ATTACHMENT J

DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation,

and

MIDWAY RISING, LLC,
a Delaware limited liability company

CITY OF SAN DIEGO

DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**"), dated as of **TO BE DETERMINED**, is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and MIDWAY RISING, LLC, a Delaware limited liability company ("**Master Developer**").

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND AGREEMENTS OF CITY AND MASTER DEVELOPER IN THIS AGREEMENT, CITY AND MASTER DEVELOPER AGREE, AS FOLLOWS:

1. **DEFINITIONS**. All defined terms or words indicated by initial capitalization in this Agreement and not specifically defined in the main body of this Agreement are defined in **ATTACHMENT 1** to this Agreement.

2. **PURPOSES**. City owns that certain real property generally described by the street addresses 3500, 3250, 3220, and 3240 Sports Arena Boulevard in the Midway-Pacific Highway Community, collectively consisting of an estimated 48.5 acres of land in the City, and more specifically described in the definition of "Property" in this Agreement. Master Developer proposes redevelopment of the Property as specifically described in the definition of "Development" in this Agreement. The redevelopment of the Property with the Development will transform a single use, 10,000 seat sports and entertainment arena built in 1965 with current allowable uses of athletic contests, music concerts and performances, family shows, charity events, exhibitions, conventions, swap meets, and parking. City desires to convey certain leasehold estates in the Property to Master Developer, and Master Developer desires to lease the Property from City, for development and operation of the Development on the Property on the terms and conditions of this Agreement.

3. **EFFECTIVE DATE**. This Agreement will only become effective on the Effective Date. If the Effective Date does not occur, this Agreement will be of no force or effect.

4. **INDEPENDENT CONTRACT CONSIDERATION**. On or before the Effective Date, Master Developer will deliver to City, by check, the Independent Contract Consideration. The Independent Contract Consideration amount was bargained for and agreed to between Master Developer and City as adequate consideration for Master Developer's right to ground lease the Property under this Agreement and for City signing and delivering this Agreement to Master Developer. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, is nonrefundable in all circumstances, and will not be credited in any manner to Master Developer at the Horizontal Ground Lease Closing, any Vertical Ground Lease Closing, or otherwise.

5. **TERM**. This Agreement will terminate on the earlier of: (a) the date of issuance of the Certificate of Occupancy for the last Vertical Improvements completed under a Vertical Ground Lease; or (b) termination of this Agreement under the other terms of this Agreement, including after an Event of Default.

6. **GENERAL DESCRIPTION OF THE REAL PROPERTY TRANSACTIONS PROCESS FOR REDEVELOPMENT OF THE PROPERTY**. Initially, the Parties intend to enter into the Horizontal Ground Lease, subject to the terms of this Agreement, for Master Developer to Construct the Horizontal Improvements on the Property at Master Developer's sole expense. Construction of the Horizontal Improvements on the Property is necessary for future Construction of the Vertical Improvements on each Development Parcel and, ultimately, completion of the Development. Under the Horizontal Ground Lease, as Master Developer completes Construction of the Horizontal Improvements required for Construction of the Vertical Improvements to be completed on a particular Development Parcel, the Horizontal Ground Lease premises will be reduced by removing that particular Development Parcel. When a particular Development Parcel is removed from the Horizontal Ground Lease premises, the Parties intend that City and Master Developer or a Vertical Developer, as applicable, will enter into a Vertical Ground Lease for the particular Development Parcel for Master Developer or a Vertical Developer, as applicable, to Construct and operate the required Vertical Improvements on the Development Parcel at Master Developer's or the Vertical Developer's sole expense. The Parties intend that one Vertical Ground Lease corresponding to each Development Parcel will be entered into by City and Master Developer or a Vertical Developer, as applicable, subject to the terms of this Agreement. A site map of the Property showing the intended Development is in **ATTACHMENT 7** to this Agreement.

7. **PROPRIETARY AGREEMENT**. The Parties acknowledge and agree that City is entering into this Agreement in its proprietary capacity as the owner of the Property and as a market participant, not under City's Governmental Authority. Therefore, the Parties intend that: (a) this Agreement is separate and distinct from all agreements entered into by City with Master Developer under City's Governmental Authority, including any statutory development agreement; (b) if there is any conflict or inconsistency between this Agreement and any agreement entered into by City with Master Developer under City's Governmental Authority, the terms, conditions, covenants, restrictions, or agreements in this Agreement will control; and (c) City is not subject to the limitations on the exercise of its Governmental Authority in entering into this Agreement or exercising its rights under this Agreement.

8. **REPRESENTATIONS AND WARRANTIES**.

8.1 Master Developer Representations and Warranties. Master Developer represents and warrants to City that the following facts and conditions exist and are true as of the Effective Date:

8.1.1 **Authority**. Master Developer has the authority to enter into and perform this Agreement. No consent of any member, partner, shareholder, creditor, investor, judicial or administrative body, Government, or other Person is required for Master Developer to enter into or perform its obligations under this Agreement, except as has already been obtained and except

as necessary to cause the satisfaction of the conditions to the Close of Escrow to be satisfied by Master Developer.

8.1.2 **Other Agreements**. Master Developer's entry into this Agreement and performance of its obligations under this Agreement do not violate any agreement to which Master Developer is a party or is subject.

8.1.3 **No Litigation**. Except as acknowledged or disclosed in this Agreement, to Master Developer's knowledge, there is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Master Developer, any Person owning an Equity Interest in Master Developer, or the Property that would, if adversely determined, materially adversely affect the Property, this Agreement, the Horizontal Ground Lease, any Vertical Ground Lease, or Master Developer's ability to develop or operate the Development on the Property.

8.1.4 **Court Order**. To Master Developer's knowledge, there is no existing court order that materially adversely affects the Property, this Agreement, the Horizontal Ground Lease, any Vertical Ground Lease, or Master Developer's ability to develop or operate the Development on the Property.

8.1.5 **Good Standing**. Master Developer is a duly formed limited liability company, organized, validly existing, and in good standing under the laws of the State of Delaware, and is qualified to do business in the State with the State Secretary of State.

8.1.6 **Master Developer's Knowledge**. As used in this Agreement, the phrase "Master Developer's knowledge" will be limited to the actual knowledge of Brad Termini, an officer of Master Developer, without any duty of inquiry or investigation into the matter so qualified. "Master Developer's knowledge" will not be construed to refer to the knowledge of any other agent or employee of Master Developer. City acknowledges and agrees that Brad Termini will have no personal liability to City for any breach of any representation or warranty in this Agreement, as such Person is acting solely in their capacity as an officer of Master Developer and such Person falls within the exculpation in Section 40.13.

8.1.7 **Representation by Counsel**. Master Developer was represented by independent legal counsel of its own selection in negotiation of this Agreement. Master Developer had ample opportunity to seek advice from its independent legal counsel regarding the final content of this Agreement.

8.2 City Representations and Warranties. The City represents and warrants to Master Developer that the following facts and conditions exist and are true as of the Effective Date:

8.2.1 **Authority**. The City is a California municipal corporation and charter city that is authorized to enter into this Agreement under an adopted City Council resolution authorizing the Mayor to sign and deliver this Agreement.

8.2.2 **Other Agreements**. To City's knowledge, this Agreement does not violate any agreement or contract to which the City is a party.

8.2.3 **No Litigation**. Except as acknowledged or disclosed in this Agreement, to City's knowledge, there is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative City or affecting City or the Property that would, if adversely determined, materially adversely affect the Property, this Agreement, the Horizontal Ground Lease, any Vertical Ground Lease, or Master Developer's ability to develop and operate the Development on the Property.

8.2.4 **Court Order**. To City's knowledge, there is no existing court order that materially adversely affects the Property, this Agreement, the Horizontal Ground Lease, any Vertical Ground Lease, or Master Developer's ability to develop and operate the Development on the Property.

8.2.5 **No Pending Eminent Domain Action**. To City's knowledge, there is no existing, pending, or threatened eminent domain action affecting the Property.

8.2.6 **Existing Agreements**. To City's Knowledge, the Existing Agreements and the Interim Arena Lease are the only leases and licenses encumbering the Property as of the Effective Date.

8.2.7 **City's Knowledge**. As used in this Agreement, the phrase "City's knowledge" will be limited to the actual knowledge of Casey Smith, Deputy Chief Operating Officer, without any duty of inquiry or investigation into the matter so qualified. "City's knowledge" will not be construed to refer to the knowledge of any other agent or employee of City. Master Developer acknowledges and agrees that Casey Smith, Deputy Chief Operating Officer, will have no personal liability to Master Developer for any breach of any representation or warranty in this Agreement, as such Person is acting solely in their capacity as Deputy Chief Operating Officer of City and such Person falls within the exculpation in Section 40.13.

8.2.8 **Representation by Counsel**. City was represented by independent legal counsel of its own selection in negotiation of this Agreement. City had ample opportunity to seek advice from its independent legal counsel regarding the final content of this Agreement.

8.3 Limited Survival of Representations and Warranties. The representations and warranties made by Master Developer in Section 8.1 and the representations and warranties made by City in Section 8.2 will survive the Horizontal Ground Lease Closing for two (2) years and expire and terminate on the second anniversary of the date of the Horizontal Ground Lease Closing.

9. **RESERVATIONS**. The approval of this Agreement or other action in performance of this Agreement by City will not be binding on City, the City Council, or any other commission, committee, board, or body of City regarding any Approval related to the Property, the Development, or Master Developer required by City, the City Council, or any other commission, committee, board, or body of City.

10. **NO CITY FINANCIAL OBLIGATIONS**. The Parties agree that City does not have any financial obligation regarding the Development under the terms of this Agreement, the Horizontal Ground Lease, or any Vertical Ground Lease.

11. **MASTER DEVELOPER ATTENDANCE AT CITY MEETINGS**. Master Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement, development of the Development, and the financing sources for the Development, such that such Person(s) can meaningfully respond to City Council or City staff questions about the status of this Agreement and the Development, attend meetings with City staff or meetings of the City Council, when requested to do so by City staff, with reasonable advance Notice to Master Developer.

12. **PROPERTY APPROVAL**.

12.1 Title Condition. Master Developer approves the condition of the title to the Property as shown in the Preliminary Report, including each Leasehold Estate created under the Horizontal Ground Lease and each Vertical Ground Lease, subject in all cases to the Permitted Exceptions, Section 14, and the terms of the Horizontal Ground Lease or each Vertical Ground Lease.

12.2 Development Condition. Master Developer conducted investigations of the physical condition of the Property, the Law applicable to the Property, and the financial feasibility of the Development under several licenses from City to Master Developer pre-dating this Agreement and that certain Exclusive Negotiation Agreement between City and Master Developer, dated December 5, 2022 ("**ENA**"). Master Developer approves the condition of the Property for Construction of the Development under applicable Law and acknowledges the financial feasibility of the Development.

12.3 San Diego River Levee Status Disclosure. City disclosed to Master Developer information and communications received by City from the Federal Emergency Management Agency about the status of segments of the San Diego River levee that could affect the Property in the future, including that certain Federal Emergency Management Agency prepared Levee Analysis and Mapping Plan, San Diego River 1, 2, & 3 Levee Systems, dated November 7, 2025. The City makes no representations or warranties to Master Developer about the current or future status of the San Diego River levee or actions that City may take in reference to maintenance of or improvements to the San Diego River levee in the future. The availability of funding or contracts for future maintenance of or improvements to the San Diego River levee are subject to multiple factors, including future discretionary decisions by the City Council.

12.4 License to Enter Property. As of the Effective Date, City licenses and authorizes Master Developer to enter the Property for the purpose of physical inspection of the Property in furtherance of the Development. In entering the Property under this license, Master Developer will not unreasonably disrupt any then-existing use or occupancy of the Property. Master Developer will not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil samples, without City's prior written consent. Master Developer will pay all of Master Developer's vendors, inspectors, surveyors, consultants, or agents engaged in any work relating to the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any such Person. Following the conduct of any work on the Property, Master

Developer will restore the Property to substantially the Property's condition prior to performance of the work. This Section 12.4 and Sections 12.5 through 12.7 will terminate on the earlier of the Horizontal Ground Lease Closing or termination of this Agreement; provided, however, that all rights or obligations arising under or from such sections before their termination will survive the Horizontal Ground Lease Closing or termination of this Agreement.

12.5 Notice and Removal of Liens. Master Developer will Notify City of each lien asserted against the Property arising from Master Developer's vendors, inspectors, surveyors, consultants, or agents engaged in any work relating to the Property within twenty (20) days following Master Developer's receipt of notice of such lien. Master Developer will, within thirty (30) days after receiving notice of a lien (but in any case within fifteen (15) days after Master Developer receives notice of commencement of foreclosure proceedings regarding any lien), cause such lien to be paid, discharged, and cleared from title to the Property; provided, however, that if Master Developer disputes such lien in good faith, Master Developer may maintain an appropriate dispute of such lien without payment, if Master Developer Records a bond complying with the provisions of California Civil Code section 3143 and causes the release of the Property from the disputed lien. Master Developer will, thereafter, prosecute such action with reasonable diligence and continuity. If City receives notice of any lien, then City will Notify Master Developer.

12.6 Protection of City. CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO MASTER DEVELOPER UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL WILL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS AGREEMENT IS INTENDED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY WORK ON THE PROPERTY, NOR AS GIVING MASTER DEVELOPER ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE PROPERTY. MASTER DEVELOPER WILL INDEMNIFY CITY AGAINST ALL LIABILITY ARISING FROM OR RELATING TO WORK UNDERTAKEN BY OR FOR MASTER DEVELOPER OR ANYONE CLAIMING THROUGH MASTER DEVELOPER AND AGAINST ALL LIENS RELATING TO SUCH WORK.

12.7 No Liens Against Public Property. MASTER DEVELOPER ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PROPERTY. MASTER DEVELOPER FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PROPERTY OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. CITY WILL HAVE THE RIGHT AT ALL REASONABLE

TIMES TO POST AND KEEP POSTED ON THE PROPERTY ALL NOTICES CITY MAY DEEM APPROPRIATE TO FURTHER PROTECT CITY OR THE PROPERTY FROM MECHANIC'S LIENS OR OTHER CLAIMS. MASTER DEVELOPER WILL GIVE CITY TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY WORK ON THE PROPERTY TO ENABLE CITY TO POST SUCH NOTICES.

13. **TERMINATION OF EXISTING MASTER DEVELOPER AGREEMENTS**. The Parties agree that this Agreement is the "Definitive Agreement" described in the ENA and that, on the Effective Date, the ENA and all other agreements between City and Master Developer relating to the Property or the Development entered into before the Effective Date are terminated and of no further force or effect, exclusive of that certain City of San Diego Percentage Lease between City and Midway Rising Venue Management, LLC, a Delaware limited liability (an Affiliate of Master Developer), dated July 27, 2023, as modified by that certain confirmation letter signed by the same parties, dated September 1, 2023, that certain First Amendment to City of San Diego Percentage Lease, dated August 26, 2024, between City and Midway Rising Venue Management, LLC, and that certain Second Amendment to City of San Diego Percentage Lease between City and Midway Rising Venue Management, LLC, approved by the City Council concurrent with its approval of this Agreement ("**Interim Arena Lease**"). On the Horizontal Ground Lease Closing, the Interim Arena Lease will terminate and be of no further force or effect.

14. **EXISTING AGREEMENTS**. The leases and licenses of the Property existing on the Effective Date and identified in **ATTACHMENT 20** to this Agreement are collectively referred to as the "**Existing Agreements**." The Parties acknowledge that the Property is encumbered by the Existing Agreements and the Interim Arena Lease on the Effective Date. City will not enter into any new leases or licenses of the Property or any amendment to any Existing Agreement extending the term of the Existing Agreement without Master Developer's approval in Master Developer's reasonable discretion. The Parties agree it will be reasonable for Master Developer to withhold approval of any such lease, license, or amendment if its term will continue beyond the anticipated Horizontal Ground Lease Closing Date, as then mutually determined by the Parties based on the timelines established in the Performance Schedule and the level of progress achieved toward satisfaction of all conditions precedent to the Horizontal Ground Lease Closing. If City enters into any new leases or licenses of the Property or any amendment to any Existing Agreement after the Effective Date (with Master Developer's advance approval, where such approval is required under this Section 14), then the definition of "Existing Agreements" under this Section 14 will be supplemented to include each such new lease, license, or amendment. City will send notices of termination of all Existing Agreements to the respective tenants or users under Existing Agreements in accordance with the respective terms of the Existing Agreements at the time(s) specified in the Performance Schedule for City to send such notices. All unlawful detainer proceedings, eviction proceedings, or other legal process (including all appeals) required to cause a tenant or other user of the Property under an Existing Agreement to physically vacate the Property, including removal of its personal property, after notice of termination of its Existing Agreement will constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement will be extended under the Unavoidable Delay provisions of this Agreement. City is solely responsible for the costs of terminating the Existing Agreements and all unlawful detainer proceedings, eviction proceedings, or other legal process (including all appeals)

required to cause a tenant or other user of the Property under an Existing Agreement to physically vacate the Property. City makes no representation, warranty, or commitment about whether any title insurance company will remove any or all the Existing Agreements from the exceptions to coverage under the Master Developer Title Policy. Master Developer acknowledges that certain tenants or users under Existing Agreements may terminate their occupancy or use of the Property under the terms of their respective Existing Agreements before the City is required to terminate their Existing Agreements under this Section 14. On and after the Horizontal Ground Lease Closing Date, Master Developer will secure against trespassing, vandalism, and waste all buildings and other improvements on areas of the Property that were subject to Existing Agreements terminated by City under this Section 14.

15. AFFORDABLE HOUSING REQUIREMENTS.

15.1 Bedroom and Affordability Mix. Master Developer must Construct a minimum of 2,000 multi-family residential rental units within the Development that are restricted to use and occupancy by "lower income households," as defined in California Health and Safety Code section 50079.5, at "affordable rent," as defined in California Health and Safety Code section 50053, comprised of a mix of studio, 1-bedroom, 2-bedroom, and 3-bedroom units (collectively "**Affordable Units**," and each, individually, an "**Affordable Unit**") with a mix of affordability levels that will periodically be stated in a written "**Affordable Unit Matrix**" reasonably agreed to by the Parties. By Notice to City, Master Developer may request the opportunity to Construct up to 2,010 Affordable Units within the Development (10 more Affordable Units than the required 2,000 minimum Affordable Units). City approval of any such request shall be in City's sole discretion. Prior to approving any request to Construct more than 2,000 Affordable Units, City shall comply with all requirements under CEQA regarding the additional Affordable Units. Master Developer will prepare an updated Affordable Unit Matrix within thirty (30) days after issuance of a Certificate of Occupancy for each affordable housing project containing Affordable Units Constructed on the Property under an Affordable Housing Lease and provide it to City. Thereafter, the Parties will work together to agree on the content of the updated Affordable Unit Matrix. Each Affordable Unit Matrix must provide for a minimum of 2,000 Affordable Units, with a minimum of five hundred (500) studio and 1-bedroom units, a minimum of two hundred (200) 2-bedroom units, a minimum of two hundred (200) 3-bedroom units, and average affordability levels across all Affordable Units not exceeding 60% AMI. The initial Affordable Unit Matrix is as follows:

AMI	Studio or 1 Bedroom	2 Bedroom	3 Bedroom	Total
61 to 80% AMI	70	60	50	180
51 to 60% AMI	180	100	100	380
31% to 50% AMI	560	240	170	970
30% AMI or below	240	120	90	450
Manager Units (unrestricted)	-	20	-	20
Total	1,050	540	410	2,000

15.2 Permanent Supportive Housing Units. Master Developer must reserve a minimum of 200 of the 2,000 total required Affordable Units in the Development for permanent (no limit on length of stay) "supportive housing," as defined in California Health and Safety Code section

50675.2(h), serving the "target population," as defined in California Health and Safety Code section 50675.14(b)(2).

15.3 Phased Buildout. The required 2,000 Affordable Units will be Constructed in the multiple "Vertical Development" phases specified in the Development Phasing Plan (each a "**Phase**"). Notwithstanding anything to the contrary in this Section 15.3 or elsewhere in this Agreement, under all circumstances, Master Developer must Construct all 2,000 required Affordable Units before the end of Phase 5. Affordable Units will be Constructed in multiple different individual buildings in which one hundred percent (100%) of the residential rental units, other than an industry-standard number of manager units, are Affordable Units. Buildings containing Affordable Units may also include a limited amount of commercial/retail space to be occupied by uses supporting the residents of the Affordable Units, such as daycare centers, senior centers, or "corner markets," when approved by City under Sections 34.6 and 34.7. Buildings containing Affordable Units will be Constructed on Development Parcels in a variety of locations on the Property and not in one general area of the Property. For the avoidance of doubt, any failure to perform any obligation under or satisfy any requirement in this Section 15.3, for any reason other than a City Default, will be a Master Developer Non-Monetary Default.

15.3.1 **Affordability Levels**. The Affordable Units Constructed on each individual Development Parcel will be restricted for occupancy at affordability levels ranging from 30% AMI up to 80% AMI with weighted average affordability not exceeding 60% AMI. The weighted average affordability in each Phase will be calculated as follows: (i) each Affordable Unit will be assigned a household income designation (e.g., 30%, 50%, 60%, or 80% AMI); and (ii) the weighted average will equal the average affordability level of the total number of occupied Affordable Units. For illustrative purposes only, in a hypothetical scenario where the Affordable Units Constructed on an individual Development Parcel consist of forty (40) Affordable Units restricted to occupancy by households with income less than 30% AMI, forty (40) Affordable Units restricted to occupancy by households with income less than 50% AMI, forty (40) Affordable Units restricted to occupancy by households with income less than 60% AMI, and eighty (80) Affordable Units restricted to occupancy by households with income less than 80% AMI, the weighted average affordability of the 200 Affordable Units will be 60% AMI.

15.3.2 **Minimum Required Affordable Units**. Notwithstanding the Development Phasing Plan and subject to Section 15.3.3, Master Developer is only required to Construct the following numbers of Affordable Units in each Phase (each, the "**Minimum Required Affordable Units**" for the applicable Phase): (a) by the end of Phase 1, a minimum of twenty-eight percent (28%) of the total residential units specified in Phase 1 on the Development Phasing Plan must be Affordable Units; (b) by the end of Phase 2, a minimum of thirty percent (30%) of the total combined residential units specified in Phases 1 and 2 on the Development Phasing Plan must be Affordable Units; (c) by the end of Phase 3, a minimum of thirty-five percent (35%) of the total combined residential units specified in Phases 1, 2, and 3 on the Development Phasing Plan must be Affordable Units; (d) by the end of Phase 4, a minimum of forty percent (40%) of the total combined residential units specified in Phases 1, 2, 3, and 4 on the Development Phasing Plan must be Affordable Units, plus any Affordable Units required to be Constructed so that no more than 580 Affordable Units are required to be Constructed in Phase 5 to complete the Construction of all 2,000 required Affordable Units for the Development; and (e) by the end of Phase 5, all the required 2,000 Affordable Units must be Constructed. All Minimum Required Affordable Units

calculations resulting in fractional units shall be rounded up to the next whole number. The following table illustrates how this Section 15.3.2 is intended to function:

Phase	Development Phasing Plan Specified Number of Affordable Units	Development Phasing Plan Specified Number of Market Rate Housing Units	Development Phasing Plan Specified Total Number of Residential Units Per Phase	Number of Minimum Required Affordable Units in Each Phase	Cumulative Number of Minimum Required Affordable Units at the End of Each Phase	Cumulative Percentage of Affordable Units in the Development
1	500	386	886	249	249	28%
2	400	316	716	232	481	30%
3	340	708	1048	447	928	35%
4	480	419	899	492	1420	40%
5	280	425	705	580	2000	47%

15.3.3 **Carryover of Excess Affordable Units**. If in any earlier Phase, Master Developer Constructs Affordable Units in a quantity exceeding the cumulative Minimum Required Affordable Units at the end of that Phase, the number of Affordable Units exceeding the cumulative Minimum Required Affordable Units at the end of that Phase may be used, until exhausted, to satisfy Master Developer's obligation to Construct the cumulative Minimum Required Affordable Units in subsequent Phases. For illustrative purposes only and with reference to the table in Section 15.3.2, in a hypothetical scenario where there are no unit count changes under Section 15.3.4 and Master Developer Constructs 500 Affordable Units in Phase 1, the number of Affordable Units Constructed in Phase 1 will exceed the 222 Minimum Required Affordable Units for Phase 1 by 278 Affordable Units (i.e., 500 Constructed Affordable Units, minus the 222 Minimum Required Affordable Units at the end of Phase 1, equals 278), and those 278 excess Affordable Units may be used, until exhausted, to satisfy Master Developer's obligation to Construct the cumulative Minimum Required Affordable Units in subsequent Phases. For further illustrative purposes in this hypothetical scenario, (a) 259 of the 278 excess Affordable Units from Phase 1 may be used to fully satisfy Master Developer's obligation to Construct the cumulative number of 481 Minimum Required Affordable Units by the end of Phase 2 (i.e., 222 Constructed Affordable Units in Phase 1, plus 259 excess Constructed Affordable Units from Phase 1 applied toward Phase 2, equals 481 Minimum Required Affordable Units by the end of Phase 2); (b) the remaining 19 excess Affordable Units from Phase 1 may be used to partially satisfy Master Developer's obligation to Construct the cumulative number of 928 Minimum Required Affordable Units by the end of Phase 3; (c) once the remaining 19 excess Affordable Units are applied toward the cumulative Minimum Required Affordable Units in Phase 3, Master Developer's use of excess Affordable Units from Phase 1 will be exhausted; and (d) Master Developer will need to Construct an additional 428 Affordable Units by the end of Phase 3 (i.e.,

447 Minimum Required Affordable Units in Phase 3, minus 19 excess Affordable Units applied from Phase 1) to satisfy the cumulative Minimum Required Affordable Units for Phase 3.

15.3.4 **Phase Residential Unit Count Changes**. Provided that the total number of residential units Constructed on the Property shall not exceed the total number of residential units specified in the Development Phasing Plan, the total number of residential units Constructed in each Phase must be no more than 10% higher or lower than the total number of residential units shown in the Development Phasing Plan for that Phase. Subject to the first sentence of this Section 15.3.4, the buildings containing residential units in each Phase may contain any number of residential units. The following table illustrates how the Minimum Required Affordable Units are impacted by the allowed 10% reduction in overall residential units in each Phase:

Phase	Development Phasing Plan Specified Total Number of Residential Units Per Phase	10% Reduction in Overall Development Phasing Plan Specified Residential Units in Each Phase	Number of Minimum Required Affordable Units in Each Phase After 10% Reduction	Cumulative Number of Minimum Required Affordable Units at the End of Each Phase After 10% Reduction	Cumulative Percentage of Affordable Units in the Development After 10% Reduction
1	886	797	224	224	28%
2	716	644	209	433	30%
3	1048	943	402	835	35%
4	899	809	585	1420	44%
5	701	1061	580	2000	47%

15.3.5 **Limitations**. Nothing in Sections 15.3.2, 15.3.3, or 15.3.4 is intended to modify, terminate, or override any of the Development Conditions or Master Developer's obligation to construct 2,000 Affordable Units by the end of Phase 5 and all provisions of Sections 15.3.2, 15.3.3, and 15.3.4 are subject to the Development Conditions and Master Developer's obligation to construct 2,000 Affordable Units by the end of Phase 5.

15.3.6 **Financing Unavailable for Construction of Affordable Units**. Notwithstanding the other provisions of this Section 15.3, if a Vertical Developer of Affordable Units in Phases 2 or 3, is unable to secure Gap Financing (defined below) for Construction of its planned Affordable Units, then Construction of its planned Affordable Units may be delayed until the immediately following Phase. For a Vertical Developer to be considered unable to secure Gap Financing for its planned Affordable Units, the Master Developer must deliver to City an Unavailable Financing Notice (defined below) for the Affordable Units and City must agree in its reasonable discretion that Gap Financing for the Affordable Units is unavailable at the time. An "**Unavailable Financing Notice**" is a Notice from Master Developer to City, with supporting documentation, demonstrating that for specified Affordable Units planned in Phases 2 or 3: (a) sources of Gap Financing are not available or are only available in an amount insufficient to

support Construction of the specified Affordable Units; and (b) the Vertical Developer timely made the number of applications for funding rounds of Gap Financing that were available to support Construction of the specified Affordable Units during the twenty-four (24) months immediately preceding the month of the Receipt Date of Master Developer's particular Unavailable Financing Notice, and the applications were unsuccessful due to the competitive nature of the financing program. "**Gap Financing**" means the following Government sponsored affordable housing financing: 9% Federal low-income housing tax credits, State of California Affordable Housing and Sustainable Communities financing program annual grants, financing sources published by HCD in annual notices of availability, such as its Multifamily Housing Program, any successor program to the foregoing, and at Vertical Developer's reasonable option, additional financing sources typically then sought by developers of affordable housing developments in the State. To the extent Affordable Units for which Construction has been delayed under this Section 15.3.6 are required to meet the Minimum Required Affordable Units in Phases 2 or 3, the requirement to meet the Minimum Required Affordable Units in that Phase will be deferred to the immediately following Phase. The Mayor's authority under Section 40.8 includes the authority to revise the Performance Schedule to: (i) extend the time specified for City and a Vertical Developer to agree on the Vertical Improvements Financing Plan required under Section 34.8 for each Affordable Housing Lease affected by a delay allowed under this Section 15.3.6 to the first ninety (90) days of the immediately following Phase; (ii) extend the time for City and a Vertical Developer to enter into an Affordable Housing Lease for each such lease affected by a delay allowed under this Section 15.3.6 to the first three hundred sixty-five (365) days of the immediately following Phase; and (iii) extend all other deadlines directly associated with each Affordable Housing Lease affected by a delay allowed under this Section 15.3.6 consistent with clauses "(i)" and "(ii)" in this Section 15.3.6. If Construction of some or all of the Minimum Required Affordable Units in one of Phases 2 or 3 are delayed until the immediately following Phase under this Section 15.3.6, then Construction of the Market Rate Housing Units specified in the Development Phasing Plan for the immediately following Phase may proceed, but no additional Market Rate Housing Units may be Constructed until all the Affordable Units for which Construction has been delayed under this Section 15.3.6 are Constructed. During the Construction of the Market Rate Housing Units, the Vertical Developer shall continue to prepare plans and specifications for the Affordable Units that were delayed in order to minimize further delays of the Construction of the Affordable Housing units once Gap Financing is available. For illustrative purposes only, in a hypothetical scenario where City agrees in response to an Unavailable Financing Notice that financing for all planned Affordable Units in Phase 2 is unavailable at the time, the requirement to meet the Minimum Required Affordable Units in Phase 2 will be deferred to Phase 3, and Construction of the Market Rate Housing Units specified in the Development Phasing Plan for Phase 3 may proceed, provided that no Construction of the Market Rate Housing Units specified in the Development Phasing Plan for Phase 4 may proceed until the Minimum Required Affordable Units are Constructed for both Phases 2 and 3.

15.3.7 **Affordable Unit Permits and Completion**. If all of the Minimum Required Affordable Units in Phase 1 will be Constructed under a single building permit, then the Minimum Required Affordable Units in Phase 1 must receive a building permit within twelve (12) months of receipt of the building permit for the first Market Rate Housing Units to be Constructed in Phase 1. If more than one building permit is required to Construct all of the Minimum Required Affordable Units in Phase 1, then the first building permit must be received within twelve (12) months of receipt of the building permit for the first Market Rate Housing Units to be Constructed

in Phase 1, and all additional building permits required to meet the Minimum Required Affordable Units in Phase 1 must be received within twenty-four (24) months of receipt of the building permit for the first Market Rate Housing Units to be Constructed in Phase 1. The Minimum Required Affordable Units for each of Phases 2, 3, 4, and 5 must receive a Certificate of Occupancy within fifty-four (54) months of receipt of the Certificate of Occupancy for the first Market Rate Housing Units Constructed in the respective Phase.

15.4 Affordable Housing Receiver Site Limitation. No Affordable Unit shall be used or credited as a receiver site affordable dwelling unit for another development project's compliance with any requirement under Law to provide or replace affordable or protected dwelling units unless: (a) City approves the proposed receiver site arrangement, in its sole discretion, after Master Developer Notifies City that the affected Vertical Developer is unable, despite diligent efforts, to secure sufficient Gap Financing for Construction of its planned Affordable Units; and (b) City obtains HCD's confirmation that the proposed receiver site arrangement is permissible under the California Surplus Land Act.

15.5 Affordable Housing Status Reports. Until issuance of a Certificate of Occupancy for all 2,000 Affordable Units in the Development, on or before January 31 of each calendar year, Master Developer must send an annual written status report to City in substantially the form of **ATTACHMENT 24** to this Agreement stating the Affordable Unit individual and average affordability levels and bedroom count forecasts, all building permits or Certificates of Occupancy issued in relation to Construction of Affordable Units during the previous calendar year, and all the rental terms for the affordability levels and targeted populations for all Affordable Units placed in service during the previous calendar year.

16. **MARKET RATE HOUSING REQUIREMENTS**. Master Developer will Construct a minimum of 2,250 and a maximum of 2,254 multi-family residential rental units within the Development offered for rent at then current market rate rents ("**Market Rate Housing**"). No income or affordability restrictions will apply to Market Rate Housing.

17. **RETAIL DEVELOPMENT REQUIREMENTS**. Master Developer must Construct a minimum of 123,500 and a maximum of 130,000 square feet of floor area of retail/commercial space within the Development ("**Retail Development**"). By Notice to City, Master Developer may request the opportunity to Construct up to 6,500 square feet of additional floor area of Retail Development within the Development (6,500 square feet more Retail Development floor area than the maximum 130,000 square feet of Retail Development floor area). City approval of any such request shall be in City's sole discretion. Prior to approving any request to Construct up to 6,500 square feet of additional Retail Development floor area, City shall comply with all requirements under CEQA regarding the additional Retail Development floor area.

18. **ENTERTAINMENT CENTER REQUIREMENTS**. Master Developer must Construct a new multipurpose arena on Development Parcels 24 and 25 that is a minimum of 380,000 square feet in floor area and has a capacity of 16,000 seats ("**Entertainment Center**"). The total number of seats in the Entertainment Center may be reduced by up to five percent (5%), provided that the total number of seats in the Entertainment Center shall never be less than 15,200. Any reduction in the total number of seats in the Entertainment Center shall be accompanied by a corresponding increase in the amounts of the "Ticket Charges" in the Entertainment Center Lease to result in the

same amount of potential revenue to the City under the Entertainment Center Lease from Ticket Charges throughout the term of the lease as if the Entertainment Center had 16,000 total seats.

19. **PARKING STRUCTURE REQUIREMENTS**. Master Developer must Construct parking structures on or within the Development containing a minimum of 6,688 and a maximum of 7,392 passenger vehicle parking spaces, a minimum of 118 short-term bike parking spaces, a minimum of 1,963 long-term bike parking spaces, and a minimum of 452 motorcycle parking spaces (collectively, "**Parking Structures**" and each, a "**Parking Structure**"). By Notice to City, Master Developer may request a reduction in the required minimum number of passenger vehicle parking spaces. City approval of any such request to reduce the required minimum number of passenger vehicle parking spaces shall be in City's sole discretion. Prior to approving any request to reduce the minimum number of required passenger vehicle parking spaces, City shall comply with all requirements under CEQA regarding the reduction in the required minimum number of passenger vehicle parking spaces. Included in the required passenger vehicle parking spaces in the Parking Structures there must be at least 3,031 zero emissions vehicle parking spaces, and of the at least 3,031 zero emission vehicle parking spaces, at least 1,615 must be EV capable spaces, at least 1,081 must be EV-ready spaces, and at least 355 must be served by EV chargers. There must be parking spaces in the Parking Structures that are available for use by the public, Development residents, and visitors to the Property. Each Parking Structure will not necessarily contain spaces for all categories of users, but each Parking Structure must have appropriate signage designating the category(ies) of users that may park in particular parking spaces. Each Vertical Ground Lease will specify the precise number of parking spaces that must be available to each of the public, Development residents, and visitors to the Property for the Vertical Improvements to be Constructed under that particular Vertical Ground Lease. Affordable Housing developments and Market Rate Housing developments within the Development shall provide bicycle parking spaces in accordance with the requirements in SDMC Chapter 14, Article 2, Division 5.

20. **PARK AND PUBLIC SPACE REQUIREMENTS**. Master Developer must Construct all the Parks and Public Space within the Development.

21. **DEVELOPMENT SITE PLAN; DEVELOPMENT CONDITIONS; DEVELOPMENT PROGRAM**. Construction of the Development shall be consistent with the Development Site Plan. The Development Site Plan is not intended to depict or prescribe the specific location, concentration, or distribution of Affordable Units within the Development. The distribution of Affordable Units within the Development will be governed by the terms of Section 15. In the event of any inconsistency between the Development Site Plan and the terms of the main body of this Agreement, the terms of the main body of this Agreement shall control. All Construction on the Property is subject to the Development Conditions, which are also included in the Horizontal Ground Lease and the Vertical Ground Leases. Further, Master Developer: (a) agrees not to Construct any or all Market Rate Housing Units or Affordable Units as, or converting them to, accessory dwelling units, visitor accommodation units, or units rented for short-term residential occupancy, or any other use not expressly allowed under the Specific Plan or this Agreement; and (b) agrees not to use any City residential development bonus incentive programs adopted under City's Governmental Authority that are not required by State law, such as Complete Communities Housing Solutions, the Accessory Dwelling Unit Bonus Program, and Micro-Unit Density Bonus, unless otherwise authorized by City Council ordinance specifically applicable to the Specific Plan area, in relation to any or all Market Rate Housing Units and Affordable Units,

except for the use of density bonus under California Government Code section 65915 and SDMC section 143.0710 et seq. The Parties acknowledge and agree that the terms of this Agreement, including the financial provisions of the Horizontal Ground Lease and the Vertical Ground Leases are based, in part, on compliance with the Development Conditions and Master Developer's agreements in this Section 21 and that failure to comply with the Development Conditions or Master Developer's agreements in this Section 21 will adversely affect the financial agreements between the Parties under this Agreement and the associated Horizontal Ground Lease and Vertical Ground Leases.

22. **DEVELOPMENT STATUS REPORTS**. Until issuance of a final Certificate of Occupancy for all Vertical Improvements in the Development, on or before January 31 of each calendar year, Master Developer must send an annual written status report to City in substantially the form of **ATTACHMENT 23** to this Agreement stating all building permits and Certificates of Occupancy issued in relation to Construction of Vertical Improvements during the previous calendar year. The reports required under this Section 22 are in addition to the reports required under Section 15.3.

23. **CITY BUSINESS COOPERATION PROGRAM PARTICIPATION**. Master Developer will be responsible for the following actions in connection with the City's Business Cooperation Program:

23.1 Exercise its right to obtain a California Department of Tax and Fee Administration ("**CDTFA**") sub-permit for the Property and allocate all eligible Bradley-Burns Uniform Local Sales and Use Tax ("**Use Tax**") to City on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with Construction on the Property under the Horizontal Ground Lease and all Vertical Ground Leases.

23.2 Ensure that all eligible tenants, subtenants, contractors, and subcontractors exercise their right to obtain a CDTFA sub-permit and allocate all eligible Use Tax to City on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with Construction on the Property.

24. **CITY REVIEW AND APPROVAL OF PARKS RECREATIONAL VALUE POINTS**.

24.1 Administrative Costs. Within the time provided in the Performance Schedule for such action, Master Developer shall establish a deposit account for the benefit of both City and Master Developer using City Form DS-3242 with an initial deposit of ten thousand dollars ($10,000) for City review of the Park Plans (defined in Section 24.2). Master Developer shall provide subsequent deposits in increments of up to five thousand dollars ($5,000) as reasonably determined necessary by City to pay City's reasonable out-of-pocket costs associated with review of the Park Plans. Master Developer agrees to pay City's reasonable out-of-pocket costs for review of the Park Plans under Section 24.2. "Out-of-pocket costs" as used in this Section 24 means Third

Person consultant fees and costs incurred by City and the costs of City staff time and materials directly attributable to review of the Park Plans under Section 24.2.

24.2 Preparation and Review of Park Plans. Master Developer shall prepare proposed Construction drawings and specifications for all the Parks, showing the Parks to be Constructed during each of the first, second, and third Horizontal Improvement Phases ("**Park Plans**"). Master Developer shall submit the proposed Park Plans at the thirty percent (30%) and sixty percent (60%) design stages to City for review within the time specified in the Performance Schedule for such submittal. City will review the proposed Park Plans within the time specified in the Performance Schedule solely with respect to whether the Parks will provide a minimum of 610 Recreational Value Points, as required under Section 20 of this Agreement. In all circumstances, City's determination of the Recreational Value Points applicable to the Park Plans shall be in City's sole discretion. It is an express condition precedent to the opening of the Horizontal Ground Lease Escrow for the benefit of both City and Master Developer that Master Developer will obtain written confirmation from City that: (a) the Park Plans will provide a minimum of 610 Recreational Value Points at the thirty percent (30%) and sixty percent (60%) design stages of the Park Plans; and (b) the Parks will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the first Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 24.3. Within the times specified in the performance schedule for the Horizontal Ground Lease, Master Developer shall also submit the Park Plans to City at the ninety percent (90%) design stage for the Parks to be Constructed in each of the second and third Horizontal Improvements Phases so that City may confirm whether the applicable Parks will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the applicable Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 24.3. Within the times specified in the Performance Schedule (or the performance schedule for the Horizontal Ground Lease, as applicable), Master Developer will provide all information reasonably required for City to determine the Recreational Value Points attributable to the Park Plans, and City will Notify Master Developer about City's determination in that regard. Master Developer shall not rely on City's review of the Park Plans under this Section 24.2 for any purpose other than the Recreational Value Points provided by the Park Plans. This review is in addition to and does not replace any review required to be completed by Parks and Recreation staff (if any) as part of the City Development Services Department's permitting process. Nothing in this Section 24.2 will limit the applicability of the condition precedent to the Horizontal Ground Lease closing described in Section 33.4.5.

24.3 Parks Construction Recreational Value Points Phasing. The minimum required Parks Construction Recreational Value Points phasing is as follows:

24.3.1 Construction of Parks worth a cumulative total of 153 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 1,064th Residential Unit Constructed on the Property;

24.3.2 Construction of Parks worth a cumulative total of 244 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 1,702nd Residential Unit Constructed on the Property;

24.3.3 Construction of Parks worth a cumulative total of 366 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 2,552nd Residential Unit Constructed on the Property;

24.3.4 Construction of Parks worth a cumulative total of 458 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 3,191st Residential Unit Constructed on the Property; and

24.3.5 Construction of Parks worth a cumulative total of 610 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 4,000th Residential Unit Constructed on the Property.

25. **PREVAILING WAGE REQUIREMENTS**. Master Developer will cause all workers performing Construction or maintenance work under this Agreement prior to the Horizontal Ground Lease Closing, including work performed during the design and pre-construction phases of Construction such as inspection and land surveying work and work performed by the contractor or subcontractors of prospective Outside Vertical Developers, to be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work, all as determined by the Director of the California Department of Industrial Relations ("**DIR**") under California Labor Code sections 1770 through 1785 (these wages are collectively referred to as "**Prevailing Wages**"). For all such work occurring prior to the Horizontal Ground Lease Closing, Master Developer and each Transferee will comply with all provisions of California Labor Code sections 1720 through 1861 (collectively, "**Prevailing Wage Law**") and **ATTACHMENT 18** to this Agreement.

25.1 City's Determination of Prevailing Wage Applicability for Future Leases. Before the Horizontal Ground Lease Closing, and before each Vertical Ground Lease Closing, City will determine in its sole discretion, based on consultation with the Office of the City Attorney, if payment of Prevailing Wages and compliance with Prevailing Wage Law is required for all Construction or maintenance work, or a specific portion thereof, done under the particular lease (each, a "**City Prevailing Wage Determination**"). Master Developer and each Vertical Developer, as applicable, will provide City with all information requested by City, if any, that City determines is necessary to make the City Prevailing Wage Determination for the particular lease. City will provide Notice to Master Developer of the City Prevailing Wage Determination for the Horizontal Ground Lease no less than sixty (60) days before the Horizontal Ground Lease Closing Date. City will Notify the applicable Vertical Developer of the City Prevailing Wage Determination for a particular Vertical Ground Lease no less than sixty (60) days before the scheduled Vertical Ground Lease Closing Date for the Vertical Ground Lease. City shall make a good faith effort to make a City Prevailing Wage Determination for each particular lease, however, if City fails to timely provide Notice of the City Prevailing Wage Determination for a particular lease, the City Prevailing Wage Determination for that lease will be deemed to be that payment of Prevailing Wages and compliance with Prevailing Wage Law are required for all Construction and maintenance work done under the particular lease. Except as provided in Section 25.2, if City determines, or is deemed to have determined, that Construction or maintenance work, or a specific portion thereof, to be performed under the Horizontal Ground Lease or a Vertical Ground Lease requires the payment of Prevailing Wages and compliance with Prevailing Wage Law (each, an

"**Affirmative Prevailing Wage Determination**"), the Horizontal Ground Lease or the particular Vertical Ground Lease will include the provisions related to the payment of Prevailing Wages and compliance with Prevailing Wage Law, including the relevant attachments or exhibits included in the "form of" leases attached to this Agreement as **ATTACHMENTS 11, 15, 16, and 17** (collectively, the "**Prevailing Wage Provisions**"). City shall not be obligated to proceed with the Horizontal Ground Lease Closing, or any Vertical Ground Lease Closing, as applicable, if City makes an Affirmative Prevailing Wage Determination for such lease, but Master Developer or the applicable Vertical Developer refuses to enter into the particular lease with the Prevailing Wage Provisions. If Master Developer or any Vertical Developer, as applicable, disagrees with an Affirmative Prevailing Wage Determination for an anticipated lease where it will be the "Tenant," then Master Developer or the Vertical Developer, as applicable, must provide Notice to the City within fifteen (15) days after the Receipt Date of the Notice of the Affirmative Prevailing Wage Determination, or if City fails to provide Notice of the City Prevailing Wage Determination for the particular lease, no less than 45 days before the Horizontal Ground Lease Closing Date or Vertical Ground Lease Closing Date, as applicable. The Notice must state whether Master Developer or the Vertical Developer, as applicable, will seek a DIR Coverage Determination under Section 25.2 or refuses to enter into the particular lease with the Prevailing Wage Provisions. If Master Developer refuses to enter into the Horizontal Ground Lease with the Prevailing Wage Provisions, either Party may terminate this Agreement by ten (10) Business Days' Notice to the other Party. If the applicable Vertical Developer refuses to enter into the Vertical Ground Lease for a particular Development Parcel with the Prevailing Wage Provisions, either City or the applicable Vertical Developer may terminate this Agreement with respect to the particular Development Parcel by ten (10) Business Days' Notice to the other. If Master Developer or a particular Vertical Developer does not provide Notice that it objects to an Affirmative Prevailing Wage Determination as required by this Section 25.1, the Prevailing Wage Provisions will be included in the Horizontal Ground Lease or the particular Vertical Ground Lease.

25.2 City's Prevailing Wage Determination Not a Default. City's Prevailing Wage Determination will not constitute a Default under this Agreement, or be the basis for the recovery of any damages or Legal Costs or other remedy or relief (except for requesting a public works coverage determination from the DIR as described in this Section 24.3.5), even if after the date of the Affirmative Prevailing Wage Determination, the DIR issues a DIR Coverage Determination concluding that payment of Prevailing Wages and compliance with Prevailing Wage Law is not required in whole or in part for any Construction or maintenance work performed under the lease for which the Affirmative Prevailing Wage Determination was made. Further, Master Developer agrees that the process for requesting a DIR Coverage Determination (including all rights of appeal to a DIR Coverage Determination) will be the sole remedy for challenging an Affirmative Prevailing Wage Determination for the Horizontal Ground Lease or any Vertical Ground Lease, and that no action other than a DIR Coverage Determination (including all rights of appeal to a DIR Coverage Determination) may be brought in a court of law against City to challenge an Affirmative Prevailing Wage Determination under this Agreement for the Horizontal Ground Lease or any Vertical Ground Lease.

25.3 DIR Public Works Coverage Determination. If Master Developer or the applicable Vertical Developer believes that City's Affirmative Prevailing Wage Determination for its particular lease is inconsistent with Prevailing Wage Law, Master Developer or the Vertical Developer (individually and collectively for this Section 25.3, "**Requesting Party**") may seek a

public works coverage determination from the DIR under California Labor Code section 1773.5 about whether Construction or maintenance work performed under the Horizontal Ground Lease or particular Vertical Ground Lease, as applicable, is fully or partially exempt from the payment of Prevailing Wages and compliance with Prevailing Wage Law ("**DIR Coverage Determination**"). Before submitting any written request for a DIR Coverage Determination, the Requesting Party must obtain City's written approval of the content of the request, which approval will not be unreasonably withheld or delayed and will be limited to City's determination that the request is factually accurate and complete. Except as provided in the immediately preceding sentence, nothing in this Agreement prohibits, restricts or otherwise imposes obligations on either Party's communications with the DIR, including providing legal positions or analysis that the Party believes are applicable, including positions or analysis that are inconsistent with positions or analysis presented by the other Party. The Requesting Party will promptly provide City with a copy of all written correspondence and documents exchanged between the Requesting Party and the DIR with respect to the requested DIR Coverage Determination. Similarly, City will promptly provide the Requesting Party with a copy of all written correspondence and documents exchanged between City and the DIR with respect to the requested DIR Coverage Determination. If the DIR determines in writing that Construction or maintenance work performed under the Horizontal Ground Lease or particular Vertical Ground Lease, as applicable, is fully or partially exempt from payment of Prevailing Wages and compliance with Prevailing Wage Law, the Prevailing Wage Provisions in the Horizontal Ground Lease or the particular Vertical Ground Lease will be modified to reflect that Prevailing Wages and compliance with Prevailing Wage Law will only be required for workers performing Construction or maintenance work under that lease to the extent the DIR determines that payment of Prevailing Wages and compliance with Prevailing Wage Law is required in the DIR Coverage Determination. City, Master Developer, and each Vertical Developer will bear its own costs related to any request for a DIR Coverage Determination and any communication with the DIR regarding such a request.

26. **PROJECT LABOR AGREEMENT CERTIFICATION**. Master Developer will cause each General Contractor (including Master Developer if Master Developer is a General Contractor) performing Construction on the Property, whether under this Agreement, the Horizontal Ground Lease, or a Vertical Ground Lease, to enter into and comply with the terms of a project labor agreement under the terms of that certain Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022. Master Developer acknowledges that it entered into the Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022, voluntarily, on its own accord and of its own free will. Master Developer will deliver to City a certification in substantially the form of **ATTACHMENT 19** signed by an authorized representative of the San Diego County Building & Construction Trades Council certifying that each General Contractor performing Construction on the Property has entered into each project labor agreement required under this Section 26, within fifteen (15) days after entering into each such agreement (each, a "**PLA Certification**").

27. **MIDWAY EIFD CONDITION**.

27.1 Anticipated Midway EIFD Formation. The Parties anticipate City and County forming an Enhanced Infrastructure Financing District, under California Government Code sections 53398.50 through 53398.88 ("**EIFD Law**"), including the Property and other, adjacent

real property, in the future ("**Midway EIFD**"). The Parties acknowledge that formation of the Midway EIFD is subject to exercise of the legislative discretion of both the City Council and County Board of Supervisors in the future, neither of which is constrained by this Agreement or certain to occur. Further, the Parties acknowledge that, once formed, the Midway EIFD will be a separate public entity from City and County governed by its own public financing authority that will exercise its own legislative discretion in the future ("**EIFD Authority**").

27.2 Midway EIFD Formation Conditions. If during the three hundred sixty-five (365) day period starting on the Effective Date ("**EIFD Formation Period**"), either (a) the Midway EIFD is not formed or (b) the EIFD Authority has not approved the EIFD Acquisition Agreement, then within ten (10) Business Days after expiration of the EIFD Formation Period City will Notify Master Developer that Master Developer has one hundred twenty (120) days from the Receipt Date of City's Notice ("**EIFD Alternative Financing Period**") to Notify City that Master Developer is either (i) terminating this Agreement or (ii) will be able to secure alternative financing to replace the financing previously anticipated to be provided by the Midway EIFD ("**Alternative Financing**") on or before the Horizontal Ground Lease Closing Date. If Master Developer Notifies City that Master Developer will be able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date, the Notice must include documentation evidencing both the feasibility of the proposed Alternative Financing and the sufficiency of the proposed Alternative Financing. If during the EIFD Alternative Financing Period Master Developer Notifies City that Master Developer will be unable to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date, either Master Developer or City may terminate this Agreement upon ten (10) Business Days' Notice to the other Party. Solely for the avoidance of doubt, Master Developer's failure to Notify City on or before the expiration of the EIFD Alternative Financing Period that Master Developer is or is not able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date will be a Non-Monetary Default by Master Developer. Further, if Master Developer does not Notify City on or before the expiration of the EIFD Alternative Financing Period that Master Developer is able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date, there is no impasse to resolve and neither Party may initiate the impasse resolution process under this Section 27.2. If Master Developer Notifies City during the EIFD Alternative Financing Period that Master Developer will be able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date, then City will Notify Master Developer within thirty (30) days after the Receipt Date of Master Developer's Notice whether City approves or rejects, in City's sole discretion, the feasibility and sufficiency of the proposed Alternative Financing. If City Notifies Master Developer that City rejects the feasibility or sufficiency of the proposed Alternative Financing, then either Party may initiate the impasse resolution process under Section 39 about the proposed Alternative Financing by delivering a Notice requesting commencement of a Negotiation Period under Section 39.1. If City rejects the feasibility or sufficiency of the proposed Alternative Financing and neither Party initiates the impasse resolution process under Section 39 within ten (10) Business Days after the Receipt Date of City's Notice rejecting the feasibility or sufficiency of the proposed Alternative Financing, either Party may terminate this Agreement by ten (10) Business Days' Notice to the other Party. If a Party initiates the impasse resolution process under Section 39 for Alternative Financing and the Parties have not agreed on Alternative Financing after completing the impasse resolution process under Section 39, either Party may terminate this Agreement by ten (10) Business Days' Notice to the other Party. If the Parties agree on Alternative Financing, Master

Developer will include the agreed upon Alternative Financing in the Horizontal Improvements Financing Plan presented to City under Section 31.2.

27.3 Anticipated Agreement between Master Developer and EIFD Authority. If the Midway EIFD is formed, Master Developer anticipates entering into an agreement with the EIFD Authority that is acceptable to Master Developer and the EIFD Authority regarding the procedures by which the costs authorized in the Midway EIFD infrastructure financing plan to be financed by the Midway EIFD with Midway EIFD bond proceeds and tax increment revenue are funded ("**EIFD Acquisition Agreement**"). If it is determined that the City is a required party to the EIFD Acquisition Agreement, the City's approval of the EIFD Acquisition Agreement will be in the City's sole discretion. If the City is not a party to the EIFD Acquisition Agreement, the City will reasonably cooperate with Master Developer, as necessary and at no cost to City, to facilitate a proposed EIFD Acquisition Agreement being presented to the EIFD Authority for approval at the earliest practicable date after the Midway EIFD is formed.

28. **CITY PROJECT COORDINATOR**. City will designate a management-level employee (program coordinator or above) as the primary contact person between Master Developer or any Vertical Developer, if any, and City for processing Approvals, City inspection of Construction of Horizontal Improvements or Vertical Improvements, and City administration of this Agreement, the Horizontal Ground Lease, or each Vertical Ground Lease ("**City Project Coordinator**"). In City's sole discretion, City may hire a Third Person consultant to be the City Project Coordinator on either a short-term or long-term basis. Nothing in this Section 28 is intended to commit City to issuing any Approval related to the Development or requiring any process for submitting or processing Applications for Approvals from City related to the Development that differs from City's standard process for the Applications for Approvals. City, in its sole discretion, may change the identity of the City Project Coordinator at any time by Notice to Developer. The cost of the City Project Coordinator position will be completely paid for by Master Developer during the period beginning on the Effective Date and continuing through the June 30 immediately following the earlier of (a) the last Vertical Ground Lease Closing Date and (b) the twentieth (20^{th}) anniversary of the Effective Date, unless City's obligation to provide the City Project Coordinator is terminated earlier under this Section 28. Master Developer will make annual advance payments to City of the total cost of the Project Coordinator position for each applicable City fiscal year with the first payment being due on the Effective Date for the period from the Effective Date through the immediately following June 30 and each subsequent payment being due on each May 15th for the immediately following full City fiscal year. The Parties may mutually determine that the City Project Coordinator is less than one full-time employment position, which must be determined by January 1 for the following City fiscal year. Master Developer, in its sole discretion, may elect to terminate City's obligation to provide the City Project Coordinator by Notice to City delivered before January 1st of any City fiscal year to be effective as of the first day of the next City fiscal year beginning July 1 and thereafter City will have no obligation to provide the City Project Coordinator at any future time. Once given, Notice of termination of City's obligation to provide the City Project Coordinator may not be revoked because City will immediately begin relying on such Notice in its budget process for City's next fiscal year. City's obligation to provide the City Project Coordinator is subject to approval of the employment position through City's process for creating a full-time employment position with City and City's annual budget process for allocating money to pay for such full-time employment position, all of which are in the sole discretion of City, its employee organizations, and the City Council. If City decides to hire a Third Person

consultant to be the City Project Coordinator, the agreement with the consultant is subject to City's process for entering into a consultant services agreement and City's annual budget process for allocating money to pay for such agreement, all of which are subject to the sole discretion of City, its employee organizations, and the City Council.

29. **CITY COOPERATION WITH OTHER GOVERNMENTS**. City will reasonably cooperate with other Governments, at no cost to City, with respect to reasonable Approvals or financing for the Development sought by Master Developer from such other Governments, including signing documents that are, in City's reasonable discretion, required or appropriate for Master Developer to obtain such Approvals or financing; provided, however, City will not be liable under any legal or equitable standard or concept to Master Developer or any other Person for Master Developer not obtaining any such Approvals or financing for the Development or any consequence resulting from Master Developer not obtaining any such Approvals of financing for the Development.

30. **VESTING TENTATIVE MAP CHANGES**. The Parties acknowledge and agree that amendments or other changes to the Vesting Tentative Map will have a material impact on the Development. As a result, Master Developer shall not apply to City, under its Governmental Authority, for an amendment or other change to the Vesting Tentative Map without the prior written consent of City, as a Party to this Agreement.

31. **HORIZONTAL IMPROVEMENTS.**

31.1 Horizontal Improvements Development Applications Submission. Master Developer will exercise commercially reasonable efforts to prepare and submit all required Applications, documents, fees, charges or other items (including deposits, funds, or sureties in the ordinary course) required for Construction of the Horizontal Improvements on the Property, under all applicable Laws and Approvals, to each Government for review and approval in order to obtain all Approvals for Construction of the Horizontal Improvements on the Property from each Government in a Permit Ready status as specified in the Performance Schedule and at least three (3) days before the Horizontal Ground Lease Closing Date.

31.2 Horizontal Improvements Financing Plan. As conditions precedent to the opening of the Horizontal Ground Lease Escrow: (a) Master Developer must deliver to City a proposed Horizontal Improvements Financing Plan within the time specified for such delivery in the Performance Schedule; and (b) Master Developer and City must agree on a Horizontal Improvements Financing Plan within the time specified for such agreement in the Performance Schedule. The Parties intend and agree that the agreed upon Horizontal Improvements Financing Plan, including the associated performance schedule, will be added as exhibits to and incorporated into the Horizontal Ground Lease before the Horizontal Ground Lease Escrow is opened. Master Developer's proposed Horizontal Improvements Financing Plan may include Master Developer's proposal for phased real estate secured financing of the Horizontal Improvements corresponding to each of the three Horizontal Improvements Phases ("**Phased Financing**"). Notwithstanding anything to the contrary in this Agreement, City's approval of a proposal for Phased Financing shall be in the City's sole discretion. If City approves a proposal for Phased Financing in City's sole discretion, City and Master Developer will negotiate, in their respective sole discretion, revisions to the Horizontal Ground Lease form to accommodate the Phased Financing, within the

time specified in the Performance Schedule for Master Developer and City to agree upon the Horizontal Improvements Financing Plan. Solely for the avoidance of doubt, Master Developer's failure to deliver a proposed Horizontal Improvements Financing Plan to City within the time specified for such delivery in the Performance Schedule will be a Non-Monetary Default by Master Developer. Further, if Master Developer does not deliver a proposed Horizontal Improvements Financing Plan to City, there is no impasse to resolve and neither Party may initiate the impasse resolution process under this Section 31.2. After Master Developer delivers a proposed Horizontal Improvements Financing Plan to City within the time specified for such delivery in the Performance Schedule, if the Parties have not agreed on a Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) within the time specified for such agreement in the Performance Schedule, then either Party may initiate the impasse resolution process under Section 39 for the Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) by delivering a Notice requesting commencement of a Negotiation Period under Section 39.1. If the Parties have not agreed on a Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) and neither Party initiates the impasse resolution process under Section 39 for the Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) within the time specified for such agreement in the Performance Schedule, then City will Notify Master Developer that Master Developer's failure to initiate the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice may result in termination of this Agreement. If neither Party initiates the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice described in the immediately preceding sentence, either Party may terminate this Agreement by ten (10) Business Days' Notice to the other Party. If a Party initiates the impasse resolution process under Section 39 for the Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) and the Parties have not agreed on a Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal Ground Lease form) after completing the impasse resolution process under Section 39, either Party may terminate this Agreement by ten (10) Business Days' Notice to the other Party.

32. **HORIZONTAL GROUND LEASE CONVEYANCE**.

32.1 Horizontal Ground Lease Escrow. The Parties intend to enter into the Horizontal Ground Lease on the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to enter into the Horizontal Ground Lease, the Parties agree to open the Horizontal Ground Lease Escrow with the Escrow Agent as specified in the Performance Schedule.

32.2 Horizontal Ground Lease Title Approval. The Horizontal Ground Lease will cover the Property. Master Developer approved the condition of the title to the Property under Section 12, including the Leasehold Estate that will be created under the Horizontal Ground Lease at the Horizontal Ground Lease Closing.

32.3 Eminent Domain. If City receives written notice that the Property is the subject of any eminent domain proceeding prior to the Horizontal Ground Lease Closing, City will Notify Master Developer of the eminent domain proceeding. If in the reasonable discretion of Master Developer stated in a Notice from Master Developer to City delivered within ten (10) days after

Notice to Master Developer of the eminent domain proceeding, the eminent domain proceeding will prohibit development of the Horizontal Improvements on the Property, then this Agreement will terminate on the date of such Notice from Master Developer to City. If this Agreement does not terminate under the immediately preceding sentence, then this Agreement will continue in full force and effect in accordance with its terms, and the Horizontal Ground Lease will only provide Master Developer with possession of that portion of the Property that is not subject to the eminent domain proceeding at the Horizontal Ground Lease Closing. An eminent domain proceeding for a taking of the Property is an Unavoidable Delay under Section 40.17 to the extent it delays a Party's performance under this Agreement. City will be entitled to receive the entire eminent domain award and all other compensation regarding all eminent domain proceedings affecting the Property attributable to the period occurring before the Horizontal Ground Lease Closing. The Parties respective rights to receive eminent domain awards and other compensation regarding eminent domain proceedings affecting the Property after the Horizontal Ground Lease Closing will be under the terms of the Horizontal Ground Lease.

32.4 City Not to Encumber. City agrees not to place any matter of Record against the Property, other than Permitted Exceptions, matters allowed or required to be recorded against the Property under this Agreement, matters arising from City's performance of its obligations or exercise of its rights under this Agreement, including the Horizontal Ground Lease, the Entertainment Center Lease, all Market Rate/Retail Leases, and all Affordable Housing Leases, matters arising from City's exercise of any Governmental Authority, including issuance of Approvals related to the Horizontal Improvements or any Vertical Improvements, or as allowed under the Horizontal Ground Lease, the Entertainment Center Lease, any Market Rate/Retail Lease, or any Affordable Housing Lease, without the prior written consent of: (a) Master Developer prior to the Horizontal Ground Lease Closing; or (b) the Vertical Developer for a particular Development Parcel, after the Development Parcel is removed from the Horizontal Ground Lease and before the Vertical Ground Lease Closing for the Development Parcel.

33. **HORIZONTAL GROUND LEASE ESCROW JOINT ESCROW INSTRUCTIONS**.

33.1 Horizontal Ground Lease Escrow Opening. Neither Party is obligated to open the Horizontal Ground Lease Escrow until after the Parties agree on the Horizontal Improvements Financing Plan under Section 31.2 and Master Developer obtains all required Notices from City under Section 24.2. After the Parties agree on the Horizontal Improvements Financing Plan under Section 31.2 and Master Developer obtains all required Notices from City under Section 24.2, Master Developer must request the opening of the Horizontal Ground Lease Escrow by Notice to City and the Escrow Agent sent within the time specified for such request in the Performance Schedule. The Parties will cause the Horizontal Ground Lease Escrow to be opened within seven (7) days after the Receipt Date of Master Developer's Notice to City and the Escrow Agent requesting the opening of the Horizontal Ground Lease Escrow. The provisions of this Section 33 are the joint escrow instructions of the Parties to the Escrow Agent for conduct of the Horizontal Ground Lease Escrow for entering into the Horizontal Ground Lease. The Parties will sign such further or supplemental escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further or supplemental escrow instructions requested by Escrow Agent, the provisions of this Agreement will control.

