelter sites, thereby forgoing the City's most effective, legally permissible tool to obtain fee title ownership of land at a fair price equal to the land's appraised fair market value; and (d) abandoning further negotiations of the Lease beyond July 12, 2024. These actions empowered Landlord to refuse to engage in meaningful discussions about the potential sale of the Property to the City and to make overly ambitious demands to the City on the rent amount and numerous other Lease provisions.

<sup>7</sup> We do not mean to imply that the City's negotiating team failed to advocate forcefully in favor of the City's interests during Lease negotiations. The City's negotiating team improved the deal terms considerably relative to the early April version of the Lease.

<sup>8</sup> Dozens of provisions in the Lease are problematic and risky for the City, to varying degrees. Due to time constraints placed on this Office, this Report focuses only on the most problematic and risky provisions. A more thorough legal analysis is necessary should the Council vote to proceed with the proposed Lease.

responsibility is successful, the City will not be excused from starting to pay base rent in month 20 and continuing to pay base rent through the balance of the Lease term.<sup>9</sup>

Based on our experience, it is highly unusual for a tenant to commence payment of rent until the tenant can occupy the premises, especially when the current condition of the premises requires substantial renovations (here, the Property consists of an abandoned warehouse and deficient building systems, among other known defects).

## **B. Potential Risk Related to City's Investment in Tenant Improvements**

The City anticipates investing up to \$18.3 million from federal and state funding sources to reimburse Landlord for the costs of design and construction of the tenant improvements at the Property. Under Section 11.4, if completion of tenant improvements is delayed past month 35 of the Lease term due to Landlord's fault, the City will have the right to terminate the Lease. The City's termination right will become effective after two time periods have elapsed: (a) an initial period of up to five months before the Work Date, as defined in the Lease; and (b) a second period of 30 months commencing on the Work Date.

In this scenario involving a potential work delay attributable to Landlord's fault, the City will need to decide at the three-year mark of the Lease term whether to: (a) terminate the Lease and seek to recapture all portions of the \$18.3 million budget already reimbursed to Landlord; or (b) try compelling Landlord's completion of the tenant improvements promptly to avoid further delay in the City's occupancy and use of the Property for its intended purpose.<sup>10</sup>

If the City decides to terminate the Lease in this scenario, the final sentence of Section 11.4 requires Landlord to promptly return the City's expenditures on the tenant improvements. As explained above, however, the City will face a significant risk that Landlord will deny responsibility for the work delays. Moreover, even if Landlord admits fault, Landlord will likely have insufficient funds to repay the City, having already paid the contractors and subcontractors for work on the tenant improvements.

Information obtained from Chicago Title Company indicates that Landlord's ownership of the Property is highly leveraged with two loans in the cumulative amount of \$12.5 million – relative to the purchase price of \$13.25 million paid by Landlord for the Property. As such, it is likely that Landlord will be “judgment-proof” even if the City pursues and wins a breach of contract action against Landlord, whether related to work delay or otherwise. The Lease does not

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<sup>9</sup> The Lease requires the City to pay two distinct forms of monthly rent: (a) base rent; and (b) additional rent (i.e., all operating, maintenance, insurance, and property tax expenses). Unlike the initial abatement of base rent, the Lease requires the City to pay additional rent from the first day of the Lease term, without any abatement or setoff, even though the City will not be occupying the Property during the initial construction phase – presumably for at least 19 months and possibly for much longer.

<sup>10</sup> Although three years may seem like ample time for completion of the tenant improvements, the Council should bear in mind at least three factors: (a) it is rare for any large-scale City-funded project to be delivered on time and on budget; (b) due to the use of public funds, Landlord will be required to follow the City's normal contracting requirements and processes with respect to the tenant improvements; and (c) Landlord will be unable to commence the tenant improvements until after the parties have fully negotiated the Tenant Work Agreement, which could take up to five months after the Effective Date as described in Section 6.1(a).

provide the City with any guarantee or collateral ensuring Landlord's repayment of the City's investment of funds in the tenant improvements in this work delay scenario. Consequently, the Council should consider the City's investment of funds in the tenant improvements to be at risk despite the absence of any City fault in this scenario.<sup>11</sup>

### **C. Risk of Future Environmental Remediation Costs**

Section 12.1 obligates Landlord to pay for any investigations and remediation measures involving any environmental contamination at the Property if required under applicable law by a governmental entity (except for the City, acting in its proprietary capacity) and up to the point of substantial completion of the tenant improvements. Section 12.1 does not require Landlord to act upon or even consider the City's opinion with respect to the need for environmental remediation at the Property. Landlord recently bought the Property with full awareness of the risk of environmental contamination in the abandoned warehouse on this site, which is located adjacent to a site with known contamination. Accordingly, it is unfair for the City to bear the risk of any environmental remediation needed in the City's reasonable view to make the Property suitable for human habitation by hundreds of occupants or needed to address any preexisting contamination first discovered after the tenant improvements are substantially complete.

This Office proposed language in Section 12.1 to better protect the City's interests with respect to environmental contamination, but Landlord's attorney rejected most of this language in the "final" July 12, 2024, version of the Lease. As a result, the City will assume a significant risk of costs for future remediation of hazardous substance contamination affecting the Property through no fault of the City. The need for environmental remediation can sometimes result in substantial delays or interruptions in human occupancy of a building, protracted, expensive litigation, and millions of dollars in remediation costs.

### **D. Lack of Reciprocal Indemnity Obligations**

Section 7.3 sets forth what may appear on its face to be reciprocal indemnity provisions, where each party agrees to defend and indemnify the other against certain losses or injuries. However, the indemnity provisions are not reciprocal because Landlord's indemnity obligations are subject to qualifying language that considerably narrows the scope of those obligations, whereas the City's indemnity obligations are relatively absolute. For instance, Section 7.3 makes the City liable to Landlord for any act or omission (whether negligent or not on the City's part) leading to loss or injury at the Property, except if caused by Landlord's gross negligence or willful misconduct, meaning that the City will be liable for loss or injury attributable to Landlord's simple or active negligence. Meanwhile, Section 7.3 makes Landlord liable to the City only for its own gross negligence or willful misconduct, not its simple negligence.

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<sup>11</sup> In this scenario, the City may be forced into difficult conversations with the affected federal and state agencies who originally supplied the funds to the City and entrusted the City to expend the funds for eligible, restricted purposes. If those agencies believe that the City mismanaged or misspent the funds under the circumstances, the agencies could seek to compel the City to reimburse the depleted funding sources with the City's own funds, thereby exposing the City's General Fund to a substantial risk of having to pay the reimbursement amount.

Section 7.3 will result in a severely disproportionate and atypical allocation of risk to the City without any rational justification or explanation from Landlord.

**E. Potentially Onerous Insurance Requirements**

Sections 7.4 and 7.5 require the City to maintain various types of insurance, at the City's sole expense, covering both the City and Landlord. Some of the mandatory insurance coverage is likely unnecessary, duplicative, and unreasonably costly for the City, and recommends obtaining input from the City's Risk Management Department on whether the insurance requirements in Sections 7.4 and 7.5 are commercially reasonable and fair.

**F. Potential Payment of Landlord's Preliminary Expenses**

Section 6.1(a) requires the City to reimburse Landlord for all costs incurred by Landlord for "design costs or termination fees"<sup>12</sup> up to a cap of \$200,000 if the Lease is terminated by either party because they are unable to timely negotiate the Tenant Work Agreement that would be attached to the Lease as Exhibit B through a future Lease amendment. In other words, the City will be required to reimburse Landlord up to \$200,000 if, despite the City's good faith efforts, the City is unable to reach consensus with Landlord on every provision of the complex Tenant Work Agreement. Section 6.1(a) is inequitable, poses a significant risk for the City, unfairly shifts the financial burden to the City for preliminary design costs without the benefit of a signed deal, and provides Landlord with major leverage in compelling the City to accept unreasonable provisions in the Tenant Work Agreement to avoid paying what is essentially an involuntary exit fee of \$200,000 to Landlord.

**II. LACK OF FLEXIBLE OPTIONS IN FUTURE USE OF PROPERTY**

**A. Lengthy Lease Term and No Extension Options**

The Lease term is 30 years from the Effective Date, which could equate to roughly 28 years or less of occupancy after the initial construction period for tenant improvements. This is a relatively lengthy period for the City to commit resources to operating a homeless services center on the Property or attempting to convert the Property to a different use as permitted in Section 3.1. Additionally, the Lease does not provide the City with any extension options beyond the 30-year term, which will place the City in an anemic negotiating position at the end of the Lease term. For instance, at the 30-year mark, the City may want to maintain the use of the Property and protect its significant investment in the tenant improvements, but would be subject to Landlord's whim in terms of the rent amount to be charged beyond the 30-year term.

Acquiring fee title ownership of the Property would put the City in the most flexible position, allowing the City to operate the Property as it sees fit, build new improvements, and change the use of the Property, all without Landlord's consent, and sell the Property as surplus land if no longer needed for the City's purposes at any point in the future. Alternatively, if the City only acquires a leasehold interest in the Property, a shorter initial Lease term coupled with a series of extension options specifying a fair market rent amount during each extension term

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<sup>12</sup> The phrase "termination fees" in the context of Section 6.1(a) and the Lease are not explained or defined.

based on an independent appraisal is recommended. For example, a more flexible approach than the proposed Lease would entail a 20-year initial term with four five-year extension options, giving the City more assurance that it is not contractually obligated for a prolonged time while also enabling the City to continue occupying the Property for an extended period that allows the City to capture the full value of its up-front investment in the tenant improvements if the homeless services center proves to be a successful operation.

#### **B. Potential Difficulty in Obtaining Approval of Future Improvements**

Section 6.2 prevents the City from making various types of alterations, physical additions, or improvements to the Property without first obtaining Landlord's written consent, which shall not be unreasonably withheld, except that Landlord may withhold the requested consent in its sole discretion in certain specified circumstances. Section 6.2 is unusual for a transaction of this nature, where the City undoubtedly will need to make numerous alterations to the improvements on the Property after Landlord completes the initial tenant improvements. Each time the City wants or needs to make any alterations, no matter how minor, the City will need to seek Landlord's consent. As a result, Section 6.2 may prevent the City from making any manner of alterations to the Property in the future, whether to accommodate the smooth operation of the contemplated homeless services center or the transition to a different use of the Property as permitted in Section 3.1.

#### **C. Long-term Liability Following City's Assignment of Lease Rights**

Section 10.2 allows the City to assign its leasehold rights to a third party if Landlord provides prior written consent, and Section 10.3 further allows the City to sublease all or any portion of the Property to a third party. However, in either of these scenarios, the City will remain fully liable for all obligations and liabilities under the Lease even if the City is occupying only some or none of the Property. This harsh outcome may hinder the City's flexibility in assigning or subleasing all or any portion of the Property if the City no longer needs the entire Property for public uses. Moreover, since the City will be paying above-market rent for the Property during the entire Lease term, according to the IBA's report, the City presumably will be unable to recoup all its rent costs in an assignment or sublease scenario, forcing the City to make up the difference in rent even without having beneficial occupancy.

### **III. VAGUE AND AMBIGUOUS LANGUAGE INVITING FUTURE DISPUTES**

#### **A. Potential Forfeiture of Landlord's Contribution of \$5 Million**

Landlord's agreement to contribute \$5 million toward the City's costs under Section 1.4 could be an illusory and unenforceable promise, depending on how the Lease is interpreted. Landlord added the phrase "in Landlord's sole and absolute discretion" to the fourth line of Section 1.4. It is unclear which portion of the first sentence of Section 1.4 this added phrase is intended to modify. One potential interpretation is that Landlord's agreement to contribute \$5 million is at Landlord's sole and absolute discretion, rendering Landlord's agreement illusory and unenforceable.



Section 1.4 contains at least two other problems. The language is ambiguous as to exactly when or how Landlord is required to pay the \$5 million contribution to the City and is imprecise about the payment triggering events, potentially inviting a dispute as to the payment obligation (if not already rendered illusory as explained above). Also, the final sentence of Section 1.4 requires the City to reimburse to Landlord the unamortized portion of Landlord's \$5 million contribution if Landlord terminates the Lease due to the City's alleged default, but the language is unclear as to exactly how the unamortized portion of the \$5 million contribution will be measured or what "unamortized" means in this specific context. Ideally, Section 1.4 would present an illustrative calculation of the unamortized portion owed by the City in a hypothetical situation, providing absolute clarity on the meaning of the contract language.<sup>13</sup>

**B. Vague Wording of the Flip Fee Payable to the City**

Section 10.1(c) requires Landlord to pay to the City a flip fee equal to 14 percent of Landlord's gross profits from the sale of the Property during an initial five-year period. Again, the language in Section 10.1(c) is unclear as to when the five-year period begins because the timing hinges on the phrase "Rent Commencement Date," a phrase used three times in the Lease but never defined. In addition, the "Sales Price" definition in Section 10.1(c) is vague because it is missing a word between "that" and "receives"; the missing word is presumably "Landlord," but we cannot know for certain.

**C. Vague Standard to Maintain the Property's Appearance**

Section 5.2(a) requires the City to maintain the Property "in a reasonably safe condition, repair and appearance." It is unusual for a tenant to be required in a lease to maintain a certain "appearance," especially if the lease provides no guidance as to what a reasonable appearance means or how it will be measured. The risk is that Landlord could seek to declare the City in default of the Lease for an allegedly subpar appearance of the Property, which is an inherently subjective evaluation absent an objective measure supplied in the Lease.

**D. Vague Wording of the City's Right of First Refusal**

Section 10.1(b) provides the City with the option to purchase the Property if Landlord receives a bona fide purchase offer from a third party that is acceptable to Landlord. However, Section 10.1(b) describes the City's method of exercising and implementing the option in a vague and ambiguous manner. First, Section 10.1(b) is vague and internally inconsistent as to whether the City has 30 days, 90 days, or 120 days to complete the purchase of the Property if the City elects to exercise its purchase option. Second, Section 10.1(b) uses the phrase "materially more favorable" in reference to Landlord's sale of the Property to a third party on

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<sup>13</sup> Similarly, the final sentence of Paragraph 5(d) in the Summary of Lease Provisions requires the City to reimburse to Landlord the unamortized portion of the Abated Rent of approximately \$2.4 million if Landlord terminates the Lease due to the City's alleged default. The final sentence of Paragraph 5(d), like the final sentence of Section 1.4, is vague and ambiguous, potentially leading to a future dispute between the parties in a fraught scenario in which Landlord has already elected to terminate the Lease due to the City's alleged default. Moreover, the penultimate sentence in Section 8.1 introduces the amortization concept again, without providing sufficient clarity, in the context of how the parties would allocate damages awarded in a future condemnation proceeding.

terms that differ from those stated in the original bona fide offer, without explaining whether “materially more favorable” refers to Landlord or the third party and what “materially more favorable” actually means. These ambiguities could complicate, or even impede entirely, the City’s ability to exercise and implement its purchase option under Section 10.1(b).

**E. Unenforceable Provision Purporting to Bind a Third Party**

The penultimate sentence of Section 8.2 purports to obligate Landlord’s lender to make a condemnation award available to Landlord in the event of a condemnation of the Property that does not result in a complete termination of the Lease. However, Landlord’s lender is not a signatory to the Lease and thus cannot be bound by its terms, rendering the penultimate sentence of Section 8.2 unenforceable.

**F. Other Drafting Errors**

Every word, phrase, and sentence in a contract is important. Any ambiguity in a contract tends to invite future disputes between the parties, which in turn can lead to protracted, expensive litigation with an uncertain outcome.

The Lease contains a high number of vague and ambiguous provisions, some of which are identified above. This Office also found numerous drafting defects in the Lease, such as: (a) typographical errors and vague wording that could invite future disputes between the parties; (b) needless repetition of certain contractual provisions, leading to ambiguity as to which provision may prevail over the other in the event of any conflict; (c) use of numerous capitalized terms that are not defined anywhere in the Lease (presumably some, but not all, of the capitalized terms will be defined in the forthcoming Tenant Work Agreement); (d) failure to capitalize certain terms that are defined in the Lease, raising the question of whether the parties’ intent is to rely on the term as expressly defined or something different; and (e) random fluctuation between referring to the Lease provisions as “sections” versus “paragraphs.”

**IMPORTANT ITEMS OF UNFINISHED BUSINESS**

As of the drafting of this Report, the parties had not yet completed the negotiation of two contracts critical to the Lease transaction. First, the City, Landlord, and Landlord’s lender will need to sign a Subordination, Nondisturbance, and Attornment Agreement (SNDA). The main purposes of the SNDA are to: (a) preserve the City’s long-term possessory interest in the Property against termination in a future foreclosure by Landlord’s lender if Landlord defaults under either or both of its two loans, which are each now secured by a deed of trust recorded against the Property in senior lien priority to the Lease; and (b) cause the City to recognize Landlord’s lender or its successor as the new landlord if a foreclosure occurs. To date, the parties have exchanged competing drafts of the SNDA, and it is uncertain whether they will reach a consensus on all SNDA provisions. Without a completed, signed SNDA, this Office recommends that the City not sign the Lease.

Second, as mentioned above, the parties have recently exchanged vastly different versions of the Tenant Work Agreement, signaling that they remain far apart in the negotiation of

that important contract. City staff listed the Council action items in the staff report to include the Council delegating authority to the Mayor or designee to approve the Tenant Work Agreement when City staff deems that agreement to be final. The Council has three options: (a) approve the action item as stated in the Staff Report and in Paragraph 4 of the main Council resolution, delegating signature authority to the Mayor or designee; (b) delegate signature authority to the Mayor or designee, conditioned on the Tenant Work Agreement meeting minimum parameters specified in the main resolution; or (c) require City staff to submit the full Tenant Work Agreement for the Council's consideration when ready in the future. To best protect the City's interests, this Office recommends that the Council pursue the third option.

### CONCLUSION

As currently written, the proposed Lease does not adequately protect the City's legal or financial interests, and the City would benefit from further negotiation, legal analysis, and due diligence.<sup>14</sup>

MARA W. ELLIOTT, CITY ATTORNEY

By /s/Jean Jordan

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Assistant City Attorney

JJ:sm

RC-2024-4

Doc. No. 3728499

Enclosure

cc: Eric Dargan, Chief Operating Officer  
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Casey Smith, Deputy Chief Operating Officer  
Kristina Peralta, Deputy Chief Operating Officer  
Christina Bibler, Director, Economic Development Department  
Sarah Jarman, Director, Homelessness Strategies Department  
Charles Modica, Independent Budget Analyst

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<sup>14</sup> This Report is not a comprehensive analysis of the Lease and is not a complete statement of all potential legal risks to the City of entering into the Lease. Aside from any qualifiers already set forth in this Report, we note that a lease transaction in California involves numerous inherent risks relating to enforceability of contract provisions, unconscionability of contract provisions, fraud or misrepresentation, force majeure events, and unanticipated actions by persons who are not parties to the lease, among other risks.

**LEASE AGREEMENT**

**BY AND BETWEEN**

**KETTNER VINE CREATIVE HOUSE LLC  
AS LANDLORD**

**AND**

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

**DATED JULY 12, 2024 (For reference purposes only)**

**SUMMARY OF LEASE PROVISIONS**

1. **Landlord:** Kettner Vine Creative House LLC, a California limited liability company.
2. **Tenant:** The City of San Diego, a California municipal corporation.
3. **Premises:** An approximately 64,939 square foot building constructed on approximately 1.8 acres of real property with a common address of 3554-3590 Kettner Boulevard, San Diego, California 92101 and being more particularly described on **Exhibit A** hereto, which Premises includes all buildings, parking areas and other improvements located on the Land.
4. **Term:** Thirty (30) Lease Years commencing on the Effective Date.
5. **Base Rent:** The Base Rent shall be as follows:
  - (a) For the first nineteen (19) months after the Effective Date (the “Rent Abatement Period”), Base Rent shall be \$0, which is equivalent to a total abatement of Base Rent in the amount of \$2,405,989 (“Abated Rent”).
  - (b) If Substantial Completion has not occurred as a result of a Landlord Delay prior to the expiration of the Rent Abatement Period, until the Substantial Completion Date (or the date on which Substantial Completion would have occurred but for a Force Majeure Delay or Tenant Delay) monthly Base Rent shall be calculated as \$126,631 multiplied by a ratio calculated as follows: the square footage of the Building that has received a final certificate of occupancy divided by the entire square footage of the Building ( $\$126,631 \times ([\text{the square footage of the Building that has received a final certificate of occupancy} \div \text{entire square footage of the Building}]])$ ).
  - (c) From and after the Substantial Completion Date (or the date on which Substantial Completion would have occurred but for a Force Majeure Delay or Tenant Delay) and continuing for twelve (12) full calendar months thereafter (such twelve-month period being the first “Rent Year”), Base Rent shall be \$126,631.
  - (d) Beginning on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) Rent Year, and on the first day of each Rent Year thereafter, Base Rent shall be as follows:

<u>Rent Year</u>	<u>Monthly Base Rent Amount</u>
Year 2	\$131,063
Year 3	\$135,650
Year 4	\$140,398
Year 5	\$145,312

Year 6	\$150,398
Year 7	\$155,662
Year 8	\$161,110
Year 9	\$166,749
Year 10	\$172,585
Year 11	\$178,626
Year 12	\$184,877
Year 13	\$191,348
Year 14	\$198,045
Year 15	\$204,977
Year 16	\$212,151
Year 17	\$219,576
Year 18	\$227,262
Year 19	\$235,216
Year 20	\$243,448
Year 21	\$251,969
Year 22	\$260,788
Year 23	\$269,916
Year 24	\$279,363
Year 25	\$289,140
Year 26*	\$299,260
Year 27*	\$309,734
Year 28*	\$320,575

*\* If the Term of this Lease shall run into such Rent Years*

Base Rent shall be payable, in advance, in equal monthly installments on the first day of each calendar month that Base Rent is payable.

Notwithstanding anything to the contrary contained in this Lease, in the case of Event of Default by Tenant results in early termination pursuant to the provisions of Section 11.3, Landlord shall be entitled to the recovery of the Abated Rent, provided that the amount of the Abated Rent that Landlord is entitled to recover shall be the unamortized portion of the Abated Rent as amortized over the Term on a straight line basis.

**6. Landlord's Notice Address:**

Kettner Vine Creative House LLC  
c/o Urban California Real Estate, Inc.  
989 West Kalmia Street  
San Diego, California 92101  
Attn: Douglas Hamm

*with a copy to:*  
SheppardMullin  
501 W. Broadway, 18th Fl.  
San Diego, CA 92101  
Attn: Michael R. Leake

7. **Tenant's Notice Address:** City of San Diego  
 1200 3rd Avenue, Ste. 1700  
 San Diego, CA 92101  
 Attn: Director, Department of Real Estate and Airport Management
- with a copy to:*  
 San Diego City Attorney's Office  
 1200 3rd Avenue, Ste. 1620  
 San Diego, CA 92101  
 Attn: Andrew J. Alfonso
8. **Address For Rent Billing:** *(Same as above)*

<b><u>EXHIBITS</u></b>	<b><u>DESCRIPTION</u></b>
Exhibit A	Legal Description
Exhibit B	Tenant Work Agreement
Exhibit C	Form of Estoppel Certificate
Exhibit D	Representations and Warranties

## LEASE AGREEMENT

### ARTICLE I BASIC LEASE TERMS

**1.1 PREMISES.** In consideration of the rents, terms, provisions and covenants of this lease agreement (the “Lease”), Landlord hereby leases, lets and demises to Tenant and Tenant hereby leases from Landlord the premises described in Paragraph 3 of the Summary of Lease Provisions (the “Summary”) above (the “Premises”). The Premises consists of the Land, together with certain buildings (collectively, the “Building”) and improvements located on the Land to be renovated by Landlord pursuant to the Tenant Work Agreement to be attached hereto as **Exhibit B** and includes all parking spaces, site work and landscaping areas on the Land. The Premises are demised and let subject to (a) the existing state of the title as of the Effective Date, including, but not limited to, the Permitted Exceptions, (b) any state of facts that an accurate survey or physical inspection thereof might show, and (c) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, without representation or warranty by Landlord, express or implied, except to the extent otherwise specified in this Lease. Without limiting the foregoing and subject to Landlord’s obligations to perform the Tenant Work pursuant to the Tenant Work Agreement, Tenant will be deemed to have accepted the Premises as of the Effective Date in “**AS IS**” condition, with all faults, except as expressly set forth in this Lease. The provisions of this Section 1.1 have been negotiated by Landlord and Tenant and are intended to be a complete exclusion and negation of any representations or warranties of Landlord, express or implied, with respect to the Premises that may arise pursuant to any law now or hereafter in effect, or otherwise, except as expressly provided in this Lease.

**1.2 TERM.** This Lease shall be effective as of the Effective Date, and the term of this Lease shall commence on the Effective Date and terminate at 11:59 p.m. (Pacific Time) on the last day of the thirtieth (30<sup>th</sup>) Lease Year (the “Expiration Date”) unless sooner terminated, renewed, or extended as may be hereinafter provided (such period from the Effective Date through the Expiration Date, taking into account any such sooner termination or extension, is hereinafter referred to as the “Term”).

#### **1.3 DEFINITIONS.**

(a) **Abated Rent.** “Abated Rent” as used in this Lease is defined in Paragraph 5(a) of the Summary.

(b) **Additional Rent.** “Additional Rent” as used in this Lease shall mean all sums due Landlord from Tenant under this Lease, other than Base Rent.

(c) **Affiliate.** “Affiliate” as used in this Lease shall mean, with respect to any specified Person, any other Person, directly or indirectly, controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “control” when



used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, relation to individuals or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

- (d) **Alterations.** “Alterations” as used in this Lease is defined in Section 6.2.
- (e) **Base Rent.** The term “Base Rent” as used in this Lease means the amounts specified in Paragraph 5 of the Summary as Base Rent.
- (f) **Beneficiary.** “Beneficiary” as used in this Lease is defined in Section 10.5.
- (g) **Benefiting Party.** “Benefiting Party” as used in the Lease is defined in Section 7.2.
- (h) **Building.** “Building” as used in this Lease is defined in Section 1.1.
- (i) **Business Day.** “Business Day” or “business day” as used in this Lease shall mean Mondays through Fridays, exclusive of any Holidays. If any date on which payment, performance, consent, approval or other action is due by either party hereunder falls on a day other than a Business Day, such payment, performance, consent, approval or other action shall be deemed timely if made, given or taken on the next succeeding Business Day.
- (j) **Casualty.** “Casualty” as used in this Lease is defined in Section 7.1.
- (k) **City.** The City of San Diego, a California municipal corporation.
- (l) **City Council.** The City Council of the City.
- (m) **City Indemnified Parties.** “City Indemnified Parties” as used in this Lease is defined in Section 7.3(d).
- (n) **Condemnation.** “Condemnation” as used in this Lease is defined in Section 8.1.
- (o) **Easements.** “Easements” as used in the Lease is defined in Section 5.2(a).
- (p) **Effective Date.** The date shown on the signature page to this Lease as the date this Lease is signed by an attorney from the Office of the San Diego City Attorney approving this Lease as to form.
- (q) **Eligibility Period.** “Eligibility Period” as used in this Lease is defined in Section 2.7.
- (r) **Environmental Laws.** “Environmental Laws” as used in this Lease is defined in Section 12.3.
- (s) **Environmental Site Assessments.** “Environmental Site Assessments” as used in this Lease is defined in Section 12.2(a).

(t) **Events of Default.** “Events of Default” as used in this Lease means those events specified in Section 11.1 as Events of Default.

(u) **Expiration Date.** “Expiration Date” as used in this Lease is defined in Section 1.2.

(v) **Flip Fee.** “Flip Fee” as used in the Lease is defined in Section 10.1(c).

(w) **Force Majeure.** A “Force Majeure” is defined as any cause that delays or hinders or prevents the performance of any act required hereunder including, but not limited to, any strikes, lockouts, labor trouble, inability to procure materials on a timely basis from any vendor (when not due to the acts or omissions of the applicable party), power outages, restrictive governmental laws or regulations, riots, insurrection, war, floods, washouts, explosions, earthquakes, fire, storms, unusually adverse weather conditions, acts of the public enemy, delays due to pandemics (including without limitation, the COVID-19 virus) or other reason of a like nature not within the reasonable control of the party delayed. “Force Majeure” shall not apply to any payment of funds hereunder and shall not include Landlord’s or Tenant’s financial inability to perform.