33.2 Escrow Agent Authority. The Parties authorize the Escrow Agent to:

33.2.1 **Charges**. Pay and charge each Party for its respective share of the applicable fees, taxes, charges, or costs regarding the Horizontal Ground Lease Escrow;

33.2.2 **Settlement/Closing Statements**. Release each Party's Escrow Closing Statement to the other Party;

33.2.3 **Document Recording**. File all documents delivered for Recording through the Horizontal Ground Lease Escrow with the County Recorder under the joint instructions of the Parties; and

33.2.4 **Counterpart Documents**. Utilize documents signed by the Parties in counterparts, including attaching separate signature pages to one version of the same document.

33.3 Master Developer's Conditions to Horizontal Ground Lease Closing. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Master Developer, Master Developer's obligation to lease the Property from City under the Horizontal Ground Lease on the Horizontal Ground Lease Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by Master Developer) of each of the following conditions precedent on or before the Horizontal Ground Lease Closing Date:

33.3.1 **Master Developer Title Policy**. The Title Company is, upon payment of the Title Company's premium for the Master Developer Title Policy, irrevocably and unconditionally committed to issue the Master Developer Title Policy to Master Developer, at the Horizontal Ground Lease Closing;

33.3.2 **Horizontal Improvements Financing Funding**. The funding of all financing identified in the Horizontal Improvements Financing Plan as closing concurrent with the Horizontal Ground Lease Closing and satisfaction of all other terms of the Horizontal Improvements Financing Plan required to be satisfied at or before the Horizontal Ground Lease Closing;

33.3.3 **Approvals**. Master Developer receives all Approvals required from each Government for Construction of the first Horizontal Improvements Phase on the Property, the terms and conditions of such Approvals are reasonably satisfactory to Master Developer, and all such Approvals are Permit Ready;

33.3.4 **Environmental Review Documents**. Adoption, approval, or certification of the Environmental Review Documents by each required Government for entry into the Horizontal Ground Lease;

33.3.5 **Vesting Tentative Map**. Vesting Tentative Map No. 3258589 for Midway Rising, San Diego, California, is approved by City (under its Governmental Authority) and Recorded;

33.3.6 **Project Labor Agreement**. Master Developer's General Contractor for the first Horizontal Improvements Phase has entered into a Project Labor Agreement for Construction of the first Horizontal Improvements Phase;

33.3.7 **No Prohibited Encumbrance**. No Prohibited Encumbrance affects the Property;

33.3.8 **Termination of Existing Agreements**. All Existing Agreements are terminated in accordance with Section 14;

33.3.9 **Interim Arena Lease Termination**. The Interim Arena Lease is terminated and the quitclaim deed described in Section 33.6.5 is Recorded;

33.3.10 **City Escrow Deposits**. City deposits all the items into the Escrow required by Section 33.7;

33.3.11 **Closing Statement**. Master Developer reasonably approves Master Developer's Escrow Closing Statement for the Horizontal Ground Lease Escrow;

33.3.12 **City Representations and Warranties**. Excluding City's representation and warranty in Section 8.2.5 that is subject to Section 32.3, all the representations and warranties of City in Section 8.2 are true and correct as of the Horizontal Ground Lease Closing Date; and

33.3.13 **City Pre-Closing Obligations**. City performs all its material obligations required to be performed by City under this Agreement prior to the Horizontal Ground Lease Closing.

33.4 City's Conditions to Horizontal Ground Lease Closing. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by City, City's obligation to lease the Property to Master Developer under the Horizontal Ground Lease on the Horizontal Ground Lease Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by City) of each of the following conditions precedent on or before the Horizontal Ground Lease Closing Date:

33.4.1 **Document Approval**. City receives from Master Developer all the documents listed in this Section 33.4.1 completed and signed by all Persons required to make such documents operative, and City approves such documents. In order to allow for City review and approval of all the required documents, Master Developer will first deliver a substantially complete draft of each document listed in this Section 33.4.1 to City as specified in the Performance Schedule. Then, Master Developer will have all the documents listed in this Section 33.4.1 completed and signed by all Persons required to make such documents operative (if applicable) and will have delivered true, accurate, complete, and legible copies or originals (as specified in this Agreement) of all such documents to City as specified in the Performance Schedule:

33.4.1.1 A copy of the Master Developer Entity Documents;

33.4.1.2 A copy of the Construction Contract for the first Horizontal Improvements Phase;

33.4.1.3 An agreement from Master Developer's General Contractor for the first Horizontal Improvements Phase agreeing to continue to perform for City (if City so elects) all obligations under the Construction Contract, if the Horizontal Ground Lease terminates or City re-enters the "Premises" under the Horizontal Ground Lease, provided the General Contractor is paid for its services requested by City after termination of the Horizontal Ground Lease or re-entry onto the "Premises" under the Horizontal Ground Lease in accordance with its Construction Contract;

33.4.1.4 A copy of the Engineering Contract for the first Horizontal Improvements Phase;

33.4.1.5 An agreement from Master Developer's Engineer for the first Horizontal Improvements Phase agreeing to continue to perform for City (if City so elects) all obligations of Master Developer's Engineer under its Engineering Contract, if the Horizontal Ground Lease terminates or City re-enters the "Premises" under the Horizontal Ground Lease, provided the Engineer is paid for its services requested by City after termination of the Horizontal Ground Lease or re-entry onto the "Premises" under the Horizontal Ground Lease in accordance with its Engineering Contract;

33.4.1.6 A copy of the Plans for the first Horizontal Improvements Phase;

33.4.1.7 Master Developer's assignment of the Plans for the first Horizontal Improvements Phase to City such that if the Horizontal Ground Lease terminates or City re-enters the "Premises" under the Horizontal Ground Lease, City may exercise all rights of Master Developer under and to the Plans for the first Horizontal Improvements Phase (in City's sole and absolute discretion);

33.4.1.8 A copy of all Approvals required for Construction of the first Horizontal Improvements Phase;

33.4.1.9 All Insurance Documents;

33.4.1.10 The original Construction Surety for the first Horizontal Improvements Phase;

33.4.1.11 A copy of the Horizontal Improvements Financing Documents for all financing for the first Horizontal Improvements Phase; and

33.4.1.12 The original PLA Certification for Construction of the first Horizontal Improvements Phase;

33.4.2 **Master Developer Title Policy**. The Title Company is, upon payment of the Title Company's premium for the Master Developer Title Policy for the Horizontal Ground Lease, irrevocably and unconditionally committed to issue the Master Developer Title Policy for the Horizontal Ground Lease to Master Developer at the Horizontal Ground Lease Closing;

33.4.3 **City Title Policy**. The Title Company is, upon payment of the Title Company's premium for the City Title Policy, irrevocably and unconditionally committed to issue the City Title Policy to City at the Horizontal Ground Lease Closing;

33.4.4 **Horizontal Improvements Financing Funding**. The funding of all financing identified in the Horizontal Improvements Financing Plan as closing concurrent with the Horizontal Ground Lease Closing and satisfaction of all other terms of the Horizontal Improvements Financing Plan required to be satisfied at or before the Horizontal Ground Lease Closing;

33.4.5 **Approvals**. Master Developer receives all Approvals required from each Government for Construction of the first Horizontal Improvements Phase on the Property, the terms and conditions of such Approvals are reasonably satisfactory to City, and all such Approvals are Permit Ready;

33.4.6 **No Prohibited Encumbrance**. No Prohibited Encumbrance affects the Property;

33.4.7 **Environmental Review Documents**. Adoption, approval, or certification of the Environmental Review Documents by each required Government for entry into the Horizontal Ground Lease;

33.4.8 **Vesting Tentative Map**. The Vesting Tentative Map is Recorded;

33.4.9 **Termination of Existing Agreements**. All Existing Agreements are terminated and all tenants or users under Existing Agreements have vacated the Property, either voluntarily or through legal process, in accordance with Section 14;

33.4.10 **Interim Arena Lease Termination**. The Interim Arena Lease is terminated and the quitclaim deed described in Section 33.6.5 is Recorded;

33.4.11 **Master Developer Escrow Deposits**. Master Developer deposits all the items into the Horizontal Ground Lease Escrow required by Section 33.6;

33.4.12 **Closing Statement**. City reasonably approves City's Escrow Closing Statement for the Horizontal Ground Lease Escrow;

33.4.13 **Master Developer Representations and Warranties**. All the representations and warranties of Master Developer in Section 8.1 are true and correct as of the Horizontal Ground Lease Closing Date; and

33.4.14 **Master Developer Pre-Closing Obligations**. Master Developer performs all its material obligations required to be performed by Master Developer under this Agreement prior to the Horizontal Ground Lease Closing.

33.5 Failure of Conditions Not a Default. Notwithstanding any provision of this Agreement to the contrary, Master Developer's failure to satisfy any of the conditions set forth in Section 33.3 will not constitute an Escrow Default (or any other type of Default or Event of

Default) by Master Developer under this Agreement, unless Master Developer fails to exercise reasonable efforts to satisfy the conditions. Notwithstanding any provision of this Agreement to the contrary, City's failure to satisfy any of the conditions set forth in Section 33.4 will not constitute an Escrow Default (or any other type of Default or Event of Default) by City under this Agreement, unless City fails to act reasonably regarding the conditions; provided, however, where City is entitled to act in City's sole and absolute discretion, the City Council is exercising its legislative discretion, or the City is exercising some other Governmental Authority, City's failure to approve a matter constituting the condition will not be any type of Default or Event of Default. Nothing in this Agreement is intended to limit City's legislative or other governmental discretion or Governmental Authority or result in the exercise of such discretion or authority being an Escrow Default or other Default.

33.6 Master Developer's Horizontal Ground Lease Escrow Deposits. At least two (2) Business Days before the Horizontal Ground Lease Closing Date scheduled by the Escrow Agent in a Notice to both Parties, Master Developer will deposit (or cause to be deposited) the following described funds and documents into the Horizontal Ground Lease Escrow and, concurrently, provide a copy of each such document to City:

33.6.1 **Horizontal Ground Lease**. The Horizontal Ground Lease signed by the authorized representative(s) of Master Developer;

33.6.2 **Horizontal Ground Lease Memorandum**. The Horizontal Ground Lease Memorandum signed by the authorized representative(s) of Master Developer and notarized for Recording against the Property;

33.6.3 **Expenses**. All monetary amounts to be paid through the Horizontal Ground Lease Escrow by Master Developer shown on Master Developer's approved Escrow Closing Statement for the Horizontal Ground Lease Escrow;

33.6.4 **Horizontal Improvements Financing Proceeds**. Documentary evidence of the funding of all proceeds of the financing sources identified in the Horizontal Improvements Financing Plan as closing concurrent with the Horizontal Ground Lease Closing;

33.6.5 **Interim Arena Lease Termination**. A quitclaim deed, in a form reasonably acceptable to City, from Midway Rising Venue Management, LLC, a Delaware limited liability company, conveying all of its right, title, and interest in the Property to City that is notarized for Recording against the Property;

33.6.6 **Other Reasonable Items**. All other documents or funds required to be delivered by Master Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company to close the Horizontal Ground Lease Escrow that have not previously been delivered by Master Developer.

33.7 City's Horizontal Ground Lease Escrow Deposits. At least two (2) Business Days before the Horizontal Ground Lease Closing Date scheduled by the Escrow Agent in a Notice to both Parties, City will deposit the following described funds and documents into the Horizontal Ground Lease Escrow and, concurrently, provide a copy of each such document to Master Developer:

33.7.1 **Horizontal Ground Lease**. The Horizontal Ground Lease signed by the authorized representative(s) of City;

33.7.2 **Horizontal Ground Lease Memorandum**. The Horizontal Ground Lease Memorandum signed by the authorized representative(s) of City and notarized for Recording against the Property;

33.7.3 **Interim Arena Lease Termination**. A certificate of acceptance of the quitclaim deed from Midway Rising Venue Management, LLC, a Delaware limited liability company, conveying all of its right, title, and interest in the Property to City, that is notarized for Recording against the Property;

33.7.4 **Expenses**. All monetary amounts to be paid through the Horizontal Ground Lease Escrow by City (if any) shown on City's approved Escrow Closing Statement for the Horizontal Ground Lease Escrow; and

33.7.5 **Other Reasonable Items**. All other documents required to be delivered by City under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company to close the Horizontal Ground Lease Escrow that have not previously been delivered by City.

33.8 Horizontal Ground Lease Closing Procedure. When each of Master Developer's Escrow deposits, as set forth in Section 33.6, and each of City's Escrow deposits, as set forth in Section 33.7, are deposited into the Horizontal Ground Lease Escrow, the Escrow Agent will determine whether all conditions to the Horizontal Ground Lease Closing under Sections 33.3 and 33.4 are satisfied or waived. After Escrow Agent receives Notice from Master Developer confirming that all conditions to the Horizontal Ground Lease Closing for the benefit of Master Developer under Section 33.3 are either satisfied or waived, Notice from City confirming that all conditions to the Horizontal Ground Lease Closing for the benefit of City under Section 33.4 are either satisfied or waived, and Notice from both Master Developer and City authorizing Escrow Agent to close the Horizontal Ground Lease Escrow, Escrow Agent will close the Horizontal Ground Lease Escrow on the Horizontal Ground Lease Closing Date by performing all the actions described in Sections 33.8.1 through 33.8.5.

33.8.1 **Recordation and Distribution of Recorded Documents**. Filing the following documents with the County Recorder for Recording in the following order of priority: (a) the quitclaim deed from Midway Rising Venue Management, LLC, a Delaware limited liability company, conveying all of its right, title, and interest in the Property to City, with City's certificate of acceptance attached; (b) the Lease Memorandum; (c) the Permitted Leasehold Security Instrument securing the construction loan for the first Horizontal Improvements Phase (if any); and (d) all other documents to be Recorded through the Horizontal Ground Lease Escrow upon the joint instructions of the Parties. Escrow Agent will deliver conformed copies of all documents filed for Recording through the Horizontal Ground Lease Escrow to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each copy of a document filed for Recording will show all Recording information. The Parties intend and agree that this Section 33.8.1 establishes the relative priorities of the documents to be Recorded through the Horizontal Ground Lease Escrow,

by providing for Recordation of senior interests prior in time to junior interests, in the order provided in this Section 33.8.1;

33.8.2 **Distribution of Other Documents**. Delivering originals or copies of all documents to be delivered through the Horizontal Ground Lease Escrow that are not filed for Recording (if any) to the Parties and any other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each such document;

33.8.3 **Master Developer Title Policy**. Obtaining and delivering the Master Developer Title Policy to Master Developer;

33.8.4 **City Title Policy**. Obtaining and delivering the City Title Policy to City; and

33.8.5 **Funds**. Distributing all funds held by Escrow Agent in accordance with the Escrow Closing Statements approved separately in writing by each Party for the Horizontal Ground Lease Escrow.

33.9 Horizontal Ground Lease Closing. The Horizontal Ground Lease Closing will occur on or before the Horizontal Ground Lease Closing Date. The Parties may mutually agree to change the Horizontal Ground Lease Closing Date by joint written instruction to Escrow Agent. The Mayor is authorized to agree to one or more extensions of the Horizontal Ground Lease Closing Date on behalf of City up to a maximum extension of sixty (60) days in the aggregate, in the Mayor's sole and absolute discretion. If for any reason the Horizontal Ground Lease Closing does not occur on or before the Horizontal Ground Lease Closing Date, then any Party not then in Default under this Agreement may cancel the Horizontal Ground Lease Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination and cancellation to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Horizontal Ground Lease Escrow, the Parties and Escrow Agent will proceed under Section 33.12. Without limiting the right of either Party to cancel the Horizontal Ground Lease Escrow and terminate this Agreement under this Section 33.9, if the Horizontal Ground Lease Escrow does not close on or before the Horizontal Ground Lease Closing Date and neither Party has exercised its contractual right to cancel the Horizontal Ground Lease Escrow and terminate this Agreement under this Section 33.9 before the first date on which Escrow Agent Notifies both Parties that the Horizontal Ground Lease Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Horizontal Ground Lease Escrow will close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that the Horizontal Ground Lease Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

33.10 Horizontal Ground Lease Escrow Costs. Escrow Agent will Notify Master Developer and City of the costs to be borne by each of them at the Horizontal Ground Lease Closing by delivering an Escrow Closing Statement to both City and Master Developer for the Horizontal Ground Lease Escrow at least two (2) Business Days prior to the Horizontal Ground Lease Closing Date. Master Developer will pay all the fees and other costs as Escrow Agent may charge for conducting the Horizontal Ground Lease Escrow, all Recording fees, documentary transfer taxes or other charges, fees, or taxes levied by Government relative to entry into the

Horizontal Ground Lease through the Horizontal Ground Lease Escrow, the premium charged by the Title Company for the Master Developer Title Policy, and the premium charged by the Title Company for the City Title Policy.

33.11 Horizontal Ground Lease Escrow Cancellation Charges. If the Horizontal Ground Lease Escrow fails to close due to City's Default under this Agreement, City will pay all ordinary and reasonable Horizontal Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company. If the Horizontal Ground Lease Escrow fails to close due to Master Developer's Default under this Agreement, Master Developer will pay all ordinary and reasonable Horizontal Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company. If the Horizontal Ground Lease Escrow fails to close for any reason other than the Default of either Master Developer or City, the Parties will each pay one half of all ordinary and reasonable Horizontal Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company.

33.12 Horizontal Ground Lease Escrow Cancellation. If this Agreement is terminated under a contractual right provided to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties will do all the following:

33.12.1 **Cancellation Instructions**. The Parties will, within three (3) Business Days following Escrow Agent's written request, sign all reasonable Horizontal Ground Lease Escrow cancellation instructions requested by Escrow Agent;

33.12.2 **Return of Funds and Documents**. Within ten (10) Business Days following receipt by the Parties of a settlement statement of Horizontal Ground Lease Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Master Developer or Escrow Agent will return to City all documents previously delivered by City to Master Developer or Escrow Agent regarding this Agreement or the Horizontal Ground Lease Escrow; (b) City or Escrow Agent will return to Master Developer all documents previously delivered by Master Developer to City or Escrow Agent regarding this Agreement or the Horizontal Ground Lease Escrow; (c) Escrow Agent will, unless otherwise provided in this Agreement, return to Master Developer all funds deposited in the Horizontal Ground Lease Escrow by Master Developer, less Master Developer's share of customary and reasonable Horizontal Ground Lease Escrow or title order cancellation charges (if any) in accordance with Section 33.11; and (d) Escrow Agent will, unless otherwise provided in this Agreement, return to City all funds deposited in the Horizontal Ground Lease Escrow by City, less City's share of customary and reasonable Horizontal Ground Lease Escrow or title order cancellation charges (if any) in accordance with Section 33.11.

34. VERTICAL GROUND LEASES.

34.1 Vertical Ground Lease Escrows. For the purposes of exchanging funds and documents to enter into each Vertical Ground Lease, City and Vertical Developer will open a Vertical Ground Lease Escrow with the Escrow Agent.

34.2 Vertical Ground Lease Title Approval. Each Vertical Ground Lease will cover a particular Development Parcel within the Property. Master Developer approved the condition of

the title to the Property under Section 12, including each Leasehold Estate to be created under each Vertical Ground Lease, and each Outside Vertical Developer acquires its right to enter into its Vertical Ground Lease subject to Master Developer's (its transferor's) previous approval of the condition of the title to the Property under Section 12, including the Leasehold Estate to be created under its Vertical Ground Lease, and by accepting the Transfer of Master Developer's right to enter into the Vertical Ground Lease, approves the condition of the title to the particular Development Parcel under Section 12, including the Leasehold Estate to be created under its Vertical Ground Lease.

34.3 Eminent Domain Proceedings. If City receives written notice that a Development Parcel to be leased under a Vertical Ground Lease is the subject of any eminent domain proceeding prior to the Vertical Ground Lease Closing for the particular Vertical Ground Lease, City will Notify Vertical Developer of the eminent domain proceeding. If in the reasonable discretion of Vertical Developer stated in a Notice from Vertical Developer to City delivered within ten (10) days after Notice to Vertical Developer of the eminent domain proceeding, the eminent domain proceeding will prohibit development of the Vertical Improvements on the Development Parcel, then this Agreement will terminate with respect to the particular Development Parcel and associated Vertical Ground Lease on the date of such Notice from Vertical Developer to City. If this Agreement does not terminate with respect to the particular Development Parcel and associated Vertical Ground Lease under the immediately preceding sentence, then this Agreement will continue in full force and effect in accordance with its terms, and the Vertical Ground Lease will only provide Vertical Developer with possession of that portion of the particular Development Parcel that is not subject to the eminent domain proceeding at the Vertical Ground Lease Closing. City and Vertical Developer's respective rights to receive eminent domain awards and other compensation regarding eminent domain proceedings affecting a particular Development Parcel after the Vertical Ground Lease Closing for the Vertical Ground Lease of such Development Parcel will be under the terms of the Vertical Ground Lease for that Development Parcel.

34.4 Vertical Ground Lease Development Parcel Acceptance. In addition to accepting the condition of the title to the Property under Section 12, each Vertical Developer will accept each Development Parcel in its "as-is" condition, as further detailed in the Vertical Ground Lease for the particular Development Parcel.

34.5 Termination/Release; Post-Closing Obligations Under Vertical Ground Leases. Except with respect to Master Developer's obligations under Sections 15, 22, 24, or 38.3, the provisions of Section 34.6.5, or as otherwise expressly provided in Section 40.12, this Agreement will terminate regarding a Development Parcel upon the Vertical Ground Lease Closing for the Vertical Ground Lease for that particular Development Parcel and the rights and obligations of City and Vertical Developer regarding such Development Parcel will be governed exclusively by the terms of the particular Vertical Ground Lease.

34.6 Vertical Improvements Designation. The phasing of development of the Vertical Improvements will occur as described in the Development Phasing Plan and the performance schedule in each Vertical Ground Lease. In all circumstances, Development Parcels 24 and 25 will be developed with the Entertainment Center and the Vertical Ground Lease for Development Parcels 24 and 25 will be the first Vertical Ground Lease entered into between City and a Vertical Developer. As a result, the Horizontal Improvements required for development of Development

Parcels 24 and 25 must be completed before the Horizontal Improvements required for development of other Development Parcels. City and Master Developer acknowledge and agree that the overall Development must contain all the development elements described in Sections 15 through 21 and each Outside Vertical Developer acquires its rights to its Vertical Ground Lease subject to this requirement. Within the time specified in the Performance Schedule, Master Developer, either as the Vertical Developer itself or in requesting City approval of a proposed Outside Vertical Developer Transfer under Section 40.4, will Notify City of the Vertical Improvements to be Constructed on each Development Parcel that will be the subject of a Vertical Ground Lease and obtain City's approval of the Vertical Improvements under Section 34.7. Solely for the avoidance of doubt, Master Developer's failure to Notify City of the Vertical Improvements to be Constructed on each Development Parcel that will be the subject of a Vertical Ground Lease within the time specified for such Notice in the Performance Schedule will be a Non-Monetary Default by Master Developer. Each Notice from Master Developer to City identifying the Vertical Improvements to be Constructed on a particular Development Parcel must include all the following information:

34.6.1 **Entertainment Center**. For the Vertical Ground Lease of the Development Parcel that will be developed with the Entertainment Center Vertical Improvements all the following information: (a) total square footage of buildings; (b) total number of seats in the entertainment center for events; (c) location and number of parking spaces allocated for the Entertainment Center use on and off the Development Parcel; (d) projected Construction Commencement Date (defined in the Vertical Ground Lease) of the Vertical Improvements; and (e) projected Project Completion Date (defined in the Vertical Ground Lease) of the Vertical Improvements.

34.6.2 **Market Rate Housing and Retail Development**. For each Market Rate Housing/Retail Lease all the following information: (a) total number of Market Rate Housing Units; (b) number of bedrooms in each Market Rate Housing Unit; (c) location and number of parking spaces allocated for the Market Rate Housing on and off the Development Parcel; (d) projected Construction Commencement Date (defined in the Market Rate Housing/Retail Lease) of the Vertical Improvements; (e) projected Project Completion Date (defined in the Market Rate Housing/Retail Lease) of the Vertical Improvements; (f) projected monthly sublease rates for each Market Rate Housing Unit; (g) total square footage of Retail Development space; (h) location and number of parking spaces allocated for Retail Development on and off the Development Parcel; and (i) projected monthly per square foot sublease rates for the Retail Development space.

34.6.3 **No Exclusive Retail Development**. All Retail Development will be part of a mixed-use development with Market Rate Housing on a Development Parcel. As a result, there will be no Vertical Ground Lease with only Retail Development being Constructed on a Development Parcel.

34.6.4 **Affordable Housing**. For each Affordable Housing Lease all the following information: (a) total number of residential units; (b) number of bedrooms in each residential unit; (c) projected Construction Commencement Date (defined in the Vertical Ground Lease) of the Vertical Improvements; (d) projected Project Completion Date (defined in the Vertical Ground Lease) of the Vertical Improvements; (e) number of each size of residential unit (i.e., studio, 1-bedroom, 2-bedroom, 3-bedroom) that will be restricted to each income level (Extremely Low

Income Household, Very Low Income Household, Low Income 60% Household, or Low Income 80% Household, all as will be defined in the Affordable Housing Lease Form); (f) special population restrictions (senior, family, veteran, etc.) on occupancy each residential unit, if applicable; (g) number of manager units and bedroom count for each manager unit; (h) location and number of parking spaces allocated for the Affordable Units and manager units on or off the Development Parcel; (i) location of all commercial/retail space in each building to be occupied by uses supporting the residents of Affordable Units in the building, such as daycare centers, senior centers, or "corner markets"; (j) total square footage of commercial/retail space in each building; (k) location and number of parking spaces allocated for commercial/retail space in each building on and off the Development Parcel; and (l) projected monthly per square foot sublease rates for the commercial/retail space in each building. Commercial/retail space in each building containing Affordable Units shall only be occupied by uses supporting the residents of Affordable Units in the building.

34.6.5 **Parks**. All the Parks will be Constructed under the Horizontal Ground Lease and then all the Parks will be or become part of the "Premises" under the Entertainment Center Vertical Ground Lease. Parks Constructed before the "Commencement Date" of the Entertainment Center Vertical Ground Lease will be immediately included in the "Premises" of that lease on the Vertical Ground Lease Closing for that lease. Each Park Constructed after the "Commencement Date" of the Entertainment Center Vertical Ground Lease will be added to the "Premises" of that lease within the time specified for such addition in the Performance Schedule.

34.6.6 **Parking Structures**. Master Developer must cause each Parking Structure to be Constructed on the Property as part of the Development to be part of the Vertical Improvements and the "Premises" under a Vertical Ground Lease by the time the last Vertical Ground Lease Closing occurs.

34.7 Vertical Improvements Approval Process. If Master Developer Notifies City of the Vertical Improvements to be Constructed on a particular Development Parcel under Section 34.6, then City will Notify Master Developer of City's approval or disapproval of the Vertical Improvements designated by Master Developer for development on the particular Development Parcel within the time specified for such Notification in the Performance Schedule. If City disapproves or conditionally approves Master Developer's designated Vertical Improvements for a particular Development Parcel, City and Master Developer will negotiate in good faith during the time specified for such negotiation in the Performance Schedule towards agreement on the Vertical Improvements to be Constructed on the particular Development Parcel. Agreement between City and Master Developer on the Vertical Improvements to be Constructed on the particular Development Parcel is an express condition precedent to the opening of the Vertical Ground Lease Escrow for entry into the Vertical Ground Lease for that particular Development Parcel for the benefit of both City and Master Developer. The authority provided to the Mayor in Section 40.8, includes authority on behalf of City to negotiate and agree to the Vertical Improvements to be Constructed on the particular Development Parcel, subject to the requirements of Sections 15 through 21, the Development Phasing Plan, and the other terms of this Agreement. City and Master Developer (on behalf of itself and its Transferees) intend and agree that the requirement to Construct all the agreed upon Vertical Improvements for a particular Development Parcel will be incorporated into the Vertical Ground Lease for that particular Development Parcel before the Vertical Ground Lease Escrow is opened for the Vertical Ground Lease. If City and

Master Developer have not agreed on the Vertical Improvements to be Constructed on the particular Development Parcel within the time specified for such agreement in the Performance Schedule, then either City or Master Developer may initiate the impasse resolution process under Section 39 for such Vertical Improvements by delivering a Notice requesting commencement of a Negotiation Period under Section 39.1. If the Parties have not agreed on the Vertical Improvements to be Constructed on the particular Development Parcel and neither Party initiates the impasse resolution process under Section 39 for such Vertical Improvements within the time specified for such agreement in the Performance Schedule, then City will Notify Master Developer that Master Developer's failure to initiate the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice may result in termination of this Agreement with respect to the particular Development Parcel. If neither Party initiates the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice described in the immediately preceding sentence, either Party may terminate this Agreement with respect to the particular Development Parcel by ten (10) Business Days' Notice to the other Party. If a Party initiates the impasse resolution process under Section 39 for such Vertical Improvements and the Parties have not agreed on the Vertical Improvements to be Constructed on the particular Development Parcel after completing the impasse resolution process under Section 39, either Party may terminate this Agreement with respect to the particular Development Parcel by ten (10) Business Days' Notice to the other Party. City and Master Developer will proceed in accordance with Sections 11.3 and 11.4 of the Horizontal Ground Lease after any termination of this Agreement with respect to a particular Development Parcel under this Section 34.7.

34.8 Vertical Improvements Financing Plans. After City and Master Developer agree on the Vertical Improvements to be Constructed on a particular Development Parcel under Section 34.7, as conditions precedent to the opening of the Vertical Ground Lease Escrow for the particular Vertical Ground Lease: (a) Vertical Developer must deliver to City a proposed Vertical Improvements Financing Plan for the Vertical Ground Lease within the time specified for such delivery in the Performance Schedule; and (b) Vertical Developer and City must agree on the Vertical Improvements Financing Plan for the Vertical Ground Lease within the time specified for such agreement in the Performance Schedule. City and Master Developer (on behalf of itself and its Transferees) intend and agree that the agreed upon Vertical Improvements Financing Plan, including the associated performance schedule, will be added as exhibits to and incorporated into the particular Vertical Ground Lease before the Vertical Ground Lease Escrow is opened for the Vertical Ground Lease. Solely for the avoidance of doubt, Vertical Developer's failure to deliver a proposed Vertical Improvements Financing Plan to City within the time specified for such delivery in the Performance Schedule will be a Non-Monetary Default by Vertical Developer. Further, if Vertical Developer does not deliver a proposed Vertical Improvements Financing Plan to City, there is no impasse to resolve and neither City nor Vertical Developer may initiate the impasse resolution process under this Section 34.8. After Vertical Developer delivers a proposed Vertical Improvements Financing Plan to City within the time specified for such delivery in the Performance Schedule, if City and Vertical Developer have not agreed on a Vertical Improvements Financing Plan for a particular Vertical Ground Lease within the time specified for such agreement in the Performance Schedule, then either City or Vertical Developer may initiate the impasse resolution process under Section 39 for such Vertical Improvements Financing Plan by delivering a Notice requesting commencement of a Negotiation Period under Section 39.1. If City and Vertical Developer have not agreed on a Vertical Improvements Financing Plan for the particular Vertical Ground Lease and neither City nor Vertical Developer initiates the impasse resolution

process under Section 39 for such Vertical Improvements Financing Plan within the time specified for such agreement in the Performance Schedule, then City will Notify Vertical Developer that Vertical Developer's failure to initiate the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice may result in termination of this Agreement with respect to the particular Development Parcel. If neither Party initiates the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice described in the immediately preceding sentence, either City or Vertical Developer may terminate this Agreement with respect to the particular Development Parcel by ten (10) Business Days' Notice to the other Person. If City or Vertical Developer initiates the impasse resolution process under Section 39 for a Vertical Improvements Financing Plan and City and Vertical Developer have not agreed on the Vertical Improvements Financing Plan after completing the impasse resolution process under Section 39, either City or Vertical Developer may terminate this Agreement with respect to the particular Development Parcel by ten (10) Business Days' Notice to the other Person. City and Master Developer will proceed in accordance with Sections 11.3 and 11.4 of the Horizontal Ground Lease after any termination of this Agreement with respect to a particular Development Parcel under this Section 34.8.

34.9 Market Rate Housing/Retail Lease Form. Each Market Rate Housing/Retail Lease will be in substantially the form of **ATTACHMENT 15** to this Agreement ("**Market Rate Housing/Retail Lease Form**").

34.10 Entertainment Center Lease Form. The Entertainment Center Lease will be in substantially the form of **ATTACHMENT 16** to this Agreement ("**Entertainment Center Lease Form**").

34.11 Affordable Housing Lease Form. Within one hundred eighty (180) days after the Effective Date ("**Affordable Housing Lease Form Negotiation Deadline**"), Master Developer and City staff will negotiate diligently to agree on the form of the Affordable Housing Lease ("**Affordable Housing Lease Form**"), which must include the covenants and provisions in **ATTACHMENT 17** and be consistent with the content of **ATTACHMENT 14**. Agreement on an Affordable Housing Lease Form is a condition precedent to the opening of the Horizontal Ground Lease Escrow and will be in the respective sole discretion of City (acting through its City Council in a noticed public hearing) and Master Developer. Neither Party is obligated to agree on an Affordable Housing Lease Form. If City staff and Master Developer have not agreed on the Affordable Housing Lease Form by the Affordable Housing Lease Form Negotiation Deadline, then either City or Master Developer may initiate the impasse resolution process under Section 39 for the Affordable Housing Lease Form by delivering a Notice requesting commencement of a Negotiation Period under Section 39.1. If City and Master Developer have not agreed on the Affordable Housing Lease Form and neither City nor Master Developer initiates the impasse resolution process under Section 39 for the Affordable Housing Lease Form within ten (10) Business Days following the Affordable Housing Lease Form Negotiation Deadline, then City will Notify Master Developer that Master Developer's failure to initiate the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice may result in termination of this Agreement. If neither Party initiates the impasse resolution process within ten (10) Business Days after the Receipt Date of City's Notice described in the immediately preceding sentence, either City or Master Developer may terminate this Agreement by ten (10) Business Days' Notice to the other Person. If City or Master Developer initiates the impasse resolution process under

Section 39 for the Affordable Housing Lease Form and City and Master Developer have not agreed on the Affordable Housing Lease Form after completing the impasse resolution process under Section 39, either City or Master Developer may terminate this Agreement by ten (10) Business Days' Notice to the other Person. If City staff and Master Developer agree on the Affordable Housing Lease Form, whether through negotiation or use of the impasse resolution process, then within ninety (90) days after City staff and Master Developer agree on the Affordable Housing Lease Form, City staff will request to docket the Affordable Housing Lease Form for consideration by the City Council, acting in its sole discretion, during a noticed public hearing. If the City Council either disapproves the Affordable Housing Lease Form in its sole discretion or fails to consider approval of the Affordable Housing Lease Form within ninety (90) days after City staff and Master Developer agree on the Affordable Housing Lease Form, either City or Master Developer may terminate this Agreement by ten (10) Business Days' Notice to the other Person.

34.12 Lease Form Conformation. The Market Rate Housing Lease form, the Entertainment Center Lease form, the Affordable Housing Lease form, the Horizontal Ground Lease Memorandum Form, the Vertical Ground Lease Memorandum Form, or the Affordable Housing Lease Memorandum Form may be modified by mutual agreement between the Parties to reflect requirements of this Agreement that were inadvertently omitted from the applicable form. Additionally, the insurance requirements in each lease form will be updated to City's current insurance requirements as of the Horizontal Ground Lease Closing or the Vertical Ground Lease Closing, as applicable, for the particular lease.

34.13 Master Rent Administration Agreement. The Parties agree to enter into the Master Rent Administration Agreement concurrent with the Vertical Ground Lease Closing for the first Market Rate Housing/Retail Lease.

34.14 Master CC&Rs. After the Horizontal Ground Lease Closing, Master Developer may submit draft Master CC&Rs to City for approval, in City's sole discretion, including which future Vertical Ground Leases closing escrow more than ninety (90) days after the Master CC&R's are approved by City, if at all, are proposed to be subject to such Master CC&Rs. City's approval of any Master CC&Rs shall only be through a Notice to Master Developer. If any Master CC&Rs are approved by City, they shall only be recorded against or encumber one or more Leasehold Estates under future Vertical Ground Leases closing escrow more than ninety (90) days after the Master CC&R's are approved by City and shall not be recorded earlier than the first Vertical Ground Lease Closing. No Master CC&Rs or memorandum or other document evidencing Master CC&Rs will be signed or recorded (1) until after Master Developer is Notified of City's approval of such document, in City's sole discretion, or (2) outside of a Vertical Ground Lease Escrow for a future Vertical Ground Lease closing more than ninety (90) days after the Master CC&R's are approved by City. Under no circumstances will any Master CC&Rs be recorded against or encumber the Fee Estate in the Property or any Development Parcel. Draft Master CC&Rs submitted by Master Developer to City shall contain, at a minimum, all the following: (a) identification of Master Developer as the initial Master Declarant; (b) a process for replacing Master Developer as the Master Declarant, if needed; (c) a provision expressly identifying City as an intended third party beneficiary of the Master CC&Rs; (d) a process for annexation of future Vertical Ground Leases into the Master CC&Rs concurrently with the Vertical Ground Lease Closing for each future Vertical Ground Lease; and (e) a provision stating that the Master CC&Rs do not constitute an encumbrance on the Fee Estate in the Property or any Development Parcel. If

any Master CC&Rs are approved by City, Master Developer shall be responsible for: (i) recording the Master CC&Rs against the Vertical Ground Leases that are to be subject to the Master CC&Rs; (ii) all costs of recording the Master CC&Rs against Vertical Ground Leases; and (iii) obtaining approvals or agreements from all Persons reasonably appropriate to record the Master CC&Rs against each Vertical Ground Lease that is to be subject to the Master CC&Rs.

35. VERTICAL GROUND LEASE ESCROW JOINT ESCROW INSTRUCTIONS.

35.1 Opening of Vertical Ground Lease Escrow. City and Master Developer intend that there will be multiple Vertical Ground Lease Escrows because there are multiple Development Parcels, and each Development Parcel will be the subject of an independent Vertical Ground Lease. City and the applicable Vertical Developer will cause each Vertical Ground Lease Escrow for a Vertical Ground Lease of a particular Development Parcel to be opened within seven (7) days after City and the applicable Vertical Developer agree on the Vertical Improvements Financing Plan for the Vertical Improvements to be Constructed on the Development Parcel under Section 34.8 by Notice to the Escrow Agent requesting the opening of the Vertical Ground Lease Escrow. Neither City nor the applicable Vertical Developer is obligated to open the Vertical Ground Lease Escrow for the Vertical Ground Lease of a particular Development Parcel until after City and Master Developer agree on the Vertical Improvements to be Constructed on the particular Development Parcel under Section 34.7 and City and the applicable Vertical Developer agree on the associated Vertical Improvements Financing Plan under Section 34.8. The provisions of this Section 35 are the joint escrow instructions of City and each Vertical Developer to the Escrow Agent for conduct of each Vertical Ground Lease Escrow. City and each Vertical Developer will sign such further or supplemental escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent for each Vertical Ground Lease Escrow. In the event of any conflict between the provisions of this Agreement and any further or supplemental escrow instructions requested by Escrow Agent, the provisions of this Agreement will control.

35.2 Escrow Agent Authority. For each Vertical Ground Lease Escrow, City and the applicable Vertical Developer authorize the Escrow Agent to:

35.2.1 **Charges**. Pay and charge City and Vertical Developer its respective share of the applicable fees, taxes, charges, or costs regarding the Vertical Ground Lease Escrow;

35.2.2 **Settlement/Closing Statements**. Release City's and Vertical Developer's Escrow Closing Statement for the Vertical Ground Lease Escrow to the other Person;

35.2.3 **Document Recording**. File all documents delivered for Recording through the Vertical Ground Lease Escrow with the County Recorder for Recordation under the joint instructions of City and Vertical Developer; and

35.2.4 **Counterpart Documents**. Utilize documents signed by City or Vertical Developer in counterparts, including attaching separate signature pages to one version of the same document.

35.3 Vertical Developer's Conditions to Vertical Ground Lease Closing. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Vertical Developer, Vertical Developer's obligation to lease a particular Development Parcel from

City under a Vertical Ground Lease on the applicable Vertical Ground Lease Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by Vertical Developer) of each of the following conditions precedent on or before the applicable Vertical Ground Lease Closing Date:

35.3.1 **Vertical Ground Lease Title Policy**. The Title Company is, upon payment of the Title Company's premium for the Vertical Ground Lease Title Policy for the Vertical Ground Lease, irrevocably and unconditionally committed to issue the Vertical Ground Lease Title Policy for the Vertical Ground Lease to Vertical Developer at the Vertical Ground Lease Closing;

35.3.2 **City Title Policy**. The Title Company is, upon payment of the Title Company's premium for the City Title Policy for the Vertical Ground Lease, irrevocably and unconditionally committed to issue the City Title Policy for the Vertical Ground Lease to City at the Vertical Ground Lease Closing;

35.3.3 **Vertical Improvements Financing Funding**. The funding of all financing identified in the Vertical Improvements Financing Plan as closing concurrent with the Vertical Ground Lease Closing and satisfaction of all other terms of the Vertical Improvements Financing Plan required to be satisfied at or before the Vertical Ground Lease Closing;

35.3.4 **Approvals**. Vertical Developer receives all Approvals required from each Government for Construction of the Vertical Improvements on the Development Parcel that is the subject of the Vertical Ground Lease, the terms and conditions of such Approvals are reasonably satisfactory to Vertical Developer, and all such Approvals are Permit Ready;

35.3.5 **Environmental Review Documents**. Adoption, approval, or certification of the Environmental Review Documents by each required Government for entry into the Vertical Ground Lease;

35.3.6 **No Prohibited Encumbrance**. No Prohibited Encumbrance affects the particular Development Parcel;

35.3.7 **Master Rent Administration Agreement**. Only as a condition precedent to the Vertical Ground Lease Closing for the first Market Rate Housing/Retail Lease, City and Master Developer enter into the Master Rent Administration Agreement as of the Vertical Ground Lease Closing;

35.3.8 **Rent Calculation Agreement**. Only as a condition precedent to each Vertical Ground Lease Closing for a Market Rate Housing/Retail Lease, Master Developer enters into a Rent Calculation Agreement with the Vertical Developer as of the Vertical Ground Lease Closing;

35.3.9 **Monitoring Agreement**. Only as a condition precedent to each Vertical Ground Lease Closing for an Affordable Housing Lease, Vertical Developer must enter into a Monitoring Agreement with SDHC as of the Vertical Ground Lease Closing;

35.3.10 **Master CC&Rs**. If City approves Master CC&Rs, then only as a condition precedent to each Vertical Ground Lease Closing for a Vertical Ground Lease that is to be subject

to the Master CC&Rs, Master Developer, City, and Vertical Developer enter into an agreement making the Master CC&Rs applicable to the Leasehold Estate under the Vertical Ground Lease as of the Vertical Ground Lease Closing;

35.3.11 **City Escrow Deposits**. City deposits all the items into the Vertical Ground Lease Escrow required by Section 35.7;

35.3.12 **Closing Statement**. Vertical Developer reasonably approves Vertical Developer's Escrow Closing Statement for the Vertical Ground Lease Escrow;

35.3.13 **City Representations and Warranties**. Excluding City's representation and warranty in Section 8.2.5 that is subject to Section 34.3, all the representations and warranties of City in Section 8.2 are true and correct as of the Vertical Ground Lease Closing Date; and

35.3.14 **City Pre-Closing Obligations**. City performs all its material obligations required to be performed by City under this Agreement prior to the Vertical Ground Lease Closing.

35.4 City's Conditions to Vertical Ground Lease Closing. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by City, City's obligation to lease a particular Development Parcel to Vertical Developer under the applicable Vertical Ground Lease on the Vertical Ground Lease Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by City) of each of the following conditions precedent on or before the Vertical Ground Lease Closing Date:

35.4.1 **Document Approval**. City receives from Vertical Developer all the documents listed in this Section 35.4.1 completed and signed by all Persons required to make such documents operative and City approves such documents. Vertical Developer will deliver a substantially complete draft of each document listed in this Section 35.4.1 to City at least thirty (30) days before the Vertical Ground Lease Closing Date. Further, Vertical Developer will have all the documents listed in this Section 35.4.1 completed and signed by all Persons required to make such documents operative (if applicable) and will have delivered true, accurate, complete, and legible copies or originals (as specified in this Agreement) of all such documents to City, at least three (3) Business Days before the Vertical Ground Lease Closing Date:

35.4.1.1 A copy of the Tenant Entity Documents if the Tenant is not Master Developer;

35.4.1.2 A copy of the Construction Contract for the Vertical Improvements;

35.4.1.3 An agreement from Vertical Developer's General Contractor agreeing to continue to perform for City (if City so elects) all obligations under its Construction Contract, if the Vertical Ground Lease terminates or City re-enters the "Premises" under the Vertical Ground Lease, provided the General Contractor is paid for its services requested by City after termination of the Vertical Ground Lease in accordance with its Construction Contract;

35.4.1.4 A copy of the Architect Contract for the Vertical Improvements;

35.4.1.5 An agreement from Vertical Developer's Architect agreeing to continue to perform for City (if City so elects) all obligations of the Architect under its Architect Contract, if the Vertical Ground Lease terminates or City re-enters the "Premises" under the Vertical Ground Lease, provided the Architect is paid for its services requested by City after termination of the Vertical Ground Lease in accordance with its Architect Contract;

35.4.1.6 A copy of the Plans for the Vertical Improvements;

35.4.1.7 Vertical Developer's assignment of the Plans for the Vertical Improvements to City such that after a termination of the Vertical Ground Lease or City re-enters the "Premises" under the Vertical Ground Lease, City may exercise all rights of Vertical Developer under and to the Plans for the Vertical Improvements (in City's sole and absolute discretion);

35.4.1.8 A copy of all Approvals required for Construction of the Vertical Improvements;

35.4.1.9 All Insurance Documents;

35.4.1.10 The original Construction Surety for the Vertical Improvements;

35.4.1.11 A copy of the Vertical Improvements Financing Documents;

35.4.1.12 The original PLA Certification for Construction of the Vertical Improvements;

35.4.2 **Vertical Ground Lease Title Policy**. The Title Company is, upon payment of the Title Company's premium for the Vertical Ground Lease Title Policy for the Vertical Ground Lease, irrevocably and unconditionally committed to issue the Vertical Ground Lease Title Policy for the Vertical Ground Lease to Vertical Developer at the Vertical Ground Lease Closing;

35.4.3 **City Title Policy**. The Title Company is, upon payment of the Title Company's premium for the City Title Policy for the Vertical Ground Lease, irrevocably and unconditionally committed to issue the City Title Policy for the Vertical Ground Lease to City at the Vertical Ground Lease Closing;

35.4.4 **Vertical Improvements Financing Funding**. The funding of all financing identified in the Vertical Improvements Financing Plan as closing concurrent with the Vertical Ground Lease Closing and satisfaction of all other terms of the Vertical Improvements Financing Plan required to be satisfied at or before the Vertical Ground Lease Closing;

35.4.5 **Approvals**. Vertical Developer receives all Approvals required from each Government for Construction of the Vertical Improvements on the Development Parcel that is the subject of the Vertical Ground Lease, the terms and conditions of such Approvals are reasonably satisfactory to City, and all such Approvals are Permit Ready;

35.4.6 **No Prohibited Encumbrance**. No Prohibited Encumbrance affects the particular Development Parcel;

35.4.7 **Environmental Review Documents**. Adoption, approval, or certification of the Environmental Review Documents by each required Government for entry into the Vertical Ground Lease;

35.4.8 **Master Rent Administration Agreement**. Only as a condition precedent to the Vertical Ground Lease Closing for the first Market Rate Housing/Retail Lease, City and Master Developer enter into the Master Rent Administration Agreement as of the Vertical Ground Lease Closing;

35.4.9 **Rent Calculation Agreement Approval**. Only as a condition precedent to the Vertical Ground Lease Closing for the first Market Rate Housing/Retail Lease, Master Developer delivers the form of Rent Calculation Agreement to be used in all Vertical Ground Lease Closings for Market Rate Housing/Retail Leases to City at least forty-five (45) days before the Vertical Ground Lease Closing Date and City approves the form of Rent Calculation Agreement, in City's sole discretion;

35.4.10 **Rent Calculation Agreement**. Only as a condition precedent to each Vertical Ground Lease Closing for a Market Rate Housing/Retail Lease, Master Developer enters into a Rent Calculation Agreement with the Vertical Developer as of the Vertical Ground Lease Closing;

35.4.11 **Master CC&Rs**. If City approves Master CC&Rs, then only as a condition precedent to each Vertical Ground Lease Closing for a Vertical Ground Lease that is to be subject to the Master CC&Rs, Master Developer, City, and Vertical Developer enter into an agreement making the Master CC&Rs applicable to the Leasehold Estate under the Vertical Ground Lease as of the Vertical Ground Lease Closing;

35.4.12 **Monitoring Agreement**. Only as a condition precedent to each Vertical Ground Lease Closing for an Affordable Housing Lease, Vertical Developer must enter into a Monitoring Agreement with SDHC as of the Vertical Ground Lease Closing;

35.4.13 **Vertical Developer Escrow Deposits**. Vertical Developer deposits all the items into the Vertical Ground Lease Escrow required by Section 35.6;

35.4.14 **Closing Statement**. City reasonably approves City's Escrow Closing Statement for the Vertical Ground Lease Escrow;

35.4.15 **Vertical Developer Representations and Warranties**. Vertical Developer makes all the representations and warranties in Section 8.1 to City in writing in a separate document, substituting Vertical Developer for Master Developer in the representations and warranties, and all such representations and warranties of Vertical Developer are true and correct as of the Vertical Ground Lease Closing Date; and

35.4.16 **Vertical Developer Pre-Closing Obligations**. Vertical Developer performs all its material obligations required to be performed by Vertical Developer under this Agreement prior to the Vertical Ground Lease Closing.

35.5 Failure of Conditions Not a Default. Notwithstanding any provision of this Agreement to the contrary, Vertical Developer's failure to satisfy any of the conditions in Section 35.3 will not constitute an Escrow Default (or any other type of Default or Event of Default) by Vertical Developer under this Agreement, unless Vertical Developer fails to exercise reasonable efforts to satisfy the conditions. Notwithstanding any provision of this Agreement to the contrary, City's failure to satisfy any of the conditions in Section 35.4 will not constitute an Escrow Default (or any other type of Default or Event of Default) by City under this Agreement, unless City fails to act reasonably regarding the conditions; provided, however, where City is entitled to act in City's sole and absolute discretion, the City Council is exercising its legislative discretion, or the City is exercising some other Governmental Authority, City's failure to approve a matter constituting a condition will not be any type of Default or Event of Default. Nothing in this Agreement is intended to limit City's legislative or other governmental discretion or Governmental Authority or result in the exercise of such discretion or authority being an Escrow Default or other Default.

35.6 Vertical Developer's Vertical Ground Lease Escrow Deposits. At least two (2) Business Days before the Vertical Ground Lease Closing Date scheduled by the Escrow Agent in a Notice to both City and Vertical Developer, Vertical Developer will deposit (or cause to be deposited) the following described funds and documents into the Vertical Ground Lease Escrow and, concurrently, provide a copy of each such document to City:

35.6.1 **Vertical Ground Lease**. The Vertical Ground Lease signed by the authorized representative(s) of Vertical Developer;

35.6.2 **Vertical Ground Lease Memorandum**. For the Entertainment Center Lease and each Market Rate Housing/Retail Lease, the Vertical Ground Lease Memorandum signed by the authorized representative(s) of Vertical Developer and notarized for Recording against the applicable Development Parcel(s). For each Affordable Housing Lease, the Affordable Housing Lease Memorandum signed by the authorized representative(s) of Vertical Developer and notarized for Recording against the applicable Development Parcel(s);

35.6.3 **Master Rent Administration Agreement Memorandum**. Only for Vertical Ground Lease Closings for Market Rate Housing/Retail Leases, the Master Rent Administration Agreement Memorandum signed by the authorized representative(s) of Vertical Developer and notarized for Recording against the applicable Development Parcel(s);

35.6.4 **Rent Calculation Agreement**. Only for Vertical Ground Lease Closings for Market Rate Housing/Retail Leases, the Rent Calculation Agreement between Master Developer and Vertical Developer signed by the respective authorized representative(s) of Master Developer and Vertical Developer;

35.6.5 **Master CC&Rs**. If City approves Master CC&Rs, then only for each Vertical Ground Lease Closing for a Vertical Ground Lease that is to be subject to the Master CC&Rs, a written agreement signed by the respective authorized representative(s) of Master Developer, City, and Vertical Developer, making the Master CC&Rs applicable to the Leasehold Estate under the Vertical Ground Lease as of the Vertical Ground Lease Closing;

35.6.6 **Monitoring Agreement**. Only for Vertical Ground Lease Closings for Affordable Housing Leases, the Monitoring Agreement between Vertical Developer and SDHC signed by the respective authorized representative(s) of Vertical Developer and SDHC;

35.6.7 **Expenses**. All monetary amounts to be paid through the Vertical Ground Lease Escrow by Vertical Developer shown on Vertical Developer's approved Escrow Closing Statement for the Vertical Ground Lease Escrow;

35.6.8 **Vertical Improvements Financing Proceeds**. Documentary evidence of the funding of all proceeds of the financing sources identified in the Vertical Improvements Financing Plan as closing concurrent with the Vertical Ground Lease Closing; and

35.6.9 **Other Reasonable Items**. All other documents or funds required to be delivered by Vertical Developer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company to close the Vertical Ground Lease Escrow that have not previously been delivered by Vertical Developer.

35.7 City's Vertical Ground Lease Escrow Deposits. At least two (2) Business Days before the Vertical Ground Lease Closing Date scheduled by the Escrow Agent in a Notice to both City and Vertical Developer, City will deposit the following described funds and documents into the Vertical Ground Lease Escrow and, concurrently, provide a copy of each such document to Vertical Developer:

35.7.1 **Vertical Ground Lease**. The Vertical Ground Lease signed by the authorized representative(s) of City;

35.7.2 **Vertical Ground Lease Memorandum**. For the Entertainment Center Lease and each Market Rate Housing/Retail Lease, the Vertical Ground Lease Memorandum signed by the authorized representative(s) of Vertical Developer and notarized for Recording against the applicable Development Parcel(s). For each Affordable Housing Lease, the Affordable Housing Lease Memorandum signed by the authorized representative(s) of Vertical Developer and notarized for Recording against the applicable Development Parcel(s);

35.7.3 **Master Rent Administration Agreement Memorandum**. Only for Vertical Ground Lease Closings for Market Rate Housing/Retail Leases, the Master Rent Administration Agreement Memorandum signed by the authorized representative(s) of City and notarized for Recording against the applicable Development Parcel(s);

35.7.4 **Expenses**. All monetary amounts to be paid through the Vertical Ground Lease Escrow by City (if any) shown on City's approved Escrow Closing Statement for the Vertical Ground Lease Escrow; and

35.7.5 **Other Reasonable Items**. All other documents required to be delivered by City under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company to close the Vertical Ground Lease Escrow that have not previously been delivered by City.

35.8 Vertical Ground Lease Escrow Closing Procedure. When each of Vertical Developer's Vertical Ground Lease Escrow deposits under Section 35.6 and each of City's Vertical Ground Lease Escrow deposits under Section 35.7 are deposited into the Vertical Ground Lease Escrow, the Escrow Agent will determine whether all conditions to the Vertical Ground Lease Closing in Sections 35.3 and 35.4 are satisfied or waived. After Escrow Agent receives Notice from Vertical Developer confirming that all conditions to the Vertical Ground Lease Closing for the benefit of Vertical Developer under Section 35.3 are either satisfied or waived, Notice from City confirming that all conditions to the Vertical Ground Lease Closing for the benefit of City under Section 35.4 are either satisfied or waived, and Notice from both Vertical Developer and City authorizing Escrow Agent to close the Vertical Ground Lease Escrow, Escrow Agent will close the Vertical Ground Lease Escrow on the Vertical Ground Lease Closing Date by performing all the actions described in Sections 35.8.1 through 35.8.5.

35.8.1 **Recordation and Distribution of Recorded Documents**. Filing the following documents with the County Recorder for Recording in the following order of priority: (a) the Vertical Ground Lease Memorandum; (b) the Master Rent Administration Agreement Memorandum (when applicable); (c) the Permitted Leasehold Security Instruments securing the Vertical Improvements Financing (if any) in the order instructed by Vertical Developer; and (d) all other documents to be Recorded through the Vertical Ground Lease Escrow upon the joint instructions of City and Vertical Developer. Escrow Agent will deliver conformed copies of all documents filed for Recording through the Vertical Ground Lease Escrow to City, Vertical Developer, and any other Person designated in the written joint escrow instructions of City or Vertical Developer to receive an original or conformed copy of each such document. Each copy of a document filed for Recording must show all Recording information. City and Master Developer (on behalf of itself and its Transferees) intend and agree that this Section 35.8.1 establishes the relative priorities of the documents to be Recorded through the Vertical Ground Lease Escrow by providing for Recordation of senior interests prior in time to junior interests, in the order provided in this Section 35.8.1;

35.8.2 **Distribution of Other Documents**. Delivering originals or copies of all documents to be delivered through the Vertical Ground Lease Escrow that are not filed for Recording (if any) to City, Vertical Developer, and any other Person designated in the written joint escrow instructions of City or Vertical Developer to receive an original or copy of each such document;

35.8.3 **Vertical Ground Lease Title Policy**. Obtaining and delivering the Vertical Ground Lease Title Policy to Vertical Developer;

35.8.4 **City Title Policy**. Obtaining and delivering the City Title Policy to City; and

35.8.5 **Funds**. Distributing all funds held by Escrow Agent under the Vertical Ground Lease Escrow in accordance with the Escrow Closing Statements for the Vertical Ground Lease Escrow separately approved in writing by City or Vertical Developer, respectively.

35.9 Vertical Ground Lease Closing. The Vertical Ground Lease Closing will occur on or before the Vertical Ground Lease Closing Date. City and Vertical Developer may mutually agree to change the Vertical Ground Lease Closing Date by joint written instruction to Escrow

Agent. The Mayor is authorized to agree to one or more extensions of the Vertical Ground Lease Closing Date on behalf of City up to a maximum extension of sixty (60) days in the aggregate, in the Mayor's sole and absolute discretion. If for any reason the Vertical Ground Lease Closing does not occur on or before the Vertical Ground Lease Closing Date, then either City or Vertical Developer, if not then in Default under this Agreement, may cancel the Vertical Ground Lease Escrow and terminate this Agreement with respect the particular Vertical Ground Lease and Development Parcel, without liability to the other Person or anyone else for such cancellation and termination, by delivering Notice of termination and cancellation to both the other Person and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Vertical Ground Lease Escrow, City, Vertical Developer, and Escrow Agent will proceed under Section 35.12. Without limiting the right of either City or Vertical Developer to cancel the Vertical Ground Lease Escrow and terminate this Agreement under this Section 35.9, if the Vertical Ground Lease Escrow does not close on or before the Vertical Ground Lease Closing Date and neither City nor Vertical Developer has exercised its contractual right to cancel the Vertical Ground Lease Escrow and terminate this Agreement under this Section 35.9 before the first date on which Escrow Agent Notifies both City and Vertical Developer that the Vertical Ground Lease Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Vertical Ground Lease Escrow will close as soon as reasonably possible following the first date on which Escrow Agent Notifies both City and Vertical Developer that the Vertical Ground Lease Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

35.10 Vertical Ground Lease Escrow Costs. Escrow Agent will Notify City and Vertical Developer of the costs to be borne by each of them at the Vertical Ground Lease Closing by delivering an Escrow Closing Statement for the Vertical Ground Lease Escrow to both City and Vertical Developer at least two (2) Business Days prior to the Vertical Ground Lease Closing Date. Vertical Developer will pay all the fees and other costs as Escrow Agent may charge for conducting the Vertical Ground Lease Escrow, all Recording fees, documentary transfer taxes or other charges, fees, or taxes levied by Government and related to entry into the Vertical Ground Lease, the premium charged by the Title Company for the Vertical Ground Lease Title Policy, and the premium charged by the Title Company for the City Title Policy.

35.11 Vertical Ground Lease Escrow Cancellation Charges. If the Vertical Ground Lease Escrow fails to close due to City's Event of Default under this Agreement, City will pay all ordinary and reasonable Vertical Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company. If the Vertical Ground Lease Escrow fails to close due to Vertical Developer's Event of Default under this Agreement, Vertical Developer will pay all ordinary and reasonable Vertical Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company. If the Vertical Ground Lease Escrow fails to close for any reason other than an Event of Default by either Vertical Developer or City, City and Vertical Developer will each pay one half of all ordinary and reasonable Vertical Ground Lease Escrow and title order cancellation charges charged by Escrow Agent or Title Company.

35.12 Vertical Ground Lease Escrow Cancellation. If this Agreement is terminated with respect to a particular Vertical Ground Lease and Development Parcel under a contractual right provided to City or Vertical Developer in this Agreement to terminate this Agreement (other than

due to an Event of Default by the other Person) with respect to a particular Vertical Ground Lease and Development Parcel, City and Vertical Developer will do all the following:

35.12.1 **Cancellation Instructions**. City and Vertical Developer will, within three (3) Business Days following Escrow Agent's written request, sign all reasonable Escrow cancellation instructions requested by Escrow Agent;

35.12.2 **Return of Funds and Documents**. Within ten (10) Business Days following receipt by City and Vertical Developer of a settlement statement of Vertical Ground Lease Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination of this Agreement with respect to the Vertical Ground Lease and Development Parcel, whichever is earlier: (a) Vertical Developer or Escrow Agent will return to City all documents previously delivered by City to Vertical Developer or Escrow Agent under the Vertical Ground Lease Escrow; (b) City or Escrow Agent will return to Vertical Developer all documents previously delivered by Vertical Developer to City or Escrow Agent under the Vertical Ground Lease Escrow; (c) Escrow Agent will, unless otherwise provided in this Agreement, return to Vertical Developer all funds deposited in the Vertical Ground Lease Escrow by Vertical Developer, less Vertical Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 35.11; and (d) Escrow Agent will, unless otherwise provided in this Agreement, return to City all funds deposited in the Vertical Ground Lease Escrow by City, less City's share of customary and reasonable Escrow or title order cancellation charges (if any) in accordance with Section 35.11.

36. REMEDIES.

36.1 MASTER DEVELOPER'S REMEDIES.

36.1.1 ***ELECTION OF REMEDIES*. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY CITY UNDER THIS AGREEMENT, MASTER DEVELOPER WILL BE LIMITED TO EITHER OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST CITY FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER UP TO A MAXIMUM OF ONE MILLION DOLLARS ($1,000,000) IN DAMAGES; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IF MASTER DEVELOPER OBTAINS A JUDGMENT AGAINST CITY FOR ANY SUCH DAMAGES, MASTER DEVELOPER WILL HAVE THE RIGHT TO RECOVER MASTER DEVELOPER'S LEGAL COSTS INCURRED IN COLLECTING SUCH DAMAGES FROM CITY, IN ADDITION TO THE AMOUNT OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL CITY BE LIABLE TO MASTER DEVELOPER UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE AMOUNT SET FORTH IN CLAUSE "(2)" OF THIS SECTION 36.1.1, ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, OR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY MASTER DEVELOPER.**

36.1.2 ***WAIVER OF RIGHTS*. EACH PARTY ACKNOWLEDGES AND AGREES THAT CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF**

CITY WERE TO BE LIABLE TO MASTER DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY, OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY CITY, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT AND A MAXIMUM OF THE AMOUNT SPECIFIED IN CLAUSE "(2)" OF SECTION 36.1.1. ACCORDINGLY, THE PARTIES AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 36.1.1 ARE REASONABLE AND WILL BE MASTER DEVELOPER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT UNDER THIS AGREEMENT BY CITY. MASTER DEVELOPER WAIVES ANY RIGHT TO PURSUE ANY REMEDY OR DAMAGES AGAINST CITY ARISING FROM OR RELATING TO THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 36.1.1.