(x) **Force Majeure Delay.** “Force Majeure Delay” shall mean any delay incurred by Landlord in the design and construction of the Tenant Work attributable to any: (i) strike, lockout or other labor or industrial disturbance (whether or not on the part of the employee of either party hereto), civil disturbance, further order claiming jurisdiction, act of public enemy, war, riot, epidemic, pandemic, sabotage, blockade, embargo; (ii) changes in any applicable laws (including, without limitation, the ADA), or the interpretation thereof; ; (iii) lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide or Building-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives; or (iv) any unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character being performed, including conditions not anticipated on the site, including but not limited to any unforeseen hazardous material conditions.

(y) **Hazardous Materials.** “Hazardous Materials” as used in this Lease is defined in Article 12.

(z) **Holiday.** “Holiday” as used in this Lease shall mean holidays observed from time to time by the City.

(aa) **Impositions.** “Impositions” as used in this Lease shall mean:

(1) all real estate taxes which either become due during the Term or accrue during the Term and all other assessments (including assessments for benefits from public works or improvements, whether or not begun or completed prior to the commencement of the Term of this Lease and whether or not to be completed within the Term), levies, fees, water and sewer rents and charges, and all other governmental charges of every kind, general and special, ordinary and extraordinary, whether or not the same shall have been within the express contemplation of the parties hereto, together with any interest and penalties thereon due to Tenant’s failure to timely pay such Imposition, which

are, at any time during the Term, imposed or levied upon or assessed against (A) the Premises or any part thereof, (B) any Base Rent or any Additional Rent, (C) this Lease or the leasehold estate hereby created or which arise in respect of the ownership, operation, possession, occupancy or use of the Premises and which either become due during the Term or accrue during the Term;

(2) all payments in lieu of taxes (“PILOT” or similar) that Landlord is or becomes obligated to pay to any governmental or quasi-governmental entity;

(3) any gross receipts or similar taxes imposed or levied upon, assessed against or measured by the Base Rent or Additional Rent hereunder or levied upon or assessed against the Premises, provided that Taxes shall not include Landlord’s income, corporate or franchise taxes; and

(4) all sales and use taxes which may be levied or assessed against, or payable by, Landlord or Tenant on account of the acquisition, construction, payment of rent or leasing or use of the Premises or any portion thereof.

(bb) **Land.** “Land” as used in this Lease means a tract of real property of approximately 1.8 acres located in San Diego, California and more particularly described on **Exhibit A** hereto.

(cc) **Landlord.** “Landlord” as used in this Lease means the owner of the rights of Landlord under this Lease, initially means the entity or person identified as Landlord in Paragraph 1 of the Summary, and upon any assignment or transfer of such rights, except an assignment or transfer made as security for an obligation, any heirs, successors and assigns.

(dd) **Landlord Contribution.** “Landlord Contribution” as used in this Lease is defined in Section 1.4.

(ee) **Landlord Delay.** “Landlord Delay” shall mean any delay incurred by Landlord in the design and construction of the Tenant Work to the extent caused by the intentional or negligent acts or omissions of Landlord, its agents, contractors and/or subcontractors.

(ff) **Landlord Easements.** “Landlord Easements” as used in the Lease is defined in Section 13.18.

(gg) **Landlord Parties.** “Landlord Parties” as used in the Lease is defined in Section 7.3(b).

(hh) **Laws.** “Laws” as used in this Lease means any applicable laws, codes, regulations (including regulatory requirements), ordinances or rules of any governmental or quasi-governmental entity having jurisdiction and any requirements of any applicable insurance underwriters.

(ii) **Lease.** “Lease” as used in this lease is defined in Section 1.1.

(jj) **Lease Year.** “Lease Year” means, as to the first Lease Year, the period commencing on the Effective Date and ending on the last day of the twelfth (12<sup>th</sup>) full calendar month from and after the Effective Date, and, as to the second and each subsequent Lease Year shall mean the twelve (12) full consecutive month period following the preceding Lease Year during the Term. In the event that the Effective Date does not occur on the first calendar day of a month, then the first Lease Year shall be deemed to include the remainder of the month in which the Effective Date occurs and the following twelve (12) full calendar month period.

(kk) **Material Temporary Taking.** “Material Temporary Taking” as used in this Lease is defined in Section 8.1.

(ll) **Net Award.** “Net Award” as used in this Lease is defined in Section 8.2.

(mm) **Non-Termination Taking.** “Non-Termination Taking” as used in this Lease is defined in Section 8.1.

(nn) **Notice of Intent to Sell.** “Notice of Intent to Sell” as used in this Lease is defined in Section 10.1(b).

(oo) **Offer.** “Offer” as used in this Lease is defined in Section 10.1(b).

(pp) **Permitted Exceptions.** “Permitted Exceptions” means all Landlord Easements, all Impositions, Security Instruments, and all other matters of record in San Diego County, California and affecting the Premises (or any portion thereof) as of the Effective Date, all agreements required to be executed and delivered by Landlord in connection with any PILOT (defined in Section 1.3(r)(2) above) payments as of the Effective Date. Except as expressly provided for or permitted in this Lease, Landlord shall not hereafter enter into, or consent to, a Permitted Exception without Tenant’s consent if such Permitted Exception would adversely affect Tenant’s use and occupancy of the Premises in accordance with the provisions of this Lease or increase Tenant’s costs of its operations in the Premises.

(qq) **Pre-Tenant Work Agreement Costs.** “Pre-Tenant Work Agreement Costs” as used in this Lease is defined in Section 6.1(a).

(rr) **Premises.** “Premises” as used in this Lease is defined in Section 1.1.

(ss) **Property.** “Property” means the Land on which the Building is situated.

(tt) **Punchlist Items.** “Punchlist Items” shall mean those items (other than landscaping) not completed on the Premises at the time of Substantial Completion that will not materially interfere with Tenant’s use of the Premises, as identified in a written list prepared by Landlord and Tenant’s representative at the time of Substantial Completion.

(uu) **Rent.** “Rent”, “rent” or “rental” means, collectively, Base Rent and Additional Rent.

(vv) **Rent Abatement Period.** “Rent Abatement Period” as used in this Lease is defined in Paragraph 5(a) of the Summary.

(ww) **Rent Year.** “Rent Year” means, as to the first Rent Year, the period commencing on the first day of the first full calendar following the Substantial Completion Date and ending on the last day of the twelfth (12<sup>th</sup>) full calendar month from and after such date, and, as to the second and each subsequent Rent Year shall mean the twelve (12) full consecutive month period following the preceding Rent Year during the Term; provided that the final Rent Year may not be a full twelve (12) month period.

(xx) **Response Period.** “Response Period” as used in this Lease is defined in Section 10.1(b).

(yy) **Sales Price.** “Sales Price” as used in this Lease is defined in Section 10.1(c).

(zz) **Security Instrument.** “Security Instrument” as used in this Lease is defined in Section 10.6.

(aaa) **SNDA.** “SNDA” as used in this Lease is defined in Section 10.6.

(bbb) **Substantial Completion.** “Substantial Completion” or “Substantially Complete” as used in this Lease shall be deemed to occur, with respect to the Tenant Work, upon the issuance of a certificate of occupancy (or its legal equivalent) for substantially all of the Building by the local building authority, subject only to Punchlist Items.

(ccc) **Substantial Completion Date.** “Substantial Completion Date” as used in this Lease shall mean the date that Substantial Completion occurs.

(ddd) **Summary.** “Summary” as used in this Lease is defined in Section 1.1.

(eee) **Taxes.** “Taxes” as used in this Lease is defined in Section 2.5.

(fff) **Tenant.** “Tenant” as used in this Lease means the entity or person identified as Tenant in Paragraph 2 of the Summary and its successors and assigns as permitted by the terms of this Lease.

(ggg) **Tenant Delay.** “Tenant Delay” shall mean any delay incurred by Landlord in the design and construction of the Tenant Work attributable to: (i) Tenant's failure to timely approve any matter requiring Tenant's approval pursuant to the Tenant Work Agreement; (ii) a breach by Tenant of the terms of the Tenant Work Agreement or the Lease; (iii) Tenant's request for changes in the approved Design Deliverables; (vi) the interference by Tenant, its agents or employees with the design and construction of the Tenant Work; (vii) Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the anticipated date of Substantial Completion, as set forth in the Project Schedule; or (viii) the time required for Tenant to issue building permits and approvals for the Tenant Work beyond the Permit Period.

(hhh) **Tenant Parties.** “Tenant Parties” as used in the Lease is defined in Section 7.3(b).

(iii) **Tenant Required Insurance.** “Tenant Required Insurance” as used in this Lease is defined in Section 7.4(a).

(jjj) **Tenant Work.** “Tenant Work” as used in the Lease is defined in Section 6.1(a).

(kkk) **Term.** “Term” as used in this Lease means the period of time specified in Section 1.2.

(lll) **Termination Date.** “Termination Date” as used in this Lease is defined in Section 9.1(a).

(mmm) **Termination Notice.** “Termination Notice” as used in this Lease is defined in Section 9.1(a).

(nnn) **Waiving Party.** “Waiving Party” as used in the Lease is defined in Section 7.2.

(ooo) **Work Date.** “Work Date” as used in this Lease means the earliest of the following dates: (1) the one-hundred fiftieth (150th) day after the Effective Date; or (2) the date on which Landlord first submits a Request for Reimbursement pursuant to **Exhibit B**.

**1.4 LANDLORD CONTRIBUTION.** Notwithstanding anything to the contrary herein, as a material inducement for Tenant to enter into this Lease, Landlord agrees to pay Tenant Five Million Dollars (\$5,000,000) (the “Landlord Contribution”) at any time after the Effective Date, in Landlord’s sole and absolute discretion, provided that Landlord shall pay the Landlord Contribution no later than the date that is three (3) months after Landlord obtains all permits required for the Tenant Work and commences construction of the Tenant Work pursuant to the Tenant Work Agreement. Tenant may use the Landlord Contribution for any purpose. Notwithstanding anything to the contrary contained herein, in the case of an Event of Default by Tenant that results in early termination pursuant to the provisions of Section 11.3, or if Tenant exercises its termination right pursuant to Section 6.1 or Section 11.4 of this Lease, Tenant shall immediately reimburse Landlord for the Landlord Contribution, provided that the amount of the Landlord Contribution that Landlord is entitled to recover shall be the unamortized portion of the Landlord Contribution as amortized over the Term on a straight line basis.

## **ARTICLE II RENT**

**2.1 PAYMENT OF RENT.** Tenant agrees to pay monthly as Base Rent during the Term, subject to abatement of Rent as provided for in this Lease, without notice or demand, set-off or deduction, and from lawfully available funds of Tenant, the sums of money set forth in Paragraph 5 of the Summary, which amount shall be payable to Landlord at the address set forth in Paragraph 6 of the Summary, or at such other address notice of which is given to Tenant by Landlord on at least 30 days’ advance notice. Tenant will make all Base Rent and other payments to Landlord by wire transfer or ACH transfer pursuant to instructions provided by Landlord or otherwise as directed by Landlord in writing to Tenant; however upon at least thirty (30) days’ written notice to Tenant, Landlord may change such payment instructions to wire transfer or other

ACH transfer instructions and Tenant will comply with such modified instructions. Subject to the abatement of Base Rent set forth in Paragraph 5 of the Summary, one full monthly installment of Base Rent shall be due and payable on or before the first day of each calendar month of each Rent Year during the Term. From and after the Substantial Completion Date, Tenant shall pay without set-off or deduction (except as expressly set forth in this Lease), as Additional Rent within thirty (30) days of Landlord submitting an invoice therefor, all other sums due under this Lease including the reasonable costs and expenses of Landlord in administering the Lease including, but not limited to, expenses relating to lease amendments and consents. Payments of Base Rent for any fractional month (including the first month, if applicable) shall be prorated based on the number of calendar days in such fractional month. All of the terms and conditions of this Lease shall apply from the Effective Date. Upon Tenant's paying the Base Rent under this Lease and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term, subject to all of the provisions of this Lease, without disturbance from Landlord or from any other person claiming by, through or under Landlord. However, the incidental disturbance of Tenant in connection with the performance by Landlord of any of its duties, obligations, or rights under this Lease shall in no case constitute a constructive eviction or give Tenant any right to terminate this Lease or surrender possession of the Premises if such performance by Landlord is not intended to be an active interference with or disturbance of Tenant's possession or quiet enjoyment of the Premises.

**2.2 LATE PAYMENT CHARGE; DEFAULT INTEREST.** Other remedies for nonpayment of rent notwithstanding, if the monthly Base Rent is not received by Landlord on or before the fifth (5th) business day after the applicable due date, a late payment charge of five percent (5%) of such past due amount, shall become due and payable, in addition to any other amounts owed under this Lease. Notwithstanding the foregoing, Landlord shall waive the first late payment in any consecutive twelve (12) month period during the Term, provided that Tenant makes such payment within five (5) business days after notice from Landlord that such payment is late. Such late payment charge is not intended as a penalty, but instead is intended to compensate Landlord for the additional administrative expenses resulting from any such late payment and which shall be paid on demand. In addition, Tenant further covenants to pay to Landlord on demand interest at the per annum rate of interest equal to the greater of (a) two percent (2%) plus the "prime rate" as reported by the *Wall Street Journal* or (b) the interest rate applicable to late payments of interest or principal due with respect to any debt secured by a first Security Instrument (such greater rate being referred to as the "Default Rate"), which as of the date of this Lease is ten percent (10%), provided that the Default Rate shall not exceed the maximum rate permitted by Laws, on all Base Rent and Additional Rent due to Landlord from the fifth (5th) business day after the date due until such amount is paid in full. If the *Wall Street Journal* is no longer published or the *Wall Street Journal* discontinues publication of the "prime rate," then Landlord shall substitute a comparable prime rate.

**2.3 HOLDING OVER.** In the event of holding over by Tenant after the end of the Term without written agreement with Landlord to do so, the holdover shall be as a tenant at sufferance subject to immediate eviction or dispossession and not as a tenant at will, and Tenant shall otherwise be subject to all the covenants and provisions of this Lease insofar as the same are applicable to a tenant at sufferance, including, without limitation, the payment of Additional Rent. In addition to any other rights and remedies that Landlord may have at law or in equity to

dispossess Tenant, Tenant shall pay Landlord, on demand, as monthly Base Rent for the period of such hold over an amount equal to the 150% of the Base Rent payable during the last month of the Term prior to the holdover, together with 100% of all Additional Rent. In addition, after thirty (30) days of holdover, (i) Tenant will be responsible for any actual damages Landlord incurs as a result of such holdover, and (ii) Tenant will be responsible for consequential damages of Landlord if Landlord has notified Tenant that Landlord has an executed lease with another party and that damages will be incurred by Landlord if Tenant has not delivered possession of the Premises to Landlord (in the condition required by this Lease in its section 5.3) by the date specified in Landlord's notice to Tenant (provided such date is at least thirty (30) days following the date Landlord delivers such notice to Tenant or sixty (60) days after the commencement of the holdover, whichever ever date is later). Given the specialized nature of the Premises, a holdover in any portion of the Premises will be considered a holdover in the entire Premises.