36.1.3 ***CALIFORNIA CIVIL CODE SECTION 1542 WAIVER.*** **MASTER DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CALIFORNIA CIVIL CODE SECTION 1542 REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 36.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:**

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

36.1.4 ***ACKNOWLEDGMENT.*** **BY INITIALING BELOW, MASTER DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 36.1.**

BJ

Initials of Authorized
Master Developer Representative(s)

36.1.5 ***STATEMENT OF INTENT.*** **CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF MASTER DEVELOPER TO BE BOUND BY THE LIMITATIONS ON DAMAGES AND REMEDIES IN THIS SECTION 36.1, AND MASTER DEVELOPER RELEASES ALL CLAIMS AGAINST CITY FOR MONETARY DAMAGES, MONETARY RECOVERY, OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT UNDER THIS AGREEMENT BY CITY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION**

36.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO MASTER DEVELOPER AS OF THE EFFECTIVE DATE.

Initials of Authorized City Representative	Initials of Authorized Master Developer Representative
_____	_____

36.2 **CITY REMEDIES AND LIQUIDATED DAMAGES FOR MASTER DEVELOPER EVENTS OF DEFAULT. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY MASTER DEVELOPER UNDER THIS AGREEMENT, CITY MAY PURSUE ALL EQUITABLE REMEDIES AVAILABLE TO CITY RELATED TO THE EVENT OF DEFAULT OR TERMINATE THIS AGREEMENT, INCLUDING CANCELLATION OF THE HORIZONTAL GROUND LEASE ESCROW IF NOTICE OF TERMINATION IS SENT BEFORE THE HORIZONTAL GROUND LEASE CLOSING DATE, AND RECEIVE LIQUIDATED DAMAGES AMOUNT 1 (DEFINED IN ATTACHMENT 1, SECTION 101); PROVIDED, HOWEVER, THAT ANY SUCH TERMINATION OF THIS AGREEMENT WILL NOT: (A) TERMINATE THE HORIZONTAL GROUND LEASE IF NOTICE OF TERMINATION IS SENT AFTER THE HORIZONTAL GROUND LEASE CLOSING; (B) TERMINATE THIS AGREEMENT WITH RESPECT TO ANY PENDING VERTICAL GROUND LEASE ESCROW BETWEEN CITY AND AN OUTSIDE VERTICAL DEVELOPER; OR (C) TERMINATE ANY VERTICAL GROUND LEASE AFTER THE VERTICAL GROUND LEASE CLOSING FOR SUCH VERTICAL GROUND LEASE. ANY SUCH TERMINATION OF THIS AGREEMENT (AND, IF APPLICABLE, CANCELLATION OF THE HORIZONTAL GROUND LEASE ESCROW) WILL BE WITHOUT ANY LIABILITY OF CITY TO MASTER DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH TERMINATION OR CANCELLATION. THE PARTIES ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY CITY IN THE EVENT OF A TERMINATION OF THIS AGREEMENT DUE TO AN EVENT OF DEFAULT BY MASTER DEVELOPER. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES CITY WOULD SUFFER IN THE EVENT OF A TERMINATION OF THIS AGREEMENT UPON AN EVENT OF DEFAULT BY MASTER DEVELOPER, THE PARTIES AGREE THAT A REASONABLE ESTIMATE OF CITY'S DAMAGES IN SUCH EVENT IS LIQUIDATED DAMAGES AMOUNT 1 (DEFINED IN ATTACHMENT 1, SECTION 101). THEREFORE, MASTER DEVELOPER WILL PAY LIQUIDATED DAMAGES AMOUNT 1 TO CITY WITHIN THIRTY (30) DAYS AFTER THE RECEIPT DATE OF CITY'S NOTICE TERMINATING THIS AGREEMENT (AND, IF APPLICABLE, CANCELLING THE HORIZONTAL GROUND LEASE ESCROW). UPON A TERMINATION OF THIS AGREEMENT THAT INCLUDES CANCELLATION OF THE HORIZONTAL GROUND LEASE ESCROW, THE PARTIES AND ESCROW AGENT WILL PROCEED IN ACCORDANCE WITH SECTION 33.12. EXCEPT FOR THE REMEDIES AVAILABLE TO CITY UNDER SECTION 36.3, RECEIPT OF LIQUIDATED DAMAGES AMOUNT 1 WILL BE CITY'S SOLE AND EXCLUSIVE**

REMEDY UPON THE TERMINATION OF THIS AGREEMENT DUE TO AN EVENT OF DEFAULT BY MASTER DEVELOPER; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, CITY WILL HAVE THE RIGHT TO RECOVER CITY'S LEGAL COSTS INCURRED IN COLLECTING LIQUIDATED DAMAGES AMOUNT 1 FROM MASTER DEVELOPER, IN ADDITION TO RECEIVING LIQUIDATED DAMAGES AMOUNT 1. UNDER NO CIRCUMSTANCES, OTHER THAN MASTER DEVELOPER'S OBLIGATIONS TO INDEMNIFY THE CITY PARTIES UNDER THIS AGREEMENT OR REMOVE LIENS FROM THE PROPERTY, WILL MASTER DEVELOPER BE LIABLE TO CITY UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY CITY.

Initials of Authorized
City Representative

_____

Initials of Authorized
Master Developer Representative

BP

36.3 **CITY REMEDIES AND LIQUIDATED DAMAGES FOR VERTICAL DEVELOPER EVENTS OF DEFAULT. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY A VERTICAL DEVELOPER UNDER THIS AGREEMENT RELATED TO ITS ENTRY INTO A VERTICAL GROUND LEASE THAT OCCURS PRIOR TO THE VERTICAL GROUND LEASE CLOSING DATE FOR ITS VERTICAL GROUND LEASE, CITY MAY PURSUE ALL EQUITABLE REMEDIES AVAILABLE TO CITY RELATED TO THE EVENT OF DEFAULT OR TERMINATE THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (INCLUDING CANCELLING THE APPLICABLE VERTICAL GROUND LEASE ESCROW). UPON SUCH TERMINATION OF THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW), CITY WILL BE RELIEVED OF ALL OBLIGATIONS UNDER THIS AGREEMENT RELATING TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL. ANY SUCH TERMINATION OF THIS AGREEMENT (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) WILL BE WITHOUT ANY LIABILITY OF CITY TO THE VERTICAL DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH TERMINATION OR CANCELLATION. CITY AND MASTER DEVELOPER (ON BEHALF OF ITSELF AND ITS TRANSFEREES) ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY CITY IN THE EVENT OF A TERMINATION OF THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) DUE TO AN EVENT OF DEFAULT BY THE VERTICAL**

DEVELOPER PRIOR TO THE VERTICAL GROUND LEASE CLOSING DATE. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES CITY WOULD SUFFER IN THE EVENT OF A TERMINATION OF THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) UPON AN EVENT OF DEFAULT BY THE VERTICAL DEVELOPER PRIOR TO THE VERTICAL GROUND LEASE CLOSING DATE, CITY AND MASTER DEVELOPER (ON BEHALF OF ITSELF AND ITS TRANSFEREES) AGREE THAT A REASONABLE ESTIMATE OF CITY'S DAMAGES IN SUCH EVENT IS LIQUIDATED DAMAGES AMOUNT 2 (DEFINED IN ATTACHMENT 1, SECTION 102). THEREFORE, UPON THE TERMINATION OF THIS AGREEMENT BY CITY WITH RESPECT TO A VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) DUE TO AN EVENT OF DEFAULT BY THE VERTICAL DEVELOPER PRIOR TO THE VERTICAL GROUND LEASE CLOSING DATE, THE ESCROW AGENT WILL IMMEDIATELY CANCEL THE VERTICAL GROUND LEASE ESCROW AND CITY, THE VERTICAL DEVELOPER, AND ESCROW AGENT WILL PROCEED IN ACCORDANCE WITH SECTION 35.12. ALSO, THE VERTICAL DEVELOPER WILL PAY LIQUIDATED DAMAGES AMOUNT 2 TO CITY WITHIN THIRTY (30) DAYS AFTER THE RECEIPT DATE OF CITY'S NOTICE TERMINATING THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLING THE ASSOCIATED VERTICAL GROUND LEASE ESCROW). EXCEPT FOR THE REMEDIES AVAILABLE TO CITY UNDER SECTION 36.2, RECEIPT OF LIQUIDATED DAMAGES AMOUNT 2 WILL BE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE TERMINATION OF THIS AGREEMENT WITH RESPECT TO THE SUBJECT VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) DUE TO AN EVENT OF DEFAULT BY THE VERTICAL DEVELOPER PRIOR TO THE VERTICAL GROUND LEASE CLOSING DATE; PROVIDED, HOWEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, CITY WILL HAVE THE RIGHT TO RECOVER CITY'S LEGAL COSTS INCURRED IN COLLECTING LIQUIDATED DAMAGES AMOUNT 2 FROM THE VERTICAL DEVELOPER, IN ADDITION TO RECEIVING LIQUIDATED DAMAGES AMOUNT 2. UNDER NO CIRCUMSTANCES, OTHER THAN THE VERTICAL DEVELOPER'S OBLIGATIONS TO INDEMNIFY THE CITY PARTIES UNDER THIS AGREEMENT OR REMOVE LIENS FROM THE PROPERTY, WILL THE VERTICAL DEVELOPER BE LIABLE TO CITY UNDER THIS AGREEMENT FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY CITY. CITY AND MASTER DEVELOPER ANTICIPATE THAT THERE WILL BE MULTIPLE VERTICAL GROUND LEASE ESCROWS WITH MULTIPLE DIFFERENT VERTICAL DEVELOPERS. AS A RESULT, CITY IS ENTITLED TO RECEIVE THE FULL AMOUNT OF LIQUIDATED DAMAGES AMOUNT 2 FOR EACH TERMINATION OF

THIS AGREEMENT WITH RESPECT TO A VERTICAL GROUND LEASE AND ASSOCIATED DEVELOPMENT PARCEL (AND, IF APPLICABLE, CANCELLATION OF THE ASSOCIATED VERTICAL GROUND LEASE ESCROW) DUE TO AN EVENT OF DEFAULT BY THE APPLICABLE VERTICAL DEVELOPER.

Initials of Authorized City Representative	Initials of Authorized Master Developer Representative
_____	_____

36.4 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Sections 36.1, 36.2, or 36.3.

36.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or Event of Default or the same rights or remedies for any other Default or Event of Default by the other Party.

37. **INSURANCE**. Master Developer will obtain and maintain, to protect the City Parties against all insurable Claims under this Agreement, at the sole cost and expense of Master Developer, all the insurance coverage (or its then reasonably available equivalent) described in **ATTACHMENT 6** to this Agreement. On and after the Horizontal Ground Lease Closing, the insurance requirements of the Horizontal Ground Lease will apply to the Horizontal Improvements and the Property. On and after each Vertical Ground Lease Closing, the insurance requirements of the applicable Vertical Ground Lease will apply to the Vertical Improvements and Development Parcel that are the subject of the Vertical Ground Lease.

38. **INDEMNIFICATION**.

38.1 Master Developer Indemnity Obligations. In addition to Master Developer's obligations to Indemnify the City Parties under other provisions of this Agreement, Master Developer will Indemnify the City Parties against all Claims to the extent arising from: (a) the Master Developer Parties' entry onto the Property prior to the Horizontal Ground Lease Closing; (b) all wrongful intentional acts or negligence of one or more of the Master Developer Parties; (c) all Applications made at the request of one or more Master Developer Parties; (d) all agreements one or more Master Developer Parties make with Third Persons regarding this Agreement, the Property, or the Development; (e) services, labor, material, or equipment supplied to, for, or on behalf of one or more Master Developer Parties; (f) all workers' compensation claims by one or more employees or contractors of one or more of the Master Developer Parties; (g) all Prevailing Wage Determinations, except to the extent prohibited by Law; (h) all Environmental Conditions occurring on or after the Effective Date; and (i) one or more project labor agreements entered into under Section 26. Notwithstanding anything to the contrary in this Agreement, Master Developer's

obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

38.2 Independence of Insurance and Indemnity Obligations. Master Developer's obligations to Indemnify the City Parties under this Agreement will not be construed or interpreted as in any way restricting, limiting, or modifying Master Developer's insurance or other obligations under this Agreement. Master Developer's obligations to Indemnify the City Parties under this Agreement are independent of Master Developer's insurance and other obligations under this Agreement. Master Developer's compliance with its insurance obligations and other obligations under this Agreement will not in any way restrict, limit, or modify Master Developer's obligations to Indemnify the City Parties under this Agreement and are independent of Master Developer's obligations to Indemnify the City Parties and other obligations under this Agreement.

38.3 Survival of Indemnification Obligations. Master Developer's obligations to Indemnify the City Parties under this Agreement will survive the expiration or termination of this Agreement, until all actual or prospective Claims subject to Master Developer's obligations to Indemnify the City Parties under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

38.4 Indemnification Procedures. Wherever this Agreement requires Master Developer to Indemnify the City Parties:

38.4.1 *Notice*. The affected City Parties will Notify Master Developer of the Claim within a reasonable time.

38.4.2 *Selection of Counsel*. Master Developer will select legal counsel reasonably acceptable to the City Council. Even though Master Developer will defend the Claim, each affected City Party may, at its option and expense, engage separate counsel to advise the affected City Party regarding the Claim and its defense (except that Master Developer will pay the Legal Costs of separate legal counsel for an affected City Party where: (a) Master Developer provides a defense to the affected City Party under a reservation of rights, (b) a conflict of interest between Master Developer or another Person and the affected City Party exists that requires the affected City Party to be represented by separate legal counsel from Master Developer's legal counsel, or (c) the affected City Party reasonably determines that Master Developer's legal counsel is not competent to represent the affected City Party's interests). The separate legal counsel representing an affected City Party may attend all proceedings and meetings. Master Developer's legal counsel will actively consult with separate legal counsel representing an affected City Party, subject to applicable conflict of interest and privileged communication limitations, if any.

38.4.3 *Cooperation*. The affected City Parties will reasonably cooperate with Master Developer's defense of the City Parties.

38.4.4 *Settlement*. Master Developer may only settle a Claim against the City Parties with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

38.5 Immediate Duty to Defend. The duty to defend that is within Master Developer's obligations to Indemnify the City Parties under this Agreement includes Claims for which the City

Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Master Developer Parties or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claim.

38.6 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Master Developer's obligations to Indemnify the City Parties under this Agreement exceeds the indemnity obligation allowed by Law, Master Developer's obligations to Indemnify the City Parties will be reduced to the extent required to comply with Law.

39. **IMPASSE RESOLUTION**.

39.1 Negotiation Period. For purposes of this Section 39, "**Participating Parties**" (each, individually, a "**Participating Party**") means for: (a) an impasse under Section 27.2, City and Master Developer; (b) an impasse under Section 31.2, City and Master Developer; (c) an impasse under Section 34.7, City and Master Developer; (d) an impasse under Section 34.8, City and Vertical Developer; (e) an impasse under Section 34.11, City and Master Developer; or (f) an impasse under Section 40.17.1, City and Master Developer. The impasse resolution process under this Section 39 is only applicable as specifically provided in Sections 27.2, 31.2, 34.7, 34.8, or 40.17.1. If a Participating Party delivers a Notice to the other Participating Party requesting commencement of a Negotiation Period under this Section 39.1, then within fifteen (15) days following the Receipt Date of the Notice, the Participating Parties will commence good-faith negotiations to resolve the impasse(s) stated in the Notice. The negotiations will continue regarding each impasse identified in the Notice requesting commencement of the Negotiation Period until the earlier of: (i) the end of the Negotiation Period; or (ii) each such impasse is resolved by a written agreement between the Participating Parties. Notwithstanding any provision of this Agreement to the contrary, the Participating Parties may, in their respective sole discretion, agree in writing to extend the duration of the Negotiation Period for any period of time.

39.2 Mediation. Except as otherwise provided in this Agreement, the Participating Parties will submit to non-binding mediation under this Section 39.2 each impasse that was the subject of a Negotiation Period and not resolved, before commencing a court action or proceeding to resolve the impasse. Either Participating Party may commence mediation by giving Notice to the other Participating Party requesting mediation and describing the subject of the impasse and the relief requested. The Participating Parties will cooperate in selecting a mediator from JAMS and in scheduling the mediation proceedings; provided, however, that the mediator must have experience with complex real property matters as an attorney, judge, or mediator. If the Participating Parties cannot agree on a mediator within fifteen (15) days after the Receipt Date of the Notice requesting mediation, a mediator with experience in complex real property matters as an attorney, judge, or mediator will be assigned by JAMS. The location of each mediation arising out of or relating to this Agreement will be the City of San Diego, California. The Participating Parties will participate in each mediation arising out of or relating to this Agreement in good faith. Regarding any impasse subject to mediation under this Section 39.2, if any Participating Party commences a court action or proceeding to resolve the impasse without first attempting to resolve the impasse through mediation or refuses to mediate after a Notice requesting mediation is given (except as exempted from the mediation requirements of this Section 39.2 under the terms of this

Agreement), then that Participating Party will not be entitled to recover its Legal Costs from the other Participating Party, even if such Legal Costs would otherwise be recoverable in any such court action or proceeding. Except as provided in Section 40.17.1, the Participating Parties will each bear their own costs and expenses of participating in each mediation and an equal share of the mediator's fees and the administrative fees and costs of each mediation. Except to the extent otherwise required by Law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either Participating Party, its agents, employees, experts or attorneys, or by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any court action or proceeding involving the Participating Parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in a mediation. Either Participating Party may seek equitable relief prior to mediation to preserve the status quo pending the completion of mediation without violating this Section 39.2 or waiving its right to Legal Costs, provided the Participating Party complies with this Section 39.2 within a reasonable time following any such effort to obtain equitable relief. Except for such an action to obtain equitable relief, neither Participating Party may commence a court action or proceeding with respect to matters submitted to mediation until after the later of: (1) completion of the initial mediation session; or (2) sixty (60) days after the Receipt Date of the Notice requesting mediation of such matters. Commencing a court action or proceeding to enable the Recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies will not constitute a violation or waiver of the mediation requirements of this Section 39.2. The Participating Parties will cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information relevant to the impasse to be mediated immediately after the Receipt Date of the Notice requesting the mediation. At least fifteen (15) days before each mediation, the Participating Parties will complete an initial exchange of all relevant, non-privileged documents, including copies of all documents in their possession or control on which they rely in support of their positions. As the Participating Parties become aware of new documents or information, all Participating Parties continue to be obligated to provide relevant, non-privileged documents and to honor any informal agreements or understandings between the Participating Parties regarding documents or information to be exchanged. Mediation may continue after the commencement of a court action or proceeding to resolve the impasse, if the Participating Parties so desire. In addition to other matters that may be excluded from the mediation requirements of this Section 39.2 under the terms of this Agreement, the following matters are specifically excluded from the mediation requirements of this Section 39.2: (1) unlawful detainer actions; (2) ejectment actions; (3) any matter that is within the jurisdiction of a probate or small claims court; or (4) any Bankruptcy Proceeding.

39.3 Performance Schedule Adjustments. To the extent that the impasse resolution process under this Section 39 delays a Participating Party's performance of an obligation under this Agreement, the time specified for performance of the obligation in the Performance Schedule will be extended by the amount of time that the Participating Parties were engaged in the impasse resolution process under this Section 39.

40. **GENERAL PROVISIONS**.

40.1 Performance Schedule. Each Party to this Agreement will perform the obligations to be performed by the Party in the time specified in the Performance Schedule and this Agreement.

All times for performance specified in the Performance Schedule are subject to extension for Unavoidable Delay or as otherwise expressly provided in this Agreement.

40.2 Compliance with City Standard Contract Provisions. Master Developer will comply with the City's standard contract provisions set forth in **ATTACHMENT 5** to this Agreement.

40.3 Master Developer Transfers. Other than a Permitted Transfer or an Outside Vertical Developer Transfer under Section 40.4, Master Developer will not make or allow a Transfer under this Agreement without City's prior written approval, which approval may be provided or withheld in City's sole discretion. Notwithstanding anything to the contrary in this Agreement, as a condition to the validity of a Permitted Transfer, Master Developer shall Notify City of such Permitted Transfer at least fifteen (15) Business Days before the Permitted Transfer is effective, for the purposes of: (a) allowing City to determine that the proposed Transfer qualifies as a Permitted Transfer; (b) Notifying City of the identity of, and detailed ownership information for, the proposed Transferee so that the City can determine whether the proposed Transferee is an Unchanged Entity or a Prohibited Transferee; and (c) Notifying City of the identity of the proposed Transferee that will be the holder of rights or obligations under this Agreement if and when the proposed Transfer is effective. Master Developer acknowledges and agrees that the specific identities of Master Developer and its Transferees are of material importance to City in entering into this Agreement with Master Developer and that, as a result and under the circumstances regarding which this Agreement is entered into by the Parties, the Transfer provisions in this Agreement are reasonable.

40.4 Outside Vertical Developer Transfers. Master Developer may Transfer its rights related to entering into a Vertical Ground Lease for a particular Development Parcel under Sections 34 and 35 to a Third Person (each, an "**Outside Vertical Developer Transfer**"), subject to the requirements of this Section 40.4 and all the other provisions of this Agreement, including Sections 15 through 21 and the Development Phasing Plan, with City's prior written consent. Master Developer must give advance Notice to City of each Outside Vertical Developer Transfer accompanied by all the following: (a) specification of the Development Parcel for which Vertical Ground Lease rights are proposed to be transferred; (b) the proposed effective date of the Outside Vertical Developer Transfer ("**Outside Vertical Developer Transfer Date**"), which Outside Vertical Developer Transfer Date shall not be earlier than the date the Horizontal Improvements necessary to make the Development Parcel for which the Vertical Ground Lease rights are proposed to be transferred build-ready and capable of supporting Construction of the applicable Vertical Improvements, as reasonably determined by City, including: (i) completion of grading and site preparation for the Vertical Improvements; (ii) installation and availability of primary off-site and on-site utility infrastructure (both public and private) serving the Development Parcel, including water, sewer, storm drain, electrical, and dry utilities; (iii) completion of access improvements, internal roads, and circulation elements necessary to serve the Development Parcel; and (iv) each final Approval from each necessary Government for such Horizontal Improvements is obtained by Master Developer, other than minor punch-list items that do not materially impair functionality; (c) a certified complete and accurate copy of the form of assignment and assumption agreement (and all related agreements) between Master Developer and the proposed Transferee that will be effective as of the Outside Vertical Developer Transfer Date to effectuate such Outside Vertical Developer Transfer, which assignment and assumption agreement will include the Outside Vertical Developer's agreement to assume for the benefit of City all of Master Developer's

obligations under this Agreement relating to the Vertical Ground Lease, Vertical Ground Lease Escrow, and Construction of the Vertical Improvements to be Constructed under the particular Vertical Ground Lease, including all Master Developer obligations under Sections 34 and 35, the Vertical Developer obligations under Section 36.3, and the Master Developer obligations under Section 38 in reference to the particular Development Parcel and the associated Vertical Ground Lease, conditioned only on City's approval of the Outside Vertical Developer Transfer; (d) a current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with GAAP and sufficiently detailed to allow City to evaluate the proposed Transferee's current assets, liabilities, and Net Worth; (e) a description of all properties owned or operated by the proposed Transferee (if any) that are similar to the Premises under the Vertical Ground Lease proposed to be assigned; (f) a certification by the Secretary or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the laws of the State, that the proposed Transferee is not a Prohibited Transferee; (g) an Estoppel Certificate covering all time periods beginning on the Effective Date and continuing through and including the effective date of Master Developer's Notice to City requesting approval of such Outside Vertical Developer Transfer (Master Developer must update each Estoppel Certificate regarding an Outside Vertical Developer Transfer on the effective date of such Outside Vertical Developer Transfer to cover all periods beginning on the Effective Date and continuing through and including the effective date of such Outside Vertical Developer Transfer); and (h) the Vertical Improvements proposed for development on the Development Parcel under Section 34.6. Master Developer will also provide City with all other information regarding the proposed Transferee, Vertical Ground Lease, or Vertical Improvements reasonably requested by City within thirty (30) days after receipt of all the information described in clauses "(a)" through "(h)" of this Section 40.4, for City to make an informed decision whether to approve or disapprove the proposed Outside Vertical Developer Transfer. Within one hundred eighty (180) days after the Receipt Date of Master Developer's Notice of the proposed Outside Vertical Developer Transfer, City will approve or disapprove the proposed Outside Vertical Developer Transfer, subject to the other provisions and conditions of this Section 40.4. City will promptly Notify Master Developer, if the information supplied to City in Master Developer's Notice of the proposed Outside Vertical Developer Transfer did not provide all the information required under this Section 40.4 or additional information is required for City to approve or disapprove the proposed Outside Vertical Developer Transfer. The one hundred eighty (180) day period for City's approval or disapproval of an Outside Vertical Developer Transfer will be tolled starting on the date of City's Notice to Master Developer that Master Developer's Notice of the proposed Outside Vertical Developer Transfer did not provide all the information required under this Section 40.4 or additional information is required for City to approve or disapprove the proposed Outside Vertical Developer Transfer until the date Master Developer delivers to City all the information required under this Section 40.4 or any other information identified by City in the Notice as necessary for City to approve or disapprove the proposed Outside Vertical Developer Transfer. If City fails to give Master Developer Notice of its approval or disapproval of a proposed Outside Vertical Developer Transfer within the one hundred eighty (180) day period for City's approval or disapproval (as potentially tolled under this Section 40.4), City will be deemed to have disapproved the Outside Vertical Developer Transfer. City will include in a City Notice disapproving a proposed Outside Vertical Developer Transfer a brief description of the reason(s) for its disapproval. While there may be other reasons that City may reasonably disapprove a proposed Outside Vertical Developer Transfer, City may reasonably disapprove any proposed Outside Vertical Developer Transfer (y) to any Person that is a Prohibited

Transferee or (z) while a Notice of Default to Master Developer is outstanding, either as of the date of Master Developer's Notice to City of such proposed Outside Vertical Developer Transfer or at any time following the date of such Notice. At least fifteen (15) days prior to each Outside Vertical Developer Transfer Date, Master Developer will provide City with copies of all documents (final versions, if available, or the most current draft versions, if final versions are not available) relating to the Outside Vertical Developer Transfer, so that City may determine whether or not the Outside Vertical Developer Transfer will comply with this Agreement or the information provided to City by Master Developer regarding the proposed Outside Vertical Developer Transfer. Master Developer will provide City with final (unexecuted) versions of the documents once available, but in all events at least seven (7) days before the Outside Vertical Developer Transfer Date. City will have five (5) days following receipt of final versions of the documents to determine whether or not there have been any substantive changes in the documents from the draft versions previously provided to City that adversely affect City's rights under this Agreement and whether or not such Outside Vertical Developer Transfer complies with this Agreement, or the information provided to City by Master Developer regarding the proposed Outside Vertical Developer Transfer. Master Developer will not complete any proposed Outside Vertical Developer Transfer until City makes such determinations or the time period for City to make such determinations has expired, without City determining that there have been any substantive changes that adversely affect City's rights under this Agreement or that the Outside Vertical Developer Transfer does not comply with this Agreement or the information provided to City by Master Developer regarding the proposed Outside Vertical Developer Transfer. Master Developer will reimburse City for all reasonable costs (including Legal Costs) City incurs in reviewing and approving each proposed Outside Vertical Developer Transfer. All monetary amounts reimbursable to City by Master Developer under this Section 40.4 shall be paid to City within thirty (30) days after Notice to Master Developer of such amount and any amount that is not paid within such thirty (30) day period will accrue Default Interest from the date incurred until paid. Master Developer will pay all transfer and other taxes payable on account of each Outside Vertical Developer Transfer by Master Developer. Notwithstanding any provision of this Agreement to the contrary, Master Developer will not make any Outside Vertical Developer Transfer to a Prohibited Transferee. Once an Outside Vertical Developer Transfer is approved by City and becomes effective between Master Developer and the Transferee, all references to Vertical Developer in Sections 34 and 35 relating to the Vertical Ground Lease for the particular Development Parcel, the Vertical Improvements to be Constructed under that Vertical Ground Lease, and financing for such Vertical Improvements will refer to the Outside Vertical Developer to which Master Developer has Transferred its rights related to entering into the Vertical Ground Lease for the particular Development Parcel.

40.5 Release of Master Developer. On and after the effective date of an Outside Vertical Developer Transfer, to the extent that obligations to Construct Vertical Improvements described in Sections 15 through 20 are assumed by an Outside Vertical Developer in a Vertical Ground Lease arising from the Outside Vertical Developer obtaining the rights to enter into the Vertical Ground Lease through the Outside Vertical Developer Transfer in compliance with this Agreement, Master Developer will be released from the obligation under this Agreement to Construct those Vertical Improvements and all other obligations for performance of this Agreement regarding the particular Development Parcel, except liabilities and obligations arising before the effective date of the Outside Vertical Developer Transfer, all reporting obligations of Master Developer under this Agreement, and all obligations of Master Developer expressly

surviving termination of this Agreement. Once an Outside Vertical Developer Transfer is effective for a particular Development Parcel, Master Developer no longer has any rights under this Agreement regarding that Development Parcel or the associated Vertical Ground Lease.

40.6 Master Developer Assumption of Risks of Legal Challenges. Master Developer assumes all risk of delays or damages arising from each Third Person legal action related to: (a) City's approval of this Agreement, even in the event that an error, omission, or abuse of discretion by City is determined to have occurred; or (b) all Approvals associated with the Development, including any Environmental Review Document. If a Third Person files a legal action for which Master Developer assumes the risk under this Section 40.6 before the Horizontal Ground Lease Closing, Master Developer will have the option to either: (1) cancel the Horizontal Ground Lease Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent will proceed in accordance with Section 33.12; or (2) Indemnify City against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of all financial or performance obligations resulting from the disposition of the legal action. If Master Developer fails to Notify City of Master Developer's election under this Section 40.6 for a Third Person legal action filed before the Horizontal Ground Lease Closing at least fifteen (15) days before response to the legal action is required by City, Master Developer will be deemed to have elected to cancel the Horizontal Ground Lease Escrow and terminate this Agreement under option "(1)" in the immediately preceding sentence, without further Notice to or action by either Party. If a Third Person files a legal action for which Developer assumes the risk under this Section 40.6 after the Horizontal Ground Lease Closing, Master Developer will Indemnify City against such Third Person legal action, including all Legal Costs, monetary awards, sanctions, and the expenses of all financial or performance obligations resulting from the disposition of the legal action. City will reasonably cooperate with Master Developer in defense of City in any legal action subject to this Section 40.6, subject to Master Developer completely performing Master Developer's obligation to Indemnify City for such legal action. If Master Developer elects to Indemnify City regarding a Third Person legal action filed before the Horizontal Ground Lease Closing that is subject to this Section 40.6, but fails to provide or stops providing such Indemnification of City, then City will have the right to immediately terminate this Agreement and cancel the Horizontal Ground Lease Escrow by Notice to Master Developer and Escrow Agent. Nothing in this Section 40.6 is intended to be, nor will be deemed or construed to be, an express or implied admission that City may be liable to Master Developer or any other Person for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 40.6 (including any appeals) will constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended under the Unavoidable Delay provisions of this Agreement.

40.7 Costs and Expenses; Legal Costs. In the event of any litigation (including court required mediation or arbitration) between the Parties arising from this Agreement (including to enforce or interpret this Agreement, seek declaratory or injunctive relief in connection with this Agreement, exercise any right or remedy under or arising from this Agreement, or terminate this Agreement) or in any Bankruptcy Proceeding affecting the other Party to this Agreement, the prevailing Party or the Party that is not the subject of the Bankruptcy Proceeding will be entitled to reimbursement from the other Party of Legal Costs with Default Interest. The Legal Costs recoverable by one Party from the other Party in each litigation (consolidated matters or matters arising from the same facts and circumstances are a single litigation) arising from this Agreement

or a Bankruptcy Proceeding affecting the other Party will not exceed Two Hundred Fifty Thousand Dollars ($250,000) multiplied by 1 plus the result of multiplying .03 times the number of full calendar years this Agreement has been in effect when the subject litigation arises (i.e., if this Agreement has been in effect for ten (10) full calendar years when the subject litigation arises the maximum recoverable Legal Costs amount would be $250,000 x (1+(.03 x 10)) = $325,000).

40.8 Mayoral Implementation. City will implement this Agreement through the Mayor. Subject to the requirements of other provisions of this Agreement for City consent, the Mayor is authorized by City to issue approvals, interpretations, waivers and enter into amendments to this Agreement on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Development or this Agreement. Nothing in this Section 40.8 will restrict the submission to the City Council of any matter within the Mayor's authority under this Section 40.8, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 40.8 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor, without consideration by the City Council.

40.9 Notices. All Notices submitted by any Party to another Party or Escrow Agent or by Escrow Agent to a Party under or as required by this Agreement must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email, followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing the recipient Party or Escrow Agent in response to a Notice email. All Notices must be sent to the Party representative or Escrow Agent representative and address designated in **ATTACHMENT 4** to this Agreement. Either Party or the Escrow Agent may designate a different representative or address for delivery of Notice under this Agreement by Notice given in accordance with this Section 40.9. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A Notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the Notice is sent by messenger for immediate personal delivery and delivered to the Notice address before 5:30 p.m. Pacific Time, on the Business Day the Notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the Notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is delivered to the United States Postal Service in accordance with this Section 40.9 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to Notice delivered via email.

40.10 Relationship of Parties. The Parties each intend and agree that City and Master Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship, or association between them.

40.11 Warranty against Payment of Consideration for Agreement. Master Developer represents and warrants to City that: (a) Master Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Master Developer; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Master Developer or any of Master Developer's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 40.11 will entitle City to terminate this Agreement immediately, without liability, and cancel the Escrow by Notice to Master Developer and Escrow Agent. Upon any termination of this Agreement under this Section 40.11, Master Developer will immediately repay City all payments made to or on behalf of Master Developer by City under this Agreement prior to the date of such termination.

40.12 Survival of Agreement. All the provisions of this Agreement will be applicable to all disputes between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until each such dispute is finally and completely resolved between the Parties, either by written settlement agreement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods. All terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies will survive any expiration or termination of this Agreement. "Disputes between the Parties arising from this Agreement" under this Section 40.12 do not include disputes arising under the Horizontal Ground Lease after the Horizontal Ground Lease Closing or under any Vertical Ground Lease after its Vertical Ground Lease Closing.

40.13 Non-liability of City Parties and Master Developer Parties. No City Party (other than City itself) will be personally liable to Master Developer in the event of any Default by City under this Agreement or for any amount that may become due to Master Developer on any obligation under this Agreement. No Master Developer Party (other than Master Developer itself) will be personally liable to City in the event of any Default by Master Developer under this Agreement or for any amount that may become due to City on any obligation under this Agreement.

40.14 Time Period Calculation. Unless otherwise specified, all references to time periods in this Agreement measured in days will be to consecutive calendar days, all references to time periods in this Agreement measured in months will be to consecutive calendar months and all references to time periods in this Agreement measured in years will be to consecutive calendar years. All references to Business Days in this Agreement will mean consecutive Business Days.

40.15 Interpretation Principles. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Agreement. The Parties both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which will govern all language in this Agreement. The words "include" and "including" in this Agreement will be construed to be followed by the words: "without limitation." Each collective noun in this Agreement will be interpreted as if followed by

the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. The words "shall" and "will" have the same meaning as the word "must" and denote a mandatory action. The word "may" denotes a permissive action. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time. Where this Agreement provides for a Party to approve or disapprove a specified matter in its sole discretion or take some other action in its sole discretion, that Party may approve, disapprove, or condition approval of the matter for any reason or no reason or take, not take, or condition the taking of the action for any reason or no reason. A Party's decision to either disapprove or condition approval of a matter over which it has sole discretion or not take or condition the taking of other action over which it has sole discretion will not be a Default by that Party.

40.16 Governing Law. The procedural and substantive laws of the State will govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Agreement will be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

40.17 Unavoidable Delay; Extension of Time for Performance.

40.17.1 **Notice**. Neither Party will be in Default where the Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay will Notify the other Party of the Unavoidable Delay within a reasonable time after the claiming Party knows of the Unavoidable Delay and within a reasonable time after such Unavoidable Delay ceases to exist. To be effective, Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice of the Unavoidable Delay is timely given under this Section 40.17.1 commences on the date the condition causing the Unavoidable Delay begins, but not earlier than twenty (20) days preceding the Receipt Date of the Notice of the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay will exercise reasonable efforts to cure the condition causing the Unavoidable Delay within a reasonable time. If one Party claims an Unavoidable Delay in a Notice to the other Party, and if the other, non-claiming Party disputes the existence or continued existence of the asserted Unavoidable Delay, the non-claiming Party will Notify the claiming Party that the non-claiming Party disputes the existence or continued existence of the asserted Unavoidable Delay. If the claiming Party continues to claim the existence or continued existence of the asserted Unavoidable Delay, the claiming Party may (but is not required to) initiate the impasse resolution process under Section 39 with respect to the asserted Unavoidable Delay by delivering a Notice to the non-claiming Party, within ten (10) Business Days after the Receipt Date of the non-claiming Party's Notice described in the immediately preceding sentence, requesting commencement of a Negotiation Period for the dispute under Section 39.1. If the claiming Party initiates the impasse resolution process but the Parties do not reach agreement about the asserted Unavoidable Delay during the Negotiation Period, then notwithstanding anything to the contrary in Section 39.2 of

this Agreement, the claiming Party may (but is not required to) submit the dispute about the asserted Unavoidable Delay to non-binding mediation under Section 39.2 by delivering Notice to the non-claiming Party, within ten (10) Business Days after the expiration date of the Negotiation Period, demanding non-binding mediation of the dispute. In such event, notwithstanding anything to the contrary in Section 39.2 of this Agreement, the claiming Party will pay one hundred percent (100%) of the mediator's fees and the administrative fees and costs of the resulting mediation, and each Party will otherwise bear its own preparation and participation costs for the resulting mediation, regardless of the outcome of the mediation or any ensuing litigation. If the claiming Party does not timely request commencement of a Negotiation Period under this Section 40.17.1 with respect to a dispute about an asserted Unavoidable Delay or does not timely submit an unresolved dispute to non-binding mediation under this Section 40.17.1, the Unavoidable Delay will be considered to no longer exist as of the expiration date of the claiming Party's first unmet deadline under this Section 40.17.1 to either request commencement of a Negotiation Period for the dispute or submit such dispute to non-binding mediation.

40.17.2 **Assumption of Economic Risks.** EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND, OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT WILL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET CONDITIONS OR DEMAND AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND, WILL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized City Representative(s)	Initials of Authorized Master Developer Representative(s)
_____	_____

40.18 Real Estate Commissions. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission, finder's fee, or other compensation regarding this Agreement on

account of any agreement or arrangement made by such Party; and (b) will Indemnify the other Party against any breach of the representations and warranties set forth in clause "(a)" of this Section 40.18.

40.19 Binding on Successors and Assigns. Subject to the limitations set forth in Sections 40.3 and 40.4, this Agreement will be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

40.20 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

40.21 Tax Consequences. Master Developer acknowledges and agrees that it will bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Master Developer related to this Agreement or the Lease.

40.22 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any right or remedy under or because of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

40.23 Signature in Counterparts. This Agreement may be signed in multiple counterpart originals, each of which will be considered an original, but all of which together will constitute one and the same document.

40.24 Electronic Signatures. Except for documents to be filed with the County Recorder for Recording, the Parties agree: (a) that they may deliver and will accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures), provided that digital signatures will only be accepted if completed through either AdobeSign or DocuSign e-signature software; and (b) that signatures delivered by e-mail or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

40.25 Entire Agreement. This Agreement, including all attachments to this Agreement, constitutes the entire understanding and agreement of the Parties about entry into the Horizontal Ground Lease, entry into all the Vertical Ground Leases, and the other subjects addressed in this Agreement. This Agreement integrates all the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all previous negotiations or agreements between the Parties about entry into the Horizontal Ground Lease, all the Vertical Ground Leases, or the other subjects addressed in this Agreement.

40.26 Time Declared to be of the Essence. As to the performance of each obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

40.27 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one or more occasions upon strict compliance with any term, covenant, condition, restriction, or

agreement contained in this Agreement will not be deemed a waiver of such term, covenant, condition, restriction, or agreement, nor will any waiver or relinquishment of any right or power under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

40.28 Amendments. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Parties.

40.29 Attachments. All the attachments to this Agreement are incorporated into this Agreement by reference in this Agreement and described as follows:

ATTACHMENT 1	Definitions.
ATTACHMENT 2	Property Legal Description.
ATTACHMENT 3	Preliminary Report.
ATTACHMENT 4	Notice Addresses.
ATTACHMENT 5	City Standard Contract Provisions.
ATTACHMENT 6	Insurance Requirements.
ATTACHMENT 7	Development Site Plan.
ATTACHMENT 8	Development Phasing Plan.
ATTACHMENT 9	Performance Schedule.
ATTACHMENT 10	Horizontal Improvements.
ATTACHMENT 11	Horizontal Ground Lease Form.
ATTACHMENT 12	Horizontal Ground Lease Memorandum Form.
ATTACHMENT 13	Vertical Ground Lease Memorandum Form.
ATTACHMENT 14	Affordable Housing Lease Memorandum Form
ATTACHMENT 15	Market Rate Housing/Retail Lease Form.
ATTACHMENT 16	Entertainment Center Lease Form.
ATTACHMENT 17	Affordable Housing Lease Form Required Provisions.
ATTACHMENT 18	Prevailing Wage Laws and Requirements.

ATTACHMENT 19	Form of Certification of Entry Into Project Labor Agreement under Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022.
ATTACHMENT 20	Existing Agreements.
ATTACHMENT 21	Master Rent Administration Agreement.
ATTACHMENT 22	Development Conditions.
ATTACHMENT 23	Development Status Report Form.
ATTACHMENT 24	Affordable Housing Status Report Form.
ATTACHMENT 25	Monitoring Agreement.
ATTACHMENT 26	Contractor Prequalification Application.

[*Remainder of page intentionally blank. Signatures appear on immediately following page.*]

SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

City and Master Developer sign and enter into this Agreement by and through the signatures of their respective authorized representative(s) set forth below:

CITY:

The City of San Diego,
a California municipal corporation

By: _____
Christina Bibler,
Director, Economic Development

MASTER DEVELOPER:

Midway Rising, LLC, a Delaware limited liability company

By: _____
Name Brad Termini
Title Authorized Signor

Approved as to form on
_____.

HEATHER FERBERT
City Attorney

By: _____
Delmar G. Williams
Deputy City Attorney

ESCROW AGENT CONSENT

Chicago Title Company, a California corporation, accepts that certain Disposition and Development Agreement, dated as of [**TO BE DETERMINED**], by and between The City of San Diego, a California municipal corporation, and Midway Rising, LLC, a Delaware limited liability company, agrees to act as "Escrow Agent" under such agreement, and agrees to be bound by all provisions of such agreement applicable to it as the Escrow Agent.

ESCROW AGENT:

Chicago Title Company, a California corporation

By:_____
Name:_____
Its:_____
Dated:_____

Notice Address:
Chicago Title Company
National Commercial Services
2365 Northside Drive, Suite 600
San Diego, CA 92108
Attention: [**TO BE DETERMINED**]
Email: [**TO BE DETERMINED**]

ATTACHMENT 1
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

DEFINITIONS

All references to sections of this Agreement in this **ATTACHMENT 1** are to sections in the main body of this Agreement, unless otherwise specified. The following words, terms, or phrases indicated to be defined terms in this Agreement by initial capitalization are used in this Agreement with the following meanings, unless the context of usage of a word, term, or phrase requires another interpretation:

1. **Affiliate**. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with a specified Person. "Affiliated" will have the correlative meaning.

2. **Affirmative Prevailing Wage Determination**. Defined in Section 25.1.

3. **Affordable Housing**. The Affordable Units Constructed or to be Constructed within the Development.

4. **Affordable Housing Lease**. Each Vertical Ground Lease of a Development Parcel for Construction of Affordable Units.

5. **Affordable Housing Lease Form**. Defined in Section 34.11.

6. **Affordable Housing Lease Form Negotiation Deadline**. Defined in Section 34.11.

7. **Affordable Housing Lease Memorandum**. A lease memorandum of each Affordable Housing Lease in substantially the form of **ATTACHMENT 14**.

8. **Affordable Unit and Affordable Units**. Defined in Section 15.1.

9. **Affordable Unit Matrix**. Defined in Section 15.1.

10. **Agreement**. This Disposition and Development Agreement dated [**TO BE DETERMINED**], between the Parties.

11. **Alternative Financing**. Defined in Section 27.2.

12. **AMI**. The then current area median income for the County, as determined and published by HCD in the California Code of Regulations or if no longer determined by HCD, then as established, and amended from time to time under Section 8 of the United States Housing Act of 1937.

13. **Application**. Each agreement, application, certificate, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Master Developer to obtain: (a) any Approval to commence, perform, or complete Construction of the Development, including

each application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument Master Developer may reasonably request for the Development; or (b) any Approval or to use, occupy, maintain, or operate the Development in accordance with this Agreement, the Horizontal Ground Lease, or any Vertical Ground Lease.

14. **Approval**. Each license, permit (including building, grading, demolition, alteration, use and special permit), approval, consent, certificate (including Certificate(s) of Occupancy), ruling, variance, authorization, or amendment to any of the foregoing necessary or appropriate under any Law to commence, perform, or complete Construction of the Horizontal Improvements to be Constructed under the Horizontal Ground Lease or the Vertical Improvements to be Constructed under any Vertical Ground Lease, or use, occupy, maintain, or operate the Horizontal Improvements to be Constructed under the Horizontal Ground Lease or the Vertical Improvements to be Constructed under any Vertical Ground Lease.

15. **Architect**. An architect that is: (a) selected by Master Developer; (b) not Affiliated with Master Developer; (c) licensed as an architect in the State; and (d) reasonably qualified and experienced in designing and overseeing projects similar to the particular Vertical Improvements for which they are engaged. Master Developer may replace its Architect, at any time, with a different architect satisfying the requirements of the first sentence of this Section 15 by Notice to City.

16. **Architect Contract**. A current, executory agreement between Master Developer and an Architect for preparation of the Plans for the applicable Vertical Improvements.

17. **Bankruptcy Proceeding**. Any proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

18. **Business Day**. Monday through Friday, except City holidays when City offices are closed.

19. **CDTFA**. Defined in Section 23.1.

20. **Certificate of Occupancy**. A certificate of occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as may be amended from time to time, and as adopted and amended by City (under its Governmental Authority), from time to time.

21. **City**. The City of San Diego, a California municipal corporation, and any assignee of or successor to such municipal corporation's rights, powers, or responsibilities.

22. **City Council**. The City Council of City.

23. **City Parties**. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

24. **City Party**. Individually, City, the City Council, or each City elected official, employee, agent, or attorney.

25. **City Prevailing Wage Determination**. Defined in Section 25.1.

26. **City Title Policy**. An ALTA standard owner's title insurance policy issued to City by the Title Company, with coverage in the amount of the fair market value of the Property as improved with the Horizontal Improvements for the Horizontal Ground Lease or the fair market value of the particular Development Parcel as improved with the applicable Vertical Improvements for each Vertical Ground Lease, respectively, insuring title to the Fee Estate of the Property or the particular Development Parcel, as applicable, vested in City, and including all available insurance endorsements requested by City.

27. **Claim**. Each claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), or any judgment.

28. **Construction**. Alteration, construction, installation, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, restoration, or other work affecting the Property, including the Horizontal Improvements or the Vertical Improvements. "**Construct**" and "**Constructed**" will have the correlative meanings.

29. **Construction Contract**. A current, executory agreement between Master Developer and a General Contractor for Construction of the entirety of the Horizontal Improvements or the entirety of the specified Vertical Improvements, as applicable, for a guaranteed maximum price or a stipulated price expressly set forth in such contract, with a commercially reasonable retention amount not to be paid to the General Contractor until the final payment is due to the General Contractor and providing that such final payment will not be paid to the General Contractor until after City issuance of a final Certificate of Occupancy for the Horizontal Improvements or the specified Vertical Improvements, as applicable, the contract complies with all the terms and conditions of this Agreement and the applicable Horizontal Ground Lease or Vertical Ground Lease, and the contract is conditioned only upon: (a) the applicable Horizontal Ground Lease Closing or Vertical Ground Lease Closing; (b) Master Developer's receipt of all Approvals for the applicable Horizontal Improvements or Vertical Improvements; (c) funding of the applicable Construction Financing; and (d) other commercially reasonable terms and conditions. Each Construction Contract will state that: (i) the General Contractor acknowledges and agrees that it may enforce any mechanics liens only against the applicable Leasehold Estate and not the Fee Estate; (ii) Master Developer will conditionally assign each Construction Contract to City, such assignment to be effective upon a termination of the Horizontal Ground Lease or particular Vertical Ground Lease, as applicable due to an "Event of Default" (as defined in such lease); and (iii) General Contractor agrees to continue to perform for City all obligations of General Contractor under its contract with Master Developer, if the Horizontal Ground Lease or particular Vertical Ground Lease terminates or City re-enters the "Premises" under the Horizontal Ground Lease or particular Vertical Ground Lease after an Event of Default, provided General Contractor is paid for its services, in accordance with such contract. Subject to all the other requirements described above in this Section 29, a cost-plus contract may be used for Construction of the Horizontal Improvements with the additional requirement that the Construction Surety increases when the contract price increases to cover the full cost of the contract.

30. **Construction Surety**. Payment and performance bonds guaranteeing the performance of the Construction Contract by the General Contractor and that the Construction of the Horizontal Improvements or the specified Vertical Improvements, as applicable, will be completed by the General Contractor or, on the General Contractor's default, the surety or guarantor, in accordance with the Horizontal Ground Lease or particular Vertical Ground Lease, as applicable. Such bonds will be in form and substance reasonably acceptable to City, for an amount of money not less than one hundred percent (100%) of the Construction Contract guaranteed maximum price or stipulated price (as approved by the Senior Permitted Leasehold Lender under the Horizontal Ground Lease or particular Vertical Ground Lease, as applicable), for the benefit of Master Developer, with City named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in California Code of Civil Procedure section 995.120, with an underwriting limitation, under California Insurance Code section 12090, greater than the contract amount of the bond. Each such bond must, by its express terms, remain in full force and effect until the Construction Completion Date (defined in the Horizontal Ground Lease) for the Horizontal Improvements or the Project Completion Date (defined in the Vertical Ground Lease) for the specified Vertical Improvements, as applicable. If the provider of any bond regarding any Construction becomes the subject of any Bankruptcy Proceeding, Master Developer will promptly provide a substitute bond to City for such Construction. The Construction Surety will be in addition to any public improvement security required by any Government regarding the Horizontal Improvements or the specified Vertical Improvements, as applicable. If Master Developer determines that any type of payment or performance bond described in this Section 30 is no longer reasonably available to the construction industry in the commercial surety bond market on commercially reasonable terms for Construction of particular Vertical Improvements (each, an "**Unavailable Bond**"), it will Notify City in writing within seven (7) days. The Notice will include reasonable documentation demonstrating that one or more of the payment or performance bonds described in this Section 30 is an Unavailable Bond and Master Developer's alternative proposal for providing the risk protection to City that would have been previously provided by each Unavailable Bond. City will have thirty (30) days to review and approve or disapprove Master Developer's proposal, in City's sole discretion. If City does not, in its sole discretion, approve Master Developer's alternative proposal to provide the risk protection to City that would have been previously provided by each Unavailable Bond, Master Developer will obtain, or will require its General Contractor to obtain, the payment and performance bonds described in this Section 30 for Construction of the particular Vertical Improvements.

31. **Contractor Prequalification Application**. The form in **ATTACHMENT 26**.

32. **Control**. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person, bind such Person to an obligation, and direct or cause the direction of the day-to-day management of such Person, in all cases whether by ownership of Equity Interests, by contract, or otherwise.

33. **Controlling and Controlled**. Exercising or having Control.

34. **County**. The County of San Diego, California.

35. **County Recorder**. The Recorder of or for the County.

36. **CTCAC**. The California Tax Credit Allocation Committee or successor in function.

37. **Default**. Each Monetary Default, Non-Monetary Default, or Escrow Default.

38. **Default Interest**. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest allowed by Law under the circumstances.

39. **Development**. Collectively, Master Developer's Construction of all the Horizontal Improvements under the Horizontal Ground Lease and all the Vertical Improvements under the Vertical Ground Leases, in accordance with this Agreement.

40. **Development Conditions**. All the requirements for and limitations on use of the Property or Construction on the Property in **ATTACHMENT 22**.

41. **Development Parcel**. Each numbered lot, and each lettered lot associated with the numbered lot, if any, created under the Vesting Tentative Map that will be the subject of a particular Vertical Ground Lease. Each Development Parcel will be referred to in this Agreement by reference to the numbered lot in the Vesting Tentative Map.

42. **Development Phasing Plan**. The plan for the phased Construction of the overall Development in **ATTACHMENT 8**.

43. **Development Site Plan**. The site plan in **ATTACHMENT 7**.

44. **DIR**. Defined in Section 25.

45. **DIR Coverage Determination**. Defined in Section 25.3.

46. **DSD**. City's Development Services Department.

47. **Effective Date**. The first date on which all the following events have occurred: (a) this Agreement is signed by the authorized representative(s) of Master Developer; (b) this Agreement is approved by the City Council; (c) this Agreement is signed by the authorized representative(s) of City; and (d) the form of this Agreement is approved by the San Diego City Attorney.

48. **EIFD Acquisition Agreement**. Defined in Section 27.3.

49. **EIFD Alternative Financing Period**. Defined in Section 27.2.

50. **EIFD Authority**. Defined in Section 27.1.

51. **EIFD Formation Period**. Defined in Section 27.2.

52. **EIFD Law**. Defined in Section 27.1.

53. **ENA**. Defined in Section 12.2.

54. **Engineer**. An architect or engineer (as applicable to the pertinent Construction) that is: (a) selected by Master Developer; (b) not Affiliated with Master Developer; (c) licensed as an

architect or engineer (as applicable) in the State; and (d) reasonably qualified and experienced in designing and overseeing projects similar to the Horizontal Improvements for which they are retained.

55. **Engineering Contract**. A current, executory agreement between Master Developer and an Engineer for preparation of the Plans for the Horizontal Improvements.

56. **Entertainment Center**. Defined in Section 18.

57. **Entertainment Center Lease**. The Vertical Ground Lease of Development Parcels 24 and 25 for Construction of the Entertainment Center.

58. **Entertainment Center Lease Form**. Defined in Section 34.10.

59. **Environmental Condition**. Any of the following events relating to the Property arising from the negligence or intentional misconduct of one or more Master Developer Parties, contractors, subtenants, licensees, or other Person's entering the Property at the request or for the benefit of Master Developer: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

60. **Environmental Law**. Each Law regarding the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

61. **Environmental Review Document**. Each exemption determination, Negative Declaration (mitigated or otherwise), or Environmental Impact Report (including each addendum or amendment to, or subsequent or supplemental Environmental Impact Report) under the California Environmental Quality Act, California Public Resources Code sections 21000, et seq., and the associated regulations at Title 14 California Code of Regulations sections 15000, et seq., or each categorical exclusion, exemption, environmental assessment, finding of no significant impact, or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. §§4321-4370h, required or permitted by any Government to issue any discretionary Approval or approve this Agreement, or enter into the Horizontal Ground Lease or any Vertical Ground Lease.

62. **Equity Interest**. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

63. **Equity Interest Transfer**. Each of the following actions or events, whether occurring by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Master Developer (even though Master Developer itself is not the transferor), excluding sales of Equity Interests listed on a public stock exchange in the United States by a Person holding ten percent (10%) or less of the Equity Interests in the Person whose Equity Interests are being sold; or (b) each merger, consolidation, sale, lease, or the like with respect to Master Developer, or a series of such mergers, consolidations, sales, leases, or the like

occurring over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in the assets of Master Developer.

64. **Escrow Agent**. Chicago Title Company, a California corporation, or such other Person mutually agreed upon in writing by both Parties.

65. **Escrow Closing Statement**. A statement prepared by Escrow Agent showing, among other things, Escrow Agent's estimate of all funds to be deposited or received by City or Master Developer, respectively, and all charges to be paid by City or Master Developer, respectively, through the Horizontal Ground Lease Escrow or any Vertical Ground Lease Escrow.

66. **Escrow Default**. The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Horizontal Ground Lease Escrow or any Vertical Ground Lease Escrow, after all other conditions precedent to the Horizontal Ground Lease Closing or the particular Vertical Ground Lease Closing for the benefit of the Party are satisfied or waived by the Party.

67. **Event of Default**. The occurrence of any one or more of the following:

67.1 *Monetary Default*. Each Monetary Default continuing for seven (7) days after Notice to the Party in Default describing the Monetary Default in reasonable detail;

67.2 *Escrow Default*. Each Escrow Default continuing for seven (7) days after Notice to the Party in Default describing the Escrow Default in reasonable detail;

67.3 *Bankruptcy or Insolvency*. A Party ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets or the Party's interest in this Agreement or the Horizontal Ground Lease or one or more Vertical Ground Leases (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made);

67.4 *Master Developer Transfer.* Each occurrence of a Transfer or Equity Interest Transfer by or affecting Master Developer, whether made voluntarily, involuntarily, or by operation of Law, in violation of Section 40.3 or Section 40.4;

67.5 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 67.3 or 67.4 of this Section 67, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default will not be in Default if it does all the following: (a) within thirty (30) days after the date of the Notice of the Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the date of the Notice of the Non-Monetary Default, commence curing the Non-Monetary

Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time, but in no event later than one hundred eighty (180) days after the date of the Notice of the Non-Monetary Default, subject to extension for Unavoidable Delay in curing the Non-Monetary Default.

68. **Existing Agreements**. Defined in Section 14.

69. **Federal**. Relating to or under the authority of the federal government of the United States of America.

70. **Fee Estate**. City's fee estate in the Property, including City's reversionary interest in the Property after each expiration or termination of the Horizontal Ground Lease or each Vertical Ground Lease.

71. **Fee Lender**. An Institutional Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument will not be considered a Fee Lender.

72. **Fee Security Instrument**. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as applicable to Fee Lenders) and containing no provision (and securing no document containing any provision) inconsistent with the Statement of Priorities; (c) otherwise complying with this Agreement; (d) a copy of which (Recorded or unrecorded) is promptly after being signed delivered to Tenant and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

73. **GAAP**. Generally Accepted Accounting Principles established by the Financial Accounting Standards Board in the United States.

74. **Gap Financing**. Defined in Section 15.3.6.

75. **General Contractor**. A State licensed general contractor selected by Master Developer that has either: (a) been preapproved by City as a prime contractor for City public works projects of similar size to the contractor's proposed scope of work; or (b) submitted its qualifications to both Master Developer and City using the Contractor Prequalification Application and been approved by both Master Developer and City as having appropriate qualifications and experience to perform the contractor's proposed scope of work.

76. **Government**. All Federal, State, County, district, City (acting under its Governmental Authority), or other governments and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any government, whether in existence on the Effective Date or subsequently established, having, or claiming jurisdiction over any Party, the Property, the

Horizontal Ground Lease, any Vertical Ground Lease, the Horizontal Improvements, any Vertical Improvements, this Agreement, or any activity this Agreement allows.

77. **Governmental Authority**. City's police power land use regulatory authority or other police powers, separate and distinct from City acting in its proprietary capacity.

78. **Hazardous Substance**. Each flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy, from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Law; (ii) is subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health or safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal. "Hazardous Substance" will not include any household chemical products in normal quantities used for operation and maintenance of the Property in compliance with Law.

79. **Hazardous Substance Discharge**. Each deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Property or any activities conducted at, on, under, in, or from the Property, including Construction of the either the Horizontal Improvements or any Vertical Improvements, whether or not caused by a Party or occurring before or after the Effective Date, the Horizontal Ground Lease Closing Date, or one or more Vertical Ground Lease Closing Dates.

80. **HCD**. The California Department of Housing and Community Development.

81. **Horizontal Ground Lease**. The ground lease of the entire Property from City to Master Developer solely for the purpose of Construction of the Horizontal Improvements on the Property, in substantially the form of **ATTACHMENT 11** to this Agreement.

82. **Horizontal Ground Lease Closing**. The first date on which Escrow Agent completes all the actions under Section 33.8.

83. **Horizontal Ground Lease Closing Date**. The earlier of: (a) on or before the third (3rd) Business Day following Escrow Agent's determination that all conditions precedent to the Horizontal Ground Lease Closing are satisfied or waived by the appropriate Party; or (b) [**DATE CERTAIN TO BE DETERMINED**], subject to extension under Section 33.9.

84. **Horizontal Ground Lease Escrow**. An escrow, as defined in California Civil Code section 1057 and California Financial Code section 17003(a), that is conducted by the Escrow Agent with respect to the Parties entering into the Horizontal Ground Lease under this Agreement.

85. **Horizontal Ground Lease Memorandum**. A memorandum in substantially the form of **ATTACHMENT 12** to this Agreement.

86. **Horizontal Improvements**. All the improvements described in **ATTACHMENT 10** to this Agreement.

87. **Horizontal Improvements Financing Documents**. All documents evidencing, creating, or securing financing (loans, grants, subsidies, tax credits, equity contributions, etc.) identified in the Horizontal Improvements Financing Plan.

88. **Horizontal Improvements Financing Plan**. A plan for financing Construction of all the Horizontal Improvements. At a minimum, the plan must include a development budget for the Horizontal Improvements, a narrative description of the specific financing types (loans, bonds, tax credits, etc.), the timing of the closing and funding of each financing type (Horizontal Ground Lease Closing, conversion, etc.), whether each financing type will be secured by the Horizontal Ground Lease or the Horizontal Improvements, for each type of financing secured by the Horizontal Ground Lease the proposed lien priority position relative to all other financing secured by the Horizontal Ground Lease, the specific identity of each source for each financing type (bank, government agency, etc.), the dollar amount of each financing type, a proforma with a summary of all the proposed financing, sources and uses of financing for Construction, and a proposed performance schedule for the Horizontal Ground Lease.

89. **Horizontal Improvements Phase**. Each phase of Construction of the Horizontal Improvements on the Property as described in the Horizontal Improvements Phasing Plan in the Horizontal Ground Lease.

90. **Indemnify**. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all Legal Costs, interest, and penalties incurred in enforcing the indemnity obligation under this Agreement regarding the Claim. "**Indemnified,**" "**Indemnification,**" or similar terms will have the correlative meanings.

91. **Indemnitee**. Each Person entitled to be Indemnified under this Agreement.

92. **Indemnitor**. Each Person agreeing to Indemnify any other Person under this Agreement.

93. **Independent Contract Consideration**. One Thousand Dollars ($1,000).

94. **Institutional Lender**. Each of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) Federal or State regulated savings bank; (f) pension, welfare, or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Federal or State regulated investment bank; (j) a Fortune 500 company; or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 94.

95. **Insurance Documents**. Certified copies of insurance policies and endorsements showing that all insurance coverage required to be obtained by Master Developer under this Agreement, the Horizontal Ground Lease, or each Vertical Ground Lease is in effect.

96. **Interim Arena Lease**. Defined in Section 13.

97. **JAMS**. Judicial Arbitration and Mediation Services, Inc., as of the Effective Date, or, if JAMS ceases operations, another similar organization mutually agreed upon in writing by, as applicable, City and Master Developer or Vertical Developer.

98. **Law**. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any manner to any Party, the Property, the Horizontal Ground Lease, any Vertical Ground Lease, the Horizontal Improvements, any Vertical Improvements, any Construction on the Property, this Agreement, any Party's rights, obligations, or remedies under this Agreement, the Horizontal Ground Lease, any Vertical Ground Lease, or any Transfer or Equity Interest Transfer, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

99. **Leasehold Estate**. The leasehold estate in the Property created by the Horizontal Ground Lease at the Horizontal Ground Lease Closing or the leasehold estate in each Development Parcel created by the Vertical Ground Lease applicable to the Development Parcel at the applicable Vertical Ground Lease Closing and all the Tenant's rights and privileges under the Horizontal Ground Lease or each Vertical Ground Lease, upon and subject to all the terms and conditions of the Horizontal Ground Lease or the particular Vertical Ground Lease, respectively.

100. **Legal Costs**. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding involving this Agreement or the other Party; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested of a Party by Notice from the other Party; (d) requirement under Law or request by Notice from a Party that such Person or its employees act as a witness in any proceeding regarding this Agreement or the requesting Party; or (e) review or approval requested of a Party by Notice from the other Party.

101. **Liquidated Damages Amount 1**. One Million Dollars ($1,000,000).

102. **Liquidated Damages Amount 2**. Two Million Dollars ($2,000,000).

103. **Market Rate Housing**. Defined in Section 16.

104. **Market Rate Housing/Retail Lease**. Each Vertical Ground Lease of a Development Parcel for Construction of Market Rate Housing and Retail Development.

105. **Market Rate Housing/Retail Lease Form**. Defined in Section 34.9.

106. **Market Rate Housing Unit**. Each individual multi-family residential rental unit within the Development offered for rent at then current market rate rent.

107. **Master CC&Rs**. Master conditions, covenants, and restrictions to be recorded against one or more Leasehold Estates under one or more Vertical Ground Leases, if approved by City under Section 34.14.

108. **Master Declarant**. The declarant under the Master CC&Rs, if any.

109. **Master Developer**. Midway Rising, LLC, a Delaware limited liability company, and its permitted Transferees under this Agreement.

110. **Master Developer Entity Documents**. The organizational documents of the entity that is Master Developer, including all amendments, all of which Master Developer will certify as accurate and update on the date of the Horizontal Ground Lease Closing and each Vertical Ground Lease Closing, and a Certificate of Good Standing from the Secretary of State of the State certifying that Master Developer is authorized to conduct business in the State, a certification of the Master Developer's member(s), partner(s), Board of Directors, or similar Person(s) authorizing Master Developer, and designating the signer(s) authorized to bind Master Developer, to enter into and perform the Horizontal Ground Lease and each Vertical Ground Lease.

111. **Master Developer Parties**. Collectively, Master Developer, its directors, officers, members, managers, partners, employees, agents, attorneys, and all owners of Equity Interests in Master Developer.

112. **Master Developer Party**. Individually, Master Developer, its directors, officers, members, managers, partners, employees, agents, attorneys, or each owner of an Equity Interest in Master Developer.

113. **Master Developer Title Policy**. A standard coverage lessee's policy of title insurance issued to Master Developer by the Title Company, with coverage in a reasonable amount based on a then-current appraisal of the fair market value of the Property after completion of the Horizontal Improvements to be Constructed on the Property and insuring title to the Leasehold Estate under the Horizontal Ground Lease vested in Master Developer, subject to the Permitted Exceptions, and including any available insurance endorsements requested by Master Developer.

114. **Master Rent Administration Agreement**. An agreement in substantially the form of **ATTACHMENT 21**.

115. **Mayor**. The Mayor, from time to time, of City or such Person's designee or successor in function and authority, or, if the Fee Estate is transferred to a Person other than City, then such Fee Estate owner's representative designated in a Notice to Master Developer.

116. **Midway EIFD**. Defined in Section 27.1.

117. **Minimum Required Affordable Units**. Defined in Section 15.3.2.

118. **Monetary Default**. Any failure by a Party to pay, deposit, or provide, when and as this Agreement requires, any amount of money, evidence of insurance coverage, or surety bond when and as this Agreement requires, whether to or with a Party or a Third Person, except to the extent the failure constitutes an Escrow Default.

119. **Monitoring Agreement**. An agreement among City, the applicable Vertical Developer, and SDHC, for SDHC to monitor the applicable Vertical Developer's compliance with the affordable housing provisions of each Affordable Housing Lease and for the applicable Vertical Developer to pay the costs of the monitoring by SDHC, among other things, in substantially the form attached to this Agreement as **ATTACHMENT 25**.

120. **Negotiation Period**. A period of thirty (30) days immediately following the Receipt Date of a Notice from City, Master Developer, or Vertical Developer requesting commencement of a negotiation period under Section 39.1.

121. **Net Worth**. The amount by which the total of all assets of a specified Person exceeds the total of all liabilities of such Person, as determined by an independent certified public accountant in accordance with GAAP.

122. **Non-Monetary Default**. The occurrence of any of the following events, except to the extent constituting a Monetary Default or an Escrow Default: (a) the failure of a Party to perform any one of its obligations under this Agreement, including not meeting any deadline in the Performance Schedule; (b) the failure of a Party to comply with any covenant, condition, restriction, or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

123. **Notice**. Each approval, consent, demand, designation, election, notice, or request relating to this Agreement, including any Unavailable Financing Notice or Notice of Default or termination of this Agreement. Notices must be in writing and delivered in accordance with Section 40.9.

124. **Notice of Default**. Each Notice of a Default. A Notice of Default is not required to specify a cure period.

125. **Notify**. Give a Notice.

126. **Outside Vertical Developer**. A Third Person to whom Master Developer Transfers, in accordance with Section 40.4, its rights related to entering into a Vertical Ground Lease for a Development Parcel under Sections 34 and 35.

127. **Outside Vertical Developer Transfer**. Defined in Section 40.4.

128. **Outside Vertical Developer Transfer Date**. Defined in Section 40.4.

129. **Park Plans**. Defined in Section 24.2.

130. **Parking Structure or Parking Structures**. Defined in Section 19.

131. **Parks**. The 8.2 acres of defined areas throughout the Property shown in the Specific Plan to be developed as park, including "The Green," "The Square," "The Plaza," "Paseo Greens," and "Paseo Greenways" (all as defined in the Specific Plan), with amenities worth a total of 610 Recreational Value Points. "**Park**" refers, individually, to each distinct area shown in the Specific Plan to be developed as park on the Property.

132. **Participating Parties**. Defined in Section 39.1.

133. **Participating Party**. Defined in Section 39.1.

134. **Parties**. Collectively, City and Master Developer.

135. **Party**. Individually, either City or Master Developer, as applicable.

136. **Performance Schedule**. The schedule for the performance of certain actions under this Agreement by City or Developer in **ATTACHMENT 9** to this Agreement.

137. **Permit Ready**. An Approval that is in a position to be issued to Master Developer by the issuing Government upon Master Developer's payment of applicable fees or assessments and the posting of required bonds.

138. **Permitted Exceptions**. All the following matters: (a) all items shown in the Preliminary Report as an exception to coverage under the title insurance policy offered in the Preliminary Report; (b) all taxes not on rolls; (c) all Laws applicable to the Property; (d) this Agreement; (e) the Horizontal Ground Lease and Horizontal Ground Lease Memorandum; (f) each Vertical Ground Lease and Vertical Ground Lease Memorandum; (g) all Permitted Leasehold Security Instruments; (h) all existing improvements on the Property as of the Effective Date; (i) all Applications made at Master Developer's or a Vertical Developer's request relating to the Property; (j) all Approvals relating to the Property, the Horizontal Improvements, or any Vertical Improvements; (k) all utility easements directly related to the Horizontal Improvements or any Vertical Improvements; (l) all matters consented to or otherwise caused by Master Developer or a Vertical Developer; (m) all documents or encumbrances expressly required or allowed to be Recorded against the Property under this Agreement or Law; or (n) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Property, whether or not of record, as of the Effective Date.

139. **Permitted Leasehold Lender**. An Institutional Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then City will not be bound by the assignment or change of address, unless and until each affected Permitted Leasehold Lender has given City Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be considered a Permitted Leasehold Lender or affect City in any way. (Only the "lead" Institutional Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Institutional Lender may be replaced at any time upon Notice from that Institutional Lender, but only the designated lead Institutional Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender.)

140. **Permitted Leasehold Security Instrument**. Any Security Instrument: (a) encumbering only the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the "Statement of Priorities" (as it applies to Permitted Leasehold Lenders) in the Horizontal Ground Lease or the particular Vertical Ground Lease, respectively, and containing no provisions (and securing no other document containing any provisions) inconsistent with such "Statement of Priorities"; (c) held by an Institutional Lender; and (d) a copy of which is delivered to City promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and Notice address.

141. **Permitted Transfer**. A Transfer, where following the Transfer, either Master Developer, an Unchanged Entity that has continuously owned an Equity Interest in Master Developer since the Effective Date, or an Unchanged Entity that has continuously owned an Equity Interest in another Unchanged Entity that has continuously owned an Equity Interest in Master Developer since the Effective Date, continuously has Control over the Transferee, the Transferee is not a Prohibited Transferee, and Master Developer is not released from liability under this Agreement following the Transfer. If Master Developer's Control over a Transferee ends or Control of an Unchanged Entity to which a Transfer is made changes, each such event will be considered a Transfer that is not a Permitted Transfer.

142. **Person**. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

143. **Phase**. Defined in Section 15.3.

144. **Phased Financing**. Defined in Section 31.2.

145. **PLA Certification**. Defined in Section 26.

146. **Plans**. The plans and specifications for the Horizontal Improvements or the specified Vertical Improvements, as applicable, approved by City as the governmental land use regulatory authority for the Property.

147. **Preliminary Report**. The offer to issue an American Land Title Association leasehold title insurance policy attached to this Agreement as **ATTACHMENT 3**.

148. **Prevailing Wages**. Defined in Section 25.

149. **Prevailing Wage Determination**. Each of the following events: (a) each determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) each determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) each administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776, or applicable Federal law; or (d) each administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781, 1782, or applicable Federal law.

150. **Prevailing Wage Law**. Defined in Section 25.

151. **Prevailing Wage Provisions**. Defined in Section 25.

152. **Prohibited Encumbrance**. Each lien, Security Instrument, mechanic's lien, easement, property interest, or other encumbrance Recorded or asserted against the Property that is not a Permitted Exception.

153. **Prohibited Transferee**. Each Person: (a) with whom City is in litigation at the time a Transfer or Equity Interest Transfer to the Person is proposed, made, or to be made, exclusive of defendants in eminent domain litigation commenced by City where the right of City to take the subject property is not challenged; (b) that City reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (c) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (d) entitled to claim diplomatic immunity; (e) that is a domestic or foreign governmental entity; or (f) that is immune or may elect to be immune from suit under State or Federal law.

154. **Property**. That certain real property specifically described in **ATTACHMENT 2** to this Agreement.

155. **Public Space**. The 6.42 acres of defined areas throughout the Property that are adjacent to or accessible from a public right-of-way (as shown in the Specific Plan), including all promenades, streetscapes, and residential buffer areas.

156. **Receipt Date**. Defined in Section 40.9.

157. **Record, recorded, recording, or recordation**. Recordation of the referenced document in the official records of the County Recorder.

158. **Recreational Value Points**. Recreational value points under the scoring methodology outlined in the City's Parks Master Plan adopted August 2021, Appendix D.

159. **Rent Calculation Agreement**. An agreement entered into between Master Developer and each tenant under a Market Rate Housing/Retail Lease providing for: (a) such tenant to provide Master Developer with an "Annual Revenue Statement" (as defined in the applicable Market Rate Housing/Retail Lease) concurrently with delivery of such Annual Revenue Statement to the City, as landlord, under the applicable Market Rate/Retail Lease; (b) if such tenant fails to timely provide the Annual Revenue Statement to Master Developer, remedies and enforcement mechanisms for Master Developer to utilize to compel the tenant to provide the Annual Revenue Statement, including the imposition of a late charge or interest; and (c) Master Developer's obligation to calculate the "Minimum Annual Rent" (as defined in the applicable Market Rate Housing/Retail Lease).

160. **Requesting Party**. Defined in Section 25.3.

161. **Residential Unit**. Each individual Affordable Unit or Market Rate Housing Unit.

162. **Retail Development**. Defined in Section 17.

163. **SDHC**. The San Diego Housing Commission, a public agency.

164. **SDMC**. Defined in Section 25.

165. **Security Instrument**. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of Record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender or Fee Lender (as applicable), then all such security instruments so consolidated or restated will constitute a single Security Instrument. A Security Instrument may be either a Fee Security Instrument or a Permitted Leasehold Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

166. **Senior**. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien priority position of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien priority position to the specified Security Instrument. Priority of liens will be determined under the section of the Horizontal Ground Lease or the particular Vertical Ground Lease, as applicable, titled "Priorities of Multiple Lenders." If only one Security Instrument of a particular type exists, then it will be the "Senior" Security Instrument of such type.

167. **Specific Plan**. Defined in the Development Conditions (Row D).

168. **State**. The State of California.

169. **Tenant**. Any Person who is the tenant under the Horizontal Ground Lease or any Vertical Ground Lease.

170. **Tenant Entity Documents**. The organizational documents of the Tenant, including all amendments, all of which Tenant certifies as accurate when delivered to City and on the date of the Horizontal Ground Lease Closing or the applicable Vertical Ground Lease Closing, a Certificate of Good Standing from the California Secretary of State certifying that Tenant is authorized to conduct business in the State, a certification in form and substance acceptable to City by the Tenant's Board of Directors, general partner(s), member(s), or similar Person(s) authorizing Tenant to enter into and perform the Horizontal Ground Lease or the applicable Vertical Ground

Lease and designating the signer(s) to bind the Tenant, and all agreements between Tenant and owners of Equity Interests in Tenant, including any type of tax credit investor.

171. **Third Person**. Any Person that is not a Party, an Affiliate of a Party, a City Party, or a Master Developer Party.

172. **Title Company**. Chicago Title Company, a California corporation, or such other title insurance company mutually agreed upon in writing by both Parties.

173. **Transfer**. Each of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Master Developer's legal, beneficial, or equitable interest in this Agreement or the Property; (b) any Equity Interest Transfer relating to Equity Interest(s) in Master Developer; or (c) any transaction that is in substance equivalent to any of the transactions described in clause "(a)" or "(b)" of this Section 173. An Equity Interest Transfer described in clause "(b)" or "(c)" of this Section 173 or otherwise, is considered a Transfer by Master Developer even though Master Developer is not technically the transferor. A "Transfer" will not, however, include any of the following Equity Interest Transfers (provided that the other Party to this Agreement receives Notice of the Equity Interest Transfer at least fifteen (15) days before the Transfer is effective): (i) a mere change in form of ownership, with no material change in beneficial ownership, that constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a collateral pledge of the Equity Interests in Master Developer to a Permitted Leasehold Lender as security for a loan allowed under, as applicable, the Horizontal Ground Lease or the applicable Vertical Ground Lease; or (iv) issuance of previously unissued or new Equity Interests in Master Developer that increases the amount of outstanding Equity Interests in Master Developer by less than ten percent (10%).

174. **Transferee**. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Master Developer through an Equity Interest Transfer or acquiring all or any portion of Master Developer's interest in this Agreement or the Property through a Transfer, including an Outside Vertical Developer Transfer. A Prohibited Transferee cannot be a "Transferee."

175. **Unavailable Bond**. Defined in this **ATTACHMENT 1**, Section 30.

176. **Unavailable Financing Notice**. Defined in Section 15.3.6.

177. **Unavoidable Delay**. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes described above in this Section 177 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

178. **Unchanged Entity**. A Person that is not a natural Person that has not had a change in Control over that Person occur since the Effective Date.

179. **Use Tax**. Defined in Section 23.1.

180. **Vertical Developer**. Master Developer, unless Master Developer Transfers its rights related to entering into the Vertical Ground Lease for a particular Development Parcel under Sections 34 and 35 through a Permitted Transfer or Outside Vertical Developer Transfer, then for the Vertical Ground Lease for that particular Development Parcel, the Transferee under such Permitted Transfer or Outside Vertical Developer Transfer.

181. **Vertical Ground Lease**. Each of the following after Master Developer's completion of all Horizontal Improvements required for Construction of the Vertical Improvements on a particular Development Parcel: (a) a Market Rate Housing/Retail Lease when the Vertical Improvements to be Constructed on the particular Development Parcel are Market Rate Housing and Retail Development; (b) the Entertainment Center Lease for Development Parcels 24 and 25 for Construction of the Entertainment Center; or (c) an Affordable Housing Lease when the Vertical Improvements to be Constructed on the particular Development Parcel are Affordable Units.

182. **Vertical Ground Lease Closing**. The first date on which Escrow Agent completes all the actions under Section 35.8 for the particular Vertical Ground Lease.

183. **Vertical Ground Lease Closing Date**. As to each Vertical Ground Lease, the earlier of: (a) on or before the third (3rd) Business Day following Escrow Agent's determination that all conditions precedent to the particular Vertical Ground Lease Closing are satisfied or waived by the appropriate Party; or (b) the deadline for the particular Vertical Ground Lease Closing specified in the Performance Schedule, subject to extension under Section 35.9.

184. **Vertical Ground Lease Escrow**. An escrow, as defined in California Civil Code section 1057 and California Financial Code section 17003(a), that is conducted by the Escrow Agent with respect to the Parties entering into a particular Vertical Ground Lease under this Agreement.

185. **Vertical Ground Lease Memorandum**. A memorandum in substantially the form of **ATTACHMENT 13** to this Agreement.

186. **Vertical Ground Lease Title Policy**. A standard coverage lessee's policy of title insurance issued to the applicable Vertical Developer by the Title Company, with coverage in a reasonable amount based on a then-current appraisal of the fair market value of the Development Parcel after completion of the Vertical Improvements to be Constructed on the Development Parcel and insuring title to the Leasehold Estate under the Vertical Ground Lease vested in Vertical Developer, subject to the Permitted Exceptions, and including any available insurance endorsements requested by Vertical Developer.

187. **Vertical Improvements**. For each Vertical Ground Lease, the improvements to be Constructed under the particular Vertical Ground Lease for a specified Development Parcel as designated and approved under Sections 34.6 and 34.7 of the main body of this Agreement. "Vertical Improvements" is also used in this Agreement to collectively refer to all Vertical Improvements Constructed or to be Constructed under all the Vertical Ground Leases.

188. **Vertical Improvements Financing Documents**. All documents evidencing, creating, or securing financing (loans, grants, subsidies, tax credits, equity contributions, etc.) identified in the Vertical Improvements Financing Plan for the particular Vertical Ground Lease.

189. **Vertical Improvements Financing Plan**. A plan for financing: (a) Tenant's acquisition of the Vertical Ground Lease for the particular Development Parcel, if applicable; (b) Construction of the designated Vertical Improvements on the particular Development Parcel; and (c) operation of the completed Vertical Improvements. At a minimum, the plan must include a development budget for the applicable Vertical Improvements, a narrative description of the specific financing types (loans, bonds, tax credits, etc.), the timing of the closing and funding of each financing type (Vertical Ground Lease Closing, conversion, etc.), whether each financing type will be secured by the Vertical Ground Lease or the Vertical Improvements, for each type of financing secured by the Vertical Ground Lease the proposed lien priority position relative to all other financing secured by the Vertical Ground Lease, the specific identity of each source for each financing type (bank, government agency, etc.), the dollar amount of each financing type, a proforma with a summary of all the proposed financing, sources and uses of financing, and cash flow projections and projected gross and net revenue for the anticipated full duration of the Vertical Ground Lease, and a proposed performance schedule for the applicable Vertical Ground Lease.

190. **Vesting Tentative Map**. Vesting Tentative Map No. 3258589 for Midway Rising, San Diego, California, approved by City, under its Governmental Authority, and Recorded, including changes to such map approved by City under Section 30 and under its Governmental Authority and applicable Law that are Recorded.

ATTACHMENT 2
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

PROPERTY LEGAL DESCRIPTION

[NOTE TO DRAFT: CITY STAFF WILL PROVIDE THE LEGAL DESCRIPTION TO INSERT HERE.]

[**To be attached behind this cover page**]

ATTACHMENT 2

Property Legal Description

For APN/Parcel ID(s): 441-590-04-00

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PUEBLO LOTS 241, 242, 259, 276, 311, 312, 313, 314, 337 AND 338 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH LOT "A" AND A PORTION OF LOT "B" OF PUEBLO LOT 339, ACCORDING TO PARTITION MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY, IN AN ACTION ENTITLED "STEELE VS. STEELE", SUPERIOR COURT, CASE NO. 5620, TOGETHER WITH A PORTION OF CASS AND MCELWEE SUBDIVISION, ACCORDING TO MAP NO. 1581, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF PUEBLO LOT 312 WITH THE NORTHERLY LINE OF FRONTIER STREET, (NOW SPORTS ARENA BOULEVARD) AS DESCRIBED IN DEED TO FRONTIER ENTERPRISES, INC., RECORDED MARCH 5, 1941, IN BOOK 1143, PAGE 320, OF OFFICIAL RECORDS OF SAN DIEGO COUNTY;
THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE TO A POINT OF INTERSECTION WITH A LINE WHICH IS DISTANT 15.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF SAID SPORTS ARENA BOULEVARD; BEING THE TRUE POINT OF BEGINNING;
THENCE SOUTH 77° 23' 46" EAST, 869.92 FEET TO A TANGENT 1,010.93 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;
THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 15° 07' 07" A DISTANCE OF 269.13 FEET TO THE SOUTHEASTERLY LINE OF SAID PUEBLO LOT 337;
THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 36° 29' 46" EAST 404.64 FEET TO THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 337;
THENCE ALONG THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 337 NORTH 53° 26' 44" WEST 464.11 FEET TO THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 338;
THENCE ALONG THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 338 NORTH 53° 27' 34" WEST 466.64 FEET TO THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 338;
THENCE SOUTH 36° 37' 26" WEST ALONG THE NORTHWESTERLY LINE OF PUEBLO LOT 338, A DISTANCE OF 233.40 FEET TO THE MOST EASTERLY CORNER OF SAID LOT "A";
THENCE NORTH 53° 27' 44" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT "A", A DISTANCE OF 233.41 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT "A";
THENCE SOUTH 36° 33' 41" WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT "A", A DISTANCE OF 74.98 FEET TO A POINT DISTANT NORTH 36° 33' 41" EAST, 158.40 FEET FROM THE MOST WESTERLY CORNER OF SAID LOT "A";
THENCE NORTH 53° 27' 19" WEST, 233.43 FEET TO A POINT IN THE NORTHWESTERLY LINE OF PUEBLO LOT 339 DISTANT SOUTH 36° 36' 21" WEST, 308.33 FEET FROM THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 339;
THENCE NORTH 36° 36' 21" EAST ALONG THE NORTHEASTERLY LINE OF PUEBLO LOT 339, A DISTANCE OF 301.33 FEET TO A LINE WHICH IS PARALLEL WITH AND 7.00 FEET SOUTHWESTERLY OF AND MEASURED AT RIGHT ANGLES TO THE NORTHERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 339;
THENCE ALONG SAID PARALLEL LINE NORTH 53° 26' 49" WEST, A DISTANCE OF 786.16 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF KURTZ STREET AS DEDICATED BY RESOLUTION NO. 197563 OF THE COUNCIL OF THE CITY OF SAN DIEGO, A COPY OF WHICH WAS RECORDED JULY 30, 1969, AS INSTRUMENT NO. 137836, OF OFFICIAL RECORDS;
THENCE ALONG THE BOUNDARY OF SAID KURTZ STREET AS FOLLOWS:

SOUTH 36° 32' 31" WEST, A DISTANCE OF 5.00 FEET, NORTH 53° 26' 49" WEST, A DISTANCE OF 307.00 FEET TO THE BEGINNING OF A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; AND WESTERLY ALONG THE ARC OF SAID CURVE TO AND ALONG THE SOUTHERLY LINE OF HANCOCK STREET DEDICATED BY SAID RESOLUTION, THROUGH A CENTRAL ANGLE OF 39° 03' 30" AN ARC LENGTH OF 204.51 FEET;

THENCE SOUTH 26° 51' 31" WEST, A DISTANCE OF 393.88 FEET;
THENCE SOUTH 12° 35' 00" WEST, A DISTANCE OF 968.25 FEET TO SAID LINE WHICH IS PARALLEL WITH AND 15.00 FEET NORTHERLY OF THE NORTHERLY LINE OF FRONTIER STREET;
THENCE ALONG SAID PARALLEL LINE SOUTH 77° 23' 46" EAST, TO THE TRUE POINT OF BEGINNING.

APN: 441-590-04-00

ATTACHMENT 3
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

PRELIMINARY REPORT

[NOTE TO DRAFT: CITY STAFF WILL PROVIDE PRELIMINARY TITLE REPORT TO INSERT HERE.]

[**To be attached behind this cover page**]

PRELIMINARY REPORT

Prelim Number:

FBSC2506790
Amendment 2

2365 Northside Dr, Suite 600
San Diego, CA 92108

Issuing Policies of **Chicago Title Insurance Company**

Order No.: FBSC2506790

TO:
City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Attn: Tyler Garland
Ref No.:

Title Officer: Mark Franklin Tony Taglialavore and Marianna Cazares
Email: SanDiegoNCSTitle@ctt.com
Phone No.: 619-521-3673
Fax No.: 619-521-3608

Escrow Office:
Escrow Officer:
Email:
Address:

Phone No.:
Fax No.:

Loan No.:

Property: APN #441-590-04-00, San Diego, CA

In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of a defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Exclusions from Coverage, and Conditions of said policy forms.

With respect to any contemplated owner's policy, the printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA/ALTA Homeowner's Policy of Title Insurance, which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a binder or commitment should be requested.

Countersigned By:



Authorized Officer or Agent
Joe Goodman

Effective date: September 28, 2026 at 07:30 AM, Amendment 2 Reissued:

The form of Policy or Policies of Title Insurance contemplated by this Report is:

CLTA Standard Coverage Owner's Policy - 2022

ALTA Loan Policy 2021

1. The estate or interest in the Land hereinafter described or referred to covered by this Report is:

   A FEE

2. Title to said estate or interest at the date hereof is vested in:

   THE CITY OF SAN DIEGO, a municipal corporation

3. The Land referred to in this Report is described as follows:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

EXHIBIT A

Legal Description

For APN/Parcel ID(s): 441-590-04-00

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PUEBLO LOTS 241, 242, 259, 276, 311, 312, 313, 314, 337 AND 338 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH LOT "A" AND A PORTION OF LOT "B" OF PUEBLO LOT 339, ACCORDING TO PARTITION MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY, IN AN ACTION ENTITLED "STEELE VS. STEELE", SUPERIOR COURT, CASE NO. 5620, TOGETHER WITH A PORTION OF CASS AND MCELWEE SUBDIVISION, ACCORDING TO MAP NO. 1581, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF PUEBLO LOT 312 WITH THE NORTHERLY LINE OF FRONTIER STREET, (NOW SPORTS ARENA BOULEVARD) AS DESCRIBED IN DEED TO FRONTIER ENTERPRISES, INC., RECORDED MARCH 5, 1941, IN BOOK 1143, PAGE 320, OF OFFICIAL RECORDS OF SAN DIEGO COUNTY;
THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE TO A POINT OF INTERSECTION WITH A LINE WHICH IS DISTANT 15.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF SAID SPORTS ARENA BOULEVARD; BEING THE TRUE POINT OF BEGINNING;
THENCE SOUTH 77° 23' 46" EAST, 869.92 FEET TO A TANGENT 1,010.93 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;
THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 15° 07' 07" A DISTANCE OF 269.13 FEET TO THE SOUTHEASTERLY LINE OF SAID PUEBLO LOT 337;
THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 36° 29' 46" EAST 404.64 FEET TO THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 337;
THENCE ALONG THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 337 NORTH 53° 26' 44" WEST 464.11 FEET TO THE MOST EASTERLY CORNER OF SAID PUEBLO LOT 338;
THENCE ALONG THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 338 NORTH 53° 27' 34" WEST 466.64 FEET TO THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 338;
THENCE SOUTH 36° 37' 26" WEST ALONG THE NORTHWESTERLY LINE OF PUEBLO LOT 338, A DISTANCE OF 233.40 FEET TO THE MOST EASTERLY CORNER OF SAID LOT "A";
THENCE NORTH 53° 27' 44" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT "A", A DISTANCE OF 233.41 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT "A";
THENCE SOUTH 36° 33' 41" WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT "A", A DISTANCE OF 74.98 FEET TO A POINT DISTANT NORTH 36° 33' 41" EAST, 158.40 FEET FROM THE MOST WESTERLY CORNER OF SAID LOT "A";
THENCE NORTH 53° 27' 19" WEST, 233.43 FEET TO A POINT IN THE NORTHWESTERLY LINE OF PUEBLO LOT 339 DISTANT SOUTH 36° 36' 21" WEST, 308.33 FEET FROM THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 339;
THENCE NORTH 36° 36' 21" EAST ALONG THE NORTHEASTERLY LINE OF PUEBLO LOT 339, A DISTANCE OF 301.33 FEET TO A LINE WHICH IS PARALLEL WITH AND 7.00 FEET SOUTHWESTERLY OF AND MEASURED AT RIGHT ANGLES TO THE NORTHERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 339;
THENCE ALONG SAID PARALLEL LINE NORTH 53° 26' 49" WEST, A DISTANCE OF 786.16 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF KURTZ STREET AS DEDICATED BY RESOLUTION NO. 197563 OF THE COUNCIL OF THE CITY OF SAN DIEGO, A COPY OF WHICH WAS RECORDED JULY 30, 1969, AS INSTRUMENT NO. 137836, OF OFFICIAL RECORDS;
THENCE ALONG THE BOUNDARY OF SAID KURTZ STREET AS FOLLOWS:

SOUTH 36° 32' 31" WEST, A DISTANCE OF 5.00 FEET, NORTH 53° 26' 49" WEST, A DISTANCE OF 307.00 FEET TO THE BEGINNING OF A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; AND WESTERLY ALONG THE ARC OF SAID CURVE TO AND ALONG THE SOUTHERLY LINE OF HANCOCK STREET DEDICATED BY SAID RESOLUTION, THROUGH A CENTRAL ANGLE OF 39° 03' 30" AN ARC LENGTH OF 204.51 FEET;

EXHIBIT A

Legal Description

THENCE SOUTH 26° 51' 31" WEST, A DISTANCE OF 393.88 FEET;
THENCE SOUTH 12° 35' 00" WEST, A DISTANCE OF 968.25 FEET TO SAID LINE WHICH IS PARALLEL WITH AND 15.00 FEET NORTHERLY OF THE NORTHERLY LINE OF FRONTIER STREET;
THENCE ALONG SAID PARALLEL LINE SOUTH 77° 23' 46" EAST, TO THE TRUE POINT OF BEGINNING.

APN: 441-590-04-00

EXCEPTIONS

At the date hereof, items to be considered and exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

A. Taxes not assessed.

B. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.

1. Any adverse claim based upon the assertion that some portion of said Land is tide or submerged lands, or has been created by artificial means or has accreted to such portion so created.

2. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	City of San Diego, a municipal corporation
Purpose:	Sanitary sewer main
Recording Date:	March 15, 1944
Recording No.:	Book 1636, Page 476, of Official Records
Affects:	Said land more particularly described therein.

3. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	The City of San Diego
Purpose:	Storm drains and appurtenances
Recording Date:	June 12, 1956
Recording No.:	Book 6136, Page 217, of Official Records
Affects:	Said land more particularly described therein.

4. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	The City of San Diego
Purpose:	Storm drain and appurtenances
Recording Date:	January 31, 1957
Recording No.:	Book 6446, Page 240, of Official Records
Affects:	Said land more particularly described therein.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	The City of San Diego
Purpose:	Kurtz Street for public street
Recording No.:	Ordinance No. 7521
Affects:	Said land more particularly described therein.

6. Matters contained in that certain document

Entitled:	Electric Easement Agreement
Executed by:	San Diego Arena Lease Company, a nonprofit corporation and San Diego Gas & Electric Company, a corporation
Recording Date:	December 16, 1966
Recording No.:	195997, of Official Records

Reference is hereby made to said document for full particulars.

7. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Poles, wires and anchors
Recording Date:	December 16, 1966
Recording No.:	195998, of Official Records
Affects:	Said land more particularly described therein.

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	December 16, 1966
Recording No.:	196009, of Official Records
Affects:	Said land more particularly described therein.

9. Intentionally omitted.

10. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document,

Recording Date:	March 26, 1968
Recording No.:	49552, of Official Records
Affects:	Said land more particularly described therein.

11. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	September 1, 1970
Recording No.:	157928, of Official Records
Affects:	Said land more particularly described therein.

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	October 13, 1970
Recording No.:	186773, of Official Records
Affects:	Said land more particularly described therein.

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	City of San Diego
Purpose:	Public street
Recording Date:	September 17, 1971
Recording No.:	211713, of Official Records
Affects:	Said land more particularly described therein.

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	City of San Diego
Purpose:	Public street
Recording Date:	December 1, 1971
Recording No.:	279211, of Official Records
Affects:	Said land more particularly described therein.

15. Intentionally omitted.

16. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	November 5, 1974
Recording No.:	74-293375, of Official Records
Affects:	Said land more particularly described therein.

17. Intentionally omitted.

18. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	June 21, 1977
Recording No.:	77-245487, of Official Records
Affects:	Said land more particularly described therein.

19. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	July 21, 1978
Recording No.:	78-306662, of Official Records
Affects:	Said land more particularly described therein.

20. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	November 28, 1979
Recording No.:	79-500793, of Official Records
Affects:	Said land more particularly described therein.

21. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	The Pacific Telephone and Telegraph Company

Purpose: Public utilities, ingress and egress
Recording Date: December 29, 1980
Recording No.: 80-435815, of Official Records
Affects: Said land more particularly described therein.

22. Matters contained in that certain document

Entitled: Encroachment Removal Agreement
Executed by: City of San Diego and Sports Arena Village, Ltd.
Recording Date: October 11, 1984
Recording No.: 84-385453, of Official Records

Reference is hereby made to said document for full particulars.

23. Matters contained in that certain document

Entitled: Conditional Use Permit No. 86-0974
Recording Date: June 23, 1988
Recording No.: 88-300845, of Official Records

Reference is hereby made to said document for full particulars.

24. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Termination of Ground Lease, Amendment to Operating Sublease and Parking Lot Lease
Lessor: City of San Diego, a municipal corporation
Lessee: San Diego Entertainment, Inc., a California corporation
Recording Date: May 4, 1993
Recording No.: 1993-0278085, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

25. Intentionally omitted.

26. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease and Superseding of Prior Leases
Lessor: The City of San Diego, a municipal corporation
Lessee: Dixieline Lumber Company, a Delaware corporation
Recording Date: March 30, 1994
Recording No.: 1994-0211082, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

The interest of Dixieline Lumber Company, a Delaware corporation was transferred to DLC Acquisition Corp., a Delaware corporation by documents recorded August 22, 2003 as Instrument No. 2003-1026951 and Instrument No. 2003-1026952, both of Official Records.

27. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease Agreement
Lessor: The City of San Diego
Lessee: Kathryn Crake Huntington
Recording Date: July 30, 1996
Recording No.: 1996-0382714, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

The interest of the lessee was conveyed to Arena Group 2000, LP, a California limited partnership by document recorded January 6, 2000 as Instrument No. 2000-0008876, of Official Records.

28. The Land described herein is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the Redevelopment Plan) as disclosed by a document.

Redevelopment Agency: City of San Diego, North Bay Redevelopment Project Area
Recording Date: June 3, 1998
Recording No.: 1998-0592287, of Official Records

29. Intentionally omitted.

30. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of:	San Diego Gas & Electric Company
Purpose:	Public utilities, ingress and egress
Recording Date:	June 7, 2002
Recording No.:	2002-0484872, of Official Records
Affects:	Said land more particularly described therein.

31. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled:	Memorandum of Ground Lease
Lessor:	City of San Diego, a municipal corporation
Lessee:	Arena Group 2000 L.P., a California limited partnership
Recording Date:	August 28, 2002
Recording No.:	2002-0732655, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

An agreement to amend or modify certain provisions of said lease, as set forth in the document executed by:

Recording Date:	August 29, 2002
Recording No.:	2002-0738582, of Official Records

An agreement to amend or modify certain provisions of said lease, as set forth in the document executed by:

Recording Date:	October 9, 2002
Recording No.:	2002-0875733, of Official Records

32. An unrecorded sublease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled:	Memorandum of Ground Sublease
Sublessor:	Arena Group 2000 LP, a California limited partnership
Sublessee:	GCFF-San Diego, LLC, a Delaware limited liability company
Recording Date:	August 29, 2002
Recording No.:	2002-0738581, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

Assignment of the interest under said lease,

Assignor:	GCFF - San Diego, LLC, a Delaware limited liability company, dba Krispy Kreme Doughnuts
Assignee:	Chick-Fil-A, Inc., a Georgia corporation
Recording Date:	July 20, 2006
Recording No.:	2006-0512628, of Official Records

33. Matters contained in that certain document

Entitled:	Amendment to Non-Disturbance and Attornment Agreement
Dated:	July 12, 2006

Executed by: The City of San Diego, a municipal corporation, Arena Group 2000, LP, a California limited partnership and Chick-Fil-A, Inc., a Georgia corporation, as successor-in-interest to GCFF-San Diego, L.L.C., a Delaware limited liability company
Recording Date: July 20, 2006
Recording No.: 2006-0512629, of Official Records

Reference is hereby made to said document for full particulars.

34. An unrecorded sublease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Ground Sublease
Sublessor: Arena Group 2000 LP, a California limited partnership
Sublessee: Arena Fuels, LLC, a California limited liability company
Recording Date: December 31, 2002
Recording No.: 2002-1210770, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

35. An unrecorded sublease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Ground Sublease
Sublessor: Arena Group 2000, L.P., a California limited partnership
Sublessee: Brinker Restaurant Corporation, a Delaware corporation
Recording Date: July 8, 2003
Recording No.: 2003-0807676, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

36. Matters contained in that certain document

Entitled: Neighborhood Use Permit No. 695763 AT&T Sports Arena - Project No. 196400 Development Services Department
Recording Date: May 20, 2011
Recording No.: 2011-0262129, of Official Records

Reference is hereby made to said document for full particulars.

37. Matters contained in that certain document

Entitled: Neighborhood Use Permit No. 754740 Sprint Clearwire Sports Arena - Project No. 212122 Development Services Department
Recording Date: June 15, 2011
Recording No.: 2011-0304456, of Official Records

Reference is hereby made to said document for full particulars.

38. Matters contained in that certain document

Entitled: Neighborhood Use Permit No. 1020190 T-Mobile Sports Arena LTE Project No. 288274 Development Services Department
Recording Date: April 19, 2013
Recording No.: 2013-0245558, of Official Records

Reference is hereby made to said document for full particulars.

39. Matters contained in that certain document

Entitled: Neighborhood Use Permit No. 1125771 Neighborhood Development Permit No. 1180472 Verizon Wireless Sports Arena - Project No. 317811 Development Services Department
Recording Date: March 14, 2014
Recording No.: 2014-0101686, of Official Records

Reference is hereby made to said document for full particulars.

40. Matters contained in that certain document

Entitled: Resolution Number R-24042501 Historical Designation of Property on 3500 Sports Arena Boulevard, San Diego, CA 92110 Assessor Parcel Number 441-590-04-00 Historical Resources Board Number 1525
Recording Date: July 1, 2024
Recording No.: 2024-0166104, of Official Records

Reference is hereby made to said document for full particulars.

41. Water rights, claims or title to water, whether or not disclosed by the public records.

42. Matters which may be disclosed by an inspection and/or by a correct ALTA/NSPS Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

43. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

44. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed to the Company:

Entitled: Percentage Lease
Dated: July 27, 2023
Lessor: The City of San Diego
Lessee: Legends Venue Management SD, LLC, a Delaware limited liability company

END OF EXCEPTIONS

PLEASE REFER TO THE "INFORMATIONAL NOTES" AND "REQUIREMENTS" SECTIONS WHICH FOLLOW FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION.

REQUIREMENTS

None.

END OF REQUIREMENTS

INFORMATIONAL NOTES

1. Note: None of the items shown in this report will cause the Company to decline to attach ALTA Endorsement Form 9 to an Extended Coverage Loan Policy, when issued.

2. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

3. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

4. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.

5. The following Exclusion(s) are added to preliminary reports, commitments and will be included as an endorsement in the following policies:

A. 2006 ALTA Owner's Policy (06-17-06).

6. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

B. 2006 ALTA Loan Policy (06-17-06)

8. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

9. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.

C. ALTA Homeowner's Policy of Title Insurance (12-02-13) and CLTA Homeowner's Policy of Title Insurance (12-02-13).

10. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

D. ALTA Expanded Coverage Residential Loan Policy - Assessments Priority (04-02-15).

12. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.

13. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.

E. CLTA Standard Coverage Policy 1990 (11-09-18).

7. Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the public records but that would be disclosed by an examination of any records maintained by or on behalf of a tribe or on behalf of its members.

8. Any claim of invalidity, unenforceability, or lack of priority of the lien of the insured mortgage based on the application of a tribe's law resulting from the failure of the insured mortgage to specify state law as the governing law with respect to the lien of the insured mortgage.

6. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

END OF INFORMATIONAL NOTES

WIRE SAFE™ | Inquire before you wire!

WIRE FRAUD ALERT

This Notice is not intended to provide legal or professional advice.
If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. DO NOT use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the number of relevant parties to the transaction as soon as an escrow account is opened.** DO NOT send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.
- **CONFIRM RECEIPT** of funds directly with settlement company using a known trusted number.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

Federal Bureau of Investigation:
http://www.fbi.gov

Internet Crime Complaint Center:
http://www.ic3.gov

TM and © Fidelity National Financial, Inc. and/or an affiliate. All rights reserved

ATTACHMENT 3-18
Preliminary Report

FIDELITY NATIONAL FINANCIAL
PRIVACY NOTICE

Effective January 1, 2026

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

A limited number of FNF subsidiaries have their own privacy notices. If a subsidiary has its own privacy notice, the privacy notice will be available on the subsidiary's website and this Privacy Notice does not apply.

Collection of Personal Information

FNF may collect the following categories of Personal Information:

- contact information (*e.g.*, name, address, phone number, email address);
- demographic information (*e.g.*, date of birth, gender, marital status);
- identity information (*e.g.,* Social Security Number, driver's license, passport, or other government ID number);
- financial account information (*e.g.,* loan or bank account information);
- biometric data (e.g., fingerprints, retina or iris scans, voiceprints, or other unique biological characteristics; and
- other personal information necessary to provide products or services to you.

We may collect Personal Information about you from:

- information we receive from you or your agent;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

Collection of Device and Browsing Information

FNF automatically collects the following categories of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or device:

- Internet Protocol (IP) address and operating system;
- browser information, such as version, language, and type;
- device type and operating system;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website.

Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

Other Online Specifics

Website Analytics. We use Google Analytics to understand how visitors interact with FNF Websites. Google Analytics may collect information such as your IP address, device type, and pages visited to help us analyze site traffic and to personalize your browsing experience on our site. If you don't want Google Analytics to be used in your browser, you can install the Google Analytics browser add-on, which Google makes available online.

Cookies. When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Do Not Track. Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

Copyright © 2026. Fidelity National Financial, Inc. All Rights Reserved.

Links to Other Sites. FNF Websites may contain links to unaffiliated third-party websites. FNF is not responsible for the privacy practices or content of those websites. We recommend that you read the privacy policy of every website you visit.

Use of Personal Information

FNF uses Personal Information for these main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To prevent and detect fraud;
- To maintain the security of our systems, tools, accounts, and applications;
- To verify and authenticate identities and credentials;
- To communicate with you about our, and our affiliates' services, jointly or independently;
- To provide reviews and testimonials about our services, with your consent.

When Information Is Disclosed

We may disclose the categories of Personal Information and Browsing Information listed above for the following purposes:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to affiliated or nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to affiliated or nonaffiliated third parties with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;
- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Security of Your Information

We maintain physical, electronic, and procedural safeguards to protect your Personal Information.

Choices With Your Information

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

State-Specific Consumer Privacy Information:

For additional information about your state-specific consumer privacy rights, to make a consumer privacy request, or to appeal a previous privacy request, please follow the link Privacy Request, or email privacy@fnf.com, or call (888) 714-2710.

Certain state privacy laws require that FNF disclose the categories of third parties to which FNF may disclose the Personal Information and Browsing Information listed above. Those categories are:

- FNF affiliates and subsidiaries;
- Non-affiliated third parties, with your consent;
- Businesses in connection with the sale or other disposition of all or part of the FNF business and/or assets;
- Service providers;
- Law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order.

For California Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties, except as permitted by California law. For additional information about your California privacy rights, please visit the "California Privacy" link on our website (fnf.com/california-privacy) or call (888) 413-1748.

Copyright © 2026. Fidelity National Financial, Inc. All Rights Reserved.

For Nevada Residents: We are providing this notice pursuant to state law. You may be placed on our internal Do Not Call List by calling FNF Privacy at (888) 714-2710 or by contacting us via the information set forth at the end of this Privacy Notice. For further information concerning Nevada's telephone solicitation law, you may contact: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: aginquiries@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information or Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes. For additional information about your Oregon consumer privacy rights, or to make a consumer privacy request, or appeal a previous privacy request, please email privacy@fnf.com or call (888) 714-2710

FNF is the controller of the following businesses registered with the Secretary of State in Oregon:
Chicago Title Company of Oregon, Fidelity National Title Company of Oregon, Lawyers Title of Oregon, LoanCare, Ticor, Title Company of Oregon, Western Title & Escrow Company, Chicago Title Company, Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, Liberty Title & Escrow, Novare National Settlement Service, Ticor Title Company of California, Exos Valuations, Fidelity & Guaranty Life, Insurance Agency, Fidelity National Home Warranty Company, Fidelity National Management Services, Fidelity Residential Solutions, FNF Insurance Services, FNTG National Record Centers, IPEX, Mission Servicing Residential, National Residential Nominee Services, National Safe Harbor Exchanges, National Title Insurance of New York, NationalLink Valuations, NexAce Corp., ServiceLink Auction, ServiceLink Management Company, ServiceLink Services, ServiceLink Title Company of Oregon, ServiceLink Valuation Solutions, Western Title & Escrow Company

For Vermont Residents: We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

Information From Children

The FNF Websites are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except as required or authorized by contract with the mortgage loan servicer or lender, or as required by law or in the good-faith belief that such disclosure is necessary: to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

Your Consent to this Privacy Notice; Notice Changes

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The Privacy Notice's effective date will show the last date changes were made. If you provide information to us following any change of the Privacy Notice, that signifies your assent to and acceptance of the changes to the Privacy Notice.

Copyright © 2026. Fidelity National Financial, Inc. All Rights Reserved.

Accessing and Correcting Information; Contact Us

If you have questions or would like to correct your Personal Information, visit FNF's Privacy Request website or contact us by phone at (888) 714-2710, by email at privacy@fnf.com, or by mail to:

Fidelity National Financial, Inc.
601 Riverside Avenue,
Jacksonville, Florida 32204
Attn: Chief Privacy Officer

Copyright © 2026. Fidelity National Financial, Inc. All Rights Reserved.

ATTACHMENT ONE

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990 (11-09-18)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material unless such lien is shown by the public records at Date of Policy.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART II

(*Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here*)

ATTACHMENT ONE
(CONTINUED)

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE OWNER'S POLICY (02-04-22)
EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.
   b. any governmental forfeiture, police, regulatory, or national security power.
   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.
   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.
2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
   e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 9.b.
5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy.
   Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
7 Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.
4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.
7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

PART II

(*Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here*)

ATTACHMENT ONE
(CONTINUED)

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (7-01-21)
EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy and We will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.
   b. any governmental forfeiture, police, or regulatory, or national security power.
   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23, or 27.
2. Any power to take the Land by condemnation. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 17.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by You;
   b. not Known to Us, not recorded in the Public Records at the Date of Policy, but Known to You and not disclosed in writing to Us by You prior to the date You became an Insured under this policy;
   c. resulting in no loss or damage to You;
   d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 5, 8.f., 25, 26, 27, 28, or 32); or
   e. resulting in loss or damage that would not have been sustained if You paid consideration sufficient to qualify You as a bona fide purchaser of the Title at the Date of Policy.
4. Lack of a right:
   a. to any land outside the area specifically described and referred to in Item 3 of Schedule A; and
   b. in any street, road, avenue, alley, lane, right-of-way, body of water, or waterway that abut the Land.

   Exclusion 4 does not modify or limit the coverage provided under Covered Risk 11 or 21.
5. The failure of Your existing structures, or any portion of Your existing structures, to have been constructed before, on, or after the Date of Policy in accordance with applicable building codes. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 14 or 15.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transfer of the Title to You is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 30.
7. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
8. Negligence by a person or an entity exercising a right to extract or develop oil, gas, minerals, groundwater, or any other subsurface substance.
9. Any lien on Your Title for real estate taxes or assessments, imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 9 does not modify or limit the coverage provided under Covered Risk 8.a or 27.
10. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$ 10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$ 5,000.00

ATTACHMENT ONE
(CONTINUED)

ALTA OWNER'S POLICY (07-01-2021)

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.
   b. any governmental forfeiture, police, regulatory, or national security power.
   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.
2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
   e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 9.b.
5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
6. Any lien on the Title for real estate taxes or assessments, imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

NOTE: The 2021 ALTA Owner's Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed as 1 through 7 below:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land or (b) asserted by persons or parties in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.
4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.
7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

ATTACHMENT ONE
(CONTINUED)

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

NOTE: The 2006 ALTA Owner's Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed below as 1 through 7 below:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.
4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.]
7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

FNF Underwritten Title Companies
CTC - Chicago Title Company
CLTC - Commonwealth Land Title Company
FNTC - Fidelity National Title Company
FNTCCA - Fidelity National Title Company of California
TICOR - Ticor Title Company of California
LTC - Lawyer's Title Company
SLTC - ServiceLink Title Company

Underwritten by FNF Underwriters
CTIC - Chicago Title Insurance Company
CLTIC - Commonwealth Land Title Insurance Co.
FNTIC - Fidelity National Title Insurance Co.
NTINY - National Title Insurance of New York

Available Discounts

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC, CLTIC, FNTIC, NTINY)
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be fifty percent (50%) to seventy percent (70%) of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be forty percent (40%) to fifty percent (50%) of the appropriate title insurance rate, depending on the type of coverage selected.

DISASTER AREA TRANSACTIONS (CTIC, CLTIC, FNTIC, NTINY)
This rate is available for individuals or entities that were victims of a national or state disaster. The rate can be used for a Lender's Policy (Standard or Extended), or an Owner's Policy (Standard or Homeowners coverage). To qualify for this rate, the applicant must, prior to the closing of the applicable transaction, make a written request, including a statement meeting the following criteria:

A. The subject property is in a disaster area declared by the government of the United States or the State of California.

B. The subject property was substantially or totally destroyed in the declared disaster.

C. The subject property ownership has not changed since the time of the disaster.

The rate will be fifty percent (50%) of the applicable rate, and the transaction must be completed within sixty (60) months of the date of the declaration of the disaster.

DISASTER AREA ESCROWS (CTC, CLTC, FNTC, TICOR, LTC)
This rate is available for individuals or entities that were victims of a national or state disaster. The rate can be used for a loan or a sale escrow transaction. To qualify for this rate, the applicant must, prior to the closing of the applicable transaction, make a written request, including a statement meeting the following criteria:

A. The subject property is in a disaster area declared by the government of the United States or the State of California.

B. The subject property was substantially or totally destroyed in the declared disaster.

C. The subject property ownership has not changed since the time of the disaster.

Notice of Available Discounts

(continued)

The rate will be fifty percent (50%) of the applicable rate, and the transaction must be completed within sixty (60) months of the date of the declaration of the disaster. Standard minimum charge applies based upon property type. No other discounts or special rates, or combination of discounts or special rates, shall be applicable. Applies to a single transaction per property.

This rate is applicable to the following Zones/Counties:

Zone 1.A: Orange County
Zone 1.B: Riverside and San Bernardino Counties
Zone 2: Los Angeles County
Zone 3: Ventura County
Zone 10: San Diego County
Zone 12: Imperial County

If used for a sale transaction, the application of this rate assumes the charge for the Residential Sale Escrow Services (RSES) fee will be split evenly between buyer and seller. As such and regardless of how the calculated applicable RSES will be split between the disaster victim and the other principal, the rate will be applied only to one half (1/2) of the calculated applicable RSES fee, regardless of whether the disaster victim is paying half (1/2) of the RSES fee (as is customary) or paying the entire fee. The rate under this provision will be fifty percent (50%) of disaster victims' one half (1/2) portion only and shall not apply to any portion paid by non-disaster victim. Additional services will be charged at the normal rates.

MILITARY DISCOUNT RATE (CTIC, CLTIC, FNTIC)

Upon the Company being advised in writing and prior to the closing of the transaction that an active duty, honorably separated, or retired member of the United States Military or Military Reserves or National Guard is acquiring or selling an owner occupied one-to-four family property, the selling owner or acquiring buyer, as applicable, will be entitled to a discount equal to fifteen percent (15%) of the otherwise applicable rates such party would be charged for title insurance policies. Minimum charge: Four Hundred Twenty-Five And No/100 Dollars ($425.00)

The Company may require proof of eligibility from the parties to the transaction verifying they are entitled to the discount as described. No other discounts or special rates, or combination of discounts or special rates, shall be applicable.

ATTACHMENT 4
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

NOTICE ADDRESSES

To Master Developer:	Midway Rising c/o Zephyr 329 S Highway 101, Suite 150 Solana Beach, CA 92075 Attention: Brad Termini and Austin Richter Email: brad@zephyrpartners.com; arichter@zephyrpartners.com
With a courtesy copy to:	Allen Matkins Leck Gamble Mallory & Natsis LLP 1901 Avenue of the Stars, Suite 1800 Los Angeles, CA 90067-6019 Attention: Elizabeth J. Wilgenburg, Esq. Email: ewilgenburg@allenmatkins.com
To City:	The City of San Diego Attention: Director, Economic Development Department 1200 Third Avenue, Suite 1400 (MS 56D) San Diego, CA 92101 Email: cbibler@sandiego.gov
With a courtesy copy to:	San Diego City Attorney's Office Attention: Delmar Williams, Senior Deputy City Attorney 1200 Third Avenue, Suite 1620 San Diego, CA 92101 Email: dgwilliams@sandiego.gov
To Escrow Agent:	Chicago Title Company National Commercial Services 2365 Northside Drive, Suite 600 San Diego, CA 92108 Attn: [**TO BE DETERMINED**] Email: [**TO BE DETERMINED**]

ATTACHMENT 5
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

CITY STANDARD CONTRACT PROVISIONS

1. **Master Developer Certifications of Compliance**. By signing this Agreement, Master Developer agrees and certifies that Master Developer is aware of, and will comply with, all the following requirements in performance of this Agreement:

1.1 Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Master Developer will comply with the City's ADA requirements under Council Policy 100-04, which is incorporated into this Agreement by this reference. Master Developer agrees that all subcontracts relating to this Agreement or the Property will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04.

1.2 Equal Benefits Ordinance. Unless an exception applies, Master Developer will comply with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.3 Equal Pay Ordinance. Unless an exception applies, Master Developer will comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Master Developer will certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Master Developer to the same extent as it would apply to Master Developer. Master Developer will require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.4 Product Endorsement. Master Developer will comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.5 Business Tax Certificate. Unless City's City Treasurer determines in writing that Master Developer is exempt from the payment of business tax, Master Developer is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing the Permitted Use.

1.6 Employment of City Staff. Under City Council Policy 300-11, if Master Developer employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, will have the right to unilaterally and immediately terminate this Agreement by notice to Master Developer.

1.7 Compliance with City's Equal Employment Opportunity Program. Unless an exception applies, Master Developer will comply with City's Equal Employment Opportunity Program, set forth in SDMC sections 22.2701 – 22.2708. In all circumstances, Master Developer will not discriminate against any employee or applicant for employment on any basis prohibited by law. Master Developer will provide equal opportunity in all employment practices. Master Developer will ensure that its subcontractors comply with this program. Nothing in this Section 1.7 will be interpreted to hold Master Developer liable for any discriminatory practice of its subcontractors.

1.8 Living Wage. In performing its obligations under this Agreement, Master Developer will comply with the provisions of City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201, et seq., and incorporated into this Agreement by this reference.

ATTACHMENT 6
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage**. Master Developer will maintain all the following insurance policies:

1.1. *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Master Developer written on the then current version of ISO form CA 00 01 12 90 or equivalent form providing coverage at least as broad, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000) combined single limit per accident. Such insurance will be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which will be subject to pre-approval by City, which pre-approval will not be unreasonably withheld. All costs of defense covered by Automobile Liability Insurance must be outside the policy limits.

1.2. *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Property or adjoining streets or passageways, written on the then current version of ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad, with a minimum annual aggregate liability limits of not less than the following: (a) other than products/completed operations $10,000,000; (b) products/completed operations $10,000,000; (c) personal injury limit $5,000,000; and (d) each occurrence $5,000,000. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit will apply separately to the Property. The policy shall not include an endorsement or modification limiting the scope of coverage for either insured vs. insured claims or contractual liability. All costs of defense covered by Liability Insurance must be outside the policy limits.

1.3. *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Master Developer.

2. **Nature of Insurance**. The contents of this **ATTACHMENT 6** are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements will be issued by carriers that: (a) have a minimum financial strength rating of "A-" and a minimum financial size category of "VI" (exception may be made for the State Compensation Insurance Fund when not specifically rated) from A.M. Best Company, Inc. (or equivalent rating service, as

determined by City); and (b) are authorized to do business in the State by the State Department of Insurance. Master Developer may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy specifies the amount(s) of the total insurance allocated to the Property, which amount(s) will equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements. City will accept insurance provided by a non-admitted, "surplus lines" carrier only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list) maintained by the State Department of Insurance. All policies of insurance carried by non-admitted carriers shall be subject to all of the Insurance Requirements for policies of insurance provided by admitted carriers described in this Agreement.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Insurance Requirements will contain (by endorsement or otherwise) the following provisions:

3.1. *Insured*. To the extent allowed by Law: (a) Liability Insurance policies will name the City Parties as "additional insured"; and (b) The coverage afforded to the City Parties will be at least as broad as that afforded to Master Developer regarding the Property or the Development and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Master Developer.

3.2. *Primary Coverage*. All insurance coverage required by these Insurance Requirements will be primary to all insurance or self-insurance maintained by the City Parties and all insurance or self-insurance maintained by the City Parties will be excess of all insurance maintained by Master Developer and will not contribute with any insurance maintained by Master Developer.

3.3. *Deliveries to City*. Original certificates of all insurance policies required by these Insurance Requirements, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by these Insurance Requirements), will be delivered by Master Developer to City before the Effective Date. City has the right to require Master Developer to deliver to City complete, certified copies of all insurance policies required by these Insurance Requirements, including all required endorsements. Builder's Risk Insurance coverage will commence at the time of General Contractor mobilization for the contracted work. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled, or its liability limits are reduced or exhausted, Master Developer will deliver to City evidence of Master Developer's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements will be endorsed to state that coverage will not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to City. Phrases such as "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company" will not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.

3.4. *Waiver of Certain Claims*. Master Developer will cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies)

with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Master Developer obtains an insurance policy covering both the Master Developer Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.

3.5. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

3.6. *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.

3.7. *Fully Paid and Non-Assessable*. All insurance maintained by Master Developer in satisfaction of these Insurance Requirements will be fully paid for and non-assessable.

3.8. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance will provide for separation of insured for Master Developer and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but will not exclude suits between named insured Persons and additional insured Persons.

3.9. *Severability of Interest*. All insurance coverage required by these Insurance Requirements will apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3.10. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Insurance Requirements will be declared to and approved by City. City may require the purchase of coverage with a lower retention or proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Master Developer will pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements will provide that, to the extent Master Developer fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements will be reimbursed to City by Master Developer in the same manner that insurance costs are reimbursable to City from Master Developer under Section 5 of these Insurance Requirements.

3.11. *No Separate Insurance*. Master Developer will not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Agreement and will not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor will the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.

5. **City Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Master Developer to maintain any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City will be entitled to immediate payment from Master Developer of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Master Developer will not relieve Master Developer of any Default or Event of Default or Master Developer's obligation to maintain all insurance coverage required by these Insurance Requirements.

ATTACHMENT 7
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

DEVELOPMENT SITE PLAN

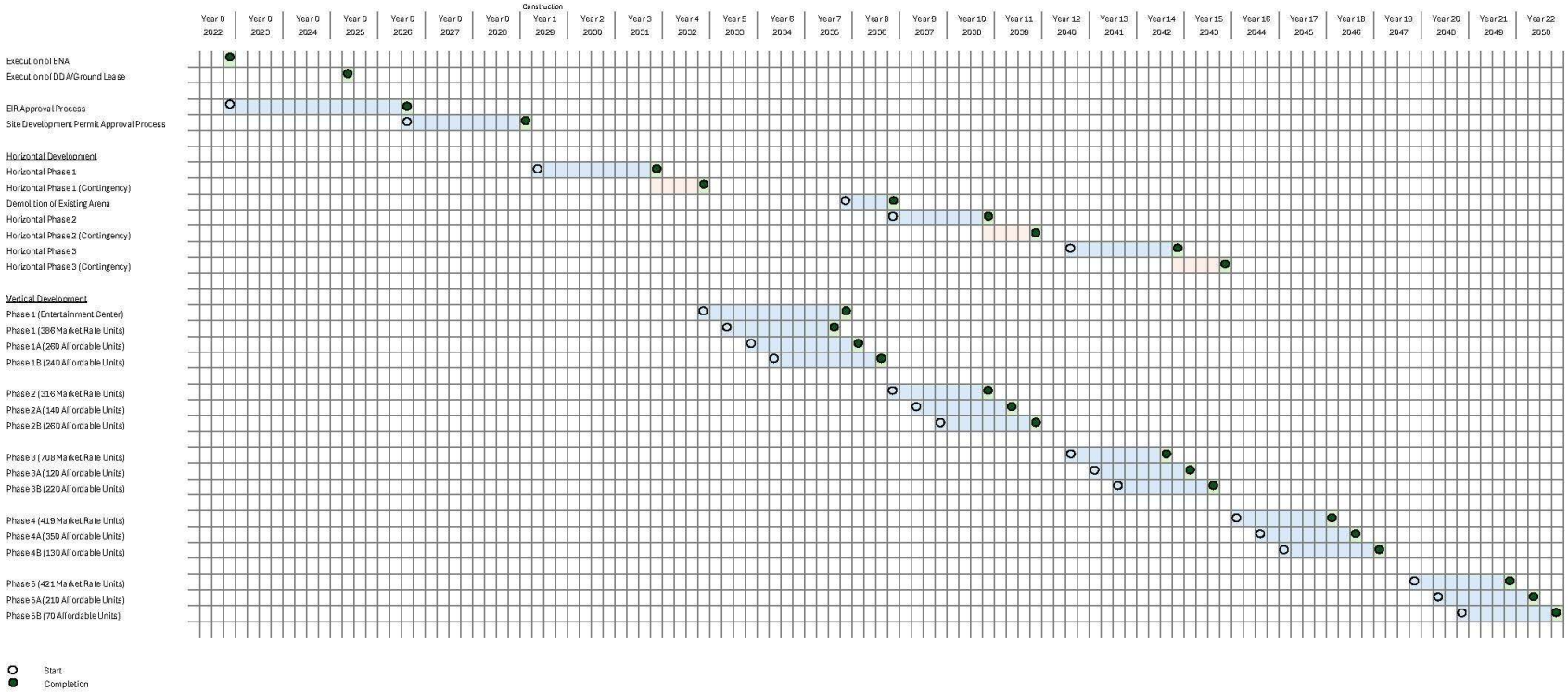


ATTACHMENT 8
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

DEVELOPMENT PHASING PLAN

[Attached behind this cover page]

ATTACHMENT 8 - 2
Development Phasing Plan



Development Phasing Plan is subject to Section 15.3 of this Agreement.

ATTACHMENT 9
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

PERFORMANCE SCHEDULE

[To be attached behind this cover page]

[**NOTE TO DRAFT: THE CITY CIRCULATED THE DRAFT PERFORMANCE SCHEDULE TO MIDWAY RISING ON 9/29/26.**]

ATTACHMENT 9
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

PERFORMANCE SCHEDULE

The Development Phasing Plan specifies that the Development will be Constructed in eight (8) phases, including three (3) Horizontal Improvements phases and five (5) Vertical Improvements phases, as follows:

- Horizontal Improvements Phase 1
- Horizontal Improvements Phase 2
- Horizontal Improvements Phase 3
- Vertical Phase 1 – Entertainment Center & Housing & Retail Vertical Improvements
- Vertical Phase 1a – Housing, Retail & Open Space Vertical Improvements
- Vertical Phase 1b – Housing, Retail & Open Space Vertical Improvements
- Vertical Phase 2 – Housing, Retail & Open Space Vertical Improvements
- Vertical Phase 3 – Housing, Retail & Open Space Vertical Improvements
- Vertical Phase 4 – Housing, Retail & Open Space Vertical Improvements
- Vertical Phase 5 – Housing, Retail & Open Space Vertical Improvements

To implement the Development Phasing Plan, the Parties established this Performance Schedule and will agree in the future on an additional Horizontal Ground Lease performance schedule and additional performance schedules for each individual Vertical Ground Lease. In this Performance Schedule, this Agreement is referred to as the "DDA" for brevity.

Activity[1,3]	Due Date[2]
1. Formation of EIFD. The Midway EIFD will be formed, and the EIFD Authority will approve the EIFD Acquisition Agreement (DDA § 27.2).	During the EIFD Formation Period (i.e., within 365 days after the Effective Date of the DDA).
2. Alternative Financing – City's Notice. If the Midway EIFD is not formed or the EIFD Authority does not approve the EIFD Acquisition Agreement before expiration of the EIFD Formation Period, City will Notify Master Developer that Master Developer has one hundred twenty (120) days from Master Developer's Receipt Date of City's Notice to Notify City that Master Developer is either (i) terminating the DDA or (ii) will be able to secure Alternative	Within ten (10) Business Days after expiration of the EIFD Formation Period (DDA § 27.2).