**2.4 NET LEASE.** This is an absolutely net lease to Landlord. It is the intent of the parties hereto that the Base Rent payable under this lease shall be an absolutely net return to Landlord and that Tenant shall pay all costs and expenses relating to the Premises and the business carried on therein. Any amount or obligation relating to the Premises that is not expressly declared to be that of Landlord shall be deemed to be an obligation of Tenant to be performed by Tenant at Tenant's expense. Except as otherwise expressly provided for in this Lease, Base Rent and Additional Rent shall be paid by Tenant without notice or demand, setoff, counterclaim, abatement, suspension, deduction or defense. For the avoidance of doubt, Tenant shall not be responsible to pay (and Landlord shall pay) Landlord's financing costs, mortgage payments, general corporate overhead, and income taxes.

**2.5 TAXES AND IMPOSITIONS.** Tenant shall pay all real estate taxes, other *ad valorem* taxes and special assessments and reassessments on the Premises ("Taxes") prior to the applicable due date for such Taxes and Tenant shall pay all charges for utilities consumed on the Premises which become due and payable during the Term, if any. Upon payment of each Imposition, Tenant will promptly give Landlord notice of such payment, along with reasonable backup documentation of such payment. Tenant shall pay all such Impositions directly to the entities to which such Impositions are due. Landlord's and Tenant's obligations under this Section 2.5 shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing provision of this Section 2.5, Tenant shall not be required to pay any franchise, corporate, estate, inheritance, succession, transfer, net income or excess profits taxes of Landlord hereunder (other than (i) transfer and documentary taxes, intangible taxes, recording fees, or similar charges payable in connection with the execution of this Lease or the recording of any memorandum or notice of this Lease or any extension of the Term, (ii) any taxes on sales, rents or gross receipts or similar taxes imposed or levied upon, assessed against or measured by the Base Rent or Additional Rent or levied upon or assessed against the Premises, and (iii) any tax, assessment, charge or levy imposed or levied upon or assessed against Landlord in substitution for or in place of an Imposition).

**2.6 TRUE LEASE.** Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect this Lease transaction in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.



**2.7 ABATEMENT OF RENT WHEN TENANT IS PREVENTED FROM USING PREMISES.** Exclusive of Rent abatement under Section 7.1 or Section 8.2, in the event that Tenant is prevented from using, and does not use, the Premises or any material portion thereof necessary for the operation of the Premises for the intended use for five (5) consecutive business days (the "Eligibility Period") after the Substantial Completion Date has occurred as a result of Landlord preventing access to the Premises for Tenant's allowed uses, then Tenant's obligation to pay Base Rent and Additional Rent shall be abated or reduced, as the case may be, from and after the first (1st) day of the Eligibility Period until the first date Tenant is no longer so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises. For clarification, to the extent Tenant shall be entitled to abatement of Rent because of a damage or destruction under Section 7.1 or a taking under Section 8.2, then the Eligibility Period shall not be applicable to such Rent abatement.

### **ARTICLE III OCCUPANCY AND USE**

**3.1 USE.** Tenant warrants and represents to Landlord that the Premises shall be used and occupied for general office, warehouse, homeless services and/or homeless shelter purposes, and for any lawful purposes ancillary thereto including, without limitation, storage, cafeterias, kitchens and pantries, conference rooms and/or an auditorium, a fitness facility, and dormitories, all in a manner consistent with the zoning for the Property, all Laws and all Permitted Exceptions, and for no other purpose. Tenant shall occupy the Premises, conduct its business and control its agents, employees, invitees and visitors, all in such a manner as is lawful, reputable and will not knowingly create any nuisance. Tenant shall not commit or permit any waste on the Premises or permit the Premises to be used in any way that would in any way render void any Tenant Required Insurance with respect to the Building. Subject to any Laws, Tenant shall have the right to access the Premises twenty-four (24) hours a day, seven (7) days a week.

**3.2 SIGNS.** Tenant (at Tenant's sole cost and expense) may erect, place or paint identification signs (i.e., identifying the name of Tenant) on the exterior of the Building and elsewhere on the Premises, provided (i) that such signs comply in all respects with Laws and all Permitted Exceptions, and (ii) Tenant's installation, use, operation, maintenance and or replacement of such signage shall not (A) adversely affect any structural components of the Building or interfere with any of the Building electrical, mechanical, life safety, plumbing or other systems, (B) violate or impair any of Landlord's warranties or guaranties relating to the Premises of which Landlord shall have notified Tenant, or (C) reduce the useful life of any Landlord improvement, fixture, equipment or property. Tenant shall cause any such signs to be removed at the end of the Term, at Tenant's sole cost, and Tenant will repair any damage to the Premises caused by such removal. Landlord shall coordinate with Tenant and shall install, at Tenant's cost, structural supports, brackets and electrical conduit for Tenant's rooftop signage in accordance with proper construction sequencing.

**3.3 COMPLIANCE WITH LAWS, RULES AND REGULATIONS.** After the Substantial Completion Date, Tenant shall, at its expense, comply with, cause the Premises to comply with, and cause the use of the Premises to comply with all Laws, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any of

the same involve a change of policy on the part of the body enacting the same, including but not limited to, the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*). Subject to Landlord's obligation to perform the Tenant Work pursuant to the Tenant Work Agreement, Tenant shall, at its expense, comply with all changes required in order to obtain the Tenant Required Insurance, and comply with the provisions of all contracts, agreements, instruments and restrictions existing at the commencement of this Lease and included in the Permitted Exceptions or thereafter created pursuant to the express provisions of this Lease. Tenant shall provide to Landlord and any first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) within twenty (20) Business Days after receipt thereof, notice of all written complaints pertaining to any alleged violation of any Laws and/or the commencement of any proceedings or investigation (of which Tenant has knowledge) under any Laws or pertaining to the Premises.

**3.4 INSPECTION.** Landlord or its authorized agents shall at any and all reasonable times, upon at least 24 hours prior notice to Tenant (which notice shall not be required in any emergency, may be written or telephonic, and if telephonic, shall be to such contact and telephone number as Tenant may specify by at least five (5) days' written notice to Landlord), have the right to enter the Premises when accompanied by a representative of Tenant to inspect the same, and to show the Premises to prospective purchasers, lenders or tenants. The costs of any such inspections shall be paid by Landlord. Tenant waives any claim for damages for injury or inconvenience to or interference with Tenant's business, any loss of occupancy or use of the Premises, and any other loss occasioned thereby, unless caused by the negligence or willful misconduct of Landlord, its employees, agents or contractors; provided, however, after the Rent Commencement Date, Landlord shall use reasonable efforts to avoid material interference with Tenant's use of the Premises. Landlord acknowledges that Tenant may designate areas of the Premises as secured areas where it stores confidential information and Landlord shall not have access to such areas, except to comply with Laws or in the event of an emergency.

#### **ARTICLE IV BUILDING SERVICES.**

**4.1 BUILDING SERVICES.** Except for the Tenant Work, Landlord will not be obligated to provide any utilities or services of any kind to the Premises during the Term. Tenant will be responsible for providing all services.

#### **ARTICLE V REPAIRS AND MAINTENANCE; UTILITIES**

**5.1 LANDLORD REPAIRS.** Except for the Tenant Work, any remediation required of Landlord under Section 12.1, and any work required of Landlord under Sections 7.1 and/or 8.2, Landlord shall not be required to make any improvements, replacements or repairs of any kind or character to, or to perform any maintenance of, the Premises, Building or Property during the Term.

## 5.2 TENANT REPAIRS AND MAINTENANCE.

(a) Tenant acknowledges that, with full awareness of its obligations under this Lease, Tenant will be deemed to have accepted the condition, state of repair and appearance of the Premises as of the Substantial Completion Date. As of the Substantial Completion Date, Tenant agrees that, at its expense, Tenant shall put, keep and maintain the Premises, including any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto or thereon, in a reasonably safe condition, and appearance and shall make all repairs and replacements necessary therefor. Without limiting the foregoing, Tenant shall promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, replacements and repairs of every kind and nature, and correct any patent defects in the Premises, which may be required to put, keep and maintain the Premises in reasonably a safe condition, repair and appearance. Tenant will keep the Premises orderly and free and clear of rubbish. Tenant covenants to perform or observe all terms, covenants and conditions of any easement, restriction, covenant, declaration or maintenance agreement (collectively, "Easements") to which it may at any time be a party or to which the Premises are currently subject or become subject pursuant to this Lease (including Landlord Easements), whether or not such performance is required of Landlord under such Easements, including without limitation, payment of all amounts due from Landlord or Tenant (whether as assessments, service fees or other charges) under such Easements. Tenant's maintenance and repair obligations, include, without limitation, regular inspection, maintenance and repair by qualified, licensed professionals of the Building roof and all electrical, mechanical, plumbing, life safety and other systems at the Premises in accordance with good industry practice for homeless services buildings located in San Diego, California. Tenant shall deliver to Landlord and any first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) within fifteen (15) Business Days after receipt thereof, copies of all written notices received from any party thereto regarding the non-compliance of the Premises or Landlord's or Tenant's performance of obligations under any Easements. Tenant shall, at its expense, use reasonable efforts to enforce compliance with any Easements benefiting the Premises by any other person or entity or property subject to such Easement. Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen, or to maintain the Premises or any part thereof in any way or to correct any patent or latent defect therein, except as expressly set forth in this Lease. Except as defined in **Exhibit B**, Tenant expressly waives any right to make repairs at the expense of Landlord which may be provided for in any law in effect at the time of the commencement of the Term or which may thereafter be enacted. If Tenant shall vacate or abandon the Premises, it shall give Landlord and any Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) immediate notice thereof.

(b) Tenant will keep detailed books and records of all of its maintenance, repairs and replacements of the Premises and all components thereof throughout the Term. Within thirty (30) days after demand, Tenant will allow Landlord, Beneficiary and their designees the right to inspect all such books and records. Upon expiration or termination of this Lease, Tenant will promptly provide to Landlord copies of all such books and records. The terms of this Section will survive the expiration or earlier termination of this Lease.

**5.3 END OF TERM.** At the Expiration Date, Tenant shall return possession of the Premises to Landlord in the condition to which the Premises must be maintained hereunder, reasonable wear and tear excepted.

**5.4 PAYMENT FOR UTILITIES.** During the Term, Tenant shall pay, when due, all charges of every nature, kind or description for utilities furnished to the Premises or chargeable against the Premises, including all charges for water, sewage, heat, gas, light, garbage, electricity, internet, telephone, steam, power, or other public or private utility services. From and after the Substantial Completion Date, Tenant shall be responsible for contracting directly with all suppliers of utility services. In the event that any charge or fee is required by any agency, subdivision or instrumentality thereof, or by any utility company or other entity furnishing services or utilities to the Premises, as a condition precedent to furnishing or continuing to furnish utilities or services to the Premises, such charge or fee shall be deemed to be a utility charge payable by Tenant. The inability of Tenant to obtain, or any stoppage of, the utility services referred to in this Section resulting from any cause, other than Landlord's negligence or willful misconduct, shall not make Landlord liable in any respect for damages to any person, property or business, or entitle Tenant to any abatement of Rent or other relief from any of Tenant's obligations under this Lease. Landlord will cooperate, at no cost to Landlord, to enable Tenant to obtain all of such utilities to the extent required (such as, by way of example, by executing any documents required of the fee owner of the Property).

## **ARTICLE VI ALTERATIONS AND IMPROVEMENTS**

### **6.1 IMPROVEMENTS.**

(a) Landlord and Tenant agree to negotiate in good faith to come to an agreement whereby Landlord, at Tenant's sole cost and expense, shall perform the design and construction of certain improvements to the Premises to make the Premises suitable for the use described in section 3.1 (such improvements, the "Tenant Work"), or cause the design and construction of the Tenant Work to be completed. The future agreement that Landlord and Tenant agree to negotiate in good faith in this section 6.1 is referred to in this Lease as "**Exhibit B**" or "Tenant Work Agreement". When Landlord and Tenant finalize Exhibit B, Landlord and Tenant agree to amend this Lease to incorporate Exhibit B as an exhibit. If Landlord and Tenant are unable to reach a final agreement on the anticipated Exhibit B by 11:59 PM (Pacific Time) on the ninetieth (90th) day following the Effective Date, then either Landlord or Tenant shall have the option to immediately terminate this Lease, provided that the parties may extend this 90-day deadline for up to two total periods of 30 days by one party providing written notice to the other party. In the event this Lease is terminated pursuant to this Section 6.1, Tenant shall reimburse Landlord for any third-party out-of-pocket costs and fees (with proof reasonably acceptable to Tenant) accrued up to the date on which the Lease is terminated in connection with the Tenant Work, including, without limitation, any applicable design costs or termination fees incurred by Landlord as a result of such termination (collectively, "Pre-Tenant Work Agreement Costs"), provided that reimbursement for such Pre-Tenant Work Agreement Costs shall not exceed \$200,000.

(b) All Tenant Work made by or on behalf of Tenant pursuant to **Exhibit B** (including any of such Tenant Work replaced by Tenant during the Term due to obsolescence) shall be surrendered to Landlord and become the property of Landlord upon the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained in this Lease, Tenant shall be deemed to have beneficial use of the Premises during any period that Tenant Work is being performed, whether by Landlord or by Tenant.