Financing to replace the financing previously anticipated to be provided by the Midway EIFD on or before the Horizontal Ground Lease Closing Date (DDA § 27.2).	
3. **Alternative Financing – Master Developer's Notice**. Master Developer will Notify City about Master Developer's election to either terminate the DDA or secure Alternative Financing on or before the Horizontal Ground Lease Closing Date. If Master Developer Notifies City that Master Developer will be able to timely secure Alternative Financing, the Notice will include documentation evidencing both the feasibility and sufficiency of the proposed Alternative Financing (DDA § 27.2).	During the EIFD Alternative Financing Period, if applicable (i.e., within one hundred twenty (120) days after Master Developer's Receipt Date of City's Notice about Master Developer's option to either terminate the DDA or secure the Alternative Financing).
4. **Alternative Financing – City's Review**. If Master Developer Notifies City during the EIFD Alternative Financing Period that Master Developer will be able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date, then City will Notify Master Developer whether City approves or rejects, in City's sole discretion, the feasibility and sufficiency of the proposed Alternative Financing (DDA § 27.2).	Within thirty (30) days after City's Receipt Date of Master Developer's Notice, if applicable, that Master Developer will be able to secure Alternative Financing on or before the Horizontal Ground Lease Closing Date.
5. **Horizontal Improvements Financing Plan – Master Developer's Submittal**. Master Developer will deliver to City the proposed Horizontal Improvements Financing Plan (DDA § 31.2).	Within one hundred eighty (180) days after the earlier of (i) the date on which the Midway EIFD is formed and the EIFD Authority approves the EIFD Acquisition Agreement or (ii) Master Developer's Receipt Date of City's Notice that City approves, in City's sole discretion, the feasibility and sufficiency of the proposed Alternative Financing.
6. **Horizontal Improvements Financing Plan – Mutual Approval**. Master Developer and City will agree on the content of the Horizontal Improvements Financing Plan (and, if applicable, revisions to the Horizontal	Within ninety (90) days after City's Receipt Date of Master Developer's delivery of the proposed Horizontal Improvements Financing Plan.

Ground Lease form to accommodate the phased financing of Horizontal Improvements) so that the approved plan may be incorporated into the Horizontal Ground Lease form (DDA § 31.2).	
7. <u>Park Plan Review Deposit Account – Master Developer's Initial Deposit</u>. Master Developer will establish a deposit account for the benefit of both City and Master Developer using City Form DS-3242 with an initial deposit of $10,000 for City's review of the proposed Park Plans to determine the Recreational Value Points attributable to the Park Plans (DDA § 24.1).	On or before the date on which Master Developer submits the proposed Park Plans at the thirty percent (30%) design stage (described in the next line item).
8. <u>Park Plans at 30% Design Stage – Master Developer's Submittal</u>. Master Developer will submit to City the proposed Park Plans for all Parks at the thirty percent (30%) design stage, together with all supporting information reasonably necessary for City to determine the Recreational Value Points attributable to the Park Plans (DDA § 24.2).	On or before the date on which Master Developer submits the Applications for Construction of the first Horizontal Improvements Phase to City and other agencies per DDA Section 31.1.
9. <u>Park Plans at 30% Design Stage – City's Determination</u>. City will deliver Notice to Master Developer confirming City's determination, in its sole discretion, regarding the number of Recreational Value Points attributable to the Park Plans at the thirty percent (30%) design stage (DDA §§ 24.2, 24.3).	Within one hundred twenty (120) days after City's Receipt Date of Developer's submittal of the proposed Park Plans at the thirty percent (30%) design stage, together with all supporting information reasonably required by City to make its determination.
10. <u>Park Plans at 60% Design Stage – Master Developer's Submittal</u>. Master Developer will submit to City the proposed Park Plans for all Parks at the sixty percent (60%) design stage, together with all supporting information reasonably necessary for City to determine the Recreational Value Points attributable to the Park Plans (DDA § 24.2).	Within one hundred twenty (120) days after Master Developer's Receipt Date of City's Notice to Master Developer confirming City's determination regarding the number of Recreational Value Points attributable to the Park Plans at the thirty percent (30%) design stage.

11. <u>Park Plans at 60% Design Stage – City's Determination</u>. City will deliver Notice to Master Developer confirming City's determination, in its sole discretion, regarding the number of Recreational Value Points attributable to the Park Plans at the sixty percent (60%) design stage (DDA §§ 24.2, 24.3).	Within one hundred twenty (120) days after City's Receipt Date of Developer's submittal of the proposed Park Plans at the sixty percent (60%) design stage, together with all supporting information reasonably required by City to make its determination.
12. <u>Draft Park Plans for Solely First Horizontal Improvements Phase at 100% Design Stage – Master Developer's Submittal</u>. Master Developer will submit to City an initial draft of the proposed Park Plans at the 100 percent (100%) design stage with respect to solely those Parks to be Constructed in the first Horizontal Improvements Phase, together with all supporting information reasonably necessary for City to determine whether those Parks will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the first Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 24.3 (DDA § 24.2).	At least one hundred twenty (120) days before the Horizontal Ground Lease Closing Date.
13. <u>Draft Park Plans for Solely First Horizontal Improvements Phase at 100% Design Stage – City's Review</u>. City will deliver Notice to Master Developer confirming City's determination, in its sole discretion, regarding whether the initial draft of the proposed Park Plans at the 100 percent (100%) design stage with respect to solely those Parks to be Constructed in the first Horizontal Improvements Phase will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the first Horizontal	Within sixty (60) days after City's Receipt Date of Developer's submittal of the initial draft of the proposed Park Plans at the 100 percent (100%) design stage with respect to all Parks to be Constructed in the first Horizontal Improvements Phase, together with all supporting information reasonably required by City to make its determination.

Improvements Phase, consistent with the phasing thresholds specified in Section 24.3 (DDA § 24.2).	
14. <u>Final Park Plans for Solely First Horizontal Improvements Phase at 100% Design Stage – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Park Plans at the 100 percent (100%) design stage with respect to solely those Parks to be Constructed in the first Horizontal Improvements Phase, together with all supporting information reasonably necessary for City to determine whether those Parks will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the first Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 24.3 (DDA § 24.2).	At least thirty (30) days before the Horizontal Ground Lease Closing Date.
15. <u>Final Park Plans for Solely First Horizontal Improvements Phase at 100% Design Stage – City's Review</u>. City will deliver Notice to Master Developer confirming City's determination, in its sole discretion, regarding whether the proposed final Park Plans at the 100 percent (100%) design stage with respect to solely those Parks to be Constructed in the first Horizontal Improvements Phase will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the first Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 24.3 (DDA § 24.2).	Within fifteen (15) days after City's Receipt Date of Developer's submittal of the initial draft of the proposed Park Plans at the 100 percent (100%) design stage with respect to all Parks to be Constructed in the first Horizontal Improvements Phase, together with all supporting information reasonably required by City to make its determination.
16. <u>Horizontal Ground Lease Escrow Opening – Master Developer's Notice</u>. Master Developer will request	Within thirty (30) days after both (i) Master Developer and City agree on the content of the Horizontal Improvements Financing Plan (and, if applicable,

the opening of the Horizontal Ground Lease opening by Notice to City and Escrow Agent (DDA § 33.1).	revisions to the Horizontal Ground Lease form to accommodate the phased financing of Horizontal Improvements) under DDA Section 31.2 and (ii) City Notifies Master Developer to confirm that City's completed review of Park Plans under clauses (a) and (b) of DDA Section 24.2 demonstrates conformance with the applicable Recreational Value Point objectives.
17. <u>Horizontal Ground Lease Escrow Opening – Escrow Agent's Action</u>. Master Developer and City will coordinate with Escrow Agent to cause the opening of the Horizontal Ground Lease Escrow (DDA § 33.1).	Within seven (7) days after Escrow Agent's Receipt Date of Master Developer's Notice to City and Escrow Agent requesting the opening of the Horizontal Ground Lease Escrow.
18. <u>Draft Plans for Horizontal Improvements – Master Developer's Submittal</u>. Master Developer will submit to City draft plans for the first Horizontal Improvements Phase (DDA § 33.4.1.6).	On or before the date on which Master Developer submits the Applications for Construction of the first Horizontal Improvements Phase to City and other agencies per DDA Section 31.1.
19. <u>Draft Plans for the Horizontal Improvements – City's Review</u>. City will complete its review of the draft plans for the first Horizontal Improvements Phase and deliver Notice to Master Developer confirming City's approval or disapproval of the draft plans (DDA § 33.4.1.6).	Within forty-five (45) days after the date of Master Developer's submittal to City of the draft plans for the first Horizontal Improvements Phase.
20. <u>Proposed Final Plans for the Horizontal Improvements – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final plans for the first Horizontal Improvements Phase that conform to the draft plans earlier approved by City (DDA § 33.4.1.6), together with Master Developer's conditional assignment of those plans to City (DDA § 33.4.1.7). Final plans may be submitted for each Horizontal Improvements Phase independently.	At least forty (40) days before Master Developer submits the Applications for Construction of the Horizontal Improvements to City and each other applicable Government per DDA Section 31.1 and, in any event, at least one hundred twenty (120) days before the Horizontal Ground Lease Closing Date.
21. <u>Proposed Final Plans for the Horizontal Improvements – City's Review</u>. City will complete its review	Within fifteen (15) days after the date of Master Developer's submittal to City of the proposed final plans and conditional assignment.

of the final plans for the first Horizontal Improvements Phase and Master Developer's conditional assignment of those plans, then deliver Notice to Master Developer confirming City's approval or disapproval of the final plans and conditional assignment (DDA §§ 33.4.1.6, 33.4.1.7).	
22. <u>Development Applications for Horizontal Improvements – Master Developer's Submittal</u>. Master Developer will prepare and submit all Applications, documents, fees, charges, or other items required for the Construction of the first Horizontal Improvements Phase on the Property (DDA § 31.1).	Within thirty (30) days after the date of City's approval of the final plans for the Horizontal Improvements and, in any event, at least one hundred (100) days before the Horizontal Ground Lease Closing Date.
23. <u>Approvals for Horizontal Improvements</u>. Master Developer will obtain all Approvals from each required Government for Construction of the first Horizontal Improvements Phase, in a Permit Ready status, and provide a copy of those Approvals to City (DDA §§ 31.1, 33.3.3, 33.4.1.8, 33.4.5).	At least three (3) Business Days before the Horizontal Ground Lease Closing Date.
24. <u>Approval of Environmental Review Documents</u>. Each required Government will issue the adoption, approval, or certification of the Environmental Review Documents for City and Master Developer to enter into the Horizontal Ground Lease (DDA §§ 33.3.4, 33.4.7).	At least one (1) Business Day before the Horizontal Ground Lease Closing Date.
25. <u>Vesting Tentative Map</u>. Vesting Tentative Map No. 3258589 for Midway Rising San Diego, California will be approved by City (in its sole discretion, acting in its Governmental Authority) and Recorded with the County Recorder. (DDA §§ 33.3.5, 33.4.8).	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.
26. <u>Project Labor Agreement – Master Developer's Submittal</u>. Master	Within fifteen (15) days after entering into each Project Labor Agreement, and in any event, at least ten (10)

Developer and each DDA transferee will submit to City the signed PLA Certification verifying that the applicable entities entered into a Project Labor Agreement for the first Horizontal Improvements Phase under the terms of the Memorandum of Understanding dated March 28, 2022, between Master Developer and San Diego County Building & Construction Trade Council. (DDA §§ 26, 33.3.6 and 33.4.1.12). A signed PLA Certification for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	Business Days before the Horizontal Ground Lease Closing Date.
27. <u>Project Labor Agreement – City's Review</u>. City will deliver Notice to Master Developer confirming that City agrees or disagrees that each PLA Certification complies with DDA Section 26.	Within five (5) Business Days after the submittal of each PLA Certification.
28. <u>Draft Master Developer Entity Documents – Master Developer's Submittal</u>. Master Developer will submit to City a substantially complete draft of the Master Developer Entity Documents (DDA § 33.4.1.1).	At least ninety (90) days before the Horizontal Ground Lease Closing Date.
29. <u>Draft Master Developer Entity Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the draft Master Developer Entity Documents (DDA § 33.4.1.1), with an explanation of the reasons for disapproval if applicable.	Within thirty (30) days after the date of Master Developer's submittal of the draft Master Developer Entity Documents.
30. <u>Proposed Final Master Developer Entity Documents – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Master Developer Entity Documents, which will address any comments or objections earlier	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.

communicated by City (DDA § 33.4.1.1).	
31. <u>Proposed Final Master Developer Entity Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Master Developer Entity Documents (DDA § 33.4.1.1), with an explanation of the reasons for disapproval if applicable.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
32. <u>Draft Construction Contract – Master Developer's Submittal</u>. Master Developer will submit to City a substantially complete draft of the Construction Contract and the General Contractor's related performance guarantee for the Construction of the first Horizontal Improvements Phase (DDA §§ 33.4.1.2, 33.4.1.3). A draft Construction Contract and General Contractor's performance guarantee for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	At least forty-five (45) days before the Horizontal Ground Lease Closing Date.
33. <u>Draft Construction Contract – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the draft Construction Contract and General Contractor's performance guarantee for the first Horizontal Improvements Phase (DDA §§ 33.4.1.2, 33.4.1.3), with an explanation of the reasons for disapproval if applicable.	Within twenty (20) days after the date of Master Developer's submittal of the draft Construction Contract and General Contractor's performance guarantee.
34. <u>Proposed Final Construction Contract – Master Developer's Submittal</u>. Developer will submit to City the proposed final Construction Contract and General Contractor's performance guarantee for the first Horizontal Improvements Phase (DDA §§ 33.4.1.2, 33.4.1.3), which will address any comments or objections earlier communicated by	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.

City. A final Construction Contract for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	
35. <u>Proposed Final Construction Contract – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Construction Contract and General Contractor's performance guarantee for the Construction of the first Horizontal Improvements Phase (DDA §§ 33.4.1.2, 33.4.1.3), with an explanation of the reasons for disapproval if applicable.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
36. <u>Proposed Final Engineering Contract – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Engineering Contract and the Engineer's related performance guarantee for the first Horizontal Improvements Phase (DDA §§ 33.4.1.4, 33.4.1.5), which will address any comments or objections earlier communicated by City. A final Engineering Contract and Engineer's performance guarantee for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.
37. <u>Proposed Final Engineering Contract – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Engineering Contract and Engineer's performance guarantee for the Construction of the first Horizontal Improvements Phase (DDA §§ 33.4.1.4, 33.4.1.5), with an explanation of the reasons for disapproval if applicable.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.

38. <u>Draft Insurance Documents – Master Developer's Submittal</u>. Master Developer will submit to City the draft Insurance Documents for the first phase of the Construction of the Horizontal Improvements (DDA § 33.4.1.9). Draft Insurance Documents for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	At least forty-five (45) days before the Horizontal Ground Lease Closing Date.
39. <u>Draft Insurance Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the draft Insurance Documents for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.9), with an explanation of the reasons for disapproval if applicable.	Within twenty (20) days after the date of Master Developer's submittal of the draft Insurance Documents.
40. <u>Proposed Final Insurance Documents – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Insurance Documents for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.9), which will address any comments or objections earlier communicated by City.	At least five (5) Business Days before the Horizontal Ground Lease Closing Date.
41. <u>Proposed Final Insurance Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Insurance Documents for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.9), with an explanation of the reasons for disapproval if applicable.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
42. <u>Draft Construction Surety – Master Developer's Submittal</u>. Master Developer will submit to City the draft Construction Surety for the Construction of the first Horizontal	At least forty-five (45) days before the Horizontal Ground Lease Closing Date.

Improvements Phase (DDA § 33.4.1.10). A draft Construction Surety for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	
43. <u>Draft Construction Surety – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the draft Construction Surety for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.10), with an explanation of the reasons for disapproval if applicable.	Within twenty (20) days after the date of Master Developer's submittal of the draft Construction Surety.
44. <u>Proposed Final Construction Surety – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Construction Surety for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.10), which will address any comments or objections earlier communicated by City. A final Construction Surety for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.
45. <u>Proposed Final Construction Surety – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Construction Surety for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.10), with an explanation of the reasons for disapproval if applicable.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
46. <u>Draft Horizontal Improvements Financing Documents – Master Developer's Submittal</u>. Master Developer will submit to City the draft Horizontal Improvements Financing Documents for the Construction of the first Horizontal	At least forty-five (45) days before the Horizontal Ground Lease Closing Date.

Improvements Phase, together with the draft Project Budget (DDA § 33.4.1.11). Draft Horizontal Improvements Financing Documents for each subsequent Horizontal Improvements Phase will be submitted independently following the Horizontal Ground Lease Closing Date.	
47. <u>Draft Horizontal Improvements Financing Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the draft Horizontal Improvements Financing Documents and the draft Project Budget for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.11), with an explanation of the reasons for disapproval if applicable.	Within twenty (20) days after the date of Master Developer's submittal of the draft Horizontal Improvements Financing Documents.
48. <u>Proposed Final Horizontal Improvements Financing Documents – Master Developer's Submittal</u>. Master Developer will submit to City the proposed final Horizontal Improvements Financing Documents for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.11), which will address any comments or objections earlier communicated by City, together with the proposed Final Project Budget for Horizontal Improvements. The final Project Budget for Horizontal Improvements may be structured on a phased basis and updated during the Horizontal Ground Lease Period to reflect each Horizontal Improvements Phase, as discussed further below.	At least fifteen (15) days before the Horizontal Ground Lease Closing Date.
49. <u>Proposed Final Horizontal Improvements Financing Documents – City's Review</u>. City will deliver Notice to Master Developer approving or disapproving the proposed final Horizontal Improvements Financing Documents and the proposed final Project Budget	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.

for the Construction of the first Horizontal Improvements Phase (DDA § 33.4.1.11), with an explanation of the reasons for disapproval if applicable.	
50. <u>Negotiation of Affordable Housing Lease Form</u>. Master Developer and City staff will complete their negotiation of an Affordable Housing Lease Form that includes the covenants and provisions in Attachment 17 to the DDA and is consistent with Attachment 14 (DDA § 34.11).	Within one hundred eighty (180) days after the Effective Date of the DDA, subject to the right of either Party to initiate the impasse resolution process if the Parties' negotiation of the Affordable Housing Lease Form is unsuccessful during such 180-day period.
51. <u>City Council's Consideration of Affordable Housing Lease Form</u>. City staff will request to docket the Affordable Housing Lease Form for the City Council's consideration during a noticed public hearing (DDA § 34.11).	Within ninety (90) days after Master Developer and City staff agree on the Affordable Housing Lease Form, whether through negotiation or use of the impasse resolution process.
52. <u>Termination of Existing Agreements</u>. City will deliver a written notice of termination of each Existing Agreement to the respective tenant or user under each Existing Agreement, to the extent that the tenant or user is then continuing to occupy or use the relevant area of the Property (DDA §§ 14, 33.3.8).	At least thirty (30) calendar days before the scheduled Horizontal Ground Lease Closing Date, with respect to each affected Existing Agreement that is terminable by City upon 30 days' advance written notice, or at an earlier date if necessary to accommodate the scheduled Horizontal Ground Lease Closing Date if the affected Existing Agreement is terminable by City upon advance written notice of more than 30 days.
53. <u>Master Developer's Escrow Deposits</u>. Master Developer will deposit all the documents and funds into the Horizontal Ground Lease Escrow required by DDA Section 33.6, including the signed Horizontal Ground Lease; the signed and notarized Horizontal Ground Lease Memorandum; funds to be paid by Master Developer shown on Master Developer's approved Escrow Closing Statement; documentary evidence of the funding of all proceeds of the financing sources identified in the Horizontal Improvements Financing Plan as closing concurrent with the	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.

Horizontal Ground Lease Closing; a signed and notarized quitclaim deed effectuating the termination of the Interim Arena Lease; and all other reasonable items described in DDA Section 33.3.6 (DDA § 33.4.12).	
54. **City's Escrow Deposits**. City will deposit all the documents and funds into the Horizontal Ground Lease Escrow required by DDA Section 33.7, including the signed Horizontal Ground Lease; the signed and notarized Horizontal Ground Lease Memorandum; a signed and notarized certificate of acceptance of the quitclaim deed effectuating the termination of the Interim Arena Lease; funds to be paid by City shown on City's approved Escrow Closing Statement; and all other reasonable items described in DDA Section 33.7.5 (DDA § 33.3.10).	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
55. **Satisfaction or Waiver of Master Developer's Conditions Precedent to Closing**. Master Developer will provide written confirmation that all conditions precedent to Master Developer's obligation to proceed with the Horizontal Ground Lease Closing under DDA Section 33.3 are satisfied, or if not satisfied, written confirmation whether Master Developer will waive the unsatisfied conditions precedent.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
56. **Satisfaction or Waiver of City's Conditions Precedent to Closing**. City will provide written confirmation that all conditions precedent to City's obligation to proceed with the Horizontal Ground Lease Closing under DDA Section 33.4 are satisfied, or if not satisfied, written confirmation whether City will waive the unsatisfied conditions precedent.	At least two (2) Business Days before the Horizontal Ground Lease Closing Date.
57. **Close of Escrow**. Assuming City and Master Developer have provided their	On or before the Horizontal Ground Lease Closing Date, which is scheduled to occur no later than June 30, 2028,

respective written confirmation that all conditions precedent are satisfied or waived, the Horizontal Ground Lease Closing will occur.	based on the projected commencement date for the first Horizontal Improvements Phase shown in the Development Phasing Plan (Attachment 8 to the DDA).[4]

[1] This Performance Schedule describes certain performance activities and deadlines under the DDA and is not intended to supersede more complete descriptions in the text of the DDA. This Performance Schedule is not intended to, and does not, replace any processes described in the DDA or modify either Party's rights under the DDA related to impasse resolution or termination with respect to certain matters and circumstances specified in the DDA. In the event of any conflict between the text of the DDA and this Performance Schedule, the text of the DDA shall govern.

[2] All references to days shall be to calendar days unless stated otherwise.

[3] Review of drawings, specifications, plans or other similar or related material by City under the DDA is intended by the Parties to be conducted in City's proprietary capacity as a contracting party and not in the City's governmental police power capacity and shall not be deemed or construed to replace, supplement, modify, amend, or change any City requirement for review under City's development code or other law, ordinance, code, land use plan, regulation, policy, or otherwise.

[4] The Horizontal Ground Lease Closing Date may be extended no more than (60) days in the aggregate, in the Mayor's sole and absolute discretion, under DDA Section 33.9.

[5] Nothing in this Performance Schedule limits City's ability to grant time extensions related to an Affordable Housing Lease where appropriate under DDA Section 15.3.6 or limits adjustments to this Performance Schedule in accordance with DDA Section 39.3.

ATTACHMENT 10
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

HORIZONTAL IMPROVEMENTS

1. Utilities. All utilities will be designed and constructed as described in the Vesting Tentative Map.

2. Parks and Public Spaces. All Parks and Public Spaces will be designed and constructed as described in the Specific Plan and Vesting Tentative Map.

2.1 Parks will be constructed per the phasing in Section 24.3 of the DDA.

3. Transportation Improvements. All transportation improvements will be designed and constructed as described in the Specific Plan and the Vesting Tentative Map.

3.1 All transportation improvements will be constructed per the phasing in the Conditions for Vesting Tentative Map.

4. Horizontal Improvements Phasing.

4.1 Phase 1 will include all utilities, transportation improvements, Parks and Public Spaces as described in the Specific Plan, Vesting Tentative Map, Conditions for Vesting Tentative Map, and on page 3 of this **ATTACHMENT 10** required to service the area bound by the easterly property line and Frontier Drive as shown in the phasing map on the next page.

4.2 Phase 2 will include all utilities, transportation improvements, Parks and Public Spaces as described in the Specific Plan, Vesting Tentative Map, Conditions for Vesting Tentative Map, and on page 4 of this **ATTACHMENT 10** required to service the area bound by Frontier Drive and Kemper Street as shown in the phasing map on the next page.

4.3 Phase 3 will include all utilities, transportation improvements, Parks and Public Spaces as described in the Specific Plan, Vesting Tentative Map, Conditions for Vesting Tentative Map, and on page 5 of this **ATTACHMENT 10** required to service the area bound by Kemper Street and the westerly property line as shown in the phasing map on the next page.

ATTACHMENT 10 - 2
Horizontal Improvements

Horizontal Improvements Phase 1 (the area bound by the easterly property line and Frontier Drive)

Existing Building Demolition
Earthwork and Grading
Linear Parks
Common Open Spaces and Parks
Pedestrian Hardscape
Asphalt Bike Path
Bike Path Striping
Curb and Gutters
Landscaping and Irrigation
Street Trees
Roadway Lighting
Pedestrian Lighting
Removeable Bollards
Fencing
Community Area Furnishings
Open Space Lighting and Uplights
Domestic Water Main and Lateral Utility Installations
Sanitary Sewer Main Utility Installations
Sewer Manholes
Sewer Cleanouts
Storm Drain Installations
Storm Drain Inlets
Storm Drain Cleanouts
Fire Hydrants
Fire Departments Connections
Fire Water Main Installations
Site Electrical Utility Installations
Gas Utility Installations
Traffic Signal Improvements
Traffic Control Improvements
Lane Striping Improvements
Crosswalk Striping
Turn Signal Striping
Buslane Striping
Pullbox Upgrade for Traffic Signals
Roadway and Median Improvements
Accessible Ramps and Access Improvements

*Subject to any changes based on the final Approvals for Construction of the Horizontal Improvements

Horizontal Improvements Phase 2 (the area bound by Frontier Drive and Kemper Street)

Existing Building Demolition
Earthwork and Grading
Linear Parks
Common Open Spaces and Parks
Pedestrian Hardscape
Asphalt Bike Path
Bike Path Striping
Curb and Gutters
Landscaping and Irrigation
Street Trees
Roadway Lighting
Pedestrian Lighting
Removeable Bollards
Fencing
Community Area Furnishings
Open Space Lighting and Uplights
Domestic Water Main and Lateral Utility Installations
Sanitary Sewer Main Utility Installations
Sewer Manholes
Sewer Cleanouts
Storm Drain Installations
Storm Drain Inlets
Storm Drain Cleanouts
Fire Hydrants
Fire Departments Connections
Fire Water Main Installations
Site Electrical Utility Installations
Gas Utility Installations
Traffic Signal Improvements
Traffic Control Improvements
Lane Striping Improvements
Crosswalk Striping
Turn Signal Striping
Buslane Striping
Pullbox Upgrade for Traffic Signals
Roadway and Median Improvements
Accessible Ramps and Access Improvements

*Subject to any changes based on the final Approvals for Construction of the Horizontal Improvements

Horizontal Improvements Phase 3 (the area bound by Kemper Street and the westerly property line)

Existing Building Demolition
Earthwork and Grading
Linear Parks
Common Open Spaces and Parks
Pedestrian Hardscape
Asphalt Bike Path
Bike Path Striping
Curb and Gutters
Landscaping and Irrigation
Street Trees
Roadway Lighting
Pedestrian Lighting
Removeable Bollards
Fencing
Community Area Furnishings
Open Space Lighting and Uplights
Domestic Water Main and Lateral Utility Installations
Sanitary Sewer Main Utility Installations
Sewer Manholes
Sewer Cleanouts
Storm Drain Installations
Storm Drain Inlets
Storm Drain Cleanouts
Fire Hydrants
Fire Departments Connections
Fire Water Main Installations
Site Electrical Utility Installations
Gas Utility Installations
Traffic Signal Improvements
Traffic Control Improvements
Lane Striping Improvements
Crosswalk Striping
Turn Signal Striping
Buslane Striping
Pullbox Upgrade for Traffic Signals
Roadway and Median Improvements
Accessible Ramps and Access Improvements

*Subject to any changes based on the final Approvals for Construction of the Horizontal Improvements

ATTACHMENT 11
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

HORIZONTAL GROUND LEASE FORM

[Attached behind this cover page]

HORIZONTAL GROUND LEASE
(Midway Rising)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

MIDWAY RISING, LLC,
a Delaware limited liability company

HORIZONTAL GROUND LEASE

(Midway Rising)

This HORIZONTAL GROUND LEASE (this "**Lease**") is entered into between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and MIDWAY RISING, LLC, a Delaware limited liability company ("**Tenant**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **LEASE SUMMARY**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 3 and in the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

1.1 Premises. The real property specifically described in **EXHIBIT A** attached to this Lease, including all Improvements located on such real property on or after the Commencement Date, exclusive of Public Improvements that have been accepted by Landlord, under its Governmental Authority, after their Construction by Tenant, or public right-of-way, public utilities, public storm water improvements, or other improvements located on the Premises on the Commencement Date that are or were part of a system owned or operated by Landlord, under its Governmental Authority. The site plan for the Premises is in **EXHIBIT B** attached to this Lease. **EXHIBIT A** is controlling as to the real property constituting the Premises. Upon each Premises Reduction Date, the affected Development Parcel or Public Improvements will be removed automatically from the Premises. Upon either Party's request in a Notice after any Premises Reduction Date, the Parties will sign a recordable amendment to the Lease Memorandum, for the requesting Party's recordation with the County Recorder, memorializing the adjustment to the Premises that occurred upon the applicable Premises Reduction Date.

1.2 Commencement Date. [**NOTE TO DRAFT: DATE OF HORIZONTAL GROUND LEASE CLOSING TO BE INSERTED**].

1.3 Term. The Term of this Lease will: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

1.4 Permitted Uses. Collectively, the following activities: (a) the operation and maintenance of the Existing Arena until the Existing Arena Closure Date; (b) Construction of the Horizontal Improvements on the Premises and the related use of vehicles, equipment, and machinery; (c) following completion of Construction of the Parks on the Premises, until their transfer to the Entertainment Center Lease, management and maintenance of the Parks as provided in the Parks Management and Maintenance Requirements; and (d) other related or incidental purposes with the prior written approval of Landlord, in Landlord's sole discretion.

2. **PURPOSES**. Landlord owns the Premises that are located in the City of San Diego, County of San Diego, California. Tenant proposes a large mixed-use redevelopment project on the

Premises referred to as the "**Development**" in the DDA. This Lease is entered into under the terms of the DDA. Landlord desires to convey a Leasehold Estate in the Premises to Tenant, and Tenant desires to lease the Premises from Landlord, to allow Tenant's phased Construction of the Horizontal Improvements on the Premises in preparation for Tenant's phased Construction of the Vertical Improvements on each Development Parcel. As described in the DDA, when Tenant completes the Horizontal Improvements necessary for Construction of Vertical Improvements on a Development Parcel, the Parties will enter into a Vertical Ground Lease for that Development Parcel as described in the DDA. When Public Improvements are accepted by Landlord, under its Governmental Authority, or the Parties sign a Vertical Ground Lease for a particular Development Parcel (or when specified deadlines included in the definition of Premises Reduction Date lapse for a particular Development Parcel), the Premises will be reduced correspondingly by removing the land on which the Public Improvements are located or the particular Development Parcel, as applicable, from the Premises under this Lease.

3. **DEFINITIONS**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 1 and the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

3.1 Additional Rent. All money this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Base Rent and Existing Arena Rent.

3.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" and "**Affiliation**" will have the correlative meanings.

3.3 Annual Existing Arena Revenue Statement. Defined in **EXHIBIT D**.

3.4 Application. Each agreement, application, certificate, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to obtain: (a) any Approval to commence, perform or complete Construction allowed under this Lease, including each application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument Tenant may reasonably request for the Construction; or (b) any Approval to use, occupy, maintain or operate the Premises in accordance with this Lease.

3.5 Appraiser. An independent appraiser that is a State Certified General Real Estate Appraiser in good standing, is a member in good standing of the Appraisal Institute, an Illinois not-for-profit corporation, or an equivalent nationally recognized professional real estate appraisal organization, and has, at least, ten (10) years of experience appraising properties similar to the Premises.

3.6 Approval. Each license, permit (including building, grading, demolition, alteration, use, and special permits), approval, consent, certificate (including Certificate(s) of Occupancy), ruling, variance, authorization, or amendment to any of the foregoing necessary or appropriate under any Law to commence, perform, or complete Construction allowed under this Lease, or use, occupy, maintain, or operate the Premises in accordance with this Lease.

3.7 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

3.8 Bankruptcy Sale. A sale of any property, or any interest in any property, under Title 11 United States Code section 363 or otherwise in any Bankruptcy Proceeding affecting the owner of such property.

3.9 Base Rent. Defined in **EXHIBIT D**.

3.10 Builder's Risk Insurance. Defined in **EXHIBIT F**.

3.11 Building Equipment. All fixtures incorporated into the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises.

3.12 Business Day. Monday through Friday, except Landlord holidays when Landlord offices are closed.

3.13 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.

3.14 CDTFA. Defined in Section 11.9.1.

3.15 Certificate of Occupancy. A certificate of occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as may be amended from time to time, and as adopted and amended by Landlord (under its Governmental Authority), from time to time.

3.16 Certifying Party. Defined in Section 37.

3.17 City Attorney. The City Attorney of the City of San Diego, California.

3.18 City Council. The City Council of the City of San Diego, California.

3.19 City Treasurer. The City Treasurer of the City of San Diego, California.

3.20 Claim. Each claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine, or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), or any judgment.

3.21 Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut that causes damage to or interferes with the use of the Premises.

3.22 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for Improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation, including any prepayment under any Security Instrument.

3.23 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

3.24 Confidential Tenant Records. Defined in **EXHIBIT D**, Section 5.

3.25 Construction. Alteration, construction, installation, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including the Horizontal Improvements. "**Construct**" and "**Constructed**" will have the correlative meaning.

3.26 Construction Commencement Conditions. All the following conditions precedent to commencing Construction of each Horizontal Improvements Phase:

(a) *Approvals*. Tenant gives Landlord copies of all Approvals required by Law for Tenant to start and complete such Horizontal Improvements Phase, including all Approvals (building permits, grading permits, demolition permits, etc.) for any associated grading, excavation, or demolition, prior to commencement of any part of such Horizontal Improvements Phase;

(b) *Assignment of Construction Documents*. Tenant conditionally assigns the Construction Documents and the Plans to Landlord such that after an Event of Default by Tenant that results in a termination of this Lease, Landlord may exercise all rights of Tenant under and to such documents (in Landlord's sole and absolute discretion), subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. Such assignment will include the benefit of all payments made under the Construction Documents, including payments made before the date of such assignment;

(c) *Construction Documents*. Tenant enters into and gives Landlord copies of all Construction Documents;

(d) *Construction Surety*. Tenant gives Landlord the Construction Surety for the Horizontal Improvements Phase;

(e) *Funds*. Tenant gives Landlord written evidence reasonably satisfactory to Landlord of the commitment of funds by or to Tenant to pay all the costs of Construction of such Horizontal Improvements Phase, as estimated by Tenant's Architect;

(f) *Insurance*. Tenant delivers to Landlord written evidence of all insurance coverage this Lease requires for Construction of such Horizontal Improvements Phase;

(g) *Lender's Approval of Plans*. Tenant gives Landlord evidence that all Permitted Leasehold Lenders, to the extent required by their respective Security Instruments, have approved the Plans for such Horizontal Improvements Phase;

(h) *Performance by Tenant's Architect and General Contractor*. Tenant provides Landlord with agreements (subject to the rights of Permitted Leasehold Lenders) from Tenant's Architect and from the General Contractor for the particular Horizontal Improvements Phase to continue to perform for Landlord (if Landlord so elects) all obligations of Tenant's Architect or General Contractor, as applicable, under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect or General Contractor is paid for its services requested by Landlord after termination of this Lease or re-entry onto the Premises in accordance with such contract; and

(i) *Plans*. Landlord receives and approves the Plans for the particular Horizontal Improvements Phase under this Lease.

3.27 Construction Commencement Date. For each Horizontal Improvements Phase, the first date on which Tenant has: (a) satisfied the Construction Commencement Conditions; and (b) started the physical work of any grading, any demolition or removal of any existing improvements, any excavation work, or otherwise started the physical work of that Horizontal Improvements Phase.

3.28 Construction Completion Date. For each Horizontal Improvements Phase, the first date on which all the following events have occurred: (a) Tenant's Architect or General Contractor certifies in writing that the applicable Horizontal Improvements have been completed in compliance with the Plans; (b) Landlord, under its Governmental Authority, accepts all Horizontal Improvements that will be owned or operated by Landlord; (c) Tenant gives Landlord a survey of the Premises showing the Horizontal Improvements as built, certified to Landlord by a licensed surveyor under Section 11.11; and (d) Tenant files a Notice of Completion for the Horizontal Improvements Phase with the County Recorder for recordation in the official records of the County.

3.29 Construction Completion Deadline. The outside date for completion of the Horizontal Improvements for each Horizontal Improvements Phase in the Performance Schedule. [**NOTE TO DRAFT: THE PERFORMANCE SCHEDULE WILL NEED TO PRESCRIBE A TIMELINE FOR EACH HORIZONTAL IMPROVEMENTS PHASE TO BE COMPLETED. ALSO, SEE SECTION 11.1 BELOW.**]

3.30 Construction Contract. A current, executory agreement between Tenant and a General Contractor for Construction of the applicable Horizontal Improvements Phase on a guaranteed maximum price or a stipulated price expressly set forth in such contract, or on a cost plus basis, with a commercially reasonable retention amount not to be paid to the General Contractor until the final payment is due to the General Contractor and providing that such final payment will not

be paid to the General Contractor until after the Construction Completion Date for the Construction to which the contract applies, and the contract complies with all the terms of the DDA and this Lease. Each Construction Contract will state that: (i) the General Contractor acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) General Contractor agrees to continue to perform for Landlord, as an express third party beneficiary of the contract, all obligations of General Contractor under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided General Contractor is paid for its services requested by Landlord after the Event of Default, in accordance with such contract.

3.31 Construction Default. Tenant's failure to cause the Construction Completion Date to occur on or before the Construction Completion Deadline for any Horizontal Improvements Phase or the failure to cause the Construction Completion Date for a Park to occur on or before the Park Completion Deadline for the particular Park. [**NOTE TO DRAFT: THE PERFORMANCE SCHEDULE WILL NEED TO SPECIFY A COMPLETION DEADLINE FOR EACH HORIZONTAL IMPROVEMENTS PHASE AND EACH PARK.**]

3.32 Construction Documents. All the following documents for each Horizontal Improvements Phase, as Tenant may Modify them from time to time, but not in violation of this Lease:

3.32.1 *Architectural Contract*. A contract between Tenant and Tenant's Architect, relating to Tenant's Architect's preparation of the Plans in which: (i) Tenant's Architect acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) Tenant's Architect agrees to continue to perform for Landlord, as an express third-party beneficiary of the contract, all obligations of Tenant's Architect under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect is paid for its services requested by Landlord after the Event of Default, in accordance with such contract;

3.32.2 *Construction Contract*. A Construction Contract between a General Contractor and Tenant, providing for the General Contractor's performance of the Horizontal Improvements Phase; and

3.32.3 *Other Contracts and Approvals*. All other agreements and Approvals in place, as of the Construction Commencement Date for the Horizontal Improvements Phase, to which Tenant or anyone claiming through Tenant is a party and relating to the Horizontal Improvements Phase.

3.33 Construction Surety. Payment and performance bonds guaranteeing the performance of the Construction Contract by the General Contractor and that the Construction of the Horizontal Improvements Phase will be completed in accordance with the Plans for the Horizontal Improvements Phase by the General Contractor or, on the General Contractor's default, the surety or guarantor, in accordance with the terms of this Lease. Such bonds will be in form and substance reasonably acceptable to Landlord, for an amount of money not less than one hundred percent (100%) of the guaranteed maximum price, stipulated price, or cost plus price (as approved by the Senior Permitted Leasehold Lender) of the Construction Contract, for the benefit of Tenant, with

Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in California Code of Civil Procedure section 995.120, with an underwriting limitation, under California Insurance Code section 12090, greater than the contract amount of the bond. Each such bond must, by its express terms, remain in full force and effect until the Construction Completion Date for the applicable Horizontal Improvements Phase. If the provider of any bond regarding any Construction becomes the subject of any Bankruptcy Proceeding, Tenant will promptly provide a substitute bond to Landlord for such Construction. The Construction Surety will be in addition to any public improvement security required by any Government regarding the Horizontal Improvements. If Tenant determines that any type of payment or performance bond described in this Section 3.33 is no longer reasonably available to the construction industry in the commercial surety bond market on commercially reasonable terms for Construction of particular Horizontal Improvements (each, an "**Unavailable Bond**"), Tenant will Notify Landlord in writing within seven (7) days. The Notice will include reasonable documentation demonstrating that one or more of the payment or performance bonds described in this Section 3.33 is an Unavailable Bond and Tenant's alternative proposal for providing the risk protection to Landlord that would have been previously provided by each Unavailable Bond. Landlord will have thirty (30) days to review and approve or disapprove Tenant's proposal, in Landlord's sole discretion. If Landlord does not, in its sole discretion, approve Tenant's alternative proposal to provide the risk protection to Landlord that would have been previously provided by each Unavailable Bond, Tenant will obtain, or will require its General Contractor to obtain, the payment and performance bonds described in this Section 3.33 for Construction of the particular Horizontal Improvements.

3.34 Contest. A legal proceeding commenced by Tenant to challenge: (a) the amount or validity of any Prohibited Encumbrance; (b) the validity of any Law or its application to the Premises; (c) the terms or conditions of, or requirements for, any Approval; or (d) the validity or merit of any Claim against which this Lease requires Tenant to Indemnify Landlord.

3.35 Contest Security. Cash in an amount equal to one hundred ten percent (110%) of the amount of money being contested.

3.36 Contractor Prequalification Application. The form in **EXHIBIT P**.

3.37 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person, bind such Person to an obligation, and direct or cause the direction of the day-to-day management of such Person, in all cases whether by ownership of Equity Interests, by contract, or otherwise.

3.38 Controlling and Controlled. Exercising or having Control.

3.39 County. The County of San Diego, California.

3.40 County Recorder. The Recorder of or for the County.

3.41 CPI. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then

the Parties will reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

3.42 CPI Adjustment Factor. As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Commencement Date.

3.43 DDA. The Disposition and Development Agreement between original Landlord and Master Tenant dated [**TO BE DETERMINED**], regarding Tenant's redevelopment of the Premises, among other things.

3.44 Default. Each Monetary Default, Construction Default, or Non-Monetary Default.

3.45 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest allowed by Law under the circumstances.

3.46 Depository. An Institutional Lender designated by the Senior Permitted Leasehold Lender or, if no Permitted Leasehold Lender exists, then by Landlord. A Permitted Leasehold Lender that is an Institutional Lender may designate itself as Depository.

3.47 Development Conditions. All the requirements for and limitations on use of the Premises or Construction on the Premises in **EXHIBIT N**.

3.48 Development Parcel. Each numbered lot, and each lettered lot associated with the numbered lot, if any, created under the Vesting Tentative Map that will be the subject of a particular Vertical Ground Lease. Each Development Parcel will be referred to in this Lease by reference to the numbered lot in the Vesting Tentative Map. Each numbered lot and each lettered lot created under the Vesting Tentative Map must be the subject of a particular Vertical Ground Lease before the end of the Term.

3.49 DIR. Defined in Section 13.

3.50 Early Termination Event. Either the termination of this Lease due to Tenant's Default or occurrence of the Scheduled Expiration Date before Vertical Ground Leases are entered into under the DDA for all Development Parcels.

3.51 Eligible Sublease. A Sublease that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length, provided that:

3.51.1 *Purposes*. The Sublease allows the Subtenant to use or occupy part of the Existing Arena for Permitted Uses consistent with the character and quality of the Existing Arena;

3.51.2 *Insurance*. The Subtenant carries the insurance required under the Subtenant/Sub-User Insurance Requirements;

3.51.3 *Required Provisions*. The Sublease includes the provisions required under Section 26.3;¶

3.51.4 *SNDA with Permitted Leasehold Lender*. If any Permitted Leasehold Security Instrument or Fee Security Instrument exists and if required by a Permitted Leasehold Lender or Fee Lender, then such Permitted Leasehold Lender or Fee Lender has entered (or simultaneously enters or has agreed in writing to enter) into a subordination, non-disturbance, and attornment agreement with such Subtenant and Tenant has given Landlord written evidence of such agreement;

3.51.5 *Term*. The term of the Sublease (including any option or renewal terms) ends on or before the day before the Existing Arena Closure Date.

3.52 Entertainment Center. A new multipurpose arena with a minimum of 380,000 square feet in floor area and a capacity of between 15,200 and 16,000 seats to be Constructed on Development Parcels 24 and 25 under the terms of the future Entertainment Center Lease.

3.53 Entertainment Center Lease. The Vertical Ground Lease (defined in the DDA) for development and operation of the Entertainment Center.

3.54 Environmental Condition. Any of the following events relating to the Premises arising from the negligence or intentional misconduct of one or more Tenant Parties, contractors, Subtenants, Sub-Users, or other Persons entering the Premises during the Term: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

3.55 Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

3.56 Equity Interest. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

3.57 Equity Interest Transfer. Each of the following actions or events, whether occurring by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Tenant (even though Tenant itself is not the transferor), excluding sales of Equity Interests listed on a public stock exchange in the United States by a Person holding ten percent (10%) or less of the Equity Interests in the Person whose Equity Interests are being sold; or (b) each merger, consolidation, sale, lease, or the like with respect to Tenant, or a series of such mergers, consolidations, sales, leases, or the like occurring over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in the assets of Tenant.

3.58 Estoppel Certificate. A written, signed certification of each of the following: (a) the nature of the Certifying Party's interest in this Lease and the Premises and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been Modifications, that this Lease is in full force and effect, as Modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of

Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Tenant Defaults, or Landlord Defaults, or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Tenant Defaults or Landlord Defaults, or failures to perform claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

3.59 Event of Default. Defined in Section 31.1.

3.60 Existing Arena. The existing indoor sports arena (commonly known as "Pechanga Arena San Diego"), surface parking lot areas serving the arena, and related facilities located at 3500 Sports Arena Boulevard that were the subject of that certain City of San Diego Percentage Lease between Landlord and Midway Rising Venue Management, LLC, a Delaware limited liability company (an Affiliate of Tenant), dated July 27, 2023, as modified by that certain confirmation letter signed by the same parties, dated September 1, 2023, that certain First Amendment to City of San Diego Percentage Lease, dated August 26, 2024, between Landlord and Midway Rising Venue Management, LLC, and that certain Second Amendment to City of San Diego Percentage Lease, dated **[TO BE DETERMINED]**, between Landlord and Midway Rising Venue Management, LLC.

3.61 Existing Arena Closure Date. Defined in **EXHIBIT D**.

3.62 Existing Arena Minimum Monthly Rent. Defined in **EXHIBIT D**.

3.63 Existing Arena Percentage Rent. Defined in **EXHIBIT D**.

3.64 Existing Arena Rent. Defined in **EXHIBIT D**.

3.65 Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

3.66 Fair Market Rent. The fair market rent of the space to be used or occupied under a Use Agreement or a Sublease, as applicable, based on a written appraisal report disclosing the then current estimated fair market rent of such space for the uses permitted under the Use Agreement or Sublease, as applicable, and prepared by an Appraiser.

3.67 Federal. Relating to or under the authority of the federal government of the United States of America.

3.68 Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

3.69 Fee Lender. An Institutional Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument will not be considered a Fee Lender.

3.70 Fee Security Instrument. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as applicable to Fee Lenders) and containing no provision (and securing no document containing any provision) inconsistent with the Statement of Priorities; (c) otherwise complying with this Lease; (d) a copy of which (recorded or unrecorded) is promptly, after being signed, delivered to Tenant and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by a Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

3.71 FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) located at the Premises and used for the Permitted Uses that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

3.72 Foreclosure Event. Any transfer of title to all or any portion of the Fee Estate or the Leasehold Estate through any: (a) judicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Security Instrument; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding and any Bankruptcy Sale), in each case (clauses "(a)" through "(e)") whether the transferee is a Fee Lender or a Permitted Leasehold Lender, a Person claiming through a Fee Lender, Permitted Leasehold Lender, or a Third Person.

3.73 GAAP. Generally accepted accounting principles established by the Financial Accounting Standards Board in the United States.

3.74 General Contractor. A State licensed general contractor experienced in the Construction of improvements like the Horizontal Improvements, selected by Tenant that has either: (a) been preapproved by Landlord as a prime contractor for Landlord's public works projects of similar size to the contractor's proposed scope of work; or (b) submitted its qualifications to both Tenant and Landlord using the Contractor Prequalification Application and been approved by both Tenant and Landlord as having appropriate qualifications and experience to perform the contractor's proposed scope of work.

3.75 Government. All Federal, State, County, district, Landlord (acting under its Governmental Authority), or other governments and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any government, whether in existence on the Commencement Date or subsequently established, having, or claiming jurisdiction over any Party, the Premises, the Horizontal Improvements, this Lease, or any activity this Lease allows.

3.76 Governmental Authority. Landlord's police power land use regulatory authority or other police powers, separate and distinct from Landlord acting in its proprietary capacity.

3.77 Gross Revenue. Defined in **EXHIBIT D**.

3.78 Hazardous Substance. Each flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy, from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Law; (ii) is subject to any Law regulating, relating to or imposing obligations, liability, or standards of conduct concerning protection of human health or safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal. "Hazardous Substance" will not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

3.79 Hazardous Substance Discharge. Each deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Premises, or during transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under, in, or from the Premises, including Construction of the Horizontal Improvements, whether or not caused by a Party or occurring before or after the Commencement Date.

3.80 Horizontal Improvements. The improvements described in **EXHIBIT J**.

3.81 Horizontal Improvements Financing Plan. The financing plan in **EXHIBIT O**.

3.82 Horizontal Improvements Phase. Each phase of Construction of the Horizontal Improvements on the Premises as described in the Horizontal Improvements Phasing Plan.

3.83 Horizontal Improvements Phasing Plan. The phasing plan in **EXHIBIT I**.

3.84 Immaterial Loss. A Casualty or Condemnation resulting in a Loss not exceeding twenty-five thousand dollars ($25,000) times the CPI Adjustment Factor.

3.85 Improvements. All improvements located on the Premises from time to time, including all improvements existing as of the Commencement Date and all Horizontal Improvements.

3.86 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all Legal Costs, interest, and penalties incurred in enforcing the indemnity obligation under this Lease regarding the Claim. "Indemnified," "Indemnification," or similar terms will have the correlative meanings.

3.87 Indemnitee. Each Person entitled to be Indemnified under this Lease.

3.88 Indemnitor. Each Person agreeing to Indemnify any other Person under this Lease.

3.89 Institutional Lender. Each of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) Federal or State regulated savings bank; (f) pension, welfare or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Federal or State regulated investment bank; (j) a Fortune 500 company; or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 3.89.

3.90 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

3.91 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor (including a Fee Lender, or anyone acting for a Fee Lender, that has acquired and then disposed of the Fee Estate) will be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

3.92 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 31.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

3.93 Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

3.94 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

3.95 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any manner to any Party, the Premises, this Lease, any Horizontal Improvements, any Construction on the Premises, any Party's rights, obligations, or remedies under this Lease, or any Transfer, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

3.96 Lease Impairment. Any of the following, whether expressly provided for in this Lease or resulting from any future agreement between Landlord and Tenant or from the unilateral action of either: (a) a Modification of this Lease, in whole or in part; (b) subordination of this Lease to any Fee Security Instrument or other encumbrance on the Fee Estate; (c) making or material modification of any encumbrance affecting the Fee Estate that is senior in recording priority to this Lease; (d) Tenant's consent (or failure to object) to: (i) any of the foregoing; (ii) any Bankruptcy Sale of the Fee Estate; (iii) any other matter of a material nature requiring Tenant's consent under this Lease; (e) delivery of any Notice that impairs or may impair, or purports to limit the exercise

of, any Permitted Leasehold Lender's rights and remedies under its Permitted Leasehold Security Instrument or this Lease; or (f) Tenant's exercise of any right to treat this Lease as terminated under 11 U.S.C. § 365(h).

3.97 Lease Memorandum. The Memorandum of Ground Lease recorded with the County Recorder against the Premises in the form of Attachment 12 to the DDA.

3.98 Lease Year. Each of: (a) the period from the Commencement Date through the immediately following, December 31; (b) every subsequent period of twelve (12) calendar months beginning on January 1 and ending on the immediately following December 31 during the Term; and (c) the period from the last January 1 during the Term through the Expiration Date. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," "Lease Year 3," and so on.

3.99 Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms of this Lease.

3.100 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding involving this Lease or the other Party; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested of a Party by Notice from the other Party; (d) requirement under Law or request by Notice from a Party that such Person or its employees act as a witness in any proceeding regarding this Lease or the requesting Party; or (e) review or approval requested of a Party by Notice from the other Party.

3.101 Lender. A Fee Lender or a Permitted Leasehold Lender, as applicable, and its successors and assigns permitted under this Lease.

3.102 Lender Protections. For any Lender, all rights, protections, and privileges of such Lender under this Lease, if any, including: (a) any right to receive Notices or to cure Defaults (including, in the case of a Permitted Leasehold Lender, all Permitted Leasehold Lender's Cure Rights); (b) in the case of a Permitted Leasehold Lender, any requirement for Permitted Leasehold Lender's Consent and all provisions for a New Lease; and (c) all other rights, remedies, protections, privileges, and powers of such Lender and anyone claiming through or under such Lender, including (in the case of a Permitted Leasehold Lender) any New Tenant and any Post-Foreclosure Tenant.

3.103 Limited Duration Events. Defined in **EXHIBIT M**, Section 5.3.

3.104 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

3.105 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

3.106 Maintenance Deficiency. Defined in Section 10.3

3.107 Maintenance Standard. Defined in Section 10.1.

3.108 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date: (a) considered as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) considered as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value will be determined as if the Term were to continue until the Scheduled Expiration Date.

3.109 Master Development Area. The real property specifically described in **EXHIBIT R**.

3.110 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function and authority, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

3.111 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

3.112 Modify. Agree to, cause, make, or permit any Modification.

3.113 Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any amount of money, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Encumbrances under Section 15; or (d) obtain, replace, maintain, or pay premiums for (or give Landlord written evidence of) any insurance coverage or surety bond when and as this Lease requires.

3.114 Music Licensing Entity. Defined in **EXHIBIT E**, Section 5.

3.115 Naming Rights. Defined in **EXHIBIT D**.

3.116 NDA. A non-disturbance and attornment agreement, in recordable form, in substantially the form of **EXHIBIT T**, modified as necessary to reflect the parties and the nature and circumstances of the estates such NDA affects.

3.117 New Lease. A new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term, through and including the Scheduled Expiration Date, considered as if this Lease was not terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly states. Any New Lease will include all rights and privileges of Tenant under this Lease, but will not include any Tenant-Specific Obligations.

3.118 New Lease Delivery Date. The first date on which both New Tenant and Landlord have entered into (or are deemed to have entered into) a New Lease.

3.119 New Lease Option Period. If any Expiration Date occurs (except because of: (a) the Scheduled Expiration Date; (b) a Casualty; or (c) a Substantial Condemnation), a period beginning on such Expiration Date and ending three (3) months after Landlord Notifies all Permitted Leasehold Lender(s) of such Expiration Date. The New Lease Option Period will be tolled and extended: (i) during any Bankruptcy Proceeding affecting Landlord or Tenant to the extent such Bankruptcy Proceeding prevents exercise of the New Lease option or entry into the New Lease by the Permitted Leasehold Lender entitled to a New Lease at the time under this Lease; (ii) during any period when the right of the Permitted Leasehold Lender entitled to a New Lease at the time, under this Lease, to require Landlord to enter into a New Lease is otherwise materially restricted or impaired, other than because of such Permitted Leasehold Lender's act or omission; and (iii) for thirty (30) days after the conclusion of an event described in either clause "(i)" or "(ii)" of this Section 3.115. All Permitted Leasehold Lenders, considered as a group, will have only a single New Lease Option Period. No individual Permitted Leasehold Lender will have a separate or sequential New Lease Option Period.

3.120 New Tenant. Either: (a) the Permitted Leasehold Lender that is entitled to and requests (or obtains) a New Lease; or (b) such other Tenant under a New Lease as such Permitted Leasehold Lender will designate by Notice to Landlord, which successor Tenant will be subject to Landlord's prior written consent, in Landlord's reasonable discretion. Any New Tenant will have all the same rights and obligations of Tenant under this Lease, except as otherwise provided in this Lease and subject to the definition of a New Lease and the occurrence of the New Lease Delivery Date.

3.121 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of Tenant to perform any one of its obligations under this Lease, including not meeting any deadline in the Performance Schedule; (b) Tenant's failure to comply with any covenant, condition, restriction or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

3.122 Notice. Each approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices must be in writing and delivered in accordance with Section 33.

3.123 Notice of Completion. The notice described in and ascribed the same name in California Civil Code section 8182.

3.124 Notice of Default. Each Notice of a Default. A Notice of Default is not required to specify a cure period.

3.125 Notify. Give a Notice.

3.126 Park Completion Deadline. The outside date for completion of the particular Park in the Performance Schedule. [**NOTE TO DRAFT: THE PERFORMANCE SCHEDULE WILL NEED TO PRESCRIBE A TIMELINE FOR EACH PARK TO BE COMPLETED.**]

3.127 Parking Lot Rental. Defined in **EXHIBIT D**.

3.128 Parking Lot Usage. Defined in **EXHIBIT D**.

3.129 Parks. The 8.2 acres of defined areas throughout the Premises shown in the Specific Plan to be developed as park, including "The Green," "The Square," "The Plaza," "Paseo Greens," and "Paseo Greenways" (all as defined in the Specific Plan). "**Park**" refers, individually, to each distinct area shown in the Specific Plan as being developed as park.

3.130 Parks Management and Maintenance Requirements. The requirements in **EXHIBIT M**.

3.131 Parties. Collectively, Landlord and Tenant.

3.132 Party. Individually, Landlord or Tenant, as applicable.

3.133 Performance Schedule. The schedule for the performance of certain actions under this Lease by Landlord or Tenant in **EXHIBIT L**.

3.134 Permitted Exceptions. All the following matters: (a) all items shown in the Preliminary Report as an exception to coverage under the title insurance policy offered in the Preliminary Report; (b) all taxes not on rolls; (c) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (d) all Laws applicable to the Premises; (e) this Lease and the Lease Memorandum; (f) all Permitted Leasehold Security Instruments; (g) all existing Improvements on the Premises as of the Commencement Date; (h) all Applications made by Tenant or at Tenant's request relating to the Premises; (i) all Approvals relating to the Premises; (j) all matters consented to or otherwise caused by Tenant; (k) all documents or encumbrances expressly required or allowed to be recorded against the Leasehold Estate under this Lease or Law; or (l) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record, as of the Commencement Date.

3.135 Permitted Leasehold Lender. An Institutional Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord will not be bound by the assignment or change of address, unless and until each affected Permitted Leasehold Lender has given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be considered a Permitted Leasehold Lender or affect Landlord in any way. (Only the "lead" Institutional Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Institutional Lender may be replaced at any time upon Notice from that Institutional Lender, but only the designated lead Institutional Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender.)

3.136 Permitted Leasehold Lender's Consent. Any matter expressly referring to "Permitted Leasehold Lender's Consent" means Permitted Leasehold Lender's prior (or, at Permitted Leasehold Lender's option, simultaneous or subsequent) written consent to such matter. If this Lease requires Permitted Leasehold Lender's Consent for a particular matter, then Permitted

Leasehold Lender may only reasonably withhold consent; provided, however, Permitted Leasehold Lender will be entitled to withhold its consent in its sole discretion, if the matter: (i) materially increases or decreases Landlord's obligations under this Lease; (ii) materially increases or decreases Tenant's obligations under this Lease; (iii) eliminates or modifies any Lender Protections; or (iv) will result in a termination of this Lease. When no Permitted Leasehold Lender exists, references to Permitted Leasehold Lender's Consent will be disregarded. Nothing in this definition will require Landlord to obtain (or to confirm that Tenant obtained) any consent from any Permitted Leasehold Lender, except where this Lease expressly requires "Permitted Leasehold Lender's Consent."

3.137 Permitted Leasehold Lender's Cure. Subject to and in accordance with this Lease, any Permitted Leasehold Lender's: (a) actions taken to cure a Default, whether or not successful; or (b) cure of a Default.

3.138 Permitted Leasehold Lender's Cure Rights. All rights of each Permitted Leasehold Lender under this Lease to effectuate any Permitted Leasehold Lender's Cure.

3.139 Permitted Leasehold Security Instrument. Each Security Instrument: (a) encumbering only the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the "Statement of Priorities" (as it applies to Permitted Leasehold Lenders) and containing no provisions (and securing no other document containing any provisions) inconsistent with the "Statement of Priorities"; (c) held by an Institutional Lender; and (d) a copy of which is delivered to Landlord promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and Notice address.

3.140 Permitted Transfer. A Transfer, where following the Transfer, either Tenant, an Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, or an Unchanged Entity that has continuously owned an Equity Interest in another Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, continuously has Control over the Transferee, the Transferee is not a Prohibited Transferee, and Tenant is not released from liability under this Lease following the Transfer. If Tenant's Control over a Transferee ends or Control of an Unchanged Entity to which a Transfer is made changes, each such event will be considered a Transfer that is not a Permitted Transfer.

3.141 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

3.142 Plans. The plans and specifications for each Horizontal Improvements Phase prepared by Tenant's Architect that have received all necessary Approvals regarding the subject Horizontal Improvements Phase, submitted in both hard copy and such machine-readable format as is then customary in the architectural or engineering profession (as applicable) in the State, using naming conventions and other criteria reasonably approved or required by Landlord, including architectural or engineering plans (as applicable), elevations, and sections as reasonably required for the specific Horizontal Improvements Phase.

3.143 Post-Foreclosure Tenant. The following Persons: (a) any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including a Permitted Leasehold Lender; and (b) the direct and indirect successors and assigns of any Person identified in clause "(a)." Any Post-Foreclosure Tenant will have all the rights and obligations of Tenant under this Lease.

3.144 Pre-Approved Signs. Defined in Section 9.15.

3.145 Preliminary Report. The offer to issue an American Land Title Association leasehold title insurance policy attached to this Lease as **EXHIBIT K**.

3.146 Premises Control. For any Permitted Leasehold Lender, any of the following: (a) possession of the Premises by a receiver, trustee, or similar officer appointed in a judicial proceeding commenced by such Permitted Leasehold Lender; (b) possession as mortgagee-in-possession under an affirmative written election to become a mortgagee-in-possession; or (c) acquisition of the Leasehold Estate by a Post-Foreclosure Tenant through a Foreclosure Event initiated by such Permitted Leasehold Lender.

3.147 Premises Information. All studies and reports prepared by or on behalf of Tenant regarding the physical condition of or title to the Premises, including, without limitation, soils reports, geotechnical reports and surveys (not to include any proprietary information, internal communications, feasibility studies, financial analyses, proformas, tax returns, or any attorney-client privileged communications and documents).

3.148 Premises Reduction Date. As to each Development Parcel, the earliest of: (a) the date of the closing of a Vertical Ground Lease under the DDA regarding the affected Development Parcel; (b) the date which is ninety (90) days after the Construction Completion Date for the Horizontal Improvements required for Construction of Vertical Improvements on the particular Development Parcel; or (c) the Construction Completion Deadline for the Horizontal Improvements required for Construction of Vertical Improvements on the particular Development Parcel. As to Public Improvements to be Constructed by Tenant on the Premises for acceptance by Landlord, under its Governmental Authority (public streets, public utilities, public storm water improvements, or other improvements that will be part of a system owned or operated by Landlord under its Governmental Authority), the date on which Landlord accepts the Public Improvements under its Governmental Authority. As to Parks completed before the "Commencement Date" of the Entertainment Center Lease, the "Commencement Date" of the Entertainment Center Lease. As to Parks completed after the "Commencement Date" of the Entertainment Center Lease, the date that is thirty (30) days after the Park Completion Deadline for the particular Park.

3.149 Prevailing Wage Law. Defined in Section 13.

3.150 Prevailing Wage Determination. Each of the following events: (a) each determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) each determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) each administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776, or applicable Federal law; or

(d) each administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781, 1782, or applicable Federal law.

3.151 Prevailing Wages. Defined in Section 13.

3.152 Prohibited Encumbrance. Each lien, Security Instrument, mechanic's lien, easement, property interest, or other encumbrance recorded or asserted against the Premises that is not a Permitted Exception.

3.153 Prohibited Transferee. Each Person: (a) with whom Landlord is in litigation at the time a Transfer to the Person is proposed, made, or to be made exclusive of defendants in eminent domain litigation commenced by Landlord, under its Governmental Authority, where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (c) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (d) entitled to claim diplomatic immunity; (e) that is a domestic or foreign governmental entity; or (f) that is immune or may elect to be immune from suit under State or Federal law.

3.154 Property Insurance. Defined in **EXHIBIT F**.

3.155 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance and Builder's Risk Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

3.156 Public Improvements. All Horizontal Improvements intended to be owned or operated by Landlord, under its Governmental Authority, when their Construction is completed by Tenant, such as public streets or public utilities. [**NOTE TO DRAFT: PARTIES TO IDENTIFY ALL PUBLIC IMPROVEMENTS.**]

3.157 Quitclaim Deed. A quitclaim deed reasonably acceptable to Landlord conveying all of Tenant's right, title and interest in this Lease and the Leasehold Estate to Landlord.

3.158 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged

with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Building Equipment, or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed will be solely a tax liability of Tenant and will be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date will be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, will be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, will be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

3.159 Receipt Date. Defined in Section 33.

3.160 Recreational Value Points. Recreational value points under the scoring methodology outlined in the City of San Diego, California, Parks Master Plan adopted August 2021, Appendix D.¶

3.161 Rent. Collectively, all Base Rent, all Existing Arena Rent, and all Additional Rent.

3.162 Requesting Party. Defined in Section 37.

3.163 Residential Unit. Each individual multi-family residential rental unit within the Development.

3.164 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

3.165 Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

3.166 Restore. Accomplish a Restoration.

3.167 Revenue. All money, and the monetary value of property or services, received by Tenant from the use or occupancy of or the right to use or occupy any part of the Premises, including all revenue from or relating to money or other consideration paid or payable by Subtenants or Sub-Users. Revenue will be determined on a cash basis.

3.168 Scheduled Expiration Date. [**NOTE TO DRAFT: PARTIES TO INSERT SPECIFIC DATE; THIS DATE WILL CORRESPOND TO THE ANTICIPATED COMPLETION OF ALL HORIZONTAL IMPROVEMENTS UNDER THE PERFORMANCE SCHEDULE**].

3.169 SDMC. San Diego Municipal Code.

3.170 Security Fence. Defined in **EXHIBIT M**, Section 3.18.

3.171 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender or Fee Lender (as applicable), then all such security instruments so consolidated or restated will constitute a single Security Instrument. A Security Instrument may be either a Fee Security Instrument or a Permitted Leasehold Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

3.172 Security Plan. Defined in Section 9.6.1.

3.173 Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien priority position of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien priority position to the specified Security Instrument. Priority of liens will be determined under Section 29.1 titled "Priorities of Multiple Lenders." If only one Security Instrument of a particular type exists, then it will be the "Senior" Security Instrument of such type.

3.174 Sign. Any banner, pennant, flag, poster, sign, electronic reader board, decoration, marquee, awning, or similar device or advertising.

3.175 Specific Plan. The Midway Rising Specific Plan adopted by Landlord, under its Governmental Authority, effective [**TO BE DETERMINED**], and governing the Premises.

3.176 State. The State of California.

3.177 Statement of Priorities. A statement, in or relating to any Security Instrument, substantially in the form and containing all the provisions set forth in Sections 3.177(a) through 3.177(c) as applicable to Fee Security Instruments or Permitted Leasehold Security Instruments, respectively. Such statement reflects the definitions in this Lease. All such terms will be (deemed) modified in any Security Instrument as appropriate to reflect the definitions in such Security Instrument.

(a) *For Fee Security Instruments*. Any Fee Security Instrument attaches solely to the Fee Estate. Any Fee Security Instrument will be subject and subordinate to, and will not encumber or attach to or otherwise affect any of the following (and by accepting its Fee Security Instrument, each Fee Lender unconditionally and irrevocably subordinates and agrees to subordinate its Fee Security Instrument to all the following), unless and until the New Lease Option Period expires

without a Permitted Leasehold Lender entitled to request a New Lease requesting a New Lease: (i) this Lease, any New Lease, and the Leasehold Estate under either of them (whether held by Tenant, a Post-Foreclosure Tenant, or a New Tenant); (ii) any estate (including a Permitted Leasehold Security Instrument) directly or indirectly arising from this Lease or any New Lease; (iii) Tenant's, Post-Foreclosure Tenant's, New Tenant's, and any Permitted Leasehold Lender's rights and remedies under this Lease, whether accruing before or after any Foreclosure Event under a Fee Security Instrument; and (iv) any Modification of any of the items described in the foregoing clauses "(i)" through "(iii)," whether or not Fee Lender joins in or consents to it. Upon any Foreclosure Event under a Fee Security Instrument, the resulting owner of the Fee Estate will succeed only to the Fee Estate, subject to the items described in clauses "(i)" through "(iv)."

(b) *For Permitted Leasehold Security Instruments*. Any Permitted Leasehold Security Instrument attaches solely to the Leasehold Estate. A Permitted Leasehold Security Instrument does not encumber the Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Lender's interest in the Fee Estate, or any reversionary interest. Any Foreclosure Event under a Permitted Leasehold Security Instrument will not convey, transfer, extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease), any Fee Security Instrument, or the rights or remedies of any Fee Lender as against Landlord or the Fee Estate. Nothing contained in this clause "(b)" will impair a Permitted Leasehold Lender's Cure Rights or rights to a New Lease, as provided in this Lease. This clause "(b)" will be subject to any written agreements by and among a Permitted Leasehold Lender and a Fee Lender, except to the extent that any such agreement would cause, allow, or result in a Permitted Leasehold Security Instrument becoming a Fee Security Instrument or otherwise encumbering the Fee Estate.

(c) *For All Security Instruments*. Any Security Instrument is subject to all terms of this Lease. Notwithstanding anything to the contrary in any Security Instrument, no Lender may receive any Loss Proceeds, except to the extent (and under the conditions) payable to such Lender (or its mortgagor) under this Lease. Upon any Foreclosure Event under any Security Instrument, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) will have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease, unless and until such owner signs, acknowledges, and delivers to the other Party to this Lease an instrument, in recordable form, by which such owner assumes all obligations of Landlord or Tenant under this Lease, as applicable, subject to the other terms of this Lease. Such instrument of assumption will be delivered: (i) promptly following consummation of the Foreclosure Event; and (ii) in any event, before taking possession of the Premises or exercising any rights under this Lease.

3.172 Sublease. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length: (a) providing a Person other than Tenant with exclusive use or occupancy of any part of the Premises; (b) sub-subleasing or any further level of subleasing any part of the Premises; or (c) Modification or assignment of any of the agreements described in clauses "(a)" or "(b)" of this Section 3.172.

3.173 Sublease Update Package. Defined in Section 26.6.2.

3.174 Sub-Rent. All money due and payable by Subtenants under Subleases or Sub-Users under Use Agreements.

3.175 Sub-Rent Payment Notice. A Notice from Landlord to any Subtenant or Sub-User, directing such Subtenant or Sub-User to pay its Sub-Rent to Landlord and not to Tenant.

3.176 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination (with Permitted Leasehold Lender's Consent) puts the remainder of the Premises in an Uneconomic condition.

3.177 Subtenant. Each Person having exclusive use or occupancy of part of the Premises under any Sublease.

3.178 Subtenant/Sub-User Insurance Requirements. The insurance coverages and requirements that each Subtenant and Sub-User must obtain and comply with as set forth in **EXHIBIT Q**.

3.179 Sub-User. Each Person authorized to use part of the Premises under a Use Agreement.

3.180 Swap Meet Usage. Defined in **EXHIBIT D**.

3.181 Telecom Usage. Defined in **EXHIBIT D**.

3.182 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

3.183 Tenant. Midway Rising, LLC, a Delaware limited liability company, and its permitted Transferees under this Lease.

3.184 Tenant Insurance Requirements. Defined in **EXHIBIT F**, Section 2.

3.185 Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge about operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is [**TO BE DETERMINED**].

3.186 Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

3.187 Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or each owner of an Equity Interest in Tenant.

3.188 Tenant-Specific Default. Any Default that: (a) is not reasonably susceptible of cure by a Permitted Leasehold Lender, such as (to the extent, if any, that it actually constitutes a Default under this Lease) any Default resulting from a Bankruptcy Proceeding affecting Tenant; any prohibited change of management of Tenant; failure to deliver required financial information solely within Tenant's control; (b) by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates; or (c) consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance satisfying all the following criteria: (i) attaches only to the Leasehold Estate; (ii) is junior to the specific Permitted Leasehold Lender's Permitted Leasehold Security Instrument; and (iii) this Lease prohibits.

3.189 Tenant-Specific Obligation. Any obligation the breach of which would constitute a Tenant-Specific Default.

3.190 Tenant Team. Defined in **EXHIBIT D**.

3.191 Tenant's Architect. An architect or engineer (as applicable to the pertinent Construction) that is: (a) selected by Tenant; (b) not Affiliated with Tenant; (c) licensed as an architect or engineer (as applicable) in the State; and (d) reasonably qualified and experienced in designing and overseeing projects similar to the Horizontal Improvements for which they are retained. Tenant may replace Tenant's Architect, at any time, with a different architect satisfying the requirements of the first sentence of this Section 3.190 by Notice to Landlord.

3.192 Third Person. Any Person that is not a Party, an Affiliate of a Party, a Landlord Party, or a Tenant Party.

3.193 Transfer. Each of the following events, whether occurring by operation of Law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease or the Leasehold Estate; (b) any Equity Interest Transfer relating to Equity Interest(s) in Tenant; or (c) any transaction that is in substance equivalent to any of the transactions described in clause "(a)" or "(b)" of this Section 3.193. An Equity Interest Transfer described in clause "(b)" or "(c)" of this Section 3.193 or otherwise, is considered a Transfer by Tenant even though Tenant is not technically the transferor. A "Transfer" will not, however, include Tenant making a Permitted Leasehold Security Instrument or any of the following Equity Interest Transfers (provided that the other Party to this Lease receives Notice of the Permitted Leasehold Security Instrument or Equity Interest Transfer at least fifteen (15) days before the Permitted Leasehold Security Instrument or Equity Interest Transfer is effective): (i) a mere change in form of ownership, with no material change in beneficial ownership, that constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a collateral pledge of the Equity Interests in Tenant to a Permitted Leasehold Lender as security for a loan allowed under this Lease; or (iv) issuance of previously unissued or new Equity Interests in Tenant that increases the amount of outstanding Equity Interests in Tenant by less than ten percent (10%).

3.194 Transferee. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Tenant through an Equity Interest Transfer or acquiring all or any portion of Tenant's interest in this Lease or the Premises through a Transfer. A Prohibited Transferee cannot be a "Transferee."

3.195 Unavailable Bond. Defined in Section 3.33.

3.196 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes

described above in this Section 3.195 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

3.197 Unchanged Entity. A Person that is not a natural Person that has not had a change in Control over that Person occur since the Commencement Date. ¶

3.198 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to required parking facilities or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

3.199 Use Agreement. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length relating to either the Existing Arena or future Parks Constructed as part of the Horizontal Improvements: (a) allowing any Person other than Tenant to use part of the Existing Arena or a Park for Permitted Uses consistent with the character and quality of the Premises; (b) not providing exclusive possession of any part of the Premises and not constituting or creating an interest or estate in land; (c) requiring the Sub-User to carry all the insurance required under the Subtenant/Sub-User Insurance Requirements; and (d) with a duration (including all options or renewal terms) that ends on or before the day before the Existing Arena Closure Date for each agreement related to the Existing Arena or on or before the Premises Reduction Date for the particular Park for each agreement related to a Park. Subject to the terms of this Lease, examples of Use Agreements include: (i) event related or short term use agreements, such as licenses for suites, clubs, premium areas, and event/program spaces; (ii) vendor, concession, and service agreements, including maintenance or repair services, food and beverage, merchandise, security, cleaning, parking, ticketing, technology, and other operations-related contracts; (iii) sponsorship, naming rights, advertising, branding, media, and promotional agreements, including related space or asset licenses; or (iv) non-exclusive or non-possessory licenses for a part of the Existing Arena or a Park.

3.200 Use Tax. Defined in Section 11.9.1.

3.201 Vertical Ground Lease. Defined in Section 181 of Attachment 1 to the DDA.

3.202 Vertical Improvements. Defined in Section 187 of Attachment 1 to the DDA.

3.203 Vesting Tentative Map. Vesting Tentative Map No. 3258589 for Midway Rising, San Diego, California, approved by Landlord, under its Governmental Authority, and Recorded, including changes to such map approved by Landlord under the DDA and under its Governmental Authority and applicable Law that are Recorded.

4. **LEASING AND HIRING**. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term, upon the terms of this Lease and subject to the Permitted Exceptions. As of the Commencement Date, with the exception of this Lease, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date.

5. **QUIET ENJOYMENT**. Landlord covenants that Tenant will and may peaceably and quietly enjoy the Premises, without hindrance or disturbance by or from Landlord, subject to the terms of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to and does not limit Landlord's Governmental Authority.

6. **PREMISES DELIVERY CONDITION**.

6.1 Delivery. Landlord will deliver possession of the Premises to Tenant on the Commencement Date, subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (C) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (D) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION

AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD WILL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES THE LANDLORD PARTIES AND THEIR REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

_____
Initials of Authorized
Tenant Representative(s)

6.6 Acquisition of Subsequent Interest. ALL PERSONS ACQUIRING ANY INTEREST IN THE PREMISES FROM OR THROUGH TENANT, BY ACCEPTING SUCH INTEREST, WILL BE DEEMED TO HAVE AGREED TO ALL THE ACKNOWLEDGMENTS, AGREEMENTS, WAIVERS, AND RELEASES CONTAINED IN THIS SECTION 6.

6.7 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant will disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915.

6.8 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for performance of any associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to asbestos remediation are fulfilled. Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's improvements, alterations, or repairs to the Improvements, or associated asbestos removal, management, remediation, or containment.

6.9 Disclosure About Petroleum and Other Hazardous Substances. Tenant acknowledges that: (i) portions of the Premises and the Improvements may contain Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises and any associated chemical seepage; and (ii) one or more underground storage tanks may exist on or under the Premises related to the historical operation of a gasoline station and car wash facility on a portion of the Premises. Tenant acknowledges receipt of written notice from Landlord of the presence of any such Hazardous Substances and underground storage tanks in accordance with Law.

6.10 Remediation of Petroleum and Other Hazardous Substances. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for all the following: (i) performance of any associated removal, management, remediation, or containment of all Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises; (ii) performance of any associated removal, management, remediation, or containment of all underground storage tanks related to the historical operation of a gasoline station and car wash facility on a portion of the Premises; and (iii) all costs associated with the activities described in clauses (i) and (ii) of this Section 6.10. All such removal, management, remediation, or containment activities will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to all such removal, management,

remediation, or containment activities are fulfilled. Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's removal, management, remediation or containment of Hazardous Substances or underground storage tanks under this Section 6.10.

6.11 Pre-Existing Improvements. Until their demolition as part of the Horizontal Improvements Phase for the area of the Premises on which they are located, Tenant will secure against trespassing, vandalism, and waste all Improvements on the Premises as of the Commencement Date.

7. RENT PAYMENT.

7.1 Base Rent and Existing Arena Rent. Tenant will pay Base Rent and Existing Arena Rent to Landlord as provided in **EXHIBIT D**.

7.2 Additional Rent. In addition to Base Rent and Existing Arena Rent, Tenant will pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant will pay all Additional Rent prior to delinquency.

7.3 Delivery of Rent. Rent payable by Tenant to Landlord is payable to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, electronic funds transfer, or other method designated by Landlord in a Notice to Tenant, all at Landlord's election, in its sole and absolute discretion, to such account or address as Landlord designates by Notice to Tenant from time to time. Rent payments sent by mail must be sent to Landlord by first-class mail through the United States Postal Service with all postage pre-paid. On the Commencement Date, the addresses for mailing or personally delivering Rent payments to Landlord are as follows:

By first-class mail through the United States Postal Service with all postage pre-paid and addressed to:	By hand delivery to:
The City of San Diego Office of the City Treasurer P.O. Box 129030 San Diego, California 92112-9030	Office of the City Treasurer Civic Center Plaza 1200 Third Avenue, First Floor San Diego, California 92101

7.4 Required Payment Information. Tenant will include Landlord's customer account number for Tenant with each Rent payment. Tenant's failure to include its Landlord customer account number will not, by itself, be a Default, but may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all late payment charges or administrative fees under Section 31.6 arising from its failure to include its Landlord customer account number with each Base Rent or Existing Arena Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Checks only constitute payment when received if the check is honored by the bank on which it is drawn. Tenant assumes all risk of loss and responsibility for late payment charges or administrative fees under Section 31.6 if payments are sent by mail.

7.5 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant will make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.6 No Offsets. Tenant will pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.7 No Allocation to FF&E. No Rent is allocable to any FF&E or Construction.

8. ADDITIONAL PAYMENTS BY TENANT; TAXES.

8.1 Landlord's Net Return. This Lease will constitute an absolutely "net" lease. The Rent will give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant will pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any way connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Restoration or Construction affecting, the Premises, except: (a) Landlord's administrative expenses; or (b) liability for any Hazardous Substance Discharge to the extent caused directly by Landlord.

8.2 Real Estate Taxes. Tenant will pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant will also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant will within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant will pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant will also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant will pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code sections 11911, *et seq*., with respect to entry into this Lease, each Modification to this Lease, any extension of this Lease, each Transfer, the Lease Memorandum, any Modification to the Lease Memorandum, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate or Fee Estate Ownership. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes, Tenant agrees to pay all increases in Real Estate Taxes resulting from a Transfer or other change in ownership of the Leasehold Estate. Landlord will pay all increases in Real Estate Taxes resulting from a change in ownership of the Fee Estate, except upon a transfer or conveyance of the Fee Estate to Tenant or an Affiliate of Tenant, in which event Tenant or its Affiliate will pay all such increases in Real Estate Taxes.

8.6 Utilities. Tenant will arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises will be installed underground and will be used for Tenant's operations only, except to the extent that the utilities are part of a larger system, such as sewer mains, water mains, storm drains, or electrical distribution systems, that extends beyond the Premises to provide public services to properties located outside of the Premises. Except when furnishing customary fee-based public utilities or services for the Premises when acting under its Governmental Authority, Landlord will have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord will not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune from such liability under applicable law and subject to any defense to such liability available to Landlord.

8.7 Unauthorized Use Charge. Tenant will pay Landlord one hundred percent (100%) of the Revenue, without any deduction, credit, or set-off, from any use of the Premises during the Term that is not a Permitted Use within thirty (30) days after Tenant receives the Revenue. Nothing in this Section 8.7 or Landlord's acceptance of any payment under this Section 8.7 is intended to authorize any use of the Premises that is not a Permitted Use, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

9. **USE**.

9.1 Permitted Uses. Tenant will only use the Premises during the Term for the Permitted Uses in compliance with Law and this Lease and no other uses.

9.2 Parks. Tenant shall be responsible for management and maintenance of the Parks in accordance with the Parks Management and Maintenance Requirements.

9.3 Premises Operation. Tenant will operate the Premises in a manner that will provide decent, safe, and sanitary facilities to all users of the Premises during the Term and will comply with all the provisions of this Lease and all applicable Law. Tenant will furnish all equipment and materials necessary for the operation of the Premises in conformity with this Lease at Tenant's sole cost and expense. Tenant will keep the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant will be solely responsible for operation of the Premises. Landlord will have no responsibility for operation of the Premises. Until Tenant ceases normal operations at the Existing Arena to prepare for its demolition, Tenant will operate the Existing Arena in accordance with the requirements of this Section 9 and **EXHIBIT E**. If any conflict exists between the provisions of this Section 9 and **EXHIBIT E** regarding the operation of the Existing Arena, the provisions of **EXHIBIT E** will control.

9.4 Competent Management. Tenant will provide competent management of the Permitted Uses to Landlord's reasonable satisfaction. For the purposes of this Section 9.4 the following terms are defined:

9.4.1 “Competent management” means management practices generally considered acceptable within Tenant’s industry for the management and operation of activities substantially similar to the Permitted Uses and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner.

9.4.2 “Fiscally responsible manner” means in accordance with GAAP consistently applied and absent financial malfeasance.

9.5 Trash and Refuse. Tenant will, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers will not be located outside the Premises. Tenant will contract to ensure that refuse containers are emptied on a regular basis and will prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant will contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.6 Security and Safety. Tenant will bear sole responsibility for the security and safety of the Premises during the Term, including for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and safety. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the security and safety of the Premises, at Tenant’s sole cost and expense. Landlord has no obligation to provide security or safety staffing or resources for the Permitted Uses or the Premises during the Term.

9.6.1 *Security Plan.* Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant will meet with each other and all other tenants of the Master Development Area in good faith to develop, review, and update a strategic plan governing security and safety operations for the Premises, the Master Development Area, and other areas affected by the Permitted Uses (“**Security Plan**”). The Security Plan is intended to address coordination with public safety agencies; coordination among Master Development Area tenants; delineation of responsibilities for interior, exterior, and perimeter security; Existing Arena and Entertainment Center event-day and non-event-day security operations; ingress and egress procedures for Master Development Area tenants, subtenants, patrons, staff, and emergency responders; crowd-management strategies tailored to anticipated attendance and event type; deployment of security technology and communications systems; and any requirements associated with conditional use permits or other Approvals. Tenant will be solely responsible for implementing its obligations under the Security Plan. Landlord will have no responsibility for implementing the Security Plan. Any Landlord public safety support or coordination, under Landlord’s Governmental Authority, relating to security of the Premises or any other part of the Master Development Area will be provided, if at all, in Landlord’s sole discretion. The Parties acknowledge that security needs for large-scale venues and in the areas immediately surrounding such venues evolve over time and may vary based on event type, anticipated attendance, and industry standards. Accordingly, the Security Plan will be updated as necessary to reflect evolving best practices, changes in Law or Approvals, and operational experience at the Premises, within the Master Development Area, and within other areas affected by the Permitted Uses. Nothing in this Section 9.6.1: (a) limits Tenant’s obligation to provide security for the Premises under this Lease; (b) obligates Tenant to provide security or public safety services outside the scope of

Section 9.6 or the Security Plan; (c) limits any authority of Landlord's public safety personnel under law; or (d) limits Landlord's Governmental Authority.

9.7 Parking. Tenant will bear sole responsibility for parking operations at the Existing Arena. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the parking operations at the Existing Arena, at Tenant's sole cost and expense. Landlord has no obligation to provide staffing or resources related to parking operations at the Existing Arena during the Term. Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant shall meet with each other and all other Master Development Area tenants in good faith to develop, review, and update a strategic plan governing parking operations for the Premises and the Master Development Area and transportation services supporting the Premises, the Master Development Area, and surrounding areas. The strategic plan is intended to address matters such as event day and non-event day parking operations, ingress and egress routes for vehicles and pedestrians, coordination with public safety and transit agencies, potential street or lane closures for games or events, traffic circulation strategies, designated loading and vendor access points, marked and signaled crosswalks where appropriate, and directional signage and wayfinding improvements designed to enhance the experience of patrons and the surrounding community. Tenant shall be responsible for coordinating its parking operations with other Master Development Area tenants to the extent necessary to address parking impacts from planned events within the Master Development Area. Landlord has no obligation under this Lease, or any other Lease with a Master Development Area tenant, to ensure that Tenant's parking operations on the Premises are not impacted by planned events within or outside the Master Development Area.

9.8 Public Use. The general public will have access to the portions of the Premises that Tenant opens to the general public during Tenant's normal hours of operation. Tenant will not wholly or permanently exclude the general public from the portions of the Premises that Tenant customarily opens to the general public during Tenant's normal hours of operation. Tenant may develop reasonable restrictions for the general public's use of such portion of the Premises. This Section 9.8 does not apply to the Parks, which are subject to the Parks Management and Maintenance Requirements.

9.9 Limitation on Construction. Except for the Horizontal Improvements (including demolition necessary to construct the Horizontal Improvements), Tenant will not perform any Construction on or related to the Premises that is not Restoration or maintenance required to be performed by Tenant under this Lease without Landlord's prior written approval, which may be given or withheld in Landlord's sole and absolute discretion.

9.10 Continuous Operation of Existing Arena. Other than during the occurrence of an Unavoidable Delay preventing operation of the Existing Arena or during a reasonable closure of the Existing Arena for Restoration following a Loss (other than an Immaterial Loss), Tenant will operate the Existing Arena, diligently and continuously and without interruption during normal hours of operation until the Existing Arena Closure Date with the intent of reasonably maximizing Existing Arena Rent and the ticket fee payments under Section 3.7 of **EXHIBIT D**. Tenant will Notify Landlord in advance of any closure of all or any part of the Existing Arena that will continue for more than one week (other than in the event of an emergency, in which case Tenant will Notify Landlord within two (2) Business Days following such emergency arising).

9.11 Continuous Operation of Parks. Other than during the performance of Construction of the Parks and the occurrence of an Unavoidable Delay preventing operation of a particular Park or during a reasonable closure of the particular Park for Restoration following a Loss (other than an Immaterial Loss), Tenant will operate the Parks, diligently and continuously and without interruption during normal hours of operation until the occurrence of the Premises Reduction Date for the particular Park. Tenant will Notify Landlord in advance of any closure of all or any part of a Park that will continue for more than one week (other than in the event of an emergency, in which case Tenant will Notify Landlord within two (2) Business Days following such emergency arising).

9.12 Abandonment. Tenant will not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term, except on each Premises Reduction Date under the express terms of this Lease providing for a reduction of the Premises. Reasonable temporary closures during the occurrence of an Unavoidable Delay preventing operation of the Premises or during a Restoration following a Loss (other than an Immaterial Loss) will not be considered an abandonment, vacation, or surrender of the Leasehold Estate.

9.13 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5, except as specified in that Article. Specifically, Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound exceeding the sound level limits in SDMC Chapter 5, Article 9.5, Division 4, except as allowed in compliance with SDMC Chapter 5, Article 9, Division 6, or a "Special Event Permit" issued under SDMC Chapter 2, Article 2, Division 40. [**NOTE TO DRAFT: REFERENCE TO SDMC CHAPTER 5, ARTICLE 9, DIVISION 6 IS CONTINGENT ON ADOPTION OF THIS NEW MUNICIPAL CODE PROVISION BY THE CITY COUNCIL AND CONFIRMATION OF THE MUNICIPAL CODE REFERENCE.**]

9.14 Nuisance. Tenant will not itself and will not allow any other Person to use the Premises for any unlawful purpose or to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance under Law or a violation of Law.

9.15 Signs. Notwithstanding anything to the contrary in this Lease, Tenant shall comply with the SDMC requirements relating to Signs on the Premises, at all times, except for deviations permitted by the Specific Plan. Other than in connection with the Existing Arena, Tenant will have the sole and exclusive right, throughout the Term of this Lease, to display, sell, license, or otherwise exploit all advertising Signs and sponsorship Signs, subject to compliance with Law. Notwithstanding anything to the contrary in this Lease, all Signs must not (a) be obscene; (b) violate Law; or (c) contain racial slurs, obscenities, or display products or messages of an explicit sexual nature. The following Signs are "**Pre-Approved Signs**": (i) Signs located inside the Horizontal Improvements and not visible outside of the Horizontal Improvements; (ii) Signs required by Law; or (iii) Signs that are consistent with a Premises signage plan approved by Landlord in its sole discretion ("**Approved Signage Plan**"). If there is no Approved Signage Plan, only Signs described in clauses "(i)" or "(ii)" of the immediately preceding sentence will be Pre-Approved Signs. Pre-Approved Signs may be placed on the Premises without any further Landlord approval after Landlord's approval of the Approved Signage Plan. No Sign, other than a Pre-Approved Sign, may be placed on the Premises without Landlord's prior written approval in each

instance, which approval may be given or withheld in Landlord's sole discretion. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense, unless such removal is expressly waived in a Notice from Landlord to Tenant. Tenant will comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant will remove all unauthorized Signs at Tenant's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove all unauthorized Signs within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign(s) at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.15, Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.15 that is not paid within fifteen (15) days after Notice to Tenant of such amount will accrue Default Interest from the date incurred until paid. This Section 9.15 does not apply to the Existing Arena, which is subject to the sign requirements in **EXHIBIT E**.

9.16 No Artist's Rights. Tenant will not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.17 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable about this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by reasonable advance Notice to Tenant.

9.18 Compliance with Law. Tenant will, during the Term, at Tenant's sole cost and expense, in all material respects: (a) comply with all Laws and Permitted Exceptions; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord, under its Governmental Authority, or any other Government under the authority of current or future Law.

10. MAINTENANCE.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant will during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or Restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. Tenant will remove trash and debris from the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises and maintain all such areas in a reasonably clean condition. Landlord has no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this

Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises comparable with facilities of similar age, type and use. Tenant's obligation to maintain the Premises described in the immediately preceding sentence will include, all at the sole cost and expense of Tenant: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as will be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping; and (h) maintaining all Parks in accordance with the Parks Management and Maintenance Requirements. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "Maintenance Standard." Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant will remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Tenant's receipt of Notice of the Maintenance Deficiency, Landlord will have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 will be reimbursed to Landlord by Tenant within thirty (30) days after Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements will be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord will have the right (but no obligation) to enter the Premises and remove the graffiti. All money expended by Landlord for the removal of graffiti from the Premises under this Section 10.4 will be reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

11. HORIZONTAL IMPROVEMENTS.

11.1 Horizontal Improvements Phases Completion. Tenant will not commence demolition or removal of then existing Improvements, excavation, or any other substantial on-site or off-site physical element of any Horizontal Improvements Phase, unless and until Tenant satisfies the Construction Commencement Conditions for such Horizontal Improvements Phase. The Parties acknowledge that all Construction Commencement Conditions for Construction of the first Horizontal Improvements Phase were satisfied prior to the Commencement Date as a condition to the Horizontal Ground Lease Closing (defined in the DDA) for this Lease under the DDA. Tenant will cause the Construction Completion Date for each Horizontal Improvements Phase, to occur on or before the Construction Completion Deadline for the particular Horizontal Improvements Phase. Tenant is solely responsible for payment of all hard and soft costs of Construction of the Horizontal Improvements.

11.2 Park Completion. For Parks to be constructed within the applicable Horizontal Improvements Phase, Tenant will not commence demolition or removal of then existing Improvements, excavation, or any other substantial on-site or off-site physical element of any Horizontal Improvements Phase, unless and until Tenant: (a) satisfies the Construction Commencement Conditions for such Park Construction for the Parks to be constructed in the applicable Horizontal Improvements Phase; and (b) receives Notice from Landlord that the Parks to be constructed in the applicable Horizontal Improvements Phase, together with the Parks constructed in any previous Horizontal Improvements Phases, satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the applicable Horizontal Improvements Phase, and any Horizontal Improvements Phase previously completed or being Constructed, consistent with the phasing thresholds specified in Section 11.7.2 of this Lease. Tenant will cause the Construction Completion Date for each Park to occur on or before the Park Completion Deadline for the particular Park. Tenant will Construct each Park in accordance with this Lease, the Development Conditions, and the Park Plans (defined in the DDA) approved by Landlord under the DDA and in compliance with Law and all Approvals.

11.3 Project Labor Agreement Certification. Tenant will cause its General Contractor (including Tenant, if Tenant is a General Contractor) for Construction of each Horizontal Improvements Phase to enter into and comply with the terms of a project labor agreement under the terms of that certain Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022. Tenant will deliver to Landlord a certification in substantially the form of **EXHIBIT S** signed by an authorized representative of the San Diego County Building & Construction Trades Council certifying that Tenant's General Contractor for Construction of each Horizontal Improvements Phase has entered into the project labor agreement required under this Section 11.3, within fifteen (15) days after the General Contractor enters into the agreement.

11.4 Assignment of Premises Information, Plans, and Approvals. If any Early Termination Event occurs, then: (a) the Premises Information, all Plans, and all Approvals related to the Development Parcels affected by the Early Termination Event will be deemed assigned to Landlord, without the need for signature of any additional documents; (b) within twenty (20) days after Notice from Landlord and at no cost to Landlord, Tenant will deliver or cause to be delivered to Landlord all Premises Information, all Plans, and documentation of all Approvals; and (c) Tenant will, if requested by Landlord, sign and deliver such other documents as Landlord may reasonably request, to further document the assignment to Landlord of the Premises Information, all Plans, and all Approvals. Tenant's delivery of the Premises Information and all Plans to Landlord will be without Tenant's representation or warranty of any kind. Tenant will take such reasonable actions and make such payments as may be necessary to preclude any Claim against the Landlord Parties or the Premises for any amounts owing by Tenant prior to the date of the Early Termination Event. Tenant will Indemnify the Landlord Parties against all Claims arising from any actual or alleged failure of Tenant to take any action or make any payment required by the immediately preceding sentence.

11.5 Mutual Cooperation. On and after the date of any Early Termination Event, each Party will Cooperate with the other Party to facilitate the other Party's (or its authorized designee's) completion of any Plans, effort to obtain any Approvals, and Construction of any development project or Improvements on the Development Parcels owned or leased by the other Party. This duty to Cooperate will include: (a) providing the other Party (or its authorized designee) with reasonable physical access to any affected Development Parcel for the completion of studies and investigations; (b) granting easements or licenses to the other Party (or its authorized designee) for the installation, operation, and repair of necessary public utilities or public services; (c) dedicating public right-of-way contemplated by any Approvals, including the Vesting Tentative Map; and (d) signing and delivering any documents and authorizations to the other Party as may be reasonably necessary to facilitate the intent of this Section 11.5.

11.6 Construction Surety. Tenant will maintain the Construction Surety in full force and effect, until the Construction Completion Date for the Horizontal Improvements Phase. Tenant will not assign or encumber or attempt to assign or encumber any Construction Surety, except: (a) to the Transferee of all of Tenant's interest in this Lease through a Transfer that complies with this Lease; (b) to a Post-Foreclosure Tenant or a New Tenant, when either acquires all of Tenant's interest in this Lease; or (c) to a Permitted Leasehold Lender as collateral for a loan secured by a Permitted Leasehold Security Instrument.

11.7 Plans. Landlord will have forty-five (45) days after receiving any Plans for any Horizontal Improvements Phase to Notify Tenant that such Plans do not comply with this Lease. If Landlord does not give such Notice within such forty-five (45) day period, then Landlord will have waived any right to assert that such Plans or any Construction performed substantially in compliance with such Plans do not comply with this Lease. Landlord approved certain Plans for the Construction of the first Horizontal Improvements Phase before the Commencement Date as a condition to the Horizontal Ground Lease Closing for this Lease under the DDA. If Tenant makes any material changes to any Plans (including any Plans approved by Landlord before the Commencement Date), excluding ordinary minor field changes, then Tenant will promptly deliver copies of such changes to Landlord for its approval in the same manner provided for approval of Plans in the first two sentences of this Section 11.7. Neither the retention of any Plans nor any other action Landlord takes regarding any Plans will constitute Landlord's opinion or representation on their sufficiency. Landlord's review or approval of any Plans under this Section 11.7 is solely in Landlord's proprietary capacity as a Party to this Lease and is separate from and in addition to any review or approval of such Plans by Landlord acting under its Governmental Authority. Tenant will reimburse Landlord for all costs and expenses (including Legal Costs) incurred by Landlord in reviewing any Plans under this Section 11.7 (exclusive of and in addition to Landlord's costs and expenses in reviewing such Plans under its Governmental Authority) for each integrated project or Application, within thirty (30) days following Notice of such costs and expenses. All such costs and expenses not reimbursed to Landlord by Tenant within such thirty (30) day period will accrue Default Interest from the date of the Notice of such costs and expenses, until paid in full.

11.7.1 Preparation and Review of Park Plans for Phases 2 and 3. Within the time specified in the Performance Schedule, Tenant shall submit Park Plans to the Landlord at the ninety percent (90%) design stage for the Parks to be constructed in the second and third Horizontal Improvements Phases so that Landlord may confirm whether the applicable Parks will provide a sufficient number of Recreational Value Points to satisfy the minimum required Parks Construction Recreational Value Points for Residential Units that will be supported by the applicable Horizontal Improvements Phase, consistent with the phasing thresholds specified in Section 11.7.2 of this Lease. Within the times specified in the Performance Schedule, Tenant will provide all information reasonably required for Landlord to determine the Recreational Value Points attributable to the Park Plans for the Parks being constructed in the second and third Horizontal Improvements Phases, and Landlord will Notify Tenant about Landlord's determination of the Recreational Value Points attributable to the Park Plans. Tenant shall not rely on Landlord's review of the Park Plans under this Section 11.7.1 for any purpose other than the Recreational Value Points provided by the Park Plans. This review is in addition to and does not replace any review required to be completed by Parks and Recreation staff (if any) as part of the City of San Diego, California, Development Services Department's permitting process.

11.7.2 Parks Construction Recreational Value Points Phasing. The minimum required Parks Construction Recreational Value Points phasing is as follows:

1.1.1 Construction of Parks worth a cumulative total of 153 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 1,064th Residential Unit Constructed in the Master Development Area;

1.1.2 Construction of Parks worth a cumulative total of 244 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 1,702nd Residential Unit Constructed in the Master Development Area;

1.1.3 Construction of Parks worth a cumulative total of 366 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 2,552nd Residential Unit Constructed in the Master Development Area;

1.1.4 Construction of Parks worth a cumulative total of 458 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 3,191st Residential Unit Constructed in the Master Development Area; and

1.1.5 Construction of Parks worth a cumulative total of 610 Recreational Value Points prior to issuance of a Certificate of Occupancy for the 4,000th Residential Unit Constructed in the Master Development Area.

11.8 Prosecution and Completion. To the extent such work is permitted by this Lease, if Tenant starts to demolish any Improvements on the Premises, or starts excavation, then Tenant will prosecute such work with reasonable diligence to completion. Tenant will with reasonable promptness and reasonable diligence commence, prosecute, and complete each Horizontal Improvements Phase in a good and workmanlike manner in compliance with Law, all Approvals, the Plans for the particular Horizontal Improvements Phase, the Performance Schedule, the Development Conditions, and this Lease.

11.9 Business Cooperation Program Participation. Tenant will be responsible for the following actions in connection with the Business Cooperation Program of the City of San Diego, California, as long as the program is in effect:

11.9.1 Exercise its right to obtain a California Department of Tax and Fee Administration ("**CDTFA**") sub-permit for the Premises and allocate all eligible Bradley-Burns Uniform Local Sales and Use Tax ("**Use Tax**") to the City of San Diego, California on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with all Construction on the Premises.

11.9.2 Ensure that the General Contractor and all other Persons performing Construction on the Premises exercise their right to obtain a CDTFA sub-permit and allocate all eligible Use Tax to the City of San Diego, California, on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with Construction on the Premises.

11.10 Approvals. Tenant will apply to each applicable Government (including Landlord acting under its Governmental Authority) for all Approvals required for Construction of each Horizontal Improvements Phase. Tenant will pay all Government fees (including those of Landlord acting under its Governmental Authority) necessary to obtain such Approvals.

11.11 Completion Deliveries. Within three (3) months after the Construction Completion Date for each Horizontal Improvements Phase, Tenant will obtain and give Landlord two (2) complete sets of "as-built" Plans and an "as-built" survey for the completed Horizontal Improvements Phase.

11.12 Tenant Attendance at Landlord Meetings. Tenant agrees to have one or more of its employees or consultants who are knowledgeable regarding this Lease and any Horizontal Improvements Phase planned, in progress, or recently completed, such that such Person(s) can meaningfully respond to Landlord or Landlord staff questions regarding the progress of such Horizontal Improvements Phase, attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by Landlord's staff, with reasonable advance Notice to Tenant.

12. **FINANCING PLAN**. Tenant's Construction of the Horizontal Improvements on the Premises must be financed as described in the Horizontal Improvements Financing Plan. All financing identified in the Horizontal Improvements Financing Plan for each Horizontal Improvements Phase shall have funded and Tenant shall have provided written evidence of such funding to Landlord before the Construction Commencement Date for the particular Horizontal Improvements Phase, along with satisfaction of all other terms of the Horizontal Improvements Financing Plan required to be satisfied regarding such financing or Horizontal Improvements Phase.

13. **PREVAILING WAGES**. [**NOTE TO DRAFT: THE APPLICABILITY OF THIS SECTION WILL BE DETERMINED UNDER SECTION 25 OF THE DDA.**] Tenant will cause all workers of Tenant or contractors or subcontractors of Tenant performing Construction or maintenance work on the Premises, including work performed during the design and preconstruction phases of Construction, such as inspection and land surveying work, to be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work, all as determined by the Director of the California Department of Industrial Relations ("**DIR**") under California Labor Code sections 1770 through 1785 (these wages are, collectively, referred to in this Lease as "**Prevailing Wages**"). Additionally, Tenant, all Subtenants, all Sub-Users, and anyone else performing Construction or maintenance work on the Premises, including work performed during the design or preconstruction phases of Construction, shall comply with all provisions of California Labor Code sections 1720 through 1861 (collectively, "**Prevailing Wage Law**") and **EXHIBIT H**.

14. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. Notwithstanding anything to the contrary in this Lease, all Improvements (exclusive of Public Improvements that have been accepted by Landlord, under its Governmental Authority, after their Construction by Tenant, or public right-of-way, public utilities, public storm water improvements, or other improvements located on the Premises on the Commencement Date that are or were part of a system owned or operated by Landlord, under its Governmental Authority or another Government or public utility), Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises (including the Existing Arena, various commercial buildings, and all associated Building Equipment) will, during the Term, be owned by, and belong to, Tenant. All benefits and burdens of ownership of such Improvements, Building Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations will be and remain in Tenant during the Term.

15. **PROHIBITED ENCUMBRANCES**.

15.1 Tenant's Covenant. Tenant will Notify Landlord of each Prohibited Encumbrance within twenty (20) days following Tenant's receipt of notice of such Prohibited Encumbrance. Tenant will, within thirty (30) days after receiving notice of a Prohibited Encumbrance (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Encumbrance), cause such Prohibited Encumbrance to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Encumbrance in good faith, Tenant may maintain an appropriate dispute of such Prohibited Encumbrance without payment, if Tenant records a bond complying with the provisions of California Civil Code section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Encumbrance. Tenant will, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Encumbrance, then Landlord will Notify Tenant.

15.2 Protection of Landlord. LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL WILL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT WILL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED ENCUMBRANCES.

15.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD WILL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT WILL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ALL CONSTRUCTION

OR OTHER WORK ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

16. **INSURANCE**. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, Construction of the Horizontal Improvements on the Premises, or the Permitted Uses, Tenant will maintain, at its sole expense, throughout the Term, all the insurance coverage described in the Tenant Insurance Requirements. Tenant will also require and cause each Subtenant and Sub-User to carry all the insurance coverage described in the Subtenant/Sub-User Insurance Requirements. Once each Lease Year, starting with Lease Year 3, either Party may initiate a review of this Lease's insurance requirements (either or both the Tenant Insurance Requirements or the Subtenant/Sub-User Insurance Requirements) to determine whether any required insurance coverage needs to be modified to protect the interests of Landlord or Tenant. Such an insurance review may be commenced by one Party Notifying the other Party of the commencement of such a review. The Receipt Date of a Notice initiating an insurance review will commence a sixty (60) day period during which Landlord and Tenant will negotiate in good faith regarding modifying the insurance coverage required under this Lease. Neither Party will unreasonably withhold, condition, or delay its consent to a requested modification in the insurance coverage required under this Lease.

17. **LOSSES AND LOSS PROCEEDS**.

17.1 Notice. If either Party becomes aware of any Loss, such Party will Notify the other Party of such Loss within a reasonable time.

17.2 Casualty. If any Casualty occurs after the Commencement Date, (a) no Rent will abate, and Tenant will Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant will be solely responsible for: (i) negotiating and adjusting all Property Insurance Proceeds regarding the Casualty, subject to the rights of Permitted Leasehold Lenders; and (ii) the costs of Restoration.

17.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease will terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant will settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, Tenant will not be required to obtain the consent of Landlord to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award will be paid to Depository under Section 17.6. For a Substantial Condemnation, subject to the rights of Lenders, Landlord and Tenant will allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

17.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

17.3.2 *Tenant's Costs*. To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

17.3.3 *Tenant's Claim*. Tenant will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

17.3.4 *Landlord's Claim*. Landlord will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

17.3.5 *Residual Claim*. If Landlord is the condemning authority, Tenant will receive the entire remaining Condemnation Award, and otherwise, Landlord will receive the entire remaining Condemnation Award.

17.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) will be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant will, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award will be distributed to Landlord and Tenant in accordance with Section 17.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

17.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent will abate under this Lease and this Lease will not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term will belong to Landlord. Otherwise, subject to the rights of Permitted Leasehold Lenders, Tenant will receive the Condemnation Award (to the extent attributable to periods within the Term).

17.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds will be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord will remit them to Depository. If a Loss is an Immaterial Loss, then subject to the terms of the Senior Permitted Leasehold Security Instrument on disbursement of Loss Proceeds for Restoration, Depository will release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository will retain the Loss Proceeds and pay them over to Tenant, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds will be paid to Landlord and Tenant as provided in Section 17.3. Depository will first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository will release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository will release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for

Restoration, Tenant will hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Encumbrance is filed against the Premises, Tenant will not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Encumbrance under Section 15.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant will nevertheless Restore at Tenant's sole cost and expense. Depository will not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord will determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

17.7 Continuation of Lease. Except as this Lease expressly provides, this Lease will not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease will exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, will continue unabated.

17.8 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor will be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease will be considered any type or form of Condemnation.

18. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant will not commit or suffer to be committed any waste of the Premises, Improvements, or Building Equipment. Tenant agrees to keep the Premises, Improvements, and Building Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Building Equipment, or FF&E. Tenant will immediately Notify Landlord of any waste affecting the Premises. If waste affecting the Premises arises from the Permitted Uses, at Landlord's election, in Landlord's sole and absolute discretion, Tenant will make, or cause to be made, full repair of the waste and Restore the Premises to its condition existing immediately prior to the waste. After Notice from Landlord electing to have Tenant repair or Restore the Premises, Tenant will commence repair or Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the date of Landlord's Notice. Tenant will complete all required repair or Restoration of the Premises within ninety (90) days after the date of Landlord's Notice electing to have Tenant repair or Restore the Premises. Tenant must obtain all Approvals required for repair or Restoration of all waste affecting the Premises.

19. **ENVIRONMENTAL CONDITIONS**. Tenant will not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant will Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following Tenant becoming aware of such Environmental Condition.

19.1 Remediation. If an Environmental Condition occurs, Tenant will remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant will take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

19.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant will remove all such Hazardous Substances from the Premises prior to the Expiration Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant will be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 19.2.

19.3 Reports. Tenant will deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant will also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

19.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be performed at Tenant's sole cost and expense. Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 19.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, will accrue Default Interest until paid.

20. **ACCESS AND INSPECTION**. Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible occurrence of an Environmental Condition; provided, however, no invasive testing will be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld or delayed. In entering the Premises, Landlord and its agents will not unreasonably interfere with Tenant's Permitted Uses of the Premises and will comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 20 will not entitle Tenant to any rights or remedies, except as expressly provided in this Section 20, and such entry will not constitute an actual or constructive eviction of Tenant from the Premises, nor will it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency. All Landlord representatives or agents who enter the Premises will identify themselves at the main entrance to the Premises and will always be accompanied by a Tenant representative while on the Premises. Tenant will make a Tenant representative available for this purpose during all regular

hours of operation for the Premises upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord will have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease, are made solely for Landlord's benefit, may be superficial and general in nature, and are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (ii) Tenant will not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

21. **INDEMNIFICATION**.

21.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant will Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises, including personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises; (b) Tenant's Construction of the Horizontal Improvements; (c) the wrongful intentional act or negligence of one or more Tenant Parties, Subtenants, or Sub-Users; (d) strict liability relating to the Tenant's use or occupancy of the Premises; (e) all Applications made by or at the request of one or more of the Tenant Parties, Subtenants, or Sub-Users; (f) all agreements that one or more of the Tenant Parties make with Third Persons regarding this Lease, the Horizontal Improvements, or the Premises; (g) all services, labor, material, or equipment supplied to, for, or on behalf of one or more of the Tenant Parties, Subtenants, or Sub-Users; (h) all workers' compensation claims by one or more employees or contractors of one or more of the Tenant Parties, Subtenants, or Sub-Users; (i) all Prevailing Wage Determinations, except to the extent prohibited by Law; (j) all Environmental Conditions occurring on or after the Commencement Date; (k) the existence of asbestos on or in the Premises or the Improvements; (l) all removal, management, remediation, or containment of Hazardous Substances or underground storage tanks on or affecting the Premises; and (m) one or more project labor agreements entered into under Section 11.3. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties exclude Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

21.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease will not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

21.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will survive the Expiration Date, until all actual or prospective Claims

subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

21.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

21.4.1 *Notice*. The affected Landlord Parties will Notify Tenant of the Claim within a reasonable time.

21.4.2 *Selection of Counsel*. Tenant will select legal counsel reasonably acceptable to the City Council. Even though Tenant will defend the Claim, each affected Landlord Party may, at its option and expense engage separate counsel to advise the affected Landlord Party regarding the Claim and its defense (except that Tenant will pay the Legal Costs of separate legal counsel for an affected Landlord Party where: (a) Tenant provides a defense to the affected Landlord Party under a reservation of rights, (b) a conflict of interest between Tenant or another Person and the affected Landlord Party exists that requires the affected Landlord Party to be represented by separate legal counsel from Tenant's legal counsel, or (c) the affected Landlord Party reasonably determines that Tenant's legal counsel is not competent to represent the affected Landlord Party's interests). The separate legal counsel representing an affected Landlord Party may attend all proceedings and meetings. Tenant's legal counsel will actively consult with separate legal counsel representing an affected Landlord Party, subject to applicable conflict of interest and privileged communication limitations, if any.

21.4.3 *Cooperation*. The affected Landlord Parties will reasonably cooperate with Tenant's defense of the Landlord Parties.

21.4.4 *Settlement*. Tenant may only settle a Claim against the Landlord Parties with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

21.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Tenant Parties or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claims.

21.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties will be reduced to the extent required to comply with applicable Law.

22. **RIGHT OF CONTEST**.

22.1 Tenant's Right. Notwithstanding anything to the contrary in this Lease, Tenant will have the exclusive right to commence and prosecute a Contest, at its sole cost. Tenant will Notify Landlord of Tenant's commencement of a Contest, within thirty (30) days following Tenant's

commencement of such Contest. Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions to remain satisfied throughout the period of the Contest:

22.1.1 *No Criminal Act*. Such deferral or non-compliance will not constitute a criminal act by Landlord or Tenant or subject Landlord or the Fee Estate to a material risk of any fine or penalty.

22.1.2 *No Liability*. Such deferral or non-compliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate.

22.1.3 *No Forfeiture*. Such deferral or non-compliance will not place the Fee Estate in material danger of being forfeited or lost.

22.1.4 *No Cost to Landlord*. Such Contest will be without cost, liability, or expense to Landlord and Tenant will Indemnify Landlord against any cost, liability or other expense arising from such Contest.

22.1.5 *Diligence*. Tenant will prosecute such Contest with reasonable diligence and in good faith.

22.1.6 *Payment*. If required for such Contest, Tenant will have paid all required amounts of money.

22.1.7 *Security*. If the amount of money at issue in such Contest (and all other Contests then pending) exceeds five hundred thousand dollars ($500,000) multiplied by the CPI Adjustment Factor, then Tenant will, before proceeding with such Contest, give Landlord Contest Security equal to such excess.

22.1.8 *Named Parties*. If Landlord has been named as a party in any action, Tenant will cause Landlord to be removed as a party.

22.2 Landlord Obligations and Protections. Landlord need not join in any Contest. Tenant will pay all reasonable costs and expenses, including Legal Costs, of any Contest and Indemnify Landlord against such costs and expenses.

22.3 Miscellaneous. Upon final determination of Tenant's Contest of a Law, Tenant will comply with such final determination. So long as all the conditions under Section 22.1 remain satisfied, Landlord will enter no objection to any Contest, except to the extent involving any Landlord Governmental Authority. Landlord may commence a Contest as to any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; (b) Tenant fails to commence such Contest within fifteen (15) days after receipt of such Notice; and (c) Landlord's Contest complies with all conditions and covenants that would apply to a Contest by Tenant, transposing references to the Parties and their interests, as appropriate.

22.4 Contest Security. Landlord will promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

23. **LANDLORD'S TRANSFERS AND FINANCING**.

23.1 Transfers. If Landlord intends to transfer or convey the Fee Estate, Landlord will Notify Tenant of Landlord's intent and provide Tenant with a period of thirty (30) days to Notify Landlord of Tenant's non-binding offer to purchase the Fee Estate. Landlord will not negotiate or complete a sale of the Fee Estate to a Third Person during this 30-day period. Landlord will not be obligated to accept Tenant's non-binding purchase offer or negotiate with Tenant in response to such purchase offer. Except as otherwise expressly provided in this Section 23.1, Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord will Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the entire Fee Estate (including any transfer or conveyance of the Fee Estate by or in lieu of exercise of remedies under a Fee Security Instrument), the grantor will be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance; provided, however, that such assignee will assume and be bound by all covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease will bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

23.2 Fee Security Instruments. Subject to the terms of this Lease and the Statement of Priorities, Landlord will have the right, at any time and from time to time during the Term, to make and deliver Fee Security Instrument(s). All Fee Security Instruments will be subject and subordinate to this Lease. Landlord will not enter into any Fee Security Instrument violating the immediately preceding sentence. Tenant will not subordinate this Lease to any Fee Security Instrument without consent from all Permitted Leasehold Lenders. Tenant will reasonably cooperate with Landlord and each actual or prospective Fee Lender by providing information reasonably requested by the Fee Lender and entering into agreements or signing and delivering documents reasonably requested by each actual or prospective Fee Lender.

23.3 Protection of Fee Lenders. If Tenant gives Landlord any Notice of a Landlord Default, Tenant will simultaneously give a copy of such Notice to all Fee Lender(s) of which Tenant has received Notice and contact information for delivery of Notices. Such Fee Lender(s) will have the right (but no obligation) to cure the Landlord Default within sixty (60) days following expiration of the cure period allowed to Landlord under this Lease, and with like effect as if Landlord had effected such cure. Tenant's failure to give Fee Lender(s) the Notice required by this Section 23.3 will not be a Default by Tenant, but no Notice by Tenant of any Landlord Default (or any resulting exercise of rights or remedies by Tenant) will be effective against such Fee Lender(s), unless and until Tenant will have given to such Fee Lender(s) the Notice and opportunity to cure required by this Section 23.3.

24. **TENANT TRANSFERS**.

24.1 General Limitations. Except for a Permitted Transfer or except as otherwise expressly provided in Section 24.2, 25, or 26, Tenant will not have any right to make or allow any Transfer without the prior written approval of Landlord, which may be given or withheld in Landlord's sole and absolute discretion. Tenant acknowledges and agrees that Landlord will not approve a Transfer

to a Prohibited Transferee. Landlord will not approve a Transfer if a Notice of Default to Tenant is outstanding as of the date of Tenant's Notice to Landlord of the Transfer or at any time following the date of such Notice through and including the effective date of the Transfer. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable. Tenant will provide prompt Notice to Landlord regarding any Permitted Transfer.

24.2 Transfers to Lender. At any time, a Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument, without Landlord's approval; or (b) a Transferee who obtains an Equity Interest or the Leasehold Estate through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written approval, in Landlord's sole and absolute discretion.

24.3 Annual Information on Equity Interests in Tenant. Within thirty (30) days after the first day of each Lease Year, Tenant will certify Tenant's then current ownership structure to Landlord, including the identity of all the then current owners of Equity Interests in Tenant.

24.4 Notice and Documentation. Tenant will Notify Landlord of each proposed Transfer, including each proposed Permitted Transfer, including all the following information:

(a) A current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with GAAP and sufficiently detailed to allow Landlord to evaluate the proposed Transferee's current assets, liabilities, and the monetary amount by which the total monetary value of all assets of the proposed Transferee exceed the total monetary value of all liabilities of the proposed Transferee;

(b) All written agreements between Tenant and the proposed Transferee effectuating such Transfer, conditioned on Landlord's approval of such Transfer;

(c) A description of all properties owned or operated by the proposed Transferee that are similar to the Premises (if any);

(d) A certification by the Chief Financial Officer or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the Laws of the State, that the proposed Transferee is not a Prohibited Transferee;

(e) An Estoppel Certificate covering all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of Tenant's Notice to Landlord requesting approval of the Transfer, (and updated on the effective date of such Transfer to cover all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of such Transfer); and

(f) In addition, following delivery of the initial Notice of Transfer, Tenant will provide all other information regarding the proposed Transferee reasonably requested by Landlord.

24.5 Landlord Approval Time. Landlord will either approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required

under Section 24.4. Any Notice of disapproval of a proposed Transfer shall include an explanation of the reasons for the disapproval. If Landlord does not approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required under Section 24.4 the Transfer will be considered disapproved by Landlord.

24.6 Transfer Taxes. Tenant will pay all transfer and other taxes payable because of any Transfer by Tenant.

24.7 Future Transfers. The provisions of this Section 24 will also apply to any future Transfers by any Tenant previously approved by Landlord under this Section 24.

24.8 Landlord's Costs. Tenant will reimburse Landlord for all reasonable costs (including Legal Costs) Landlord incurs in reviewing or approving each proposed Transfer requiring Landlord's approval under this Lease.

24.9 Charter Section 225. Under San Diego City Charter section 225, Tenant and each of its Transferees will disclose to Landlord the names and identities of all natural persons who own more than 10% of Tenant or each Transferee, each Subtenant under a Sublease that requires Landlord approval, and each Sub-User under a Use Agreement that requires Landlord approval.

24.10 Release of Tenant upon Certain Transfers. Notwithstanding anything in this Lease to the contrary, following a Landlord approved Transfer of all of Tenant's interest under this Lease to a Transferee that is not a Prohibited Transferee (but not following a Permitted Transfer), the transferring Tenant will be released from all obligations under this Lease that accrue from and after the date of the Transfer.

25. **USE AGREEMENTS**.

25.1 Use Agreement Prevailing Wage Requirements. Except as specified in this Section 25.1, Tenant shall not enter into any Use Agreement providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Use Agreement that provides for the Sub-User to pay less than the Fair Market Rent, Tenant shall require in the Use Agreement that: (a) all workers of the Sub-User or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 13, for all Construction or maintenance performed by the Sub-User or its contractors or subcontractors; and (b) the Sub-User and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Use Agreement requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Use Agreement and the Use Agreement does not include the requirements in clauses "(a)" and "(b)" of this Section 25.1.

25.2 Tenant's Entry into Use Agreements. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Use Agreements, Modify any Use Agreement, terminate any Use Agreement, evict any Sub-User, or give any consent under any Use Agreement, all without Landlord's approval; provided, however, that Landlord's prior written approval, in Landlord's sole discretion, is required for any Use Agreements that (a) are subject to Section 3.6 of **EXHIBIT D** or (b) pertain to events that are

subject to the events revenue provisions of Section 3.7 of **EXHIBIT D** and limit the number of seats for which admission tickets could be sold below the total number of seats in the Existing Arena for more than seven (7) consecutive days. Tenant shall Notify Landlord of each Use Agreement that generates Revenue within fifteen (15) days after entering into such Use Agreement.

26. SUBLEASING.

26.1 Tenant's Right. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Eligible Subleases, Modify any Eligible Sublease, terminate any Eligible Sublease, evict any Subtenant, or give any consent under any Eligible Sublease, all without Landlord's consent. No Sublease shall affect any obligation of Tenant or right of Landlord under this Lease, all of which shall continue in full force and effect, notwithstanding any Sublease. All Subleases shall be subject and subordinate to this Lease and expire no later than the Existing Arena Closure Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure all Defaults. Tenant shall take all steps reasonable and necessary to prevent Defaults caused by Subtenants.

26.2 Sublease Prevailing Wage Requirements. Except as specified in this Section 26.2, Tenant shall not enter into any Sublease providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Sublease that provides for the Subtenant to pay less than the Fair Market Rent, Tenant shall require in the Sublease that: (a) all workers of the Subtenant or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 13, for all Construction or maintenance performed by the Subtenant or its contractors or subcontractors; and (b) the Subtenant and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Sublease requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Sublease and the Sublease does not include the requirements in clauses "(a)" and "(b)" of this Section 26.2.

26.3 Assignment of Sub-Rents. To secure Tenant's performance under this Lease, Tenant assigns, transfers, and sets over to Landlord, subject to the conditions in this Section 26.3 (and the rights of Permitted Leasehold Lenders), Tenant's right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Sub-Rent during the pendency of an Event of Default. Landlord's exercise of such rights shall not constitute an eviction of Tenant. Unless and until an Event of Default by Tenant or on a termination of this Lease, Tenant shall have a license to exercise its right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Landlord may revoke such license, at Landlord's option, only during the pendency of an Event of Default by Tenant or on a termination of this Lease. Upon any such revocation, Landlord may collect Sub-Rent directly from Subtenants and Sub-Users and apply the net amount collected to amounts owed to Landlord by Tenant, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. No such condition shall be, or be deemed to be, Landlord's waiver of any term of this Lease, acceptance of any Subtenant or Sub-User as Tenant, or release of Tenant from any obligation under this Lease. All sums Landlord collects prior to termination of this Lease and in excess of the net amount Landlord

applies against amounts owed to Landlord by Tenant shall belong to Tenant and be refunded to Tenant (subject to the rights of Permitted Leasehold Lenders).

26.4 Required Provisions. Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section 26.4. By entering into its Sublease, each Subtenant shall agree to these provisions that reflect the definitions in this Lease. All such defined terms shall be modified in the required provision, as appropriate, to reflect the definitions in the Sublease.

> *All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this Sublease shall automatically and concurrently terminate subject to the rights of Subtenant under an NDA. In that event, Subtenant, only at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease, in accordance with the NDA between Subtenant and Landlord. Subtenant shall sign and deliver, at any time and from time to time, upon the request of Tenant, Landlord or any Permitted Leasehold Lender, any instrument necessary or appropriate to evidence such attornment. This appointment is coupled with an interest and is irrevocable. Subtenant, for the express benefit of Landlord, waives its rights under any Law that may allow Subtenant to terminate this Sublease or surrender possession of the demised subpremises, if the Lease terminates.*

26.5 Delivery of Subleases. Tenant shall deliver to Landlord a copy of each fully signed Sublease and all associated agreements, all certified as accurate by both Tenant and Subtenant; within fifteen (15) days following Tenant entering into the particular Sublease.

26.6 Non-Disturbance of Subtenants. Landlord shall, within thirty (30) days after Notice from Tenant at any time or from time to time, enter into (and cause each Fee Lender to enter into) a recordable NDA with any Subtenant or proposed Subtenant, provided that: (a) such Subtenant's Sublease is (or once signed by Tenant and Subtenant, will be) an Eligible Sublease upon the Landlord, Tenant, and Subtenant entering into the associated NDA; (b) Tenant gives Landlord a certified copy of such Sublease (or proposed Sublease, as the case may be), which Sublease contains all provisions required by this Lease and otherwise complies with this Lease; and (c) no Event of Default exists.

26.7 Tenant's Obligations Regarding Subleases.

26.7.1 **Sublease Lists and Enforcement**. Tenant shall, upon request (no more frequently than once every six (6) months), give Landlord a current list of all Subleases. Tenant shall perform its obligations under all Subleases and Tenant shall enforce all its rights under Subleases in a commercially reasonable manner.

26.7.2 **Sublease Update Packages**. Tenant shall give Landlord copies of all Subleases and amendments to Subleases, to the extent that such copies have not previously been delivered to Landlord, or a certificate that no such new Subleases or new Sublease amendments have been entered into (such copies or certificates, a "Sublease Update Package"), at least, once each Lease

Year, within thirty (30) calendar days following the first day of each Lease Year, together with a current rent roll for the Premises, listing all Subleases and Subtenants and their respective current Sub-Rent and security deposits.

26.8 Future Subleasing. The provisions of this Section 26 shall also apply to any future subleasing or assignment by any Subtenant previously approved by Landlord under this Section 26.

26.9 Amendments to Eligible Subleases. Tenant shall give Landlord Notice (which Notice includes a certified copy of the subject amendments(s)) of any and all amendments of each Eligible Sublease within fifteen (15) calendar days following Tenant's entry into such amendment. Any Modification to an Eligible Sublease, including those resulting from Tenant's consent under the Eligible Sublease, that would make the Sublease not an Eligible Sublease may only be made with Landlord's prior written consent, in Landlord's sole and absolute discretion.

26.10 Collection of Sub-Rent. Landlord shall not send any Sub-Rent Payment Notice unless an Event of Default has occurred. If Landlord collects any Sub-Rent prior to termination of this Lease, then Landlord shall apply it first to pay all of Landlord's costs in collecting such Sub-Rent, including Legal Costs, then to pay all Rent then due, and then to cure all Defaults and Events of Default of Tenant and then to pay all costs of the Premises. Landlord shall then remit to Tenant, any such remaining Sub-Rent. All Sub-Rent collected by Landlord after termination of this Lease is the sole property of Landlord. Tenant directs Landlord accordingly. If Landlord sends a Sub-Rent Payment Notice, Tenant cures all Events of Default, and this Lease has not been terminated, then Landlord shall, at Tenant's expense (including Landlord's Legal Costs), give each Subtenant or Sub-User a Notice rescinding Landlord's Sub-Rent Payment Notice.

27. **PERMITTED LEASEHOLD SECURITY INSTRUMENTS**.