**6.2 ALTERATIONS.** Tenant shall not make or allow to be made any alterations, physical additions or improvements (collectively, "Alterations") in or to the Premises, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, except that Landlord may withhold its consent in its sole and absolute discretion if such Alterations would (i) change the Building footprint, square footage or structural components of the Building or other improvements, (ii) violate any Law, or (iii) materially reduce the value of the Premises to a third party user. Landlord will not impose any charge of any kind for profit, overhead or supervision in connection with any Alterations, other than charges (at Landlord's actual and reasonable documented cost) Landlord must pay to third parties in connection with such Alterations. Tenant will pay such third party charges within thirty (30) days after demand. Landlord will notify Tenant of Landlord's approval or disapproval of any proposed Alterations within ten (10) business days (or five (5) business days for resubmissions) after receipt of all plans, specifications, proposed contractors and other information reasonably required by Landlord in connection with its review. Upon prior written notice to Landlord, and without Landlord written consent (except if such Alterations would trigger any of clauses (i) – (iii) above), Tenant shall be permitted to perform any cosmetic (e.g., paint and carpet) and any other non-structural Alterations that do not require a building permit. Prior to performing or allowing to be performed any Alterations to the Premises, Tenant shall cause each contractor performing any aspect of the work to procure, or Tenant itself shall procure, insurance in form and amount reasonably satisfactory to Landlord and to deliver a certificate of insurance to Landlord that identifies as additional insureds thereunder Landlord, Landlord's managing agent and Beneficiary. Tenant shall also cause all such contractors to maintain, or Tenant shall itself maintain, such insurance throughout the duration of any work in the Premises. Any Alterations to the Premises made by Tenant (excluding moveable equipment or furniture of Tenant) and shall be surrendered to and become the property of Landlord upon the expiration or earlier termination of this Lease. Tenant shall be responsible for obtaining, at its cost, all permits required as to any Alterations. Tenant shall provide a copy of such permits to Landlord prior to starting work. Upon completion of any permitted Alterations (except for those that are only decorative in nature or which, by their nature, do not customarily require the preparation of plans and specifications), Tenant shall provide Landlord with copies of as-built plans or drawings with respect to such Alterations, as well as operation and maintenance manuals for any non-moveable equipment installed in the Premises. Tenant shall have no authority, express or implied, to create any lien, charge or encumbrance upon the interest of Landlord in the Premises or Property.

**6.3 LIENS.** Tenant will not, directly or indirectly, create or permit to be created and to remain for more than thirty (30) days after Tenant becomes aware thereof, and will promptly discharge (or bond over, if the legal effect of bonding over will prevent any enforcement or foreclosure of the lien), at its expense, within thirty (30) days after Tenant becomes aware thereof, any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Premises or any part thereof or Tenant's interest therein or the Base

Rent, Additional Rent or other sums payable by Tenant under this Lease, other than any Security Instrument or other encumbrance created by Landlord or the Permitted Exceptions or equipment leases entered into by Tenant. Nothing contained in this Lease shall be construed as constituting the consent or request, expressed or implied, by Landlord to or for the performance of any labor or services or of the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Premises or any part thereof by any contractor, subcontractor, laborer, materialman or vendor. Notice is hereby given that Landlord, except as expressly set forth in the Tenant Work Agreement, will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises or any part thereof, and that no mechanic's, construction or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Premises.

## **ARTICLE VII CASUALTY AND INSURANCE**

**7.1 FIRE AND CASUALTY DAMAGE.** If all or any part of the Premises shall be damaged or destroyed by casualty ("Casualty"), (i) Tenant shall promptly notify Landlord and Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) thereof; and (whether or not such estimated cost shall be or exceed Two Hundred Fifty Thousand Dollars (\$250,000) and whether or not insurance proceeds are or will ever be available therefor) Landlord shall, with reasonable promptness and diligence, rebuild, replace and repair any damage or destruction to the Premises, at its expense, in such manner as to restore the same to the same or better condition and equivalent or better value, as nearly as possible, as existed immediately prior to such Casualty; and (ii) there shall be no termination of the Lease but Base Rent and Additional Rent shall abate from the date of the Casualty through the date that the Premises is reconstructed to the extent that a certificate of occupancy or a temporary certificate of occupancy is issued by the relevant municipal authority. The provisions of this Article constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, and any applicable law, now or hereafter in effect, including Sections 1932(2) and 1933(4) of the California Civil Code shall have no application to this Lease or any damage or destruction to all or any part of the Premises.

**7.2 WAIVER OF SUBROGATION.** Anything in this Lease to the contrary notwithstanding, each party (the "Waiving Party") waives and releases the other party (the "Benefiting Party") of and from any and all rights of recovery, claim, action or cause of action, against the Benefiting Party, its partners, agents, officers and employees, for any loss or damage that may occur to the Premises or Property, or personal property within the Building, which is insured or is required to be insured by Waiving Party pursuant to the terms hereof regardless of cause or origin, including negligence of Landlord or Tenant and their partners, agents, officers and employees. The Waiving Party agrees to give immediately to its insurance companies which have issued policies of insurance covering any risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section 7.2, and to have the insurance policies properly endorsed, if necessary. The Waiving Party acknowledges that the waivers and releases set forth in this Section 7.2 are intended to result in any loss or damage which is covered by insurance or required to be insured by the Waiving Party being borne by the insurance carrier of the Waiving Party, or by the party having the insurable interest if such loss is not covered by insurance and this Lease required such party to maintain insurance to cover such loss.

### **7.3 WAIVER; HOLD HARMLESS.**

(a) Neither Landlord, its agents, servants, employees, any other holder of any mortgage nor the lessor under any superior lease shall be liable to Tenant, or to Tenant's employees, agents, invitees, licensees, contractors or visitors, or to any other person, for any injury to person or damage to property or for consequential, incidental, indirect, special or punitive damages of any nature on or about the Premises or Property, to the extent caused by any act or omission of Tenant, its agents, servants or employees, or of any other persons entering upon the Premises or Property under express or implied invitation by Tenant, or caused by the Premises or Property or the improvements located thereon becoming out of repair, the failure or cessation of any service provided by Landlord, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises or Property.

(b) Except for Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord, its Affiliates, partners and subpartners, and their respective, directors, shareholders, agents, property managers, employees, independent contractors and Affiliates ("Landlord Parties") from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with any use, condition, event and/or occupancy of the Premises occurring in on or about the Premises during the Term, including without limitation, (i) any use, condition or event caused by Tenant or any of Tenant's employees, agents, contractors, licensees, invitees, guests, or other third parties ("Tenant Parties"), (ii) any injury to, or the death of, any person or damage to property on the Premises during the Term, (iii) any violation by Tenant Parties of any agreement or condition of this Lease, or (iv) any violation by Tenant Parties of any Laws. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified. In the event Tenant shall, pursuant to this Section 7.3(b), discharge any claim against a Landlord Party, Tenant shall be subrogated to the rights of the Landlord Party with respect thereto, except that in no event shall Tenant be thereby subrogated to a claim against another Landlord Party.

(c) Notwithstanding the obligations in Paragraph 7.3(b) and the limitations of liability in Paragraph 7.3(a), Landlord agrees to the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Landlord shall require its design professional to indemnify and hold harmless Tenant, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Landlord's design professional or design professional's officers or employees except to the extent of any Tenant Parties' negligence or willful misconduct.

(d) Notwithstanding the obligations in Paragraph 7.3(b) and the limitations of liability in Paragraph 7.3(a), and other than in the performance of design professional services which shall be solely as addressed in Section 7.3(c), to the fullest extent permitted by applicable Law, Landlord agrees to defend (with legal counsel reasonably acceptable to Tenant as approved by the City Council), indemnify and hold harmless Tenant and its officers, agents, departments, officials, and employees ("City Indemnified Parties") from and against all claims, losses, costs,

damages, injuries (including, without limitation injury to or death of an employee of Landlord or Landlord's agents and Affiliates), expense and liability of every kind, nature and description (including without limitation, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent arising out of, pertain to, or relate to, directly or indirectly, in whole or in part, gross negligence or willful misconduct of Landlord or Landlord's agents, any contractor, subcontractor, anyone directly or indirectly employed by them, or anyone they control in connection with Landlord's performance of the Tenant Work. Landlord's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the negligence or willful misconduct of the City Indemnified Parties.

(e) The Parties' obligations and liabilities under this Section 7.3 shall survive expiration or earlier termination of this Lease.

#### **7.4 TENANT'S INSURANCE.**

(a) Tenant covenants and agrees to provide at its expense, as of the Effective Date, and to keep in force at all times, the following insurance on the Premises (herein called the "Tenant Required Insurance"):

(i) Property insurance insuring the Building including the Tenant Work for all risks of direct physical loss and for perils covered by the causes of loss-special form (all risk, extended coverage including risks from named storms and terrorism) and in addition, ordinance or law coverage and boiler and machinery coverage (if applicable) and earthquake insurance in an amount acceptable to Landlord if the Building is located in seismic zones 3 or 4 and has probable maximum loss greater than 20%. Such insurance shall be written on a replacement cost basis with an agreed value equal to the full replacement cost of the Building including the Tenant Work. The policy shall name Beneficiary as "mortgagee" and "loss payee," provided that so long as no Event of Default by Landlord exists hereunder, proceeds of such property insurance shall be made available to Landlord for the purpose of restoring the Premises.

(ii) Commercial general liability insurance naming Landlord (and each of its shareholders, members, partners and beneficiaries, as applicable and specified in writing by Landlord), Landlord's property manager and any Beneficiary as additional insureds against any and all claims as are customarily covered under a standard policy form routinely accepted by institutional owners and mortgagees of properties similar to the Premises, for bodily injury, death and property damage occurring in or about the Premises and on adjoining streets and sidewalks. Such insurance shall have a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence with a minimum Five Million Dollar (\$5,000,000) aggregate limit and excess umbrella liability insurance in the amount of at least Ten Million Dollars (\$10,000,000). Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance, if any, shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this Lease.



(iii) Workers' compensation insurance in accordance with statutory law and employers' liability insurance with a limit of not less than One Million Dollars (\$1,000,000) per occurrence or the minimum amounts required by law, if greater than One Million Dollars (\$1,000,000).

(iv) Flood insurance if any part of the Building is located in an area identified by the Federal Emergency Management Agency as an area having special flood and mudslide hazards in the maximum available amount under the National Flood Insurance Act of 1968 (and any successor act thereto) and otherwise meeting the requirements of the Federal Insurance Administration.

(b) The policies required to be maintained by Tenant shall conform a rating acceptable to the Securities Valuation Office of the National Association of Insurance Commissioners, and (ii) a general policy rating of A or better and a financial class of X or better by A.M. Best Company, Inc. Insurers shall be authorized to do business in the state in which the Premises are located and domiciled in the USA. Except as may be otherwise specified in subsection 7.4(a), any deductible amounts under any insurance policies required hereunder shall not exceed the deductible amounts under insurance policies carried by Tenant or its Affiliates for similar properties. Certificates of insurance (as to property insurance, using Accord Form No. 28 (or the equivalent thereof), and as to liability insurance, using Accord Form 25-S (or the equivalent thereof)), or policies shall be delivered to Landlord and each Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) by the Rent Commencement Date and thereafter upon request prior to the expiration date of each required policy. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord and any Beneficiary as required by this Lease. Each policy of insurance shall provide notification to Landlord and any first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) at least ten (10) days prior to any non-renewal, cancellation or modification to reduce the insurance coverage, to the extent available in the State of California. Insurance claims by reason of damage to or destruction of any portion of the Premises shall be adjusted by Tenant unless such claim is in excess of \$250,000, in which case each such claim shall be adjusted by Landlord along with Tenant's insurance representative. Tenant shall, promptly after any damage or destruction to the Premises, advise Landlord and any first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) of such occurrence and consult with Landlord and any first Beneficiary throughout the process of adjusting any such claim; provided that Landlord shall adjust any claim in excess of \$250,000 along with Tenant's insurance representative. Landlord shall not be required to prosecute any claim against, or to contest any settlement proposed by, an insurer. All of Tenant's policies shall be endorsed to be primary to all insurance available to the Landlord and its officers, directors, management company and Beneficiaries, and any insurance maintained by the Landlord and its officers, directors, management company and Beneficiaries shall be excess, secondary and noncontributing.

(c) Provided that the tenant under this Lease is the initially named Tenant under this Lease, then such tenant shall have the right to self-insure for the above required insurance, in which case Tenant shall provide self-insurance certifications confirming the same, and Tenant shall pay any amounts due in lieu of insurance proceeds or any deductibles because of self-

insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease. If an event or claim occurs for which a defense and/or coverage would have been available from the insurance company issuing insurance for which Tenant is required to maintain pursuant to Section 7.4 and Tenant has self-insured with respect to such required insurance, Tenant shall, to the extent required under this Lease, (i) undertake the defense of any such claim, including a defense of Landlord at Tenant's sole cost and expense; and (ii) use its own funds to pay any claim or replace any property or otherwise provide the funding that would have been available from insurance proceeds but for such election by Tenant to self-insure.

(d) In the event Tenant does not purchase the insurance (or maintain the equivalent self insurance retentions) required by this Lease, or fails to keep the same in full force and effect or fails to provide Landlord with evidence of the insurance required, Tenant shall repay to Landlord, as Additional Rent, the amount so paid promptly upon demand together with interest at the Default Rate on such payment from the date expended until the date reimbursed. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as Additional Rent, any and all expenses (including reasonable attorneys' fees) and damages which Landlord may sustain by reason of the failure of Tenant to obtain and maintain such insurance. In the event that Tenant shall fail to provide insurance that complies with the requirements, then Tenant shall be deemed to have elected to self-insure the risks to which such failure relates.

**7.5 LANDLORD'S INSURANCE.** Landlord, at Tenant's sole cost and expense, agrees to provide on or before the Effective Date, and to keep in force at all times, the following insurance on the Premises (herein called the "Landlord Required Insurance") to the extent such insurance is available on a commercially reasonable basis and at a commercially reasonable cost:

(a) 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 will cover liability arising from any and all bodily injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$5 million. There will 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 will be outside the limits of the policy.

(b) Additional Insured. The Landlord Required Insurance policy shall include, as an additional insured, the Tenant and its respective elected officials, officers, employees, agents, and representatives.

(c) If Landlord fails to provide the Landlord Required Insurance after the Effective Date, and any notice and cure periods provided for in Section 11.4, Tenant may withhold Rent notwithstanding anything contrary in Section 11.5.

## **ARTICLE VIII CONDEMNATION**

**8.1 ASSIGNMENT OF AWARD.** Subject to the rights of Tenant set forth in this Article 8 and the rights of Landlord set forth in Section 9.1, Tenant hereby irrevocably assigns to Landlord any award or payment to which Tenant may be or become entitled with respect to the taking of the Premises or any part thereof, by Condemnation or other eminent domain proceedings

pursuant to any law, general or special, or by reason of the temporary taking of any interest in or the use or occupancy of the Premises or any part thereof, by any governmental authority, civil or military, whether the same shall be paid or payable in respect of Tenant's leasehold interest hereunder or otherwise; provided, however, the foregoing assignment shall not apply to any separate award which Tenant may be entitled to claim against the condemnor with respect to Tenant's relocation expenses, the value of Tenant's personal property, and the unamortized value of Tenant Work paid by Tenant (provided that no amortization of the value of the Tenant Work shall apply in the event that the Condemnation occurs within five (5) years after the Substantial Completion Date), so long as such separate award does not reduce the Net Award to which Landlord is otherwise entitled. Landlord and any first Beneficiary shall be entitled to participate in any such proceeding.