27.1 Tenant's Rights. Subject to the terms of this Lease and the Statement of Priorities, Tenant will have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instrument(s) encumbering this Lease and the Leasehold Estate, provided that all Defaults and Events of Default are cured before or on the effective date of the Permitted Leasehold Security Instruments; and (b) assign (absolutely or collaterally) Tenant's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

27.2 Limitations on Permitted Leasehold Security Instruments. Landlord will not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances will the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Tenant or any Person other than Landlord. Permitted Leasehold Security Instruments may only secure repayment of financing being applied solely to pay the cost of the Construction of the Horizontal Improvements Phase that is actively under Construction or has been Constructed. Notwithstanding anything to the contrary contained in this Lease, at no time may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the costs of the Construction of the applicable Horizontal Improvements Phase. Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Tenant is outstanding under this Lease will not encumber

the Leasehold Estate and will be a Default by Tenant, subject to applicable Notice and cure periods, unless all Defaults of Tenant under this Lease are cured concurrent with the grant of such Security Instrument.

27.3 Effect on Landlord. No Permitted Leasehold Security Instrument will affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. Any Lender Protections applicable to Permitted Leasehold Lenders may be exercised only by, and will only benefit, Permitted Leasehold Lenders, New Tenants, and Post-Foreclosure Tenants. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then such Permitted Leasehold Security Instrument will be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. If this Lease terminates and the New Lease Option Period expires, without any Permitted Leasehold Lender timely requesting and entering into a New Lease, then Permitted Leasehold Lender(s) will no longer be entitled to any Permitted Leasehold Lender's Cure Rights or other Lender Protections. The priority of the Leasehold Estate and the consequences of a Foreclosure Event under a Permitted Leasehold Security Instrument are as described in the Statement of Priorities. Nothing in any Permitted Leasehold Security Instrument binds Landlord or imposes any obligation or liability on Landlord.

27.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a Foreclosure Event and exercise any other rights or remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any other provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it will, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Tenant under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) will have any personal liability under this Lease unless and until (and then only so long as) it is Tenant under this Lease. Any such personal liability will be limited to the Person's interest in this Lease.

27.5 Transfer of Escrows, Reserves, Security, and Other Deposits Held by Landlord. Upon any Foreclosure Event or New Lease Delivery Date, the Tenant's right, title, and interest in any security deposit, letter of credit (subject to the issuer's consent), reserve account, escrow account (for Real Estate Taxes, insurance premiums, Rent, or any other purpose), security, prepaid Rent, or other amount of money the former Tenant previously paid Landlord under this Lease, any Restoration Funds, and any Construction Surety (subject to the surety's consent) will automatically be assigned to the New Tenant or Post-Foreclosure Tenant, as applicable. In such event, such former Tenant will no longer have any right, title, or interest in or to the foregoing. Instead, New Tenant or Post-Foreclosure Tenant will hold all such rights, free of any claim of the former Tenant. To the extent that on any New Lease Delivery Date, the New Lease requires Tenant to restore the amount of any security deposit, bond, or account, New Tenant's failure to do so will constitute a Monetary Default, subject to all applicable Notices and opportunity to cure, including Permitted Leasehold Lender's Cure Rights.

27.6 Termination of Permitted Leasehold Lender's Rights. If a Permitted Leasehold Lender is entitled to Lender Protections, then such entitlement will not terminate, unless and until such time, if any, as either: (a) its Permitted Leasehold Security Instrument is satisfied, except through a Foreclosure Event (in which event the Permitted Leasehold Lender will proceed under

Section 27.9); (b) such Permitted Leasehold Lender consents in writing to termination of its Lender Protections; or (c) after Landlord complies with all Lender Protections, Landlord validly terminates this Lease, no Permitted Leasehold Lender validly requests (and is entitled to) and enters into a New Lease, and the New Lease Option Period expires. Upon the occurrence of the circumstances described in clause "(c)" in the immediately preceding sentence, the obligations formerly secured by Permitted Leasehold Security Instrument(s) will no longer be secured by Permitted Leasehold Security Instruments and no Permitted Leasehold Security Instrument will encumber the Leasehold Estate.

27.7 Lease Impairments. Any Lease Impairment made or entered into without Permitted Leasehold Lender's Consent will (at the option of the Senior Permitted Leasehold Lender) not be effective and not bind Permitted Leasehold Lenders or any New Tenant or Post-Foreclosure Tenant. Nothing in this Section 27.7 limits Landlord's right to terminate this Lease after an Event of Default and the expiration of all Permitted Leasehold Lender's Cure Rights, without cure of such Event of Default, subject however to: (a) provisions of this Lease limiting Landlord's right to terminate this Lease because of Tenant-Specific Default(s); and (b) the right of a Permitted Leasehold Lender to obtain a New Lease.

27.8 Permitted Leasehold Lender Notice of Default. Any Landlord right to terminate this Lease following any Tenant Default will be conditioned upon Landlord first Notifying each Permitted Leasehold Lender of which Landlord received Notice and an address for service of Notice of the Default, and no Permitted Leasehold Lender timely curing such Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 27.9.

27.9 Permitted Leasehold Lender's Cure Rights. If any Tenant Default occurs, then any Permitted Leasehold Lender will have the time provided for below in this Section 27.9 within which to take (if such Permitted Leasehold Lender so elects, and no Permitted Leasehold Lender will have any duty to undertake any Permitted Leasehold Lender's Cure of any kind) whichever of the actions set forth below as will apply to such Default:

27.9.1 *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender may, at its option, cure such Default, within fifteen (15) days following expiration of Tenant's cure period under this Lease for such Monetary Default.

27.9.2 *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender can reasonably cure without obtaining possession of the Premises (excluding any Tenant-Specific Default), provided that Permitted Leasehold Lender has cured all Monetary Defaults, Permitted Leasehold Lender may: (a) Notify Landlord of the Permitted Leasehold Lender's intent to cure the Non-Monetary Default; (b) within thirty (30) days following expiration of Tenant's cure period for such Non-Monetary Default, commence to cure such Non-Monetary Default; and (c) diligently prosecute the cure of such Non-Monetary Default to completion within a reasonable time under the circumstances.

27.9.3 *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises (including any Construction-related Default), Permitted Leasehold Lender will be

entitled (but not required) to do the following (but only so long as, for any Defaults other than a Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises, such Permitted Leasehold Lender has exercised or is exercising, within the applicable cure periods, the applicable Permitted Leasehold Lender's Cure Rights):

(a) **Pursue Premises Control**. At any time within thirty (30) days following expiration of the cure period (if any) applicable to Tenant, or if no cure period applies to Tenant, then within thirty (30) days after receiving Notice of the Non-Monetary Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and (subject to any applicable stay in any Bankruptcy Proceeding affecting Tenant or any applicable injunction) then diligently prosecute such proceedings to completion. If a Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control in accordance with this Section 27.9.3(a) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender or Post-Foreclosure Tenant will proceed with reasonable diligence to cure all Non-Monetary Defaults (excluding Tenant-Specific Defaults) within: (i) thirty (30) days after such Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control; or (ii) if such Non-Monetary Default is not reasonably susceptible of cure within such thirty (30) day period, then within a reasonable time under the circumstances.

(b) **Performance of Lease Obligations**. Perform all the Tenant's covenants and obligations under this Lease that can be performed by such Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

27.10 Security Instrument Defaults. If a Permitted Leasehold Security Instrument is in default, the Permitted Leasehold Lender will, as provided by Law, have the right, without Landlord's prior consent, subject to the other provisions of this Lease and the other provisions of this Section 27, to:

27.10.1 *Assignment in Lieu of Foreclosure*. Accept an assignment of the Leasehold Estate in lieu of foreclosure; or

27.10.2 *Foreclosure Sale*. Cause a foreclosure sale of the Leasehold Estate to be held through either judicial proceedings or power of sale under the applicable Permitted Leasehold Security Instrument.

27.11 Landlord's Exercise of Other Rights and Remedies. Whenever a Permitted Leasehold Lender is exercising, or is entitled to exercise, Permitted Leasehold Lender's Cure Rights, Landlord may, notwithstanding anything to the contrary in this Lease, continue to deliver Notices of Default to, collect actual damages from, and seek equitable relief (including a negative or mandatory injunction) against Tenant on account of any Default, and may require Tenant to Indemnify the Landlord Parties (and other Indemnitees) in each case when, as, and to the extent this Lease requires.

27.12 Permitted Leasehold Lender Exercise of Tenant's Rights. So long as such Permitted Leasehold Lender's cure rights (and right to obtain a New Lease) under this Lease have not expired, such Permitted Leasehold Lender may, at any time, exercise (and will always have standing to exercise and assert) all rights or remedies of Tenant under this Lease, subject to all limitations on such rights. Any exercise of such rights by any Permitted Leasehold Lender will be as effective as if done by Tenant.

27.13 Indemnity Regarding Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Permitted Leasehold Lender desires to enter the Premises to cure any Default, then, as a condition to such entry, such Permitted Leasehold Lender will agree in writing to Indemnify the Landlord Parties regarding Claims arising from any negligence or willful misconduct of such Permitted Leasehold Lender in pursuing the cure of any such Default, except Claims arising solely from the active negligence or willful misconduct of the Landlord Parties.

27.14 Limited Assignment of Security Instruments. No Permitted Leasehold Lender will assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender Controlling such Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by such Permitted Leasehold Security Instrument.

28. **NEW LEASE**.

28.1 New Lease Notice. If the Expiration Date occurs before the Scheduled Expiration Date for any reason (including because of any Event of Default or rejection in a Bankruptcy Proceeding or any Permitted Leasehold Lender's failing to timely exercise its Permitted Leasehold Lender's Cure Rights), but excluding any termination with Permitted Leasehold Lender's Consent because of a Loss or otherwise, then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Permitted Leasehold Lender), Landlord will, within ten (10) Business Days, Notify all Permitted Leasehold Lenders of such termination. If a Permitted Leasehold Lender requests a New Lease during the New Lease Option Period, then from the Expiration Date to the New Lease Delivery Date, Landlord will not: (a) operate the Premises in an unreasonable manner; or (b) lease the Premises to anyone other than New Tenant. Upon a Permitted Leasehold Lender's request for a New Lease made during the New Lease Option Period, Landlord will enter into a New Lease with New Tenant, provided that on the New Lease Delivery Date, New Tenant: (i) pays Landlord all monetary amounts then due under this Lease, as if this Lease had not terminated; and (ii) agrees to cure with reasonable diligence all then-uncured Non-Monetary Defaults (except Tenant-Specific Defaults), within a reasonable period after the New Lease Delivery Date. Nothing in this Lease will prevent Landlord from terminating this Lease in accordance with its terms (after compliance with all Permitted Leasehold Lender's Cure Rights), but any such termination will, thereafter, be subject to Permitted Leasehold Lenders' and New Tenant's rights to obtain a New Lease (even if any Permitted Leasehold Lender could have prevented such termination by exercising its Permitted Leasehold Lender's Cure Rights). The following additional provisions will apply to any New Lease:

28.1.1 *Priority*. Any New Lease and New Tenant's Leasehold Estate under such New Lease, and Landlord's obligation to deliver possession of the Premises under any New Lease, will all be subject to: (a) the rights of all Persons in possession of the Premises; (b) any matters that

encumbered the previous Leasehold Estate and were senior and prior to the Permitted Leasehold Security Instrument held by the Permitted Leasehold Lender that requested the New Lease; and (c) Permitted Exceptions.

28.1.2 *Adjustment for Net Income*. On the New Lease Delivery Date, Landlord will pay New Tenant an amount of money equal to the Revenue Landlord received from the Premises, less (a) Rent and (b) operating expenses expended or incurred by Landlord, from the Expiration Date to the New Lease Delivery Date, provided that New Tenant simultaneously pays Landlord (or credits Landlord an amount of money equal to) all amounts of money required to be paid Landlord under this Lease upon entry into such New Lease (including any Rent due, but unpaid), and not otherwise paid by Landlord from Revenue received by Landlord.

28.1.3 *Transfer of Certain Items*. On the New Lease Delivery Date, Landlord will assign and convey, without recourse to New Tenant, Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Tenant (or Permitted Leasehold Lender) would have been entitled to receive, but for Tenant's Event of Default and Landlord's termination of this Lease; and (b) Improvements, to the extent of the former Tenant's former interest in such Improvements under the terminated Lease.

28.1.4 *Landlord's Costs and Expenses*. If a Permitted Leasehold Lender requests Landlord enter into a New Lease, then on the New Lease Delivery Date (and as a condition to Landlord's delivery of the New Lease) such Permitted Leasehold Lender will pay all reasonable expenses, including documentary transfer taxes and Legal Costs, incurred or payable by Landlord in connection with any Event of Default and termination of this Lease, recovery of possession of the Premises, preparation, signature, and delivery of the New Lease, any memorandum of the New Lease requested by New Tenant and recordation of any such memorandum, and all other documents New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

28.1.5 *Survival*. All rights of any Permitted Leasehold Lender, and obligations of Landlord, regarding a New Lease will survive termination of this Lease for the duration of the New Lease Option Period.

29. **INTERACTION OF MULTIPLE ESTATES**.

29.1 Priorities of Multiple Lenders. If more than one Lender of a particular type (Fee or Leasehold) desires to exercise any Lender Protections applicable to such Lender, then the Party against whom such Lender Protections are to be exercised will be required to recognize either: (a) only the Lender desiring to exercise such Lender Protections and whose Security Instrument is most Senior (as against other Security Instruments of like type); or (b) such other Lender as all Fee Lenders or all Permitted Leasehold Lenders, as applicable, designate in writing to exercise such Lender Protections. Priority of Security Instruments will be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of the same type (Fee or Leasehold, as applicable); or (ii) a report or certificate of a title insurance company licensed to do business in the State. Neither Tenant nor Landlord will be obligated to determine the relative priorities of any Security Instruments.

29.2 No Merger. Notwithstanding any acquisition of both the Fee Estate and the Leasehold Estate by Tenant, any Post Foreclosure Tenant, a New Tenant, any Lender, or a Third Person, without the written consent of Landlord, Tenant, and all Permitted Leasehold Lenders (the consent of Landlord, Tenant, and Permitted Leasehold Lenders only being required until their respective rights under this Lease are terminated), the Fee Estate and the Leasehold Estate will always remain separate and distinct estates.

30. LANDLORD'S RESERVATION OF RIGHTS.

30.1 Government Action. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its Governmental Authority or constitute an Approval by Landlord under its Governmental Authority. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Uses, or otherwise. Tenant will diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord, under its Governmental Authority, and other Governments necessary for the Permitted Uses. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary Landlord's exercise of its Governmental Authority.

30.2 Proprietary Agreement. The Parties acknowledge and agree that Landlord is entering into this Lease in its proprietary capacity as the owner of the Premises and as a market participant, not under its Governmental Authority. Therefore, the Parties intend that: (a) this Lease is separate and distinct from all agreements entered into by Landlord with Tenant under Landlord's Governmental Authority, including any statutory development agreement; (b) if there is any conflict or inconsistency between this Lease and any agreement entered into by Landlord with Tenant under Landlord's Governmental Authority, the terms, conditions, covenants, restrictions, or agreements in this Lease will control; and (c) Landlord is not subject to the limitations on the exercise of its Governmental Authority in entering into this Lease or exercising its rights under this Lease.

30.3 Natural Resources. Landlord reserves all right, title, and interest in all subsurface natural resources relating to the Premises, including natural gas, oil, minerals, and water, on or within the Premises; provided, however, Landlord will not unreasonably interfere with Tenant's use, occupancy or development of the Premises in connection with Landlord's rights to such subsurface natural resources.

30.4 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property; provided, however, Landlord will not unreasonably interfere with Tenant's use, occupancy, or development of the Premises in connection with Landlord's rights to grant, establish, or use such access rights.

31. EVENTS OF DEFAULT; REMEDIES.

31.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

31.1.1 *Monetary Default*. A Monetary Default that continues for seven (7) days after Notice to Tenant of the Monetary Default.

31.1.2 *Construction Default*. A Construction Default that continues for thirty (30) days after Notice to Tenant of the Construction Default.

31.1.3 *Bankruptcy or Insolvency*. Tenant ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

31.1.4 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 31.1.2 or 31.1.3, that is not cured within thirty (30) days after Notice to Tenant describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to Tenant, Tenant will not be in Default if it does all the following: (a) within thirty (30) days after the date of the Notice of the Non-Monetary Default, Notifies Landlord of Tenant's intention to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the date of the Notice of the Non-Monetary Default, commences curing the Non-Monetary Default; and (c) completes the cure of the Non-Monetary Default within a reasonable time, but in no event more than one hundred eighty (180) days after the Receipt Date of the Notice of the Non-Monetary Default.

31.2 Remedies. If an Event of Default occurs, then Landlord will, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy will not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

31.2.1 *Termination of Tenant's Rights*; *Conditional Limitation*. Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term will automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant will then quit and surrender the Premises to Landlord in accordance with Section 32 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term will terminate and expire as set forth in this Section 31.2.1. This Section 31.2.1 is intended to establish a conditional limitation and not a condition subsequent.

31.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease will also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) 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.

(e) The "worth at the time of award" of the amounts referred to in Sections 31.2.2(a) and 31.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 31.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

31.2.3 *Taking Possession*. Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 31.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, will absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord will apply all rents from any such reletting in the manner provided in Section 31.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 31.2.3 in Landlord's name and will be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant will nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all amounts required to be paid by Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 31.2.3 will constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

31.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

31.2.5 *Receipt of Money*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease will reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to

enforce payment of any Rent payable or later becoming due, or Landlord's right to recover possession of the Premises by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

31.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, will waive any such Default, Event of Default, or such covenant, agreement, term, condition, or restriction. No covenant, agreement, term, condition, or restriction of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, will be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default will Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease will continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

31.2.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Event of Default, including as set forth in Section 31.2.2 and reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Event of Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Event of Default but may bring and prosecute a single combined action for all such Rent or damages.

31.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to exercise the remedy described in California Civil Code section 1951.4 and maintain Tenant's right to possession of the Premises after an Event of Default, this Lease will continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable considering that the development contemplated in the DDA is dependent upon the successful and timely Construction of the Horizontal Improvements such that Tenant's reputation in the applicable industry, ability to obtain reasonable financing for Construction as provided in the Horizontal Improvements Financing Plan, ability to coordinate successfully with Landlord, creditworthiness, operational efficiency, and similar attributes are all critical to achievement of Landlord's financial expectations for this Lease, and the overall development of the Premises contemplated under the DDA.

31.4 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

31.5 Restoration Funds. Upon any termination of this Lease after an Event of Default or otherwise, to the extent Landlord or Depository then holds any Restoration Funds, such funds will be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

31.6 Proceeds of Reletting. Landlord will apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

31.6.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

31.6.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

31.6.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord will maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

31.6.4 *Residue*. Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

31.7 Tenant's Late Payments; Administrative Charges. If Landlord sends a Notice of Monetary Default to Tenant, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant will pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant will pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence will be no less than $25. Nothing in this Section 31.6 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 31.6 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 31.6 are not a penalty or compensation for use of funds and will not be credited against any other obligation of Tenant under this Lease.

31.8 Landlord's Right to Cure. If an Event of Default occurs, then Landlord, after five (5) Business Days' Notice to Tenant (except where Landlord determines that immediate action is

necessary to protect person or property, then with such notice (if any) as is reasonably practicable under the circumstances), and without waiving or releasing Tenant from any obligation, Default or Event of Default and without waiving Landlord's right to take such action as this Lease may permit following such Default or Event of Default, may (but need not) make such payment or take such action. Within ten (10) days after Notice of such payment amount, Tenant will reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 31.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 31.8 from the date paid until the date of reimbursement to Landlord.

31.9 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease will be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment will not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

31.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises will relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

31.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

31.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant will give Landlord Notice of the Landlord Default and thirty (30) days following the Receipt Date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the Receipt Date of the Notice of such Landlord Default, the cure period for the Landlord Default will be extended for such further period as Landlord will reasonably require to cure the Landlord Default, provided that Landlord will: (a) within thirty (30) days following the Receipt Date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default. If Landlord does not cure a Landlord Default after receiving the Notice and opportunity to cure required under this Lease for the Landlord Default, except as otherwise prohibited under this Lease, Tenant may pursue any remedy available at Law or in equity for such Landlord Default.

32. **END OF TERM**.

32.1 Surrender. Upon any Expiration Date: (a) all Building(s), Building Equipment, and Horizontal Improvements will become Landlord's property; (b) Tenant will deliver possession of the Premises to Landlord, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore; (c) Tenant will deliver the Premises free and clear of all: (i) Use Agreements and Subleases, unless otherwise requested in writing by Landlord, and (ii) liens except: (1) Permitted Exceptions, exclusive of Permitted Leasehold Security Instruments; and (2) liens that Landlord caused; (d) Tenant will assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (e) the Parties will cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; (f) the Parties will adjust for all expenses and income of the Premises and will make such payments as will be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant will first be applied to cure any Default), provided, however, that Tenant will be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the end of the Term (if any) and Landlord will not be required to pay or credit Tenant for any Real Estate Taxes paid by, or on behalf of, Tenant; and (g) the Parties will terminate the Lease Memorandum by signing and recording the Quitclaim Deed in accordance with Section 32.2. Notwithstanding anything to the contrary in this Lease, following a termination of this Lease after an Event of Default, Landlord may, in its sole discretion, by Notice to Tenant, require Tenant to demolish all or any specified portion of the Horizontal Improvements on the Premises and all or any specified portion of any other Improvements on the Premises and remove all associated debris from the Premises, all at Tenant's sole expense. Notwithstanding anything to the contrary in this Section 32.1, Tenant may remove from the Premises at any time, and from time-to-time, any FF&E, but Tenant must do so, if at all, prior to the Expiration Date. Tenant will immediately repair all material damage to the Premises from removal of FF&E. All FF&E not removed before the Expiration Date will be deemed abandoned.

32.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant will sign, acknowledge, and deliver to Landlord a Quitclaim Deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such Quitclaim Deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such Quitclaim Deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a Quitclaim Deed, which appointment is irrevocable and coupled with an interest.

33. **NOTICES**. All Notices submitted by one Party to the other Party under or as required by this Lease must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named

recipient representing the recipient Party in response to a Notice email). All Notices must be sent to the Party representatives and address designated in **EXHIBIT C** attached to this Lease. Either Party may designate a different representative or address for delivery of Notice under this Lease by Notice given in accordance with this Section 33. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A Notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the Notice is sent by messenger for immediate personal delivery and delivered to the Notice address before 5:30 p.m. Pacific Time, on the Business Day the Notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the Notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is delivered to the United States Postal Service in accordance with this Section 33 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices delivered via email.

33.1 Replacement of Statutory Notice Requirements. When this Lease requires service of a Notice, that Notice will replace, rather than supplement, any equivalent or similar Notice required by Law, including any notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by this Section 33 will replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

33.2 Refused, Unclaimed, or Undeliverable Notices. Any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be Notified will be effective as of the first date the Notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

34. **NO BROKER**. Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) will Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 34.

35. **NON-RECOURSE**. Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and the other Landlord Parties, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Leasehold Estate (including the proceeds of the Leasehold Estate). No property or assets of Landlord whatsoever, except Landlord's interest in the Leasehold Estate (including the proceeds of the Leasehold Estate, but excluding Landlord's ownership of the Fee Estate and reversionary interest), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Tenant arising under or in connection with this Lease. The limitation of liability and remedies in this Section 35 applies not only to Claims under the express terms of this Lease, but also to Claims of any kind whatsoever arising from the relationship between the Parties or any

rights or obligations the Parties may have relating to the Premises, this Lease, or anything related to either this Lease or the Premises.

36. **LIMITATIONS ON DAMAGES**. Subject to Section 35, whenever either Party may seek or claim damages against the other Party (whether by reason of a Default, Event of Default, or Landlord Default, as the case may be, under this Lease by such Party, in enforcement of any Indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, collateral, special, punitive or indirect damages, whether such Default, Event of Default, or Landlord Default, as the case may be, shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded to either Party arising from this Lease (whether or not this Lease has been terminated) shall be limited to: (a) actual, direct damages sustained by the aggrieved Party, including all damages recoverable under California Civil Code section 1951.2; and (b) consequential damages sustained by the aggrieved Party (but not actual, direct damages) not exceeding One Million Dollars ($1,000,000) times the CPI Adjustment Factor (on an occurrence basis). Notwithstanding anything to the contrary in this Section 36, nothing in this Section 36 limits recovery of Legal Costs as provided in this Lease.

37. **ESTOPPEL CERTIFICATES**. Up to twice each Lease Year, each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party will sign and deliver such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate within the required fifteen (15) day period, then the Certifying Party will pay the Requesting Party liquidated damages of two hundred fifty dollars ($250) times the CPI Adjustment Factor per day for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party will pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate. Any such Estoppel Certificate may be relied upon by the Requesting Party and its designated Third Person, if any.

38. **HOLDOVER**. If Tenant continues to occupy the Premises after the Expiration Date, such occupancy will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent will be a month-to-month tenancy and all other terms of this Lease will continue in full force and effect, except that Landlord may then demand and receive rental payments from Tenant equal to the then fair market rental value of the Premises, as determined by Landlord. Additionally, Tenant will be liable for all damages incurred by Landlord as a result of Tenant remaining in the Premises after the Expiration Date. Landlord's acceptance of any Rent from Tenant after the Expiration Date will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

39. **MISCELLANEOUS**.

39.1 Compliance with Landlord Standard Contract Provisions. Tenant will comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

39.2 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor will be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

39.3 Mayoral Implementation. Landlord will implement this Lease through its Mayor. The Mayor is authorized by Landlord to issue approvals, interpretations, waivers and enter into amendments to this Lease on behalf of Landlord, to the extent that any such action(s) does/do not materially or substantially change the Premises, the Permitted Uses, the Horizontal Improvements to be Constructed under this Lease, the Development Conditions, the Performance Schedule, Existing Arena operating requirements, amounts of money payable to Landlord, or the other material terms of this Lease. Nothing in this Section 39.3 will restrict the submission to the City Council of any matter within the Mayor's authority under this Section 39.3, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 39.3 is to authorize certain actions by the Mayor on behalf of Landlord, but not to require that such actions be taken by the Mayor, without consideration by the City Council.

39.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

39.5 Successors and Assigns. This Lease will bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 39.5 will not limit, supersede, or Modify any Transfer restrictions in this Lease.

39.6 Costs and Expenses; Legal Costs. In the event of any litigation (including court required mediation or arbitration) between the Parties arising from this Lease, (including to enforce or interpret this Lease, seek declaratory or injunctive relief in connection with this Lease, exercise any right or remedy under or arising from this Lease, or terminate this Lease) or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party or the Party that is not the subject of the Bankruptcy Proceeding will be entitled to reimbursement from the other Party of its Legal Costs, with Default Interest. The Legal Costs recoverable by one Party from the other Party in each litigation (consolidated matters or matters arising from the same facts and circumstances are a single litigation) arising from this Lease or a Bankruptcy Proceeding affecting the other Party will not exceed Two Hundred Fifty Thousand Dollars ($250,000) multiplied by 1 plus the result of multiplying .03 times the Lease Year number in which the earliest Claim included in the litigation arises (i.e., if the earliest Claim included in the litigation arises in Lease Year 10 the maximum recoverable Legal Costs amount would be $250,000 x (1+(.03 x10)) = $325,000).

39.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party will not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event

of Default, or Landlord Default will waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

39.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted will have the right to perform the obligation under protest, which will not be regarded as voluntary performance. If a Party performs an obligation under protest and the performance of that obligation is later determined by the Parties or final judgment of a court of competent jurisdiction not to be required, the performing Party may institute appropriate proceedings to recover the reasonable cost of performing the obligation, with Default Interest from the date of performance.

39.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date will survive any such Expiration Date.

39.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> 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 will 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.

39.11 Unavoidable Delay. Neither Party shall be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay will Notify the other Party of the Unavoidable Delay within a reasonable time after the claiming Party knows of the Unavoidable Delay and within a reasonable time after such Unavoidable Delay ceases to exist. To be effective, Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice of the Unavoidable Delay is timely given under this Section 39.11 commences on the date the condition causing the Unavoidable Delay begins, but not earlier than twenty (20) days preceding the Receipt Date of the Notice of the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay will exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

39.12 ASSUMPTION OF ECONOMIC RISKS. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE WILL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY

ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, WILL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

_____	_____
INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)	INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

39.13 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

39.14 Counterparts. This Lease may be signed in multiple counterpart originals, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

39.15 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms for this Lease. Breach of the representations or warranties of this Section 39.15 will entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant will immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to this Lease, the Premises, the Horizontal Improvements, or any other Improvements Constructed by Tenant on the Premises, prior to the date of any such termination.

39.16 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

39.17 Survival of Lease. All the provisions of this Lease will be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written

settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms of this Lease relating to dispute resolution or remedies will survive any Expiration Date.

39.18 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) will be personally liable to Tenant, in the event of any Landlord Default under this Lease or for any amount that may become due to Tenant, on any obligation under this Lease. No Tenant Party (other than Tenant itself) will be personally liable to Landlord in the event of any Event of Default on Tenant's part or for any amount of money that may be or become due to Landlord on any obligation under this Lease.

39.19 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

39.20 Tax Consequences. Tenant will bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease, including all Transfers.

39.21 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

39.22 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days will be to consecutive calendar days, all references to time periods in this Lease measured in months will be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years will be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days will be to consecutive Business Days.

39.23 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, conditions, restrictions, and agreements between the Parties regarding the use and occupancy of the Premises during the Term. Except as set forth in the DDA, the Parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises. If any conflict or inconsistency exists between the DDA and this Lease regarding the use and occupancy of the Premises during the Term, the provisions of this Lease will control.

39.24 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, will be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles. The Parties acknowledge and agree that this Lease is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Lease will be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

39.25 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance will to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected by such invalidity. All remaining provisions of this Lease will be valid and be enforced to the fullest extent Law allows.

39.26 Interpretation Principles. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" will be construed to be followed by the words: "without limitation." Each collective noun used in this Lease will be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. The words "will" and "shall" have the same meaning as the word "must" and denote a mandatory action. The word "may" denotes a permissive action. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification violating this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time. Where this Lease provides for a Party to approve or disapprove a specified matter in its sole discretion or take some other action in its sole discretion, that Party may approve, disapprove, or condition approval of the matter for any reason or no reason or take, not take, or condition the taking of the action for any reason or no reason. A Party's decision to either disapprove or condition approval of a matter over which it has sole discretion or not take or condition the taking of other action over which it has sole discretion will not be a Default or Landlord Default by that Party.

39.27 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant will cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

39.28 Reasonableness. Wherever this Lease states that a Party will not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval will not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval will be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this will not waive its right to require such consent or approval for any further or similar matter.

39.29 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

39.30 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Premises Legal Description.
EXHIBIT B	Premises Site Plan.
EXHIBIT C	Notice Addresses.
EXHIBIT D	Base Rent; Existing Arena Rent; and Events Revenue.
EXHIBIT E	Existing Arena Operating Requirements.
EXHIBIT F	Tenant Insurance Requirements.
EXHIBIT G	Landlord Standard Contract Provisions.
EXHIBIT H	Prevailing Wage Laws and Requirements.
EXHIBIT I	Horizontal Improvements Phasing Plan.
EXHIBIT J	Horizontal Improvements.
EXHIBIT K	Preliminary Report.
EXHIBIT L	Performance Schedule.
EXHIBIT M	Parks Management and Maintenance Requirements.
EXHIBIT N	Development Conditions.
EXHIBIT O	Horizontal Improvements Financing Plan.
EXHIBIT P	Contractor Prequalification Application Form.
EXHIBIT Q	Subtenant/Sub-User Insurance Requirements.
EXHIBIT R	Master Development Area Legal Description.
EXHIBIT S	Project Labor Agreement Certification.
EXHIBIT T	Non-Disturbance and Attornment Agreement Form.

SIGNATURE PAGE
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
[**TO BE DETERMINED**]

Approved as to form on
_____.

HEATHER FERBERT,
City Attorney

By: _____
[**TO BE DETERMINED**]

TENANT:

MIDWAY RISING, LLC, a Delaware limited liability company

By: _____
[**TO BE DETERMINED**]

EXHIBIT A
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PREMISES LEGAL DESCRIPTION

[**TO BE INSERTED**]

EXHIBIT B
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PREMISES SITE PLAN

[**TO BE INSERTED**]

EXHIBIT C
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

NOTICE ADDRESSES

Tenant:

[**INSERT TENANT'S NOTICE ADDRESS(ES), INCLUDING NAME AND EMAIL**]

Landlord:

[**INSERT LANDLORD'S NOTICE ADDRESS(ES), INCLUDING NAME AND EMAIL**]

EXHIBIT D
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

BASE RENT; EXISTING ARENA RENT; AND EVENTS REVENUE

1. **DEFINITIONS**. All words, terms, or phrases indicated to be defined words, terms, or phrases by initial capitalization in this **EXHIBIT D** that are not specifically defined in this exhibit will have the meaning given to the same word, term, or phrase, respectively, in the Lease. All section references in this **EXHIBIT D** are to sections in this **EXHIBIT D**, unless otherwise specified. As used in this exhibit, the following words, terms, or phrases will have the following meanings:

1.1. Annual Existing Arena Revenue Statement. An annual statement disclosing all of Tenant's income from and expenses of operation of the Existing Arena during the immediately preceding Lease Year, setting forth in reasonable detail Tenant's Gross Revenue from the Existing Arena during the immediately preceding Lease Year and calculating the Existing Arena Percentage Rent for the preceding Lease Year, prepared using industry standard accounting practices and GAAP consistently applied.

1.2. Base Rent. $100,000.00 per Lease Year.

1.3. Confidential Tenant Records. Defined in Section 5.

1.4. Disclosure Law. Defined in Section 5.

1.5. Existing Arena Closure Date. The first date the Existing Arena is no longer operated or used by Tenant or any other Person for events to which admission tickets are sold that require a venue the size of the Existing Arena.

1.6. Existing Arena Minimum Monthly Rent. Defined in Section 3.3.

1.7. Existing Arena Percentage Rent. Defined in Section 3.4.

1.8. Existing Arena Rent. Defined in Section 3.1.

1.9. Gross Revenue. Defined in Section 3.2.

1.10. Naming Rights. Defined in Section 3.2.

1.11. Parking Lot Rental. Defined in Section 3.2.

1.12. Parking Lot Usage. Defined in Section 3.2.

1.13. Swap Meet Usage. Defined in Section 3.2.

1.14. Telecom Usage. Defined in Section 3.2.

1.15. Tenant Team. Defined in Section 3.7.

2. **BASE RENT**. On the Commencement Date and on each anniversary of the Commencement Date during the Term, in partial consideration for possession and use of the Premises under the terms of this Lease, Tenant will pay Landlord the Base Rent. Base Rent will be prorated based on a 365-day year for each Lease Year or part of a Lease Year that is less than 365 days.

3. **EXISTING ARENA RENTS AND EVENTS REVENUE**.

3.1. Existing Arena Rent. Each Lease Year until the Existing Arena Closure Date, including the Lease Year in which the Existing Arena Closure Date occurs, in partial consideration for possession and use of the Premises under the terms of this Lease, Tenant will annually pay to Landlord the greater of ("**Existing Arena Rent**"): (a) the Existing Arena Percentage Rent; and (b) the total Existing Arena Minimum Monthly Rent for the Lease Year. Existing Arena Minimum Monthly Rent will be paid monthly on or before the 30th day of each calendar month during the Term. Any Existing Arena Percentage Rent due for a particular Lease Year in excess of the total Existing Arena Minimum Monthly Rent for that Lease Year will be paid with Tenant's delivery of the Annual Existing Arena Revenue Statement for that Lease Year. Tenant will deliver an Annual Existing Arena Revenue Statement to Landlord within ninety (90) days after the end of each Lease Year through and including the Lease Year in which the Existing Arena Closure Date occurs.

3.2. Gross Revenue. "**Gross Revenue**" means all revenue derived by Tenant from the following sources: (i) subtenants, operators, licensees, or concessionaires on the Premises: (ii) usage of the parking lots on the Premises during Existing Arena events ("**Parking Lot Usage**"), (iii) rental of the parking lots on the Premises other than usage of the parking lots on the Premises during events at the Existing Arena ("**Parking Lot Rental**"), (iv) usage of the Premises to conduct Kobey's swap meet ("**Swap Meet Usage**"), (v) usage of the Premises to install and operate wireless telecommunication equipment for the benefit of Third Persons ("**Telecom Usage**"), and (vi) naming rights of the Existing Arena ("**Naming Rights**"). Possessory interest taxes or other property taxes will not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue will not include: (a) Federal, State, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by Tenant to a Government agency and accompanied by a tax return or statement as required by Law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenue; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service, or sales carrying charges, or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (g) receipts from public telephones, stamp machines, public toilet locks, or vending machines installed solely for use by Tenant's employees; (h) sales of fixtures, equipment, or property that are not stock in trade; (i) gift certificates or like vouchers until such time as the same will have been converted into a sale by redemption; (j) advertising revenue received for advertising, signage and other marketing materials inside the

Existing Arena, excluding trade signage; (k) security deposits; (l) condemnation awards; and (m) insurance proceeds. Tenant will clearly indicate the amount attributable each Lease Year to each Gross Revenue exclusion category in its Annual Existing Arena Revenue Statements delivered to Landlord under Section 4.

3.3. Existing Arena Minimum Monthly Rent. The "**Existing Arena Minimum Monthly Rent**" is as follows: $70,648.07 monthly in 2026; $72,767.51 monthly in 2027; $74,950.54 monthly in 2028; $77,199.05 monthly in 2029; $79,515.03 monthly in 2030; and for each calendar year after 2030, the Existing Arena Minimum Monthly Rent will increase by three percent (3%) of the Existing Arena Minimum Monthly Rent during the immediately preceding calendar year.

3.4. Existing Arena Percentage Rent. "**Existing Arena Percentage Rent**" means the sum of the monetary amounts determined by multiplying the percentages shown in the table below by the amount of Gross Revenue received by Tenant from the Existing Arena in the corresponding categories of Gross Revenue shown in the table below:

Percentage of Gross Revenue	**Business Activities**
Twenty Five Percent (25%)	Parking Lot Usage
Thirty Percent (30%)	Parking Lot Rental
Twenty Five Percent (25%)	Swap Meet Usage
Sixty Percent (60%)	Naming Rights
Fifty Five Percent (55%)	Telecom Usage

3.5. Only Fair Market Rates. Tenant will not permit Parking Lot Usage, Parking Lot Rental, Swap Meet Usage, Naming Rights, or Telecom Usage by Third Persons, without charging a fair market value rental, usage charge, or naming rights fee, as applicable.

3.6. Other Uses. If Tenant requests to engage in any Revenue generating use of the Existing Arena other than Parking Lot Usage, Parking Lot Rental, Swap Meet Usage, Naming Rights, Telecom Usage, or events for which admission tickets are sold as described in Section 3.7, that is not conducted at the Existing Arena as of the Commencement Date, Landlord and Tenant will mutually agree upon the Existing Arena Percentage Rent calculation applicable to such use prior to Landlord's approval of such use, subject to Landlord's reserved sole discretion to approve or refuse to approve the requested use.

3.7. Existing Arena Events Revenue. In addition to Existing Arena Rent, in partial consideration for possession and use of the Premises under the terms of this Lease, Tenant will pay a fee to Landlord for each paid ticket sold to all non-Tenant Team events (unless such non-Tenant Team event is held by Landlord) at the Existing Arena. Each of the following is a "**Tenant Team**": (i) San Diego Gulls (hockey), (ii) San Diego Seals (indoor lacrosse), (iii) San Diego Sockers (indoor soccer), and (iv) San Diego Strike Force (arena football). Ticket fee payments are

payable to Landlord by Tenant annually, contemporaneously with delivery of the Annual Existing Arena Revenue Statement for each Lease Year. The fee payable to Landlord for each paid ticket sold to all non-Tenant Team events is three dollars ($3.00).

3.8. Existing Arena Closure. Tenant must Notify Landlord of the occurrence of the Existing Arena Closure Date within fifteen (15) days after such date.

4. **FINANCIAL REPORTING; AUDIT RIGHTS**. Tenant will deliver Annual Existing Arena Revenue Statements to Landlord within ninety (90) days after the end of each Lease Year. Landlord will keep all information in Annual Existing Arena Revenue Statements confidential unless disclosure is required by Law, as more particularly set forth in Section 5 below.

4.1. Preparation and Content of Statements. Each Annual Existing Arena Revenue Statement will be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Annual Existing Arena Revenue Statement will be certified by an executive level officer of Tenant with substantial knowledge about the factual background and content of the Annual Existing Arena Revenue Statement. Each Annual Existing Arena Revenue Statement will certify that the accounting practices of Tenant conform to industry standards, use GAAP consistently applied, categorize revenues by source and deductions by type, and otherwise comply with the requirements of this Lease. If such certification cannot be made, then the Annual Existing Arena Revenue Statement will show any adjustments necessary to conform Tenant's accounting practices such that the certification can be made. Each Annual Existing Arena Revenue Statement will be in a customary form reasonably satisfactory to Landlord and supported by source documents such as ticket sales receipts, food and merchandise sales receipts, rent rolls, purchase and sale agreements, assignment agreements, escrow closing statements, and tax statements (which may be in electronic form) as necessary to allow Landlord to easily verify all amounts and calculations in the statement. Tenant will comply with all reasonable requests from Landlord to modify the form and content of Annual Existing Arena Revenue Statements. Tenant will provide all additional information reasonably requested by Landlord regarding Existing Arena Revenue and the calculation of ticket fee payments under Section 3.7.

4.2. Overpayment or Underpayment; Landlord's Right to Audit. If any Annual Existing Arena Revenue Statement, as it may be adjusted under this Section 4.2, indicates an overpayment or underpayment of money owed to Landlord for the subject Lease Year, the amount of any overpayment will be refunded by Landlord to Tenant or the amount of any underpayment will be paid by Tenant to Landlord, within thirty (30) days following the Receipt Date of Notice of the particular overpayment or underpayment. On ten (10) Business Days' Notice (Notice will not be required during the continuance of an Event of Default), only during normal business hours, and (so long as no Event of Default has occurred) no more often than once each Lease Year, Landlord's auditor may audit Tenant's financial statements and all information referenced in the pertinent Annual Existing Arena Revenue Statements. Tenant will, without charge, assist in such audit, as Landlord's auditor may reasonably request.

4.3. Retention. Tenant will, during operation of the Existing Arena and for a period of six (6) years following the Existing Arena Closure Date, maintain and cause Tenant's Affiliates to

maintain, safe and intact, all Annual Existing Arena Revenue Statements and supporting information. From time to time, upon Notice from Landlord requesting such information, Tenant will make all Annual Existing Arena Revenue Statements and supporting information, whether in the custody or control of Tenant or Tenant's Affiliates available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises or another reasonable location in the County at any reasonable time, on five (5) days advance Notice.

4.4. Audit Costs. If any Landlord audit of one or more Annual Existing Arena Revenue Statements discloses that payments due to Landlord were under-reported in any Annual Existing Arena Revenue Statement to an extent of four percent (4%) or more on an annual basis for one or more Lease Years, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in the amount of money payable to Landlord for each under-reported Lease Year, with Default Interest on such payment deficiency amount from the date such amount was originally due, until paid in full. If any Landlord audit of one or more Annual Existing Arena Revenue Statements discloses Tenant's overpayment to Landlord, the overpaid amount will be credited to Tenant against future Existing Arena Rent becoming due to Landlord under this Lease, unless the Existing Arena Closure Date has occurred, in which case Landlord will pay any overpaid amount to Tenant within thirty (30) days after Landlord's receipt of the audit report disclosing the overpayment; provided, however, that Landlord may first apply any such overpayment to any amount(s) owed to Landlord by Tenant before making any such payment to Tenant.

4.5. Identity and Retention of Auditor. Landlord's auditor will be either: (1) an employee of Landlord; or (2) a certified public accountant. Landlord's auditor will comply with such reasonable restrictions on time and access as Tenant may require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Landlord's auditor will not work under a contract providing a contingency fee for amounts determined to have been underpaid to Landlord by Tenant.

5. **CONFIDENTIALITY**. Landlord shall not disclose information to Third Persons that is clearly identified by Tenant at the time such information is provided to Landlord as proprietary or confidential information of Tenant ("**Confidential Tenant Records**"), unless such disclosure is required by Law (including the California Public Records Act) or court order (collectively, "**Disclosure Law**"), or the disclosure is related to the pursuit of any remedies or the assertion of any rights of Landlord under this Lease. Tenant shall only mark information as Confidential Tenant Records if the information has independent economic value as a result of generally not being known to another Person that could obtain economic value from using or disclosing it, and Tenant takes reasonable efforts to maintain its confidentiality other than disclosing it to Landlord as required under this Lease. Tenant shall provide Landlord with an explanation for the basis of identifying information as a Confidential Tenant Record, and Tenant shall not adopt a practice of marking all information as Confidential Tenant Records if such information or communication does not meet the standard in the immediately preceding sentence. If Landlord receives a request or order under Disclosure Law that requires disclosure of Confidential Tenant Records, Landlord will endeavor to provide Notice to Tenant of such request or order. Landlord has the responsibility to make determinations about disclosure of information under Disclosure Law in Landlord's sole discretion, and to disclose information as required by Disclosure Law if Landlord determines that

particular information is disclosable. As a result of Landlord's obligations under Disclosure Law, Landlord's disclosure of any Confidential Tenant Records as required to comply with any Disclosure Law, with or without prior Notice to Tenant, will not be a Landlord Default under this Lease.

EXHIBIT E
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

EXISTING ARENA OPERATING REQUIREMENTS

1. Operation of Existing Arena. Subject to Unavoidable Delay and reasonable closure for repair or Restoration or to prepare for demolition of the Existing Arena, Tenant will conduct its business and operate the Existing Arena diligently and continuously and without interruption during normal hours of operation during the Term with the intent of reasonably maximizing revenue. Tenant will Notify Landlord in advance if any closure of all or any part of the Existing Arena will continue for more than one week (other than in the event of an emergency, in which case Tenant will Notify Landlord within two (2) Business Days following such emergency arising). Tenant will conduct its business and operate the Existing Arena in conformity with all applicable Laws and Approvals. Tenant will ensure that the type and quality of all food-handling services furnished by Tenant, or its licensees, contractors or subcontractors, at all times satisfies all the conditions and requirements of the "A" Card issued by the San Diego County Health Department to operators of food-handling establishments.

2. Food Handling Services. Tenant will ensure that the type and quality of all food-handling services furnished by Tenant, Subtenants, or Sub-Users at the Existing Arena at all times satisfy all the conditions and requirements of the "A" Card issued by the San Diego County Health Department to operators of food-handling establishments.

3. Single Use Plastic Restriction. Tenant, Subtenants, or Sub-Users at the Existing Arena will all comply with the Single Use Plastic Reduction Ordinance, at SDMC Chapter 6, Article 6, Division 9.

4. Alcohol. No alcohol or alcoholic beverages may be served at the Existing Arena unless Tenant, Subtenants, or Sub-Users (as applicable) have obtained all Approvals required to serve alcohol at the Existing Arena. Tenant will provide to Landlord a complete copy of all required Approvals allowing alcohol to be served at the Existing Arena prior to serving alcohol or alcoholic beverages. Tenant, Subtenants, or Sub-Users will comply at all times with all Laws related to serving alcohol and all terms, conditions, and restrictions in the required Approvals related to serving alcohol at the Existing Arena. Tenant will bear full responsibility, at its sole risk and cost, for compliance with all Laws and Approval conditions related to service of alcohol whenever Tenant, Subtenants, or Sub-Users (as applicable) obtain permission to serve alcohol at the Existing Arena.

5. Music. Tenant, each Subtenant, or each Sub-User will only perform music at the Existing Arena for which Tenant, the Subtenant, or the Sub-User has obtained a "non-dramatic" performance license from ASCAP, Broadcast Music, Inc., SESAC, or any other required musical industry licensing entity (each, a "Music Licensing Entity"). For a list of approved music and artists, Tenant may contact each Music Licensing Entity. It will be Tenant's sole responsibility to

ensure music for which Tenant, the Subtenant, or the Sub-User (as applicable) have obtained a valid music performance license from each appropriate Music Licensing Entity is performed at the Existing Arena. Tenant will ensure that for each "non-dramatic" performance license: (1) Landlord is named in the license; (2) the Premises or the Existing Arena are identified in the license; and (3) Tenant has provided Landlord with a fully signed copy of the license before the performance of the subject music.

6. Equipment. Tenant will furnish all equipment and materials necessary for the operation of the Existing Arena in conformity with this Lease, including this **EXHIBIT E**, at Tenant's sole cost and expense.

7. Signs. Notwithstanding anything to the contrary in this Lease, Tenant shall comply with the SDMC requirements relating to Signs at the Existing Arena at all times. Tenant will have the sole and exclusive right, throughout the Term of this Lease, to display, sell, license, or otherwise exploit all advertising Signs and sponsorship Signs on the interior and exterior of the Existing Arena, subject to compliance with Law. Tenant shall be entitled to receive and retain 100% of all cash or in-kind consideration, revenues, royalties, or other economic benefits derived from such Signs during the Term of the Lease, provided that the same shall be included in Gross Revenue. Notwithstanding anything to the contrary in this Lease, all Signs must not: (a) be obscene; (b) violate Law; (c) contain racial slurs, obscenities, or display products or messages of an explicit sexual nature; or (d) include the name of another Government or territorial jurisdiction in a manner that reasonably suggests the Existing Arena is located outside the City of San Diego, California. No prior written consent or approval by Landlord shall be required for Signs that are either (i) consistent with Tenant's Approved Signage Plan, (ii) located inside the Existing Arena and not visible outside the Existing Arena or (iii) required by Law (collectively, the "**Arena Pre-Approved Signs**"). If there is no Approved Signage Plan, only Signs described in clauses "(ii)" or "(iii)" of the immediately preceding sentence will be Arena Pre-approved Signs. No sign, other than an Arena Pre-Approved Sign, may be placed on the Existing Arena without Landlord's prior written approval, in each instance, which approval shall not be unreasonably withheld. All Signs on the Existing Arena will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Existing Arena on or before the Existing Arena Closure Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense. Tenant will comply with all Laws requiring the posting of Signs on the Existing Arena. If any unauthorized Sign is found on the Existing Arena, Tenant will remove the Sign at Tenant's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the Sign within such twenty-four (24) hour period, Landlord may enter the Existing Arena and remove the Sign at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 7, Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after the Receipt Date of Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 7 that is not paid within fifteen (15) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest from the date incurred until paid in full.

EXHIBIT F
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

TENANT INSURANCE REQUIREMENTS

1. **Required Insurance Coverage**. Tenant will maintain all the following insurance policies:

1.1 *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant, written on the then current version of ISO form CA 00 01 12 90 or equivalent form providing coverage at least as broad, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000) combined single limit per accident. Such insurance will be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which will be subject to pre-approval by Landlord, which pre-approval will not be unreasonably withheld. All costs of defense covered by Automobile Liability Insurance must be outside the policy limits.

1.2 *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, written on the then current version of ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad, with a minimum annual aggregate liability limits of not less than the following: (a) other than products/completed operations $10,000,000; (b) products completed operations $10,000,000; (c) personal injury limit $5,000,000; and (d) each occurrence $5,000,000. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit will apply separately to the Premises. The policy shall not include an endorsement or modification limiting the scope of coverage for either insured vs. insured claims or contractual liability. All costs of defense covered by Liability Insurance must be outside the policy limits.

1.3 *Property Insurance*. Insurance providing coverage for the Premises and all Improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all Improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance will include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4 *Builder's Risk Insurance*. Special form builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an

amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the replacement value of the subject Construction, including cost of debris removal (including demolition), excavations, grading, and filling, plus fifteen percent (15%) to cover administrative costs, design costs, and the costs of inspections and Construction management. Such insurance will also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location or in transit intended for use in, or in connection with, the Premises. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the Premises.

1.5 *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

1.6 *Contractors Pollution Liability Insurance*. Contractors Pollution Liability Insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Tenant or on Tenant's behalf, Tenant's products, Tenant's work (including Tenant's completed operations performed by Tenant or on Tenant's behalf), or premises owned, leased, controlled, or used by Tenant, with minimum liability limits of Two Million Dollars ($2,000,000) for any one claim or occurrence and Four Million Dollars ($4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance must be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars ($25,000) per claim unless and until Tenant obtains Landlord's separate written approval of a higher deductible amount. With Landlord's separate prior written approval, Tenant may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its contractor or subcontractor maintaining Contractors Pollution Liability Insurance as required under these Tenant Insurance Requirements (defined below). When Tenant requests Landlord's approval to use its contractor's or subcontractor's Contractors Pollution Liability Insurance, Tenant will certify to Landlord that all activities requiring Contractors Pollution Liability Insurance under these Tenant Insurance Requirements will be performed exclusively by the contractor or subcontractor that will maintain the Contractors Pollution Liability Insurance and provide Landlord with a copy of its contractor's or subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on an occurrence basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences. Policies issued on a claims made basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences, be maintained for the duration of all activity covered by the Contractors Pollution Liability Insurance and include a 12-month extended claims discovery period applicable to all activity covered by the Contractors Pollution Liability Insurance or the policy or policies must be maintained for at least 12 months after completion of all activities covered by the Contractors Pollution Liability Insurance without advancing the retroactive date.

1.7 *Contractors Hazardous Transporters Pollution Liability Insurance*. Contractors Hazardous Transporters Pollution Liability Insurance, including contractual liability coverage to cover liability arising out of transportation of Hazardous Substances or any other pollutants by Tenant or any contractor or subcontractor in an amount no less than $2,000,000 limit per occurrence and $4,000,000 aggregate per policy period of one year. All costs of defense covered

by Contractors Hazardous Transporters Pollution Liability Insurance must be outside the limits of the policy. Landlord's prior written approval is required for a contractor or subcontractor to provide Contractors Hazardous Transporters Pollution Liability Insurance. To obtain Landlord approval of a contractor's or subcontractor's Contractors Hazardous Transporters Pollution Liability Insurance coverage, Tenant shall certify that all activities under the Contractors Hazardous Transporters Pollution Liability Insurance will be performed exclusively by the contractor or subcontractor providing the insurance. The deductible under Contractors Hazardous Transporters Pollution Liability Insurance shall not exceed $25,000 per claim without prior approval of the Landlord. Occurrence based policies shall be procured before any activity covered by the Contractors Hazardous Transporters Pollution Liability Insurance commences. Claims made policies shall be procured before any activity covered by the Contractors Hazardous Transporters Pollution Liability Insurance commences, shall be maintained for the duration of the activities, and shall include a 12-month extended claims discovery period applicable to the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance or the existing policy or policies shall continue to be maintained for 12 months after completion of the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance, without advancing the retroactive date.

1.8 *Professional Liability Insurance*. All architects and engineers providing services to Tenant related to the Premises or the Horizontal Improvements must provide Landlord with written evidence of Professional Liability Insurance coverage with a limit of no less than $1,000,000 per claim and $2,000,000 aggregate per policy period of one year. The policy retroactive date must be on or before the date of commencement of the services. The policy must be maintained in force for a period of three (3) years after completion of the Horizontal Improvements and there will be no changes or endorsements to the policy that affect the specified coverage. If professional engineering services are to be provided solely by a subcontractor, Tenant must certify this fact to Landlord in writing and require the subcontractor to procure Professional Liability Insurance coverage in accordance with this Section 1.8.

2. **Nature of Insurance**. The contents of this **EXHIBIT F** are sometimes referred to as the "**Tenant Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, Builder's Risk Insurance, Contractors Pollution Liability Insurance, Contractors Hazardous Transporters Pollution Liability Insurance, and Professional Liability Insurance policies required by these Tenant Insurance Requirements will be issued by carriers that: (a) have a minimum financial strength rating of "A-" and a minimum financial size category of "VI" (exception may be made for the State Compensation Insurance Fund when not specifically rated) from A.M. Best Company, Inc. (or equivalent rating service, as determined by Landlord); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy specifies the amount(s) of the total insurance allocated to the Premises, which amount(s) will equal or exceed the amount(s) required by these Tenant Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Tenant Insurance Requirements. Landlord will accept insurance provided by a non-admitted, "surplus lines" carrier only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list) maintained by the State Department of Insurance. All policies of

insurance carried by non-admitted carriers shall be subject to all the Tenant Insurance Requirements for policies of insurance provided by admitted carriers described in this Lease.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Tenant Insurance Requirements will contain (by endorsement or otherwise) the following provisions:

3.1 *Insured*. To the extent allowed by Law: (a) Liability Insurance, Contractors Pollution Liability Insurance, and Contractors Hazardous Transporters Pollution Liability Insurance policies will name the Landlord Parties as "additional insured;" (b) Builder's Risk Insurance policies will name Landlord as a "loss payee;" and (c) The coverage afforded to the Landlord Parties will be at least as broad as that afforded to Tenant regarding the Premises, including the Improvements, and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2 *Primary Coverage*. All insurance coverage required by these Tenant Insurance Requirements will be primary to all insurance or self-insurance maintained by the Landlord Parties and all insurance or self-insurance maintained by the Landlord Parties will be excess of all insurance maintained by Tenant and will not contribute with any insurance maintained by Tenant.

3.3 *Commencement of Builder's Risk Insurance Coverage*. Before starting any Construction, including the Horizontal Improvements, Tenant shall have Builder's Risk Insurance covering the Construction in place. Builder's Risk Insurance coverage will commence no later than the time of contractor mobilization for the contracted work.

3.4 *Contractual Liability*. Liability Insurance and Contractors Pollution Liability Insurance policies will contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's maintaining or failing to maintain such contractual liability coverage will not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.5 *Deliveries to Landlord*. Original certificates of all insurance policies required by these Tenant Insurance Requirements, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by these Tenant Insurance Requirements), will be delivered by Tenant to Landlord before the Commencement Date. Landlord has the right to require Tenant to deliver to Landlord complete, certified copies of all insurance policies required by these Tenant Insurance Requirements, including all required endorsements. No later than ten (10) days before any insurance required by these Tenant Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant will deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Tenant Insurance Requirements. Each insurance policy required by these Tenant Insurance Requirements will be endorsed to state that coverage will not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company" will not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Tenant Insurance Requirements.

3.6 *Waiver of Certain Claims*. Tenant will cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Workers Compensation Insurance, or Automobile Liability

Insurance coverage under these Tenant Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

3.7 *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Tenant Insurance Requirements are adequate or sufficient.

3.8 *No Claims Made Coverage*. None of the insurance coverage required by these Tenant Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.

3.9 *Fully Paid and Non-Assessable*. All insurance maintained by Tenant in satisfaction of these Tenant Insurance Requirements will be fully paid for and non-assessable.

3.10 *Separation of Insured*. All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance will provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Tenant Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but will not exclude suits between named insured Persons and additional insured Persons.

3.11 *Severability of Interest*. All insurance coverage required by these Tenant Insurance Requirements will apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3.12 *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Tenant Insurance Requirements will be declared to and approved by Landlord. Landlord may require the purchase of coverage with a lower retention or proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Tenant will pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Tenant Insurance Requirements will provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties under these Tenant Insurance Requirements will be reimbursed to Landlord by Tenant in the same manner that insurance costs are reimbursable to Landlord from Tenant under Section 5 of these Tenant Insurance Requirements.

3.13 *No Separate Insurance*. Tenant will not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required

by these Tenant Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Tenant Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and will not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor will the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to maintain any insurance coverage required by these Tenant Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord will be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Tenant Insurance Requirements to be carried by Tenant will not relieve Tenant of any Default or Event of Default or Tenant's obligation to maintain all insurance coverage required by these Tenant Insurance Requirements.

EXHIBIT G
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease at Tenant's sole cost and expense. Tenant's failure to comply with, or ensure the compliance of its licensees, contractors, subcontractors, operators, or concessionaires with, any such requirements will be a Default under this Lease. All Council Policies and other Landlord requirements referenced in this **EXHIBIT G** are incorporated by reference into this Lease.

1.1 Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the ADA requirements of the City of San Diego, California under Council Policy 100-04, which is incorporated into this Lease by this reference. Tenant agrees that all contracts and subcontracts relating to this Lease or the Premises will contain the contractor's agreement to abide by the provisions of Council Policy 100-04.

1.2 Equal Benefits Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.3 Equal Pay Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Tenant will certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to each contractor and subcontractor who performs work on behalf of Tenant, a Subtenant, or a Sub-User to the same extent as it would apply to Tenant. Tenant will require all its contractors, subcontractors, Subtenants, and Sub-Users to certify compliance with the Equal Pay Ordinance in written contracts.

1.4 No Discrimination or Segregation. Neither Tenant nor any Subtenant, nor any Sub-User, nor any other Person claiming under or through Tenant will establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, and occupancy of the Premises or in the selection, location, number, use, or occupancy of Subtenants or Sub-Users on or about the Premises.

1.5 Equal Employment Opportunity Outreach Program. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with SDMC sections 22.2701 through 22.2707. Tenant and all Subtenants and Sub-Users will not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant and all Subtenants and Sub-Users will provide

equal opportunity in all employment practices. Tenant and all Subtenants and Sub-Users will ensure that their contractors and subcontractors comply with this program. Nothing in this Section 1.5 will be interpreted to hold Tenant or any Subtenant or Sub-User liable for any discriminatory practice of its contractors or subcontractors.

1.6 Product Endorsement. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to the City of San Diego, California as a user of a good or service must have the prior written approval of the Mayor.

1.7 Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant or the applicable Subtenant or Sub-User is exempt from the payment of business tax, Tenant and each Subtenant and Sub-User is required to obtain a business tax certificate from the City Treasurer and provide a copy of such certificate to Landlord before commencing the Permitted Uses on the Premises.

1.8 Employment of Landlord Staff. Under Council Policy 300-11, if Tenant employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a Landlord officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the entry into this Lease, Landlord, in its sole and absolute discretion, will have the right to unilaterally and immediately terminate this Lease by notice to Tenant. This provision is not intended to apply to members of the City Council.

1.9 Zero Emissions Municipal Buildings and Operation Policy. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with all requirements of Council Policy 900-03.

1.10 Living Wage. In performing its obligations under this Lease, Tenant will comply, and cause all Subtenants and Sub-Users to comply with the provisions of the City of San Diego, California, Living Wage Ordinance codified in SDMC sections 22.4201, et seq.

EXHIBIT H
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PREVAILING WAGE REQUIREMENTS

[NOTE TO DRAFT: APPLICABILITY TO BE DETERMINED UNDER SECTION 25 OF DDA]

1. **PREVAILING WAGES**. In performing all Construction or maintenance work under this Lease, Tenant, its contractors and subcontractors will cause all workers who perform Construction and or maintenance work on or for the Premises (including work performed during the design and preconstruction phases of Construction, such as inspection and land surveying work) to be paid not less than Prevailing Wages and will comply with Prevailing Wage Law and the provisions of this **EXHIBIT H**. If anyone else performs any work on or for the Premises during the design and preconstruction phases of Construction as contemplated in Section 13 of this Lease, then all requirements of this **EXHIBIT H** shall apply to them and their contractors or subcontractors, and all references in this **EXHIBIT H** to "contractors and subcontractors" shall include them and their contractors or subcontractors.

1.1 Prevailing Wage Rates. Copies of the DIR prevailing wage rates are on file with Landlord and are available for inspection to any interested Person on request. Copies of the prevailing rates of wages also may be found at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant, its contractors and subcontractors will all post a copy of the prevailing wage rate determination at each job site and will make this information available to all interested Persons upon request. Tenant, its contractors and subcontractors will all deliver evidence of the required job site posting to Landlord within five (5) days after such posting.

1.1.1 *Wage Duration*. The prevailing wage rates determined by DIR refer to expiration dates. If the published prevailing wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published wage rate will be in effect for the duration of this Lease or until changed by DIR. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate will become effective on the date following the expiration date of the previous wage rate and will apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate will apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate will apply to the balance of the Term, unless otherwise increased under applicable law.

1.2 Penalties for Violations. Tenant, its contractors and subcontractors will be subject to and proceed in accordance with California Labor Code section 1775, in the event a worker is paid less

than Prevailing Wages for the work or craft in which the worker is employed, in addition to all other applicable penalties allowed under Prevailing Wage Law.

1.3 Payroll Records. Tenant, its contractors and subcontractors will all maintain all the records, make all the verifications and certifications, and submit or make available, as applicable, all such records, verifications, and certifications as described in California Labor Code section 1776. Tenant, its contractors and subcontractors will all include provisions requiring performance of all actions described in California Labor Code section 1776 in all contracts with all contractors or subcontractors, including submitting certified payroll records to DIR through its online system for submission of certified payroll records and furnishing the records specified in California Labor Code section 1776 directly to the California Labor Commissioner in the manner required in California Labor Code section 1771.4. Tenant shall contractually require that each of Tenant's contractors and subcontractors submit certified payroll records to Landlord, the California Labor Commissioner, and DIR.