**8.2 CONDEMNATION; MATERIAL TEMPORARY TAKING; NON-TERMINATION TAKING.** For purposes of this Lease, (i) "Condemnation" shall mean a governmental taking of all or any material portion of the Premises; and (ii) a "Material Temporary Taking" shall mean a temporary governmental taking of all or any material part of the Premises for a period in excess of twenty-four (24) consecutive months or a period extending beyond the end of the Term. If during the Term (A) a portion of the Premises shall be taken by Condemnation or other eminent domain proceedings which taking does not result in a termination of this Lease pursuant to Article 9 or (B) the use or occupancy of the Premises or any part thereof shall be temporarily taken by any governmental authority and such temporary taking does not result in a termination of this Lease pursuant to Article 9 (a taking described in clause (A) or (B) being a "Non-Termination Taking"), then this Lease shall continue in full force and effect with proportional abatement of Rent for the portion of the Premises that is not usable by Tenant during the time such portion of the Premises is not usable by Tenant. Landlord shall, promptly after any Non-Termination Taking (including after the cessation of any temporary taking), at its expense, repair any damage caused thereby so that, thereafter, the Premises shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such taking. In the event of any Non-Termination Taking, Beneficiary shall make the Net Award available to Landlord to make such repair. Any Net Award remaining after such repairs have been made shall be delivered to Landlord, less any costs incurred by Beneficiary in connection therewith. If the cost of any repairs required to be made by Landlord pursuant to this Section 8.2 shall exceed the amount of the Net Award, the deficiency shall be paid by Landlord.

**8.3 NET AWARD.** For the purposes of this Lease the term "Net Award" shall mean: (i) all amounts payable as a result of any Condemnation or other eminent domain or taking proceeding whether temporary or permanent to Landlord and Tenant as tenant under this Lease, less all expenses for such proceeding not otherwise paid by Tenant in the collection of such amounts (including without limitation, all costs and expenses (including reasonable counsel fees and expenses) incurred by Landlord and a first Beneficiary in participating in any Condemnation or eminent domain or taking proceeding whether temporary or permanent) plus (ii) all amounts payable pursuant to any agreement with any condemning authority (which agreement shall be deemed to be a taking) which has been made in settlement of or under threat of any Condemnation or other eminent domain or temporary taking proceeding affecting the Premises, less all expenses incurred as a result thereof not otherwise paid by Tenant in the collection of such amounts (including without limitation, all costs and expenses (including reasonable counsel fees and

expenses) incurred by Landlord in participating in any Condemnation or eminent domain or taking proceeding whether temporary or permanent).

**ARTICLE IX  
TERMINATION OF LEASE FOLLOWING MAJOR CONDEMNATION OR  
MATERIAL TEMPORARY TAKING**

**9.1 TERMINATION RIGHT.**

(a) If a (1) Condemnation occurs and, in Tenant's good faith judgment, renders the Premises unsuitable for restoration for continued use of the Premises for the uses allowed under Section 3.1, or (2) a Material Temporary Taking affects more than twenty-five percent (25%) of the square footage of the Premises, then Tenant may, at its option, exercisable not later than ninety (90) days after the date of such Condemnation, deliver to Landlord and the first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices), if any, notice (a "Termination Notice") of its intention to terminate this Lease on the next rental payment date that occurs not less than sixty (60) days after the delivery of such notice (the "Termination Date"), which Termination Notice will not be effective unless Tenant delivers to Landlord (simultaneously with delivery of the Termination Notice) the following: a writing signed by of an authorized officer of Tenant describing the event giving rise to such termination.

(b) In the case of a Material Temporary Taking, Landlord and Tenant each waive the provisions of California Code of Civil Procedure Section 1265.130 and any other applicable existing or future applicable Law allowing either party to petition for a termination of this Lease upon a partial taking of the Premises.

**ARTICLE X  
ASSIGNMENT OR SUBLEASE; RIGHTS OF MORTGAGEES**

**10.1 LANDLORD ASSIGNMENT.**

(a) Landlord shall be free to transfer its fee interest in the Premises or any part thereof or interest therein (and Landlord's interest in this Lease), subject, however, to the terms of this Section 10.1. Landlord shall be released from the responsibility for the performance of any liabilities and obligations that shall arise under the terms, covenants and conditions of this Lease subsequent to the date of any such transfer; provided that the agreement effecting the transfer of this Lease shall evidence the fact that such assignee or transferee has assumed full and complete liability for all future obligations and responsibilities of Landlord (subject to the terms and conditions of this Lease), which will arise under, out of and/or in connection with this Lease from and after the effective date of such assignment or transfer. In the event that Landlord transfers its interest in this Lease, Tenant agrees to attorn to such assignee or transferee with respect to Tenant's obligations under this Lease. Tenant shall, upon Landlord's or such transferee's written request, enter into an attornment agreement providing for such attornment. There shall be no assignment of this Lease by Landlord on or before the Substantial Completion Date.

(b) Tenant's Right of First Refusal to Purchase the Premises. Subject to the rights set forth in subsection (a) above and provided that Tenant is not in default under the Lease,

in the event Landlord desires to sell the Premises, or any portion of its interest in the Premises, and shall have received an acceptable bona fide offer to purchase the Premises or such interest that it desires to accept (each, an "Offer"), Landlord shall give written notice to Tenant of Landlord's intent to sell ("Notice of Intent to Sell"), together with a copy of the Offer setting forth all of the terms of the proposed purchase and identifying the prospective purchaser. Within thirty (30) days of Tenant's receipt of the Notice of Intent to Sell (the "Response Period"), Tenant shall then have an option to purchase the Premises or such interest on the same terms and conditions as set forth in the Offer by paying Landlord in cash at closing the full amount of the purchase price of the Premises or Landlord's interest in the Premises, notwithstanding any noncash terms set forth in the Offer, provided that if the noncash terms and conditions of the Offer provide for an exchange of like kind real property as payment of all or a portion of the purchase price in the Offer, then the value of such real property for purposes of determining a total dollar amount Tenant may pay in cash at closing shall be the fair market value of such real property as determined by an appraisal prepared by an appraiser selected mutually by the Parties and licensed by the California Bureau of Real Estate Appraisers. If the City Council has not approved such purchase within ninety (90) days after Tenant's exercise of its purchase option, Tenant shall be deemed to have declined to purchase the Premises. If Tenant declines to purchase or is deemed to have declined to purchase the Premises, Landlord may sell, transfer or convey the Premises to any third party, provided that Landlord provide Tenant with prior written notice of the identity of such third party (a "Buyer Notice"), and provided further, that the purchase price offered to a third party is not less than 95% of the purchase price set forth in the Offer, and the other terms and conditions of the sale are otherwise not materially more favorable than those specified in the Offer. Tenant shall, within ten (10) business days of its receipt of a Buyer Notice, have the right to deliver written notice to Landlord that the proposed third party buyer is a Person with whom Tenant is prohibited by Law from conducting business or the City has current pending or prior litigation against such Person (a "Disapproval Notice"), in which event, Landlord shall be prohibited from selling the Premises to such third party. If Tenant fails to deliver a Disapproval Notice to Landlord within such ten (10) business day period, Tenant shall be deemed to have approved such third party buyer and Tenant shall have no further right to object to or disapprove of the sale of the Premises to such third party buyer pursuant to this Section 10.1(b). If the purchase price offered to a third party is less than 95% of the purchase price in the Offer and/or the other terms and conditions of the sale are materially more favorable than those specified in the Offer, Landlord before accepting any third party offer to purchase the Premises shall again offer the Premises, in writing, to Tenant upon the terms offered to the third party (the "Revised Offer"), and Tenant shall have the right to accept or reject the Revised Offer following the same process and time periods as applied to the Offer. Tenant shall, upon request, deliver to Landlord an acknowledgment of Tenant's election (or deemed election) not to exercise its right of first refusal to purchase the Premises and Landlord's right to sell the Premises or interest therein pursuant to this Section. Tenant's right of first refusal set forth in this Section 10.1(b) is personal to Tenant and shall automatically terminate upon any assignment of this Lease by Tenant, other than to a permitted leasehold lender. Notwithstanding anything to the contrary contained herein, the terms of this Section 10.1(b) shall not apply to (i) any bona fide mortgage, deed of trust or granting of a security interest in the Premises by Landlord, and (ii) any foreclosure or deed in lieu of foreclosure under a mortgage, deed of trust or other security interest described in clause "(i)" above.

(c) Flip Fee. In the event that the Landlord sells the Premises, or any portion of its interest in the Premises, before the sixth (6th) anniversary of the Rent Commencement Date,

Landlord shall pay Tenant fourteen percent (14%) of the Profit that inures to the benefit of Landlord or Landlord Parties (the "Flip Fee"). The Flip Fee is determined by multiplying the Profit by 0.14 (Profit  $\times$  0.14 = Flip Fee). The term "Profit", as it is used in this Section 10.1(c), means, and is determined by calculating, the difference between the Sales Price for the Premises and Thirteen Million Two Hundred Fifty Thousand Dollars (\$13,250,000) (Sales Price – \$13,250,000 = Profit). The term "Sales Price", as it is used in this Section 10.1(c), means the amount of consideration that receives from the purchaser of the Premises at the closing of the sale of the Premises. If the consideration paid by the purchaser includes an exchange of like kind real property as payment of all or a portion of the Sales Price, then the value of such real property for purposes of determining a total dollar amount of the Sales Price shall be the fair market value of such real property as determined by an appraisal prepared by an appraiser selected mutually by the Parties and licensed by the California Bureau of Real Estate Appraisers.

**10.2 TENANT ASSIGNMENT OR SUBLEASE.** Without first obtaining Landlord's consent, which shall be granted or withheld in Landlord's reasonable discretion, Tenant shall not assign, in whole or in part, this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise (including without limitation by transfer of a direct or indirect controlling interest of stock, partnership interests or other ownership interests, merger, or dissolution, which transfer of majority interest of stock, partnership interests or other ownership interests, merger or dissolution shall be deemed an assignment) or mortgage, encumber or pledge the same, or sublet the Premises, in whole or in part, or allow all or a portion of the Premises to be used by a third party (except as may be expressly permitted by Section 10.3 below). For purposes of this Lease, a transfer or assignment will include a sale of a controlling interest of the stock of Tenant. In no event shall any such assignment, transfer or sublease ever release Tenant, any assignor, or transferor from any obligation or liability hereunder.

**10.3 PERMITTED SUBLEASE.** Without Landlord's consent but only after at least thirty (30) days' prior written notice to Landlord, Tenant shall be entitled to sublease all or a portion of the Premises. No sublease will release Tenant from any obligation or liability hereunder. No sublease will be effective unless Tenant provides Landlord a fully executed original of the applicable sublease on a form reasonably acceptable to Landlord. So long as Tenant remains liable under this Lease, Tenant's subtenants shall have the same rights to further sublease the Premises, or the applicable portion thereof, as Tenant.

**10.4 CONDITIONS OF ASSIGNMENT.** If Tenant desires to obtain Landlord's consent to an assignment or transfer of this Lease pursuant to Section 10.2, it shall so notify Landlord at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Tenant agrees to pay to Landlord within fifteen (15) days of demand all reasonable legal and accountant fees incurred by Landlord and Beneficiary in connection with Tenant's request. Tenant shall provide Landlord with a copy of the proposed assignment and such information as Landlord reasonably requests concerning the proposed assignee to allow Landlord to make an informed judgment as to the financial condition, reputation, operations and general desirability of the proposed assignee.

**10.5 RIGHTS OF MORTGAGEE AND OTHERS.** Landlord shall be free to grant one or more mortgages, deeds of trust or like security interest in Landlord's interest in the Premises and this Lease (individually a "Security Instrument") to one or more mortgagees, deed of trust

trustees or other grantees (individually, together with each holder of any note secured thereby, a “Beneficiary”) on the condition that either (a) this Lease shall be superior to the Security Instrument, or (b) if this Lease is to be subordinate to the Security Instrument, Tenant receives from Beneficiary a subordination, non-disturbance and attornment agreement in a commercially reasonable form (an “SNDA”). Tenant will execute (in recordable form) and deliver to Landlord and Beneficiary an SNDA in such agreed upon form within twenty (20) days of demand. Tenant agrees to attorn, at the request of any Beneficiary, to such Beneficiary or other transferee upon a transfer of title by reason of foreclosure of such Security Instrument or deed in lieu of foreclosure thereof, in accordance with the provisions of the SNDA. In connection with any proposed transfer, pledge or mortgage of Landlord’s fee interest in the Premises or any portion of the ownership interests in Landlord, Tenant shall, within twenty (20) days after Landlord’s written request therefor, provide Landlord and the proposed transferee and/or Beneficiary with confirmation in writing that, upon the execution and delivery of the required SNDA, Tenant shall recognize such transferee and Beneficiary as such in the event of the consummation of the transaction described in such notice.

**10.6 ESTOPPEL CERTIFICATES.** Landlord and Tenant shall each furnish, from time to time, within twenty (20) business days after receipt of a request from the Landlord or Beneficiary, or Tenant, as the case may be, an estoppel, in the case of Tenant, to the extent accurate, in substantially the form attached hereto as **Exhibit C** or, in the case of both parties, a commercially reasonable form certifying, to the extent accurate (to Landlord, Beneficiary, any purchaser and any other party required by Landlord or to Tenant) the following: (a) that Tenant is in possession of the Premises; (b) the Premises are acceptable; (c) this Lease is in full force and effect; (d) this Lease is unmodified; (e) Tenant claims no present charge, lien, or claim of offset against rent; (f) the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; (g) there is no existing default by reason of some act or omission by the other party; and (h) such other matters as may be reasonably required by the requesting party. Landlord acknowledges that an estoppel certificate by Landlord may be required by Tenant to comply with securities or regulatory requirements and may be relied upon by a prospective assignee of this Lease or a subtenant of all or any portion of the Premises.

## **ARTICLE XI DEFAULT AND REMEDIES**

**11.1 DEFAULT BY TENANT.** The following shall be deemed to be Events of Default by Tenant under this Lease: (a) Tenant shall fail to pay when due any installment of Base Rent or or recurring Additional Rent and the continuation of such failure for five (5) business days after the due date thereof or Tenant shall fail to pay when due any non-recurring Additional Rent and the continuation of such failure for ten (10) Business Days following Landlord’s written notice to Tenant; (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of Rent, and the failure is not cured within thirty (30) days after written notice to Tenant; provided, however, that no Event of Default shall occur if the failure is not susceptible to cure within thirty (30) days so long as Tenant promptly commences the cure within such thirty (30) day period and diligently and continuously pursues it to completion as soon as reasonably possible, such additional period not to exceed one hundred twenty (120) days; (c) Tenant shall fail to have in force at all times the insurance policies required by Section 7.4 hereof; (d) Tenant shall have “abandoned” the Premises (as confirmed by Landlord under the procedures described in

California Civil Code section 1951.35) or (e) Tenant shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due; or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations; or Tenant shall make a transfer to defraud creditors or shall make an assignment for the benefit of creditors.

**11.2 LANDLORD WAIVER OF RENT ACCELERATION.** Notwithstanding anything to the contrary in this Lease, Landlord waives (a) all rights to accelerate Tenant's payment of Rent under this Lease for any time period after the later of the date Landlord terminates this Lease and the date Tenant vacates the Premises and (b) all rights under California Civil Code section 1951.2(a) or otherwise, to collect Rent for any time period after the later of the date Landlord terminates this Lease and the date Tenant vacates the Premises.

**11.3 REMEDIES FOR TENANT'S DEFAULT.** Subject to Section 11.2, upon the occurrence of an Event of Default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(ii) If Tenant vacates the Premises after the date of termination of this Lease, the worth at the time of award of the amount by which (1) the unpaid Rent which would have been earned after termination until the earlier of (A) the date Tenant vacates the Premises, and (B) the time of award, exceeds (2) the amount of such rental loss that Tenant proves could have been reasonably avoided; plus any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, but excluding the collection or acceleration of unpaid Rent accruing or which would have accrued after the later of (y) the date of the termination of this Lease and (z) the date Tenant vacates the Premises; and

(iii) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, but excluding the collection or acceleration of unpaid Rent accruing or which would have accrued after the later of (A) the date of the termination of this Lease and (B) the date Tenant vacates the Premises.



The term “rent” as used in this Section 11.3 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 11.3(a)(i) and (ii), the “worth at the time of award” shall be computed by allowing interest at the Default Rate set forth in Section 2.2, but in no case greater than the maximum amount of such interest permitted by law.

(b) Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(c) Landlord may, but shall not be obligated to, make any such payment or perform or otherwise cure any such obligation, provision, covenant or condition on Tenant’s part to be observed or performed (and may enter the Premises for such purposes), all at Tenant’s expense, without waiving its rights based upon any Event of Default of Tenant and without releasing Tenant from any obligations under this Lease. In the event of Tenant’s failure to perform any of its obligations or covenants under this Lease, and such failure to perform poses a material risk of injury or harm to persons or damage to or loss of property, then Landlord shall have the right to cure or otherwise perform such covenant or obligation at any time after such failure to perform by Tenant, whether or not any such Notice or cure period set forth in Section 11.1 above has expired. Any such actions undertaken by Landlord pursuant to the foregoing provisions of this Paragraph 11.3(c) shall not be deemed a waiver of Landlord’s rights and remedies as a result of Tenant’s failure to perform and shall not release Tenant from any of its obligations under this Lease. Tenant shall pay to Landlord, within thirty (30) days after delivery by Landlord to Tenant of statements therefor, sums equal to expenditures reasonably made and obligations reasonably incurred by Landlord in connection with Landlord's performance or cure of any of Tenant's obligations pursuant to the provisions of this Paragraph 11.3(c).

(d) Subleases of Tenant. If Landlord elects to terminate this Lease on account of any Event of Default by Tenant, as set forth in this section 11.3, following any such Event of Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord’s sole and absolute discretion, succeed to Tenant’s interest in such subleases, licenses, concessions or arrangements. In the event of Landlord’s election to succeed to Tenant’s interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of Notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

**11.4 DEFAULT BY LANDLORD.** Landlord shall not be in default hereunder unless: (a) Landlord shall fail to pay when due any amount required pursuant to this Lease and the continuation of such failure for five (5) Business Days following Tenant’s written notice thereof to Landlord; or (b) Landlord shall fail to comply with any term, provision or covenant of this Lease, and the failure is not cured within thirty (30) days after written notice to Landlord; provided, however, that no default shall occur if the failure is not susceptible to cure within thirty (30) days so long as Landlord promptly commences the cure within such thirty (30) day period and diligently

and continuously pursues it to completion as soon as reasonably possible. If Landlord has not completed, or caused to be completed, the construction of the Tenant Work by within thirty (30) full calendar months after the Work Date due to Landlord Delay (as such term is to be defined in **Exhibit B**, along with the term Tenant Delay), then such failure shall not be a default by Landlord under the terms of this Lease, however, Tenant shall thereafter have the right to immediately terminate this Lease by delivery of written notice to Landlord at any time prior to the Substantial Completion Date and if Tenant exercises this right, then Landlord shall promptly return all sums Tenant has paid to Landlord pursuant to the terms of **Exhibit B** to the extent not otherwise previously reimbursed to Tenant by Landlord or any of Landlord's contractors or construction managers.

**11.5 REMEDIES FOR LANDLORD'S DEFAULT.** During the continuation of any uncured default (beyond all applicable notice and cure periods) of Landlord, Tenant shall be entitled to all rights and remedies available to Tenant at law or in equity, except Tenant shall not be entitled to withhold, offset or abate Rent or terminate this Lease except as otherwise expressly set forth herein. Notwithstanding anything in this Lease to the contrary, in no event shall Landlord be liable to Tenant or City Indemnified Parties for any consequential, special or punitive damages of any nature, whether resulting from a default by Landlord or otherwise.

**11.6 MITIGATION.** Following any termination of Tenant's right to possession only, or termination of this Lease, Landlord agrees to use reasonable efforts to relet the Premises at fair market rental rates and to otherwise mitigate any damages arising out of an Event of Default on the part of Tenant; provided, however, that (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises Landlord or Landlord's affiliates has available for leasing in other properties owned or managed by Landlord or Landlord's affiliates; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space within a building comparable to the Building; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider. In no event shall Landlord be required to enter into a lease for less than all of the Premises or for a rental rate that is less than the fair market rental rate, as reasonably determined by Landlord.

## **ARTICLE XII HAZARDOUS MATERIALS**

**12.1 LANDLORD REMEDIATION.** Landlord shall retain the responsibility and pay for any investigations and remediation measures required of Landlord by governmental entities (as to Tenant, when Tenant is acting in its governmental capacity exercising its police power and not when it is acting in its propriety capacity as tenant of the Property) having jurisdiction with respect to the existence of Hazardous Materials (as defined below) on the Premises prior to the Substantial Completion Date, including such remediation measures, if any, required under applicable Law to complete the Tenant Work and render the Premises fit for the uses allowed under Section 3.1, including, but not limited to, daily human habitation. Without any obligation to incur associated out of pocket expenses, Tenant shall cooperate fully in any such activities at the request of Landlord, including allowing Landlord and Landlord's agents to have reasonable access to the

Premises at reasonable times in order to carry out Landlord's investigative and remedial responsibilities.

**12.2 INDEMNITY.** Subject to Section 12.1 above, after the Substantial Completion Date, Tenant shall:

(a) Not cause, suffer or permit any Hazardous Material, excepting such Hazardous Material (i) revealed in the Phase I Environmental Site Assessment for the Property dated March 26, 2024, or the Phase II Environmental Site Assessment for the Property dated March 3, 2022 (collectively, the "Environmental Site Assessment"), to exist on or discharged from or be released at the Premises (except for any underground discharge or release originating from property other than the Property and not caused by Tenant) in violation of Environmental Laws, and shall promptly: (A) remove, remediate and dispose of any such Hazardous Material in compliance with all Environmental Laws, (B) remove any charge or lien upon any of the Premises relating thereto, and (C) defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord, any Beneficiary and their respective officers, directors, trustees, members, partners, shareholders, beneficiaries, employees and agents (herein collectively called "Indemnified Parties" and individually an "Indemnified Party") from any and all claims, expenses, liability, loss or damage, including all reasonable attorneys' fees and expenses, resulting from any Hazardous Material that is introduced or discharged from or is released at the Premises by Tenant, except for any underground discharge or release originating from property other than the Property and not caused by Tenant in violation of Environmental Laws.

(b) Notify Landlord and any Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) in writing of any Hazardous Material (other than (1) Hazardous Material stored or transported to or from the Premises in the ordinary course of Tenant's or Tenant's sublessee's business and in compliance with all Environmental Laws, and (2) Hazardous Material revealed in the Environmental Site Assessment) that exists on or is discharged from or onto or brought onto or released at the Premises in violation of Environmental Laws within five (5) Business Days after Tenant first has knowledge of such event.

(c) Defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless each Indemnified Party from and against any and all claims, expenses, liability, loss or damage (including all reasonable attorneys' fees and expenses) resulting from the failure to comply with Environmental Laws. Tenant shall give Landlord and each Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) prompt notice of (A) any proceeding or inquiry of which Tenant becomes aware during the Term by any party with respect to the presence of any Hazardous Material on, under, from or about the Premises, (B) all claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Material of which Tenant becomes aware, and (C) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that Tenant reasonably determines is likely to cause the Premises to be subject to any investigation or cleanup pursuant to any Environmental Law. Tenant shall permit Landlord and any Beneficiary to join and participate in, as a party if it so elects, any legal proceedings or action initiated with respect to the Premises in connection with any Environmental Law or Hazardous Material.

(d) Not change its use of the Premises or permit the use of the Premises to be changed to any purpose other than the intended use as set out in Section 3.1 of this Lease, if any such change of use or operations would (A) increase the risk of any Hazardous Material being brought onto or released or discharged at or from the Premises in violation of Environmental Laws, (B) result in Tenant or Landlord being obligated to perform any remediation of any Hazardous Material or (C) result in the rescinding or modification of any waiver or stand-still agreement as to environmental compliance matters granted by any governmental agency.

**12.3 ARTICLE 12 DEFINITIONS.** For purposes of this Lease, the following terms shall have the following meanings: (1) “Hazardous Material” means any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Environmental Laws; and (2) “Environmental Laws” means any statute, law, ordinance, rule or regulation of any local, county, state or federal authority having jurisdiction over the Premises or any portion thereof or its use, which pertains to environmental, health or safety matters and/or the regulation of any hazardous or toxic materials, substance or waste, including but not limited to: (a) the Federal Water Pollution Control Act (33 U.S.C. §1317 *et seq.*) as amended; (b) the Federal Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*) as amended; (c) the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 *et seq.*) as amended; (d) the Toxic Substance Control Act (15 U.S.C. §2601 *et seq.*), as amended; (e) the Clean Air Act (42, U.S. §7401 *et seq.*), as amended, and (f) the requirements of the Division 20 of the California Health and Safety Code; the California Water Code, section 13000 *et seq.*, and any other governmental entity having jurisdiction over the Premises. Notwithstanding the foregoing, Hazardous Materials shall not include de minimis quantities of materials typically associated with the use of portions of the Premises for driving and parking motor vehicles and such amounts commonly and lawfully stored for use in the normal maintenance and operation of the Premises for its intended purpose and in compliance with Environmental Laws.

**12.4 FURTHER INVESTIGATIONS.** Upon Landlord’s or any first Beneficiary’s request when Landlord or a first Beneficiary, based upon documentary evidence submitted to Tenant, has reasonable grounds to believe that (A) Hazardous Material has been released, stored or disposed on or around the Premises during the Term in violation of Environmental Laws (other than as permitted under this Lease and those Hazardous Materials revealed in the Environmental Site Assessments) or (B) the Premises may be in material violation of Environmental Laws, and (ii) not more than fifteen (15) months and not less than twelve (12) months prior to the Expiration Date and upon the termination of this Lease, Tenant shall allow Landlord, at Landlord’s sole cost, to perform a current inspection or audit of the Premises by a hydrogeologist or environmental engineer or other appropriate consultant approved by Landlord regarding the presence or absence of Hazardous Material at the Premises, including the presence or absence of friable asbestos or substances containing asbestos at the Premises. Tenant shall promptly deliver to Landlord copies of all monitoring results and environmental inspections and reports that Tenant performs or receives with respect to Hazardous Material at the Premises after the Substantial Completion Date. The obligations of Tenant under this Article 12 shall survive the expiration or earlier termination of this Lease.

**ARTICLE XIII  
MISCELLANEOUS**

**13.1 WAIVER.** Failure of either party to declare a default immediately upon its occurrence, or delay in taking any action in connection with a default, shall not constitute a waiver of the default, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more of the remedies set forth in Article 11 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy constitute forfeiture or waiver of any rent or damages accruing to a party by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by either party to enforce one or more of the remedies provided upon a default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. No agreement to accept a surrender of the Premises and no act or omission by Landlord or Landlord's agents during the Term shall constitute an acceptance or surrender of the Premises or a termination of this Lease unless made in writing and signed by Landlord. No re-entry of the Premises by Landlord shall constitute an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. No custom or practice which may develop between the parties in connection with the terms of this Lease shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Lease, without written notice thereof to the other party.

**13.2 FORCE MAJEURE.** Except as set forth in this Section, Landlord and Tenant shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease when prevented from so doing by Force Majeure.

**13.3 ATTORNEYS' FEES.** If either party commences an action against the other arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit, whether in a mediation or arbitration proceeding, at trial, on appeal, or in a bankruptcy proceeding. All references herein to attorneys' fees and expenses shall be deemed to refer to reasonable attorneys' fees and expenses actually incurred.

**13.4 SUCCESSORS.** This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns, subject, however, to Article 10 of this Lease. It is covenanted and agreed that should Landlord's interest in the Premises cease to exist for any reason during the Term of this Lease, then notwithstanding the happening of such event, this Lease nevertheless shall remain unimpaired and in full force and effect and Tenant hereunder agrees to attorn to the then owner of the Premises, subject to Article 10 of this Lease.

**13.5 RENT TAX.** If applicable in the jurisdiction where the Premises are situated, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes resulting from Tenant's Rent payments or use of the Premises, if any, levied or imposed by any city, state or county or other governmental body having authority, such payments to be in addition to all other

payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment shall be paid in accordance with applicable Law.

**13.6 CAPTIONS.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any section.

**13.7 NOTICE.** All rent and other payments required to be made by Tenant shall be payable to Landlord pursuant to Section 2.1. All payments required to be made by Landlord to Tenant shall be payable to Tenant at the address set forth in Paragraph 7 of the Summary. Any notice, demand or document required or permitted to be delivered by the terms of this Lease shall be written in the English language and shall be deemed to be delivered when received or refused and may be personally delivered, sent by a recognized overnight delivery service or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Landlord at the address set forth in Paragraph 6 of the Summary and addressed to Tenant at the address set forth in Paragraph 7 of the Summary. Either party may by notice to the other specify a different address for payments or for delivery of notices.

**13.8 SUBMISSION OF LEASE.** The negotiation and submission of this Lease to Tenant for signature does not constitute an offer to lease to Tenant or a reservation of space or an option to lease. Neither Landlord nor Tenant shall be bound until both parties have executed and delivered such Lease to the other party and any execution of this Lease by one party may be revoked by such party until such time as the other party fully executes and delivers such Lease to the party first executing such Lease. This Lease may be executed in counterparts and each counterpart shall be deemed an original. In addition, this Lease may be executed and transmitted electronically by pdf. or DocuSign, which shall be binding on the parties.

**13.9 AUTHORITY.** Landlord and Tenant each represents that the individual executing this Lease on behalf of Landlord or Tenant, as the case may be, is authorized to do so, and that the execution and delivery of this Lease has been authorized by all necessary corporate or partnership action. Landlord and Tenant agree to provide the other upon request reasonable evidence confirming the existence of such authority.

**13.10 SEVERABILITY.** If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by Laws.

**13.11 LANDLORD'S LIABILITY.** If Landlord shall be in default under this Lease and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Property and/or the Premises as the same may then be encumbered and the proceeds thereof (including the net rental, sales and financing proceeds) and neither Landlord nor any person or entity comprising Landlord shall be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord nor any person or entity comprising Landlord other than its interest in the Property and/or the Premises (and such proceeds) as herein expressly provided. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any

officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable hereunder.

**13.12 NO BROKER CLAIMS.** Landlord and Tenant represent that no broker has acted as broker with respect to the Premises. Landlord and Tenant warrant and represent to the other that the party making said warranty and representation has not dealt with any broker, agent or finder. In connection with this Lease, and, subject to the default and remedies provisions of Article 11 of this Lease, Landlord and Tenant covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost or expense (including but not limited to reasonable attorney's fees and expenses and court costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder, claiming by, through or under the indemnifying party, whether or not such claim is meritorious. Such obligations shall survive the expiration or earlier termination of this Lease. Douglas Hamm, principal of Landlord, provides notice that he is acting solely as a principal herein, but is a licensed broker in the State of California under License 01754099.

**13.13 NO JOINT VENTURE.** Nothing contained in this Lease or any exhibits hereto shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or to create any relationship between them except the relationship of landlord and tenant.

**13.14 TIME OF ESSENCE.** Time is of the essence of this Lease. However, if a certain day stated for payment or performance of any obligation of Landlord or Tenant is a non-Business Day, the certain day shall be extended until the end of the next Business Day.

**13.15 JOINT AND SEVERAL LIABILITY.** If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

**13.16 REPRESENTATION AND WARRANTIES.** To induce Landlord and Tenant to enter into this Lease, Landlord and Tenant make the representations and warranties set forth in **Exhibit D** to this Lease. The representations and warranties of Tenant may be relied upon by any first Beneficiary as if such Beneficiary were a party to this Lease.

**13.17 LANDLORD EASEMENTS.** Tenant shall join in and subordinate this Lease to easements or reciprocal easement agreements (each a "Landlord Easement" and collectively "Landlord Easements") which are either (i) required for the construction of the Tenant Work, completion of Landlord's obligations hereunder and/or operation of the Premises or which (ii) (A) do not materially interfere with Tenant's use and operation of the Premises, (B) impose no material obligations on Tenant and (C) are otherwise reasonably acceptable to Tenant.

**13.18 NO LIGHT OR AIR EASEMENT.** Any diminution or shutting off of light or air by any structure which is now or hereafter erected on the Property or upon property adjacent to the Property shall not affect this Lease or impose any liability on Landlord.

**13.19 ENTIRE LEASE.** It is expressly agreed by Landlord and Tenant, as a material consideration for the execution of this Lease, that this Lease, with the specific references to written extrinsic documents, is the entire agreement of the parties; that there are, and were, no

representations, warranties, understandings, stipulations, agreements or promises pertaining to this Lease or the expressly mentioned written extrinsic documents not incorporated in writing in this Lease. This Lease may not be altered, waived, amended or extended except by an instrument in writing executed and delivered by Landlord and Tenant in the same manner as the execution and delivery of this Lease. Landlord and Tenant expressly agree that, other than warranties for the Tenant Work, there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose or of any other kind arising out of this Lease and there are no warranties which extend beyond those expressly set forth in this Lease.

**13.20 INTENT OF AGREEMENT.** This Lease is intended as, and shall constitute, an agreement of lease. Under no circumstances shall this Lease be regarded as an assignment of all of Landlord's interests in and to the Premises, except to the extent of any specific conditional right granted in this Lease to Tenant to purchase the Premises. Landlord and Tenant shall have the relationship between them of landlord and tenant, pursuant to the provisions of this Lease. Tenant and Landlord intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State thereof affecting Tenant or any collection actions relating thereto, the transactions evidenced by this Lease shall be regarded as a lease from Landlord to Tenant and shall not be regarded as a loan made by Landlord to Tenant secured by the Premises.

**13.21 EXHIBITS AND SUMMARY OF LEASE PROVISION.** The content of each and every exhibit which is referenced in this Lease is incorporated into this Lease as fully as if set forth in the body of this Lease. The content of each and every provision of the Summary which is referenced in this Lease is incorporated into this Lease as fully as if set forth in the body of this Lease.

**13.22 NO MERGER OF TITLE.** There shall be no merger of this Lease or the leasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the same person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises or any portion thereof.

**13.23 FINANCIAL STATEMENTS.** Tenant will not be obligated to provide any financial statements pursuant to this Section 13.23 if Tenant's financial statements are publicly available to Landlord and first Beneficiary without charge and such financial statements are audited at least annually by an independent certified public accountant of recognized national standing. Except as provided in the preceding sentence, within one hundred twenty (120) days after the end of each fiscal year of Tenant, Tenant will provide Landlord and first Beneficiary (of which Tenant received written notice of a mailing address for delivery of notices) duplicate copies of the financial statements (including balance sheet, income statement and cash flows statement) for such recently ended fiscal year, which must be prepared in accordance with generally accepted accounting principles and audited at least annually by an independent certified public accountants of recognized national standing in accordance with generally accepted auditing standards.

**13.25 CASP INSPECTION.** The Premises have not undergone an inspection by a Certified Access Specialist (CASP), and a disability access inspection certificate, as described in



subdivision (e) of Section 55.53 of the California Civil Code, has not been issued for the Premises. In accordance with Section 1938 of the California Civil Code, Tenant is advised of the following: “A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” Accordingly, the parties agree that Tenant shall have the right, but not the obligation, to have a CAsp inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. If Tenant elects to obtain a CAsp inspection, Tenant shall be responsible for the payment thereof and for the costs of any corrective work identified therein.

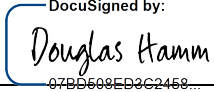
**13.26 ENERGY DISCLOSURE.** To the extent applicable, Tenant shall comply with the requirements to disclose certain information concerning the energy performance of the Building pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto.

**[SIGNATURE PAGE ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed, effective as of the date set forth below.

**LANDLORD**

KETTNER VINE CREATIVE HOUSE,  
LLC, a California limited liability company

By:  \_\_\_\_\_  
Printed Name: Douglas W. Hamm  
Its: Manager

**TENANT**

CITY OF SAN DIEGO, a California  
municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form on: \_\_\_\_\_.

MARA W. ELLIOTT  
City Attorney

By: \_\_\_\_\_  
Andrew J. Alfonso  
Deputy City Attorney

**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land referred to herein is situated in the City of San Diego, County of San Diego, State of California, and is described as follows:

PARCEL 1:

LOTS 1 TO 12 INCLUSIVE, IN BLOCK 156 OF MIDDLETOWN, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO THE PARTITION MAP THEREOF MADE BY J. E. JACKSON, ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAID SAN DIEGO COUNTY.

PARCEL 2:

LOTS 5 TO 8 INCLUSIVE, IN BLOCK 159 OF MIDDLETOWN, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO THE PARTITION MAP THEREOF MADE BY J. E. JACKSON, ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAID SAN DIEGO COUNTY.

EXCEPTING THEREFROM THOSE PORTIONS OF LOTS 7 AND 8 IN BLOCK 159 AS GRANTED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 2, 1964 AS DOCUMENT NO. 59552.

APNs: 451-690-14-00 (Lots 7 & 8 of Parcel 2)  
451-690-15-00 (Lot 5 of Parcel 2)  
451-690-16-00 (Lot 6 of Parcel 2)  
451-690-17-00 (Parcel 1)

**EXHIBIT B**

**TENANT WORK AGREEMENT**

**[TO BE NEGOTIATED PURSUANT TO SECTION 6.1 (a)]**

## EXHIBIT C

### ESTOPPEL CERTIFICATE

#### [DOCUMENT DATE]

The undersigned, [\_\_\_\_\_,], a [\_\_\_\_\_] (“**Tenant**”), is the tenant under that certain Lease (the “**Lease**”), dated as of [Document Date], between Tenant and [Borrower], [Borrower Article Nomenclature] [Borrower Jurisdiction] [Borrower Entity], as Landlord (“**Landlord**”), of certain real property located in the City of [\_\_\_\_\_] in the [\_\_\_\_\_] commonly known as [Property Street Address] legally described on attached *Exhibit A* (the “**Premises**”). With the understanding that [(i)] [\_\_\_\_\_] (“**Beneficiary**”), will rely upon the covenants, representations and statements made herein in making a mortgage loan (the “**Loan**”) to Landlord evidenced by a Senior Secured Note (the “**Note**”) in the aggregate principal amount of the Loan, executed by Landlord in favor of Beneficiary and secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the “**Security Instrument**”) creating a first lien on the Premises and Landlord’s interest in the Lease and by an Assignment of Leases and Rents (the “**Assignment of Leases and Rents**”) creating a direct and absolute assignment to Beneficiary of all of Landlord’s rights, title and interest as Landlord in and to the Lease and all rent due thereunder will rely upon the covenants, representations and warranties made herein in making the Loan and accepting an assignment of Landlord’s interest in the Lease, Tenant covenants, represents and warrants, to the actual knowledge of the representative of Tenant signing this certificate, as follows (terms used herein which are not otherwise defined herein shall have the meaning ascribed to them in the Lease), as of the date hereof:

1. Tenant is the owner and holder of all rights, title and interest in the Leasehold estate created by the Lease and has no actual knowledge of any prior assignment of Landlord’s interest in the Lease, except as described above in favor of Beneficiary.

2. Landlord does not have any unsatisfied obligations to Tenant arising out of or incurred in connection with the construction or renovation of the Premises, the leasing of the Premises to Tenant, and no defense or right of termination, offset, abatement or counterclaim exists with respect to any rents or other sums payable or to become payable by Tenant under the Lease.

3. Tenant has obtained (through Landlord or otherwise) all permits and certificates of occupancy, if any, required for the lawful occupancy of the Premises by Tenant for the purposes permitted by the Lease in accordance with applicable Laws.

4. Attached hereto is a true and correct copy of the Lease and the following amendments thereto: [If none, state “**None.**”] The Lease is in full force and effect and has not been modified, supplemented, canceled or amended in any respect except as stated above.

5. The term of the Lease commenced on [\_\_\_\_\_, \_\_\_\_], and continues through [\_\_\_\_\_, \_\_\_\_] unless extended as provided in the Lease. Tenant shall commence paying Base Rent on [\_\_\_\_\_] [\_\_\_\_], [20[\_\_\_\_]]. Tenant is obligated to pay Base Rent in monthly

installments in an amount equal to \$[\_\_\_\_\_]. No installment of Base Rent has been or will be prepaid more than thirty (30) days before it comes due.

6. The Premises shall be used solely for the purposes expressly permitted by the Lease.

7. No event has occurred or is continuing which would constitute a default by either Tenant or Landlord under the Lease or would constitute such a default but for the requirement that notice be given or that a period of time elapse or both. The representations and warranties by Tenant contained in *Exhibit D* to the Lease are true and correct as of the date hereof. No offset presently exists with respect to any rents or other sums payable or to become payable by Tenant under the Lease.

8. This Certificate may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. This Certificate shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, and to no other person or entities. The certifications made herein shall survive the closing of the Loan between Beneficiary and Landlord.

IN WITNESS WHEREOF, this Certificate is made as of the date first written above.

[\_\_\_\_\_], a [\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT D**

### **REPRESENTATIONS AND WARRANTIES**

(a) Tenant is a California municipal corporation duly existing and in good standing under the laws of the jurisdiction of its incorporation, is authorized to do business and is in good standing in the state where the Premises is located, and has the corporate power and authority and all necessary licenses and permits to enter into and perform its obligations under this Lease.

(b) This Lease has been duly authorized, executed and delivered by Tenant and constitutes the valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms, subject to bankruptcy, insolvency or similar laws affecting creditors' rights generally, applicable law, and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(c) The execution and delivery of this Lease and compliance by Tenant with all of its provisions (including the expenditure of funds pursuant thereto) do not contravene any Laws.

(d) There are no proceedings pending or, to the knowledge of Tenant, threatened, and to the knowledge of Tenant there is no existing basis for any such proceedings, against or affecting Tenant in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, could reasonably be expected to materially and adversely affect Tenant, the Premises or Tenant's interest in this Lease or materially impair the ability of Tenant to perform its obligations under this Lease. Tenant is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal which default could reasonably be expected to materially adversely affect Tenant, the Premises or Tenant's interest in this Lease or materially impair the ability of Tenant to perform its obligations under this Lease.

(e) The execution and delivery of this Lease and the consummation of the transactions contemplated by this Lease do not require the consent, approval or authorization of, or filing, registration or qualification with any governmental authority or any other Person, except for such of the foregoing that have been made or obtained.