1.4 Apprentices. Tenant, its contractors and subcontractors will all employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6 and 1777.7. Tenant will be held responsible for its own failure and the failure of its contractors and subcontractors to employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant, its contractors and subcontractors will all comply with the working hours requirements described in California Labor Code sections 1810 through 1815, including: (i) restricting working hours to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day a worker works more than 8 hours per day and 40 hours per week.

1.6 Required Provisions for Subcontracts. Tenant, its contractors and subcontractors will all include, at a minimum, a copy of and compliance with the following provisions of the Prevailing Wage Law in each contract any of them enters into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. As described in California Labor Code section 3700, Tenant, its contractors and subcontractors will all secure the payment of compensation of their respective employees and by signing this Lease or any contract or subcontract, respectively, Tenant, its contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant, its contractors and subcontractors will include this certification in all contracts with each of their contractors or subcontractors.

1.8 Registration Requirements. All Construction or maintenance work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104 or engage in the performance of any such contract unless currently registered and qualified

to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the California Business and Professions Code or by section 10164 or 2103.5 of the California Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation will not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under California Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor that does not comply with California Labor Code section 1771.1(a) will be subject to cancellation, provided that a contract will not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it is registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and has verified or will verify that all of Tenant's contractors and subcontractors performing Construction or maintenance work under this Lease are registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and will provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant will timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of each filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant will record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of each recorded notice of completion to Landlord.

1.11 Awarding Body for Subleases and Use Agreements. Tenant acknowledges and agrees that, for any Sublease or Use Agreement requiring the payment of Prevailing Wages, (a) Tenant (not Landlord) is the awarding body as that term is used in Prevailing Wage Law, (b) Tenant will comply with all obligations of Prevailing Wage Law applicable to awarding bodies, and (c) Tenant will be responsible for all penalties, fines, damages or other liabilities that may be imposed on an awarding body for failing to comply with Prevailing Wage Law.

1.12 Subtenants and Sub-Users. If one or more Subtenants or Sub-Users perform any work on any portion of the Premises that requires the payment of Prevailing Wages under Sections 13, 25.1, or 26.2 of this Lease, then all requirements of this **EXHIBIT H** shall apply to those Subtenants or Sub-Users and their respective contractors and subcontractors, and all references in this **EXHIBIT H** to "contractors and subcontractors" shall include those Subtenants and Sub-Users and their respective contractors and subcontractors.

EXHIBIT I
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

HORIZONTAL IMPROVEMENTS PHASING PLAN

[**TO BE INSERTED**]

EXHIBIT J
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

HORIZONTAL IMPROVEMENTS

[**TO BE INSERTED**]

EXHIBIT K
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PRELIMINARY REPORT

[TO BE INSERTED]

EXHIBIT L
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PERFORMANCE SCHEDULE

[PARTIES TO INSERT THIS PERFORMANCE SCHEDULE AFTER IT IS AGREED UPON UNDER SECTION 31.2 OF THE DDA]

EXHIBIT M
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PARKS MANAGEMENT AND MAINTENANCE REQUIREMENTS

1. **LEGAL COMPLIANCE**. Tenant shall ensure that all Parks comply with this Lease, all Laws, and all Approvals. Tenant shall also ensure compliance with all Approvals, all Government license, permit, or certificate requirements, all required financial disclosures, all California State Seller's Permit requirements, and all County Health Department requirements by all contractors, licensees, concessionaires, or vendors using, entering onto, or operating within the Parks. Tenant shall ensure that all contractors, licensees, concessionaires, or vendors using, entering onto, or operating within the Parks obtain and maintain all insurance required by the Subtenant/Sub-User Insurance Requirements, and all Approvals required under this Lease, or under Law.

2. **SPECIFIC PLAN COMPLIANCE**. Tenant shall ensure that all Parks comply with the Specific Plan. Tenant shall also maintain and provide Parks worth a total of 610 Recreational Value Points as determined under the DDA. Once all Parks are Constructed, the Parks must be, collectively, worth a total of 610 Recreational Value Points at all times.

3. **PARKS MAINTENANCE**. Tenant shall furnish and pay for all utilities (water, electricity, etc.), materials, tools, equipment, labor, and supplies needed to maintain and operate the Parks, all at Tenant's expense. All utilities serving the Parks shall be separately metered. Tenant shall perform, or cause to be performed, all maintenance of the Parks in accordance with Section 10 of the main body of this Lease and this **EXHIBIT M** at Tenant's expense. In addition to the Maintenance Standard and the maintenance obligations described in Section 10 of the main body of this Lease, all the following maintenance requirements apply to Tenant's maintenance of the Parks:

3.1. General Maintenance. Tenant shall maintain, or cause to be maintained, all the following generally described elements of the Parks in good and safe condition:

3.1.1. All paved surfaces, including curbs, gutters, sidewalks and roadways, sports court surfacing, decomposed granite (D.G.) paths, parking lots, and platforms;

3.1.2. All objects Constructed above the ground;

3.1.3. All furniture, furnishings, structures (moveable or stationary, i.e. permanent seating, coffee carts, retail carts), and objects, including benches, trash receptacles, picnic or shade structures, bike racks, signs, trellises, kiosks, fountains, lighting standards and fixtures, exercise, play or recreational equipment, AV equipment, and interpretive, educational, placemaking, and interactive technology elements;

3.1.4. All buildings, including comfort stations and concessions;

3.1.5. All security systems installed in or for the Parks;

3.1.6. All components of the Parks installed during initial Construction of the Parks under this Lease not described in this Section 3;

3.1.7. The enhanced paving, irrigation, and planting in the public rights-of-way associated with the Parks;

3.1.8. All other amenities in the Parks, including off-leash dog areas, hardcourt areas, active recreation fields, multi-purpose turf areas, specialty restaurant areas, food areas/concessions/cafes, restaurants, performance/event spaces, and amphitheaters.

3.2. Watering, Irrigation, and Power Washing/Spraying. All watering, irrigation, and power washing/spraying shall comply with Landlord's "Emergency Water Regulations" (SDMC 67.3801, et seq.) enacted under its Governmental Authority. All compliance activities or fines related to violations of the "Emergency Water Regulations" or other Laws by Tenant shall be the responsibility of Tenant, at Tenant's expense. Tenant shall not be in Default of this Lease if it reduces or eliminates irrigation of the Parks to comply with water conservation measures required by Landlord, under its Governmental Authority, or another Government. Tenant shall comply with all Laws (including requirements of the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management, including requirements of the applicable National Pollutant Discharge Elimination System permit. Tenant acknowledges and agrees that such legal requirements may change at any time and from time to time. At all times, Tenant and its contractors or subcontractors shall exercise care with regard to the use of equipment and machinery in and around the Parks to prevent injury or damage to patrons, trees, building surfaces, walls, header board, light fixtures, signage, etc.

3.3. Landscaping. Tenant shall maintain all landscaping within the Parks in a good and attractive condition, including trimming, watering, and fertilizing all turf, ground cover, shrubs, vines, trees, and other plantings, removal of dead or waste material, and replacement of all dead or diseased grass, ground cover, shrubs, vines, trees, or other plantings; maintenance of planted areas free of weeds; and trimming and pruning of all shrubs, vines, and trees so they do not impede pedestrian or other traffic. Plant replacements shall be substantially equal in size, quality, and character to the plant or plants being replaced; provided, however, that while Tenant is required to replace mature trees, Tenant is not required to replace mature trees with trees of equal size, but shall replace mature trees with trees of the same type that are at least the size of a thirty-six (36) inch box tree and that upon reaching the same age of maturity as the tree being replaced, are reasonably expected to be of similar size.

3.4. Synthetic Turf. Tenant shall maintain synthetic turf, if any, in good and safe condition consistent with the manufacturer's recommendations and shall fix or replace synthetic turf as reasonably necessary.

3.5. Irrigation. Tenant shall maintain all irrigation systems, including water lines, valves, backflow valves, vacuum breakers, heads, electrical wires, controllers, clocks, and other elements, within the Parks in good condition. All irrigation systems for landscaping shall be maintained to

provide an appropriate amount of water to the landscape for plant growth without causing soil erosion and runoff.

3.6. Pathways. Tenant shall maintain all sidewalks, trails, pathways, multi-use pathways, bike paths, cycle tracks, fitness circuits, and the like within the Parks in a safe condition that does not impede the uses for which they are designed. Tenant shall also be responsible for the removal of weeds and debris from all sidewalks, trails, pathways, multi-use pathways, bike paths, cycle tracks, fitness circuits, and the like within the Parks.

3.7. Play Equipment and Play Area Surfacing. Tenant shall maintain all play equipment and play area surfacing in a clean and safe condition and in good working order. Tenant shall temporarily secure broken or damaged equipment so it cannot be used, place appropriate signage to notify the public that the equipment is out of service, and repair broken or damaged equipment within a reasonable time. Play area safety surfacing shall be regularly inspected for signs of cracking, granulating, or flaking at intervals recommended by the manufacturer to ensure that the surface meets the fall zone specifications required for safety and, as necessary, repaired in accordance with the manufacturer's instructions within a reasonable time.

3.8. Art Objects. Tenant shall be responsible for the maintenance of all artwork installed in the Parks, including cleaning of artwork, artwork-related plaques, and surrounding paving. Bird droppings shall be removed from all artwork within a reasonable time.

3.9. Light Fixtures. Tenant shall be responsible for maintaining all light fixtures in the Parks in good condition, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. Tenant shall be responsible for ensuring the correct aiming of these light fixtures and replacement of defective/burned-out lamps when reasonably necessary.

3.10. Utility and Drainage Facilities. Tenant shall be responsible for periodic inspection and maintenance of all: (a) surface and subsurface drains located within the Parks and for assuring proper flow and functioning, including removing debris or vegetation that might accumulate at drain inlets as reasonably required; (b) infrastructure located within the Parks for treatment of the Parks' stormwater; and (c) utility service lines and facilities directly serving the Parks (excluding distribution lines and facilities serving other properties as well), such as electrical connections, and similar elements.

3.11. Trash Removal. All trash, litter, or other debris, and the residue of urination and defecation shall be removed from the Parks at least one (1) time per day.

3.12. Graffiti Removal. Tenant shall address graffiti in the Parks as provided in Section 10 of the main body of this Lease.

3.13. Dog Waste Disposal Bag Dispensers. Tenant shall replenish dog waste disposal bags in the Parks at reasonable intervals, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.14. Walls and Fencing. Tenant shall maintain all walls, fencing, gates, and trellis elements in the Parks in good and safe working condition, making repairs as reasonably necessary,

consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.15. Signage. Tenant shall maintain all Park signage in good condition, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. The sign requirements in Section 9.15 of the main body of this Lease apply to all signs in the Parks.

3.16. Public Restrooms. Tenant shall clean and maintain all grounds, structures, and fixtures of public restrooms within the Parks in good, safe, and sanitary condition, in accordance with all Laws. Tenant will clean and disinfect all plumbing fixtures, mirrors, washroom sanitary and waste receptacles, floors, wall bases, and dispensers of supplies located in restrooms regularly, and adequately maintain and stock all toiletry receptacles and dispensers with supplies, all consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. The entrance doors to public restrooms in the Parks shall be open seven (7) days a week from the hours of 6:00 a.m. to 9:00 p.m., at a minimum, and shall be inspected from time-to-time throughout the day by Tenant, private security personnel hired by Tenant for the Parks, or by other Persons engaged by Tenant for such purposes. The public restrooms within the Parks will have appropriate lighting and security measures intended to deter crime.

3.17. Security. In addition to the requirements of Section 9.6 of the main body of this Lease and the Security Plan, the Parks shall be patrolled by a security guard 24-hours-a-day. To the extent permitted under Law, the Parks may also be monitored by a 24-hour-a-day recordable video security camera system with internet website accessibility setup by Tenant. If Tenant elects to monitor the Parks with video security cameras, Tenant shall consider participating in any then available San Diego Police Department program allowing San Diego Police Department access to live video transmissions. If a Park is monitored by a video security camera system Tenant shall provide adequate signage at various areas in the Park indicating that the Park is monitored by security cameras.

3.18. Security Fence. Upon the request of either Party, Tenant and Landlord, including a representative of the San Diego Police Department, shall meet and confer about whether any of them believes that the number of security-related incidents in or about the Parks and in the immediately surrounding community, as evidenced by the maintenance records for the Parks related to repairs and associated misuse, inappropriate use, or vandalism, or private security or police records, reports, or security tapes, is at a level that proper control or security in the Parks cannot be adequately maintained without installing a security fence around the perimeter(s) of the Parks with appropriate height and openings to the surrounding sidewalk that may be needed to adequately secure the Parks (a "**Security Fence**"). If, after meeting and conferring, Landlord and Tenant reasonably agree that a Security Fence should be installed due to security concerns, Tenant shall cause the Security Fence to be installed and maintained, at Tenant's expense, within a reasonable time. If, after meeting and conferring, Landlord and Tenant reasonably agree that a Security Fence is not required to be installed at the time of the initial meet and confer, Tenant and Landlord, including a representative of the San Diego Police Department, shall continue to meet and confer periodically to determine whether adequate security in the Parks can be maintained without installing a Security Fence. If, after meeting and conferring, Tenant does not agree that a Security Fence is necessary to address security concerns, but Landlord does believe a Security

Fence is necessary, Tenant shall provide an additional Security Plan specific to the Park or Parks for which Landlord has identified security concerns. The additional Security Plan shall detail additional security measures that will be taken to mitigate the security concerns identified. Further, the additional Security Plan will require that Tenant document all incidents relating to the specific Park or Parks for an agreed upon time, but no less than one (1) calendar year, after which Landlord and Tenant will meet and confer to discuss whether the additional security measures are effectively addressing the identified security concerns, or if a Security Fence is necessary. If Tenant cannot demonstrate to Landlord's reasonable satisfaction that the additional security measures were effective during the agreed upon period of time in addressing the identified security concerns, Tenant shall cause a Security Fence to be installed and maintained at Tenant's expense, within a reasonable amount of time. If a Security Fence is installed, the continuing necessity of the Security Fence will be reviewed by Landlord and Tenant annually during the month containing the first day of each Lease Year after installation of the Security Fence.

3.19. Daily Inspection Standards.

3.19.1. **General Inspection**. Tenant shall cause all Park areas to be inspected at least once a day. Any major problems in the Parks shall be repaired by Tenant within a commercially reasonable time, but no longer than 72 hours if such repair is a day-to-day non-capital repair.

3.19.2. **Irrigation Inspection**. Tenant shall cause all Park irrigation systems to be visually inspected regularly, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego California, to ensure complete electronic operation and proper distribution of water, including the water meter, backflow preventer, master valve, quick couplers, irrigation heads, valves, wires, mainlines, lateral lines, controllers, flow sensors, rain sensors, pressure regulators, etc. Maintenance and repair of irrigation systems shall be as needed, to ensure proper operation of irrigation systems using only irrigation equipment approved under the Park Design Manual that can be located online at https://www.sandiego.gov/parks-and-recreation/design-development.

3.19.3. **Inspection**. Upon discovery, Tenant shall barricade or tape off, as appropriate, all potential hazards in Parks immediately for non-use until the hazard can be evaluated and repaired. Repairs and cleaning shall be completed as needed on all Park furnishings, including trash cans, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.19.4. **Drainage Inspection**. Visual inspections of area and landscape drains in the Parks will be performed during the morning litter removal sweep. Repairs shall be completed by Tenant as needed. Site drainage shall comply with local and Federal Best Management Practices (BMPs).

3.19.5. **Security Lighting Inspection**. Visual inspections of security lighting in the Parks will be performed during the evening litter removal sweep. Repairs shall be completed by Tenant as needed.

4. **RESTORATION**. Tenant shall Restore all Improvements, elements, or amenities comprising or relating to the Parks in accordance with Section 17 or 18 of the main body of this Lease, as applicable. During any period prior to or during any Restoration work, Tenant shall remove, clean up, or otherwise protect the damaged or destroyed Improvements, elements, or amenities comprising or relating to the Parks as necessary or appropriate to protect public health and safety. During Restoration work, Tenant shall control pedestrian and other access and shall conduct its Restoration work in a safe and orderly fashion. All ordinary maintenance, repair, and replacement work, and all Restoration work required under this **EXHIBIT M**, shall be performed in a manner to keep the Parks of the same type and quality as initially Constructed.

5. **ALLOWED USES OF THE PARKS**. Subject to applicable Law, the Parks may be used only as follows:

5.1. All Parks shall be publicly accessible for passive recreation activities from at least 6:00 a.m. to 9:00 p.m., 365 days per year, subject to temporary closures for routine or special maintenance, closures required by Law or for public health or safety reasons, and temporary closures or access restrictions in connection with events, programming, installations, or other uses conducted or authorized by Tenant under this Lease;

5.2. Programmed active recreational uses, including athletic fields; and

5.3. Temporary pre-scheduled park, recreational, cultural, educational, entertainment, and promotional events facilitated or permitted by Tenant that take place over the course of no more than five (5) calendar days, inclusive of no more than two (2) days of set-up and dismantling time ("**Limited Duration Events**"), for the following categories of activities:

5.3.1. Arts and entertainment programs and events;

5.3.2. Promotional programs and events;

5.3.3. Concert and performance programs and events;

5.3.4. Educational programs and events;

5.3.5. Fairs, festivals, and market programs and events;

5.3.6. Awareness and fundraising programs and events;

5.3.7. Athletics, recreation, and health programs and events;

5.3.8. Holiday special programs and events; and

5.3.9. Exhibits and shows.

6. **PARK PROGRAMMING AND PERMITTING**. With respect to Limited Duration Events, Tenant or its contractors will: (1) plan, develop, market, manage, support, schedule, and coordinate Limited Duration Events held on the Parks by Tenant; and (2) issue permits for Limited Duration Events for the use of the Parks by Third Persons, subject to the same park use provisions in the

SDMC governing all City of San Diego, California, parks that are not subject to the Special Events Ordinance (SDMC section 22.4001-22.4038); or (3) issue reservations of space under SDMC section 63.0103(d)(1). For all Limited Duration Events subject to the Special Events Ordinance, Tenant or its contractors will contact, or direct the Third Person holding the Limited Duration Event to contact, Landlord's department overseeing special events and filming. Tenant and all Third Persons holding a Limited Duration Event on a Park shall secure all Approvals required from all applicable Governments, including Landlord acting under its Governmental Authority, prior to commencing the Limited Duration Event. The requirements of SDMC Chapter 5, Article 9, Division 6 shall prevail over the provisions of Sections 5 through 8 of this **EXHIBIT M** only to the extent there is any conflict between SDMC Chapter 5, Article 9, Division 6 and the provisions of Sections 5 through 8 of this **EXHIBIT M**. [**NOTE TO DRAFT: THE REFERENCE TO SDMC CHAPTER 5, ARTICLE 9, DIVISION 6 (ENTERTAINMENT DISTRICT ORDINANCE) IN SECTION 7 ABOVE IS SUBJECT TO BOTH CITY COUNCIL ADOPTION OF THE ORDINANCE AND CONFIRMATION OF THE MUNICIPAL CODE CITATION FOR THE ORDINANCE**.]

7. **PARK ELEMENT NAMING RIGHTS**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, and subject to the other terms of this Lease, Tenant shall have the exclusive right during the Term to market, authorize, and display (subject to Section 9.15 of the main body of this Lease) naming rights and sponsored identification for individual elements, areas, and components within the Parks, including plazas, trails, lawns, performance areas, activity zones, and similar identifiable portions of the Parks.

8. **PARK RULES**. Tenant shall develop and publish rules and regulations applicable to the operation of the Parks, including penalties for violations of such rules and regulations, and submit them to Landlord for approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Only Tenant's rules and regulations applicable to the operation of the Parks that are approved by Landlord will be applied to the Parks.

EXHIBIT N
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

DEVELOPMENT CONDITIONS

	Development Condition	**Specifications**
1.	Parking Structures	The facades of all parking structures shall be wrapped with a building or architectural screening capable of blocking 80 percent of the parking structure facade.
2.	Structure Height	To the extent permitted by Law, the maximum structure height on the Master Development Area will be 105 feet with the following exceptions: (a) The maximum structure height of the Entertainment Center will be 165 feet. (b) Up to 10 percent of the surface area of the Master Development Area (approximately 214,446 square feet) may include structures (other than the Entertainment Center) with a maximum height of 250 feet. Building footprint area will be used for calculating the percentage of the surface area of the Master Development Area used by a building.
3.	Development Parcel Sizes	The minimum Development Parcel size shall be 2,850 square feet.
4.	Park Frontage Setback	As shown on Specific Plan Figure 39, Buildings with ground floor uses fronting a Park shall have an open setback area with a minimum width of 7 feet measured from the nearest building facade to the edge of the Park to create a separation between the Building and the Park, unless a greater distance is required by the California Building Code.
5.	Public Streets	All as shown on Figures 7 through 19 in the Specific Plan and all to the satisfaction of the City Engineer of the City of San Diego, California, based on City of San Diego, California standards for these improvements, Tenant shall Construct: (a) Kemper Street and Frontier Drive as public streets to connect Sports Arena Boulevard and Kurtz Street; (b) frontage improvements along Sports Arena Boulevard and Kurtz Street; (c) the roundabout at Kurtz Street; and (d) the offsite street improvements.

	Development Condition	Specifications
6.	Public Access	All private drives, Promenades, Paseo Greens, Paseo Greenways, The Plaza, The Green and The Square (each as described in the Specific Plan) shall be publicly accessible from at least 8:00 a.m. to 8:00 p.m. seven days a week, 365 days a year. Wayfinding signs shall be provided and include the hours these areas are open to the public in conformance with a Detailed Sign Concept Plan as described in Appendix B of the Specific Plan.
7.	Street Trees	Two rows of street trees shall be provided on Sports Arena Boulevard, Kurtz Street, and Kemper Street, respectively, to provide shade on each multi-use path, and to provide a buffer from vehicular traffic.
8.	Landscaping	All streets, whether public or private, and all parking structures located on the Premises shall contain a minimum of 4.75 percent (4.75%) landscaping, consisting of street trees and groundcovers located within bulb-outs. For vehicular use areas located on the rooftops of parking structures, photovoltaic solar canopies or other shade structures may be provided in lieu of shade trees. Shade structures or photovoltaic solar canopies used in lieu of the shade tree requirement shall meet the following criteria: (1) shade structures or photovoltaic solar canopies shall either (a) cover a minimum of fifty percent (50%) of each individual parking stall, or (b) cover a minimum of fifty percent (50%) of each vehicular use area with no photovoltaic solar canopy or shade structure located more than fifteen (15) feet from any parking stall; and (2) on the rooftops of parking structures or on structural podiums, shade structures with a maximum of fifty percent (50%) transparency or photovoltaic solar canopies may be provided. A minimum 14-foot-wide landscape buffer shall be provided between all residential buildings and the western boundary of the Master Development Area.
9.	Roof Top Mounted Solar Photovoltaic	All building rooftops will install roof-top mounted solar photovoltaic cells, except the Entertainment Center.

	Development Condition	Specifications
10.	Park Amenities	Each Park shall include one or more of the following amenities: • Play Area • Nature Exploration Playground • Multi-Purpose Turf Area • Active Recreation Fields • Hardcourt Areas • Specialty Recreation Areas • Lighting • Multi-use Pathways • Bike Path or Cycle Track • Fitness Circuit • Off-Leash Dog Area • Community Garden • Food Area/Concessions/ Café/ Restaurants • Performance/Event Space • All-weather Shade Cover/Pavilion with tables/seating • Seating Area with movable seats • Restroom Building • Amphitheater • Wayfinding Signage System • Interactive/Technology Element • Public Art/Placemaking Elements • Native Planting Restoration Area
11.	The Green	"The Green" identified in Specific Plan Figure 38 shall: (1) Have a minimum average width of at least 67 feet measured from the outer edge of all adjacent residential entry/dining patio zones; (2) Have a minimum area of 2.32 acres (101,059 square feet); and (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (4) Include one or more of the following amenities: (a) Recreational Amenity; (b) Seating Area; (c) Shade Structure/Pavilion with seating; (d) Performance or Event Space; or (e) Multi-modal Shared Use Path.
12.	The Square	"The Square" identified in Specific Plan Figure 40 shall:

	Development Condition	Specifications
		(1) Have a minimum width of 90 feet (measured from the face of the Entertainment Center to an opposing building's residential entry/dining patio zone); (2) Have a minimum area of 2.93 acres (127,630 square feet); (3) Include frontage on Sports Arena Boulevard; (4) Include a fire access lane; (5) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (6) Include one or more of the following amenities: (a) Seating Areas with fixed and moveable seating; (b) Shade Structure/Pavilion with seating; (c) Interactive Water Feature; or (d) Multi-modal Shared Use Path.
13.	The Plaza	"The Plaza" identified in Specific Plan Figure 41 shall : (1) Have a minimum width of 27 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 0.54 acres (23,520 square feet); (3) Include a fire access lane; (4) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (5) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved for all the Parks by the original Landlord under Section 24.2 of the DDA and 11.7.1 of the main body of this Lease equals or exceeds 610.
14.	Paseo Greens	The "Paseo Greens" identified in Specific Plan Figure 42 shall: (1) Have a minimum width of 36 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 1.06 acres (46,174 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as

	Development Condition	Specifications
		identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved for all the Parks by the original Landlord under Section 24.2 of the DDA and 11.7.1 of the main body of this Lease equals or exceeds 610.
15.	Paseo Greenways	The "Paseo Greenways" identified in Specific Plan Figure 43 shall: (1) Have a minimum width of 45 feet (measured from the frontage of all adjacent residential entry/dining patio zones); and (2) Have a minimum area of 1.27 acres (55,321 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved for all the Parks by the original Landlord under Section 24.2 of the DDA and 11.7.1 of the main body of this Lease equals or exceeds 610.
16.	Wood and Gas Fireplaces	Wood and gas fireplaces shall not be permitted within any Residential Unit located on the Premises.
17.	Building Base	The building base of each building shall have a minimum of 1 story and shall not exceed 3 stories. A minimum of 50 percent of the building base facade shall incorporate a change in at least one of the following: material, color, or transparency that is different from the building facade material, color, or transparency above the building base. Building base facades without windows shall incorporate changes in wall texture, material and color, artistic features, or murals to provide varied and articulated facades.
18.	Restrictions on Visitor Accommodations and Other Uses	Neither the Premises nor any residential unit on the Premises will, at any time, be Constructed as, or converted to, accessory dwelling units, visitor accommodation units, or units rented for short-term residential occupancy or be used as a hotel,

	Development Condition	Specifications
		motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, other transient use, or any other use not expressly allowed under the Specific Plan or this Lease.
19.	Agreement Regarding Certain Programs	No Construction on the Premises, nor the Premises, nor any residential unit on the Premises will, at any time, be eligible to participate in any residential development bonus incentive program adopted by the original Landlord under its Governmental Authority that is not required by State law, such as Complete Communities Housing Solutions, the Accessory Dwelling Unit Bonus Program, or Micro-Unit Density Bonus, unless otherwise authorized by City Council ordinance specifically applicable to the Premises.

EXHIBIT O
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

HORIZONTAL IMPROVEMENTS FINANCING PLAN

[PARTIES TO INSERT THIS FINANCING PLAN AFTER IT IS AGREED UPON UNDER SECTION 31.2 OF THE DDA]

EXHIBIT P
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

CONTRACTOR PREQUALIFICATION APPLICATION FORM

1. Applicant Information

Name of Company ("Applicant"): _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Address(es), phone and fax number(s) of Applicant facilities located in San Diego County (if different from above):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Type of Business: _____

Type of License: _____

Company Representative for this Application (Name and Title):

_____

2. Applicant Exceptions – Pass / Fail

2.1 If the Applicant takes exception to any portion of the contract terms, the Applicant must identify and explain to the Landlord in writing the basis for the exception. The Applicant must submit any claimed exception within 10 calendar days of the date of Applicant submittal.

3. Project Team and General Qualifications (5 Points Max)

3.1 Describe the proposed management plan for this Applicant's submittal and include all relevant evidence of State licenses. Describe the qualifications of key proposed construction and technical personnel, and subcontractors, from applicable fields including the following:

3.1.1 Civil; and

3.1.2 Environmental.

4. Technical Approach and Design Concept (15 Points Max)

4.1 Describe in detail the proposed design concept for this Project. Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow Landlord and Tenant to make an informed evaluation of the Applicant's technical approach. The completeness and technical merit of the design concept will be evaluated. The following elements shall be included in this Applicant submittal:

4.1.1 Proposed Design Schedule: Outline the proposed design schedule, including sequencing of each major design component (30%, 60%, 100%, and Final Design) and proposed durations.

4.2 Scope of improvement description and locations.

4.3 Storm Water Pollution Control Best Management Practices.

4.4 Quality Assurance/Quality Control Plan (QA/QC Plan): The Applicant shall submit a QA/QC Plan specifically developed for this project. The Applicant's QA/QC Plan shall comply with Landlord's Quality Assurance/Quality Control Plan Guidelines. The QA/QC Plan shall describe the tools, process, and resources the Applicant will use to ensure that it provides facilities that meet the Landlord's requirements.

4.5 Curb Ramp Design and Installation plan pursuant to the Access Law Compliance Section's Preliminary Engineering Assessment Report and clarification amendment memo regarding changes to the 2020 California Building Code requirements and highlight any modification, if any.

4.6 Permits: the Applicant shall identify what permits are required and what is the proposed plan/timeline to obtain the required permit(s).

5. Construction Plan (20 Points Max)

5.1 Describe the proposed construction plan for this Project, including the following, at a minimum:

5.1.1 Description of relevant phase(s) and lease(s) in which the construction will take place;

5.1.2 Construction approach and methods;

5.1.3 Plan for operation of facility during construction; and

5.1.4 Plan for phasing of construction activities.

5.2 General plan for functional testing and start-up.

5.3 Proposed safety program

5.4 Proposed emergency response plan

5.5 Proposed construction schedule

5.6 Traffic Control Management

5.7 Community Impact

6. Equal Opportunity Contracting Program (20 Points Max)

6.1 Failure to submit the required EOCP information will result in Applicant's submittal being deemed incomplete and Applicant's submittal will be rejected.

6.2 Subcontractor Documentation of EOCP information, if applicable.

7. Financial Viability (30 Points Max)

7.1 Provide financial statements for the past three (3) years of operations.

8. Reference Checks (5 Points Max)

8.1 Three references are required

Reference #1 name:

Reference #1 Company

Reference #1 Phone:

Reference # email:

8.2 Reference #2 name:

Reference #2 Company

Reference #2 Phone:

Reference #2 email:

8.3 Reference #3 name:

Reference #3 Company

Reference #3 Phone:

Reference #3 email:

EXHIBIT Q
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

SUBTENANT/SUB-USER INSURANCE REQUIREMENTS

[**NOTE TO DRAFT: PARTIES TO INSERT THE SUBTENANT/SUB-USER INSURANCE REQUIREMENTS AFTER THEY ARE AGREED UPON PRIOR TO THE HORIZONTAL GROUND LEASE CLOSING; THE REQUIREMENTS WILL BE BASED ON THE CITY'S THEN STANDARD INSURANCE REQUIREMENTS FOR LEASES AND LICENSE AGREEMENTS WITH SIMILAR USES.**]

EXHIBIT R
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

MASTER DEVELOPMENT AREA LEGAL DESCRIPTION

[**TO BE INSERTED**]

[**NOTE TO DRAFT: THE PREMISES LEGAL DESCRIPTION AND THE MASTER DEVELOPMENT AREA LEGAL DESCRIPTION IS ANTICIPATED TO BE THE SAME ON THE COMMENCEMENT DATE. HOWEVER, THE PREMISES LEGAL DESCRIPTION WILL BE REDUCED OVER TIME, SO IT IS NECESSARY TO INCLUDE THE MASTER DEVELOPMENT AREA LEGAL DESCRIPTION TO CAPTURE REQUIREMENTS THAT WILL CONTINUE TO APPLY TO THE ENTIRE SITE AFTER THE PREMISES ARE REDUCED.**]

EXHIBIT S
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

PROJECT LABOR AGREEMENT CERTIFICATION FORM

[DATE]

City of San Diego
[ADDRESS]
Attention: Economic Development Director

RE: Midway Rising Disposition and Development Agreement:
Project Labor Agreement Certification

Dear [**TO BE DETERMINED**],

The letter constitutes our certification of compliance with the project labor agreement requirements of Section 11.3 of that certain Horizontal Ground Lease by and between the City of San Diego, a municipal corporation ("**City**"), and [**TO BE DETERMINED**], dated [**TO BE DETERMINED**] ("**Lease**").

The undersigned represents and warrants to the City that: (1) [**INSERT NAME OF GENERAL CONTRACTOR AND ITS CSLB GENERAL CONTRACTOR LICENSE NUMBER**] entered into that certain Project Labor Agreement, dated [**TO BE DETERMINED**] ("**PLA**"), with the San Diego County Building & Construction Trades Council regarding construction work to be performed on Development Parcel [**TO BE DETERMINED**], as defined in the DDA; (2) The duration of the PLA is [**TO BE DETERMINED COMMENCEMENT AND TERMINATIONS DATES OF PLA**]; and (3) the PLA complies with all the terms of that certain Memorandum of Understanding between Master Developer, as defined in the DDA, and San Diego County Building & Construction Trades Council, dated March 28, 2022, and Section 11.3 of the Lease.

SAN DIEGO COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL

By:_____
Name:_____
Title:_____
Date:_____

EXHIBIT T
TO
HORIZONTAL GROUND LEASE
(Midway Rising)

NON-DISTURBANCE AND ATTORNMENT AGREEMENT FORM

RECORDING REQUESTED BY: Chicago Title Company Commercial Division **AND WHEN RECORDED MAIL TO:** City of San Diego 1200 Third Avenue, Suite 1400 San Diego, CA 92101 Attn: Director, Economic Development Dept.	

APNs: [**TO BE DETERMINED**]

Exempt from Recording Fees – Cal. Govt. Code § 27383

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made by and among THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), [**TO BE DETERMINED**] ("**Tenant**"), and [**TO BE DETERMINED**] ("**Subtenant**"), effective on the date this Agreement is approved as to form by the San Diego City Attorney, as shown on the signature page to this Agreement. Landlord, Tenant, and Subtenant are sometimes referred to in this Agreement, individually, as a "**Party**" or, collectively, as the "**Parties**."

1. **Background**. Landlord is the owner of certain real property in the City of San Diego, County of San Diego, State of California described on **Exhibit 1** attached to this Agreement and incorporated into this Agreement by this reference ("**Property**"). Landlord and Tenant entered into that certain Horizontal Ground Lease, dated [**TO BE DETERMINED**] ("**Ground Lease**") regarding the Property. Tenant and Subtenant have entered into that certain Sublease Agreement dated [**TO BE DETERMINED**] ("**Sublease**"), in which Tenant subleased a portion of the Property, as further described in **Exhibit 2** attached to this Agreement ("**Sublease Premises**"), to Subtenant under the Ground Lease. Tenant and Subtenant represent and warrant to Landlord that a true and correct copy of the Sublease was delivered to Landlord on [**TO BE DETERMINED**].

Landlord, Tenant, and Subtenant desire to enter into this Agreement for the purpose, among other things, of providing various rights and protections to Landlord and Subtenant in the event of an early termination of the Ground Lease by Landlord as a result of an Event of Default under the Ground Lease by Tenant.

2. **Non-Disturbance and Attornment**. If the Ground Lease is terminated before its Scheduled Expiration Date (as defined in the Ground Lease) ("**Triggering Event**") and subject to all the terms of the Ground Lease regarding Subleases (as defined in the Ground Lease), including the provisions of the Ground Lease regarding a New Lease (as defined in the Ground Lease), Landlord agrees to recognize the Sublease as a direct lease between Landlord and Subtenant, and Subtenant agrees to recognize and attorn to Landlord as Subtenant's direct landlord under the Sublease, subject to all the following:

2.1 The Sublease is in full force and effect and has not been terminated, and no state of facts then exist that would permit Tenant to terminate the Sublease by virtue of the default of Subtenant under the Sublease.

2.2 Landlord shall retain all rights under the Sublease in the event of any default by Subtenant.

2.3 Landlord shall not be liable to Subtenant for any default under the Sublease by Tenant, as sublandlord, any amount owed by Tenant to Subtenant, any offset right, claim for damages, refund, rebate, payment or other performance that Subtenant may have against Tenant relating to any event or occurrence before the date of the Triggering Event, including any claim for damages of any kind whatsoever as the result of any breach of the Sublease by Tenant that occurred before the date of the Triggering Event.

2.4 Landlord shall not be required to return to Subtenant any security deposit not received by Landlord.

2.5 Landlord shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one (1) month in advance.

2.6 Landlord shall not be bound by any modification or amendment of the Sublease or any waiver of any term of the Sublease, unless made with Landlord's written consent.

2.7 Landlord shall not be liable for any construction work, including tenant improvement work (as opposed to typical landlord structural maintenance obligations), made by or obligated to be made by Tenant under the Sublease.

3. **Notices**. All notices from one Party to another Party under or as required by this Agreement must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a notice email). All notices must be sent to the Party

representative and address designated below in this Section 3. A Party may designate a different representative or address for delivery of notice under this Agreement by notice given in accordance with this Section 3. To conserve resources and reduce administrative burden, the Parties intend to deliver notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the notice is sent by messenger for immediate personal delivery and delivered to the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the notice is delivered to the United States Postal Service in accordance with this Section 3 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices delivered via email. The notice addresses for the Parties on the effective date of this Agreement are as follows:

Landlord:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Tenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Subtenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

4. **Miscellaneous Provisions**.

4.1 No Merger. The Parties agree that the respective ownerships or estates of Landlord and Tenant in and to the Property shall not merge, and shall remain separate and distinct, notwithstanding the union of such ownerships or estates in either Tenant, Landlord, or any third party by purchase, assignment, or otherwise.

4.2 Further Assurances. From time to time as required to more effectively carry out the terms of this Agreement, each of the Parties shall, at the reasonable request of another Party (a) sign and deliver to the requesting Party other ancillary instruments and documents, and (b) take other ancillary actions.

4.3 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original of this Agreement and all of which together shall constitute one and the same instrument.

4.4 Further Documentation. The provisions of this Agreement shall be effective and self-operative, without any need for Landlord, Tenant, or Subtenant to sign any further document; provided, however, upon request after a Triggering Event, the Parties shall sign and deliver a writing documenting the effects of the provisions of this Agreement on the Sublease.

4.5 Entire Agreement. This Agreement and the documents specifically referenced and incorporated into this Agreement set forth the entire agreement between the Parties regarding the subject matter of this Agreement. Except as specifically set forth in this Agreement, there are no agreements, representations, or warranties whatsoever as to any matter. Any prior conversations or writings are merged into this Agreement, superseded by this Agreement, and extinguished.

4.6 Modifications, Successors and Assigns. This Agreement may only be modified in a writing signed by all the Parties or their respective successors in interest. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

4.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Sole and proper venue for any action to enforce or interpret any of the terms and provisions of this Agreement shall be in the County of San Diego, California.

[***Remainder of page intentionally blank. Signatures appear on the following page.***]

SIGNATURE PAGE
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

Landlord, Tenant, and Subtenant make and enter into this Agreement by and through the signatures of their respective authorized representatives below.

LANDLORD:

The City of San Diego, a California municipal corporation

By:_____
Name:_____
Its:_____

Approved as to form on: _____.

[**TO BE DETERMINED**],

City Attorney

By: _____

TENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

SUBTENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

EXHIBIT 1
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property Legal Description

[**TO BE INSERTED**]

EXHIBIT 2
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Sublease Premises Legal Description

[**TO BE INSERTED**]

ATTACHMENT 12
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

HORIZONTAL GROUND LEASE MEMORANDUM FORM

[Attached behind this cover page]

RECORDING REQUESTED BY:

Chicago Title Company
Commercial Division

AND WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Attn: Director, Economic Development Dept.

APNs: _____

Exempt from Recording Fees – Cal. Govt. Code § 27383

MEMORANDUM OF HORIZONTAL GROUND LEASE AND AFFORDABLE HOUSING RESTRICTIONS (Midway Rising)

THIS MEMORANDUM OF HORIZONTAL GROUND LEASE AND AFFORDABLE HOUSING RESTRICTIONS ("**Memorandum**") is made and entered into as of [**TO BE DETERMINED**], by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and MIDWAY RISING, LLC, a Delaware limited liability company ("**Tenant**").

5. Ownership. Landlord is the fee owner of that certain real property in the City of San Diego, County of San Diego, State of California, specifically described on Exhibit 1 attached to this Memorandum ("**Property**").

6. Horizontal Ground Lease. Landlord and Tenant entered into that certain unrecorded Horizontal Ground Lease, dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**Lease**"), the terms of which are incorporated into this Memorandum by this reference. Under the Lease, Tenant acquired from Landlord a leasehold estate in the Property ("**Premises**"). Landlord and Tenant entered into the Lease in accordance with that certain unrecorded Disposition and Development Agreement between Landlord and Tenant, dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**DDA**").

7. Lease Term. Landlord leases the Premises to Tenant on all the terms and conditions and subject to the reservations set forth in the Lease. The "Commencement Date" of the Lease is [**TO BE DETERMINED**]. The term of the Lease begins on the Commencement Date and ends at 11:59 p.m. Pacific Time on [**TO BE DETERMINED**], unless terminated earlier under the terms and conditions of the Lease.

8. Notice of Lease. This Memorandum is being recorded, among other reasons, to give notice to the public that the Property is subject to the Lease. Any person taking any interest in the Property will do so subject to all documents (including all terms and conditions of such documents)

and other matters this Memorandum refers to or discloses. Interested persons should obtain and read copies of all documents this Memorandum refers to or discloses to determine the extent of Tenant's rights and obligations relating to the Premises.

9. Purpose. This Memorandum is prepared, signed, and acknowledged solely for recording purposes under the laws of the State of California. This Memorandum is intended to summarize certain terms of the DDA and the Lease, but in no way changes, modifies, or otherwise affects any term of the DDA or the Lease.

10. Affordable Housing Restrictive Covenants. Under Section 15 of the DDA, Tenant is obligated to construct a minimum of 2,000 residential rental units on the Premises that are restricted to use and occupancy by "lower income households," as defined in California Health and Safety Code section 50079.5, at "affordable rent," as defined in California Health and Safety Code section 50053, comprised of a mix of studio, 1-bedroom, 2-bedroom, and 3-bedroom units (collectively "**Affordable Units**," and each, individually, an "**Affordable Unit**"), for the duration of the Affordable Housing Ground Lease (defined in Section 6.1) under which each particular Affordable Unit is Constructed. Further, under Section 15.3.1 of the DDA, the Affordable Units Constructed on each individual "**Development Parcel**" (defined in the DDA) shall be restricted for occupancy at affordability levels ranging from 30% "**AMI**" (defined in the DDA) up to 80% AMI, with a weighted average affordability not to exceed 60% AMI. All the requirements described above in this Section 10 are collectively referred to in this Memorandum as the "**Affordable Housing Production Covenant**."

10.1 More Specific, Future Covenants. During the term of the Lease, portions of the Premises will be removed from the Lease in phases once: (a) Tenant completes the "Horizontal Improvements" (defined in the Lease) required for the pertinent portion of the Property to be ready for future development; and (b) Landlord and Tenant's designated developer enter into a "**Vertical Ground Lease**" (defined in the DDA) for development of specified vertical improvements on the pertinent portion of the Property. With respect to each portion of the Property planned for the development of Affordable Units, Landlord and the developer of Affordable Units are anticipated to enter into an 85-year Vertical Ground Lease for the pertinent portion of the Property obligating the developer/lessee to construct and operate a specified number of Affordable Units on the leasehold estate (each, an "**Affordable Housing Ground Lease**"). Each Affordable Housing Ground Lease will contain more specific affordable housing covenants, conditions, and restrictions applicable to the leasehold estate obligating the developer/lessee to construct specific Affordable Units and operate those Affordable Units for the duration of the Affordable Housing Ground Lease (each, a "**Future Affordable Housing Covenant**"). A lease memorandum for each Affordable Housing Ground Lease will be recorded in the official records of the County of San Diego Recorder providing record notice of the Affordable Housing Ground Lease, including the Future Affordable Housing Covenant.

10.2 Senior Lien Priority. This Memorandum shall be recorded in senior lien priority against the Premises and shall not be subordinated to any security instrument, lien, property interest, or other encumbrance affecting the Premises (each, a "**Security Instrument**"). Tenant shall not record and shall not allow to be recorded against the Premises any Security Instrument that purports to achieve a lien priority senior to this Memorandum or the Affordable Housing Production Covenant. Each Future Affordable Housing Covenant recorded against the

leasehold estate created by an Affordable Housing Ground Lease must be senior in lien priority to all Security Instruments, and the lessee under the applicable Affordable Housing Ground Lease must obtain all required subordination agreements from Security Instrument holders to establish the senior lien priority of such Future Affordable Housing Covenant.

10.3 Enforcement of Affordable Housing Production Covenant. Landlord and Tenant declare their mutual specific intent that the Affordable Housing Production Covenant is part of a plan for the promotion and preservation of affordable housing within the territorial jurisdiction of Landlord, under its Governmental Authority, and that the Affordable Housing Production Covenant is intended to be a covenant and restriction running with the land with respect to the Premises, binding upon each successor-in-interest of Tenant in any portion of the Premises. Regardless of classification or characterization, the Affordable Housing Production Covenant touches and concerns the land of the Premises and is expressly declared to be for the benefit and in favor of Landlord, regardless of whether Landlord is or remains an owner of any land or interest in land to which the Affordable Housing Production Covenant relates. If Tenant violates the Affordable Housing Production Covenant, Landlord has the right to exercise all rights and remedies and maintain all actions at law or suits in equity or other proper proceedings, to enforce remedies addressing Tenant's violation. Additionally, and without limiting Landlord's rights, the Affordable Housing Production Covenant shall be enforceable by any one or more of the persons or entities described in California Government Code section 54222.5(a) through (f), inclusive. Every contract, deed, or other instrument transferring any estate or interest in the Premises shall conclusively be deemed to have been made, entered into, delivered, and accepted subject to the Affordable Housing Production Covenant, regardless of whether the Affordable Housing Production Covenant is set forth in or referenced in such contract, deed, or other instrument, until the Affordable Housing Production Covenant is completely satisfied.

11. Conflicts with Lease. Landlord and Tenant each have rights, duties, and obligations (and conditions to these rights, duties, and obligations) under the Lease that are not stated in this Memorandum. In the event of any conflict between this Memorandum and the Lease, the terms of the Lease will prevail. Nothing in this Memorandum constitutes any representation or warranty by either Landlord or Tenant. To the extent, if any, that the Lease limits the liability of either Landlord or Tenant, such limitation will apply with the same force and effect to any liability of Landlord or Tenant under this Memorandum.

12. Termination. Without limiting the right or ability of Landlord or any other person or entity described in Section 10.3 to enforce or pursue Tenant's compliance with the Affordable Housing Production Covenant, this Memorandum will automatically terminate and be of no further force or effect upon any expiration or termination of the Lease, including any termination of the Lease following the occurrence of an "Event of Default," as defined in the Lease.

13. Release or Partial Release of Memorandum. If the Lease terminates, and provided that Affordable Housing Ground Leases have been entered into for the construction and operation of 2,000 or more cumulative Affordable Units on the Property, then Landlord and Tenant will sign, acknowledge (where necessary), and deliver such documents as Landlord, a title insurance company insuring a "**Permitted Leasehold Security Instrument**" or a "**Fee Security Instrument**" (all as defined in the Lease), or an "**Institutional Lender**" (as defined in the Lease) providing financing secured by a Permitted Leasehold Security Instrument or a Fee Security

Instrument may reasonably require to terminate and remove this Memorandum of record. Whenever an Affordable Housing Ground Lease or other Vertical Ground Lease is entered into in accordance with the DDA, Landlord and Tenant will sign, acknowledge (where necessary), and deliver such documents as Landlord, a title insurance company insuring a Permitted Leasehold Security Instrument or a Fee Security Instrument, or an Institutional Lender providing financing secured by a Permitted Leasehold Security Instrument or a Fee Security Instrument may require to partially terminate and remove this Memorandum of record solely with respect to the portion of the Property that is subject to the particular Affordable Housing Ground Lease or other Vertical Ground Lease.

14. Liens. Under the Lease, Tenant may not authorize or allow, and will be solely responsible for, all mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the "**Fee Estate**" (as defined in the Lease) arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

14.1 NOTICE IS GIVEN THAT NEITHER LANDLORD NOR LANDLORD'S FEE ESTATE IN THE PROPERTY WILL BE LIABLE FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL FURNISHED OR TO BE FURNISHED TO OR ON BEHALF OF TENANT OR ANY SUBTENANT UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL WILL ATTACH TO OR AFFECT LANDLORD'S FEE ESTATE. NOTHING IN THE LEASE OR THIS MEMORANDUM WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICE OR LABOR OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST LANDLORD'S FEE ESTATE.

14.2 ON THE COMMENCEMENT DATE OF THE LEASE, THE FEE ESTATE IN THE PROPERTY IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. THIS MEMORANDUM IS NOTICE TO EACH PROVIDER OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND LANDLORD'S FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDER OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL.

15. Counterparts. This Memorandum may be signed in multiple counterpart originals.

[***Remainder of page intentionally blank. Signatures on following page.***]

SIGNATURE PAGE
TO
MEMORANDUM OF HORIZONTAL GROUND LEASE
AND AFFORDABLE HOUSING RESTRICTIONS
(Midway Rising)

Landlord and Tenant sign and make this Memorandum of Horizontal Ground Lease and Affordable Housing Restrictions by and through the signatures of their respective authorized representative(s) set forth below:

Landlord:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Name: _____
Title: _____

Tenant:

MIDWAY RISING, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

EXHIBIT 1
TO
MEMORANDUM OF HORIZONTAL GROUND LEASE
AND AFFORDABLE HOUSING RESTRICTIONS
(Midway Rising)

PREMISES LEGAL DESCRIPTION

[To be attached behind this cover page]

[**NOTE TO DRAFT: PREMISES LEGAL DESCRIPTION TO BE OBTAINED FROM HORIZONTAL GROUND LEASE PRELIMINARY REPORT**]

ATTACHMENT 13
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

VERTICAL GROUND LEASE MEMORANDUM FORM

[Attached behind this cover page]

RECORDING REQUESTED BY:

Chicago Title Company
Commercial Division

AND WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Attn: Director, Economic Development Dept.

APNs: _____

Exempt from Recording Fees – Cal. Govt. Code § 27383

[SPECIFY ENTERTAINMENT CENTER OR MARKET RATE HOUSING AND RETAIL] GROUND LEASE MEMORANDUM
(Midway Rising – Phase [TO BE DETERMINED])

THIS **[SPECIFY ENTERTAINMENT CENTER OR MARKET RATE HOUSING AND RETAIL]** GROUND LEASE MEMORANDUM ("**Memorandum**") is made and entered into as of [**TO BE DETERMINED**], by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and [**INSERT GROUND LEASE TENANT NAME, ENTITY TYPE, AND DOMICILE STATE**] ("**Tenant**").

1. Ownership. Landlord is the fee owner of that certain real property in the City of San Diego, County of San Diego, State of California, specifically described on Exhibit "1" attached to this Memorandum ("**Property**").

2. Ground Lease. Landlord and Tenant entered into that certain unrecorded [**SPECIFY ENTERTAINMENT CENTER LEASE OR MARKET RATE HOUSING AND RETAIL GROUND LEASE**], dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**Lease**"), the terms of which are incorporated into this Memorandum by this reference. Under the Lease, Tenant acquired from Landlord a leasehold estate in the Property ("**Premises**"). Landlord and Tenant entered into the Lease in accordance with that certain unrecorded Disposition and Development Agreement between Landlord and Midway Rising, LLC, a Delaware limited liability company ("**Midway Rising**"), dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**DDA**"), for Midway Rising to act as master developer of the Property. Unless otherwise specified, all capitalized terms in this Memorandum have the same meaning ascribed to them in the Lease.

3. Lease Term. Under the Lease, Landlord leased the Premises to Tenant for a term of 85 years. The "Commencement Date" of the Lease is [**TO BE DETERMINED**]. The term of the

Lease begins on the Commencement Date and ends at 11:59 p.m. Pacific Time on [**TO BE DETERMINED**], unless terminated earlier under the terms of the Lease.

4. Minimum Annual Rent Determination. Under the DDA, City and Midway Rising anticipate City entering into multiple Market Rate Housing/Retail Leases (as defined in the DDA) and these leases have a rent structure that aggregates the total annual "Percentage Rent" (as defined in each Market Rate Housing/Retail Lease) payable under all Market Rate Housing/Retail Leases to determine the "Minimum Annual Rent" (as defined in each Market Rate Housing/Retail Lease) for each Market Rate Housing/Retail Lease.

[**NOTE TO DRAFT: SECTIONS 5 AND 6 ONLY APPLY TO MARKET RATE HOUSING/RETAIL LEASES**].

5. Master Rent Administration Agreement. Under the DDA, City and Midway Rising entered into that certain Master Rent Administration Agreement, dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**MRAA**"), for Midway Rising to calculate the "Minimum Annual Rent" (as defined in the MRAA) and allocate the Minimum Annual Rent payment obligation among all Market Rate Housing/Retail Leases.

6. Purpose. This Memorandum is prepared, signed, and acknowledged solely for recording purposes under the laws of the State of California. This Memorandum is intended to summarize certain provisions of the Lease, DDA, or MRAA, but in no way changes, modifies or otherwise affects any provision of the Lease, DDA, or MRAA. [**NOTE TO DRAFT: REFERENCES TO MRAA ONLY APPLY TO MARKET RATE HOUSING/RETAIL LEASES**]

7. Notice of Agreements. This Memorandum is recorded, among other reasons, to give notice to the public that the Premises are subject to the Lease, DDA, and MRAA [**NOTE TO DRAFT: REFERENCE TO MRAA ONLY APPLIES TO MARKET RATE HOUSING/RETAIL LEASES**]. Any person taking any interest in the Premises will do so subject to all documents (including all terms and conditions of such documents) and other matters this Memorandum refers to or discloses. Interested persons should obtain and read copies of all documents this Memorandum refers to or discloses to determine the extent of Tenant's rights and obligations relating to the Premises.

8. Senior Lien Priority. This Memorandum shall be recorded in senior lien priority against the Premises and shall not be subordinated to any security instrument, lien, real property interest, or other encumbrance affecting the Premises (each, a "**Security Instrument**"). Tenant shall not record and shall not allow to be recorded against the Premises any Security Instrument that purports to achieve a lien priority senior to this Memorandum. Tenant must obtain all required subordination agreements from Security Instrument holders to establish and preserve the senior lien priority of this Memorandum.

9. Conflicts Among Agreements. Landlord and Tenant each have rights, duties, and obligations (and conditions to these rights, duties, and obligations) under the Lease, DDA, or MRAA that are not stated in this Memorandum. In the event of any conflict between this Memorandum and the Lease, DDA, or MRAA, the terms of the Lease, DDA, or MRAA, as

applicable, will prevail. Nothing in this Memorandum constitutes any representation or warranty by either Landlord or Tenant. To the extent, if any, that the Lease, DDA, or MRAA limits the liability of either Landlord or Tenant, such limitation will apply with the same force and effect to any liability of Landlord or Tenant under this Memorandum. [**NOTE TO DRAFT: REFERENCES TO MRAA ONLY APPLY TO MARKET RATE HOUSING/RETAIL LEASES**]

10. Termination. This Memorandum will automatically terminate and be of no force or effect upon any expiration or earlier termination of the Lease, including any termination of the Lease following the occurrence of an Event of Default.

11. Release of Memorandum. If the Lease terminates, then Landlord and Tenant will sign, acknowledge (where necessary), and deliver such documents as Landlord, a title insurance company insuring a Permitted Leasehold Security Instrument or a Fee Security Instrument, or an Institutional Lender providing financing secured by a Permitted Leasehold Security Instrument or a Fee Security Instrument may reasonably require to terminate and remove this Memorandum of record.

12. Liens. Under the Lease, Tenant may not authorize or allow, and will be solely responsible for, all mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the Fee Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

12.1 NOTICE IS GIVEN THAT NEITHER LANDLORD NOR LANDLORD'S FEE ESTATE IN THE PROPERTY WILL BE LIABLE FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL FURNISHED OR TO BE FURNISHED TO OR ON BEHALF OF TENANT OR ANY SUBTENANT UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL WILL ATTACH TO OR AFFECT LANDLORD'S FEE ESTATE. NOTHING IN THE LEASE OR THIS MEMORANDUM WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICE OR LABOR OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST LANDLORD'S FEE ESTATE.

12.2 ON THE COMMENCEMENT DATE OF THE LEASE, THE FEE ESTATE IN THE PROPERTY IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. THIS MEMORANDUM IS NOTICE TO EACH PROVIDER OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE

PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDER OF LABOR, SERVICES, EQUIPMENT OR MATERIAL.

13. Counterparts. This Memorandum may be signed in multiple counterpart originals.

[***Remainder of page intentionally blank. Signatures on following page.***]

SIGNATURE PAGE
TO
[SPECIFY ENTERTAINMENT CENTER OR MARKET RATE HOUSING AND RETAIL] GROUND LEASE MEMORANDUM
(Midway Rising)

Landlord and Tenant sign and make this **[SPECIFY ENTERTAINMENT CENTER OR MARKET RATE HOUSING AND RETAIL]** Ground Lease Memorandum by and through the signatures of their respective authorized representative(s) set forth below:

Landlord:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Name: _____
Title: _____

Tenant:

[**INSERT GROUND LEASE TENANT NAME, ENTITY TYPE, AND DOMICILE STATE**]

By: _____
Name: _____
Title: _____

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

EXHIBIT 1
TO
[SPECIFY ENTERTAINMENT CENTER OR MARKET RATE HOUSING AND RETAIL] GROUND LEASE MEMORANDUM
(Midway Rising)

PREMISES LEGAL DESCRIPTION

[To be attached behind this cover page]

[**NOTE TO DRAFT: PREMISES LEGAL DESCRIPTION TO BE OBTAINED FROM PARTICULAR VERTICAL GROUND LEASE PRELIMINARY REPORT**]

ATTACHMENT 14
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

AFFORDABLE HOUSING LEASE MEMORANDUM FORM

[Attached behind this cover page]

RECORDING REQUESTED BY:

Chicago Title Company
Commercial Division

AND WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Attn: Director, Economic Development Dept.

APNs: _____

Exempt from Recording Fees – Cal. Govt. Code § 27383

MEMORANDUM OF AFFORDABLE HOUSING GROUND LEASE WITH AFFORDABLE RENTAL HOUSING RESTRICTIONS
(Midway Rising – Phase [TO BE DETERMINED])

THIS MEMORANDUM OF AFFORDABLE HOUSING GROUND LEASE WITH AFFORDABLE RENTAL HOUSING RESTRICTIONS ("**Memorandum**"), is made and entered into as of [**TO BE DETERMINED**], by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and [**INSERT GROUND LEASE TENANT NAME, ENTITY TYPE, AND DOMICILE STATE**] ("**Tenant**").

1. Ownership. Landlord is the fee owner of that certain real property in the City of San Diego, County of San Diego, State of California, specifically described on Exhibit 1 attached to this Memorandum ("**Property**").

2. Affordable Housing Ground Lease. Landlord and Tenant entered into that certain unrecorded Affordable Housing Ground Lease, dated [**TO BE DETERMINED**], as the same may be amended or modified from time to time ("**Lease**"), the terms of which are incorporated into this Memorandum by this reference. Under the Lease, Tenant acquired from Landlord a leasehold estate in the Property ("**Premises**"). Unless otherwise specified, all capitalized terms in this Memorandum have the same meaning ascribed to them in the Lease.

3. Lease Term. Under the Lease, Landlord leased the Premises to Tenant for a term of 85 years. The "Commencement Date" of the Lease is [**TO BE DETERMINED**]. The term of the Lease begins on the Commencement Date and ends at 11:59 p.m. Pacific Time on [**TO BE DETERMINED**], unless terminated earlier under the terms of the Lease.

4. Purpose. This Memorandum is prepared, signed, and acknowledged solely for recording purposes under the laws of the State of California. This Memorandum is intended to

summarize certain terms of the Lease, but in no way changes, modifies, or otherwise affects any term of the Lease.

5. Affordable Rental Housing Restrictions. The Lease restricts the rental of Dwelling Units on the Premises to persons or households with certain income levels at rents that are less than the fair market rental value of the Dwelling Units, all as described in Section [10] of the Lease ("**Affordable Rental Housing Restrictions**").

6. Eligible Income Categories. The Lease requires Tenant to construct and operate [**TO BE DETERMINED**] Dwelling Units on the Premises that are available for occupancy by, and affordable to, the following income categories of households: [**NOTE TO DRAFT: INCLUDE THE SAME INCOME LEVELS AS ARE INCLUDED IN THE SPECIFIC LEASE**].

(a) Low Income 80% Household. An individual or household with a household income equal to or less than eighty percent (80%) of the then current Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then eighty percent (80%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

(b) Low Income 60% Household. An individual or household with a household income equal to or less than sixty percent (60%) of the then current Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then sixty percent (60%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

(c) Very Low Income Household. An individual or household with a household income equal to or less than fifty percent (50%) of the then current Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then fifty percent (50%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

(d) Extremely Low Income Household. An individual or household with a household income equal to or less than thirty percent (30%) of the then current Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then thirty percent (30%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

7. Maximum Rent Amounts. The Lease restricts the maximum rent amount that may be charged for the Dwelling Units to HCD Rent, unless the Dwelling Units are financed with Tax Credits, in which case the maximum rent amount is CTCAC Rent.

8. Affordable Rental Housing Covenant. As more specifically described in Section [10] of the Lease, Tenant covenants to and for the benefit of City that all the Dwelling Units will be occupied or Available for occupancy by a Qualifying Household at an Affordable Rent on a continuous basis for the entire term of the Lease. Each Dwelling Unit will be occupied by a Qualifying Household earning a household income ranging from 30% of Area Median Income up

to 80% of Area Median Income if HCD Rent applies, or a household income ranging from 30% of CTCAC Area Median Income up to 80% of CTCAC Area Median Income if CTCAC Rent applies. The Dwelling Units must have a cumulative average affordability not exceeding 60% of Area Median Income. The calculation of the cumulative average affordability of the Dwelling Units will be based on a weighted average calculation described in Section [10] of the Lease. The Lease specifies the distribution of income levels among the various Dwelling Units of different bedroom counts. The Lease also contemplates that the Project will include [**TO BE DETERMINED**] Manager Unit(s) that are not subject to the Affordable Rental Housing Restrictions.

9. Special Restrictions. [**INCLUDE AN EXPLANATORY SECTION HERE ABOUT DWELLING UNITS THAT WILL BE "PERMANENT SUPPORTIVE HOUSING" OR RESTRICTED TO OCCUPANCY BY "SENIOR CITIZENS" OR "VETERANS"**].

10. Notice of Lease. This Memorandum is recorded, among other reasons, to give notice to the public that the Premises are subject to the Affordable Rental Housing Restrictions in the Lease and comply with the California Surplus Land Act and associated guidelines promulgated by HCD. Any person taking any interest in the Premises will do so subject to all documents (including all terms and conditions of such documents) and other matters this Memorandum refers to or discloses. Interested persons should obtain and read copies of all documents this Memorandum refers to or discloses to determine the extent of Tenant's rights and obligations relating to the Premises.

11. Senior Lien Priority. This Memorandum shall be recorded in senior lien priority against the Premises and shall not be subordinated to any security instrument, lien, real property interest, or other encumbrance affecting the Premises (each, a "**Security Instrument**"). Tenant shall not record and shall not allow to be recorded against the Premises any Security Instrument that purports to achieve a lien priority senior to this Memorandum. Tenant must obtain all required subordination agreements from Security Instrument holders to establish and preserve the senior lien priority of this Memorandum.

12. Enforcement of Affordable Rental Housing Restrictions. Landlord and Tenant declare their mutual specific intent that the Affordable Rental Housing Restrictions are part of a plan for the promotion and preservation of affordable housing within the territorial jurisdiction of Landlord, under its Governmental Authority, and that the Affordable Rental Housing Restrictions are intended to be a covenant and restriction running with the land with respect to the Premises, binding upon each successor-in-interest of Tenant in any portion of the Premises. Regardless of classification or characterization, the Affordable Rental Housing Restrictions touch and concern the land of the Premises and are expressly declared to be for the benefit and in favor of Landlord, regardless of whether Landlord is or remains an owner of any land or interest in land to which the Affordable Rental Housing Restrictions relate. If Tenant violates the Affordable Rental Housing Restrictions, Landlord has the right to exercise all rights and remedies under the Lease and maintain all actions at law or suits in equity or other proper proceedings, to enforce remedies addressing Tenant's violation. Additionally, and without limiting Landlord's rights, the Affordable Rental Housing Restrictions shall be enforceable by any one or more of the persons or entities described in California Government Code section 54222.5(a) through (f), inclusive. Every

contract, deed, or other instrument transferring any estate or interest in the Premises shall conclusively be deemed to have been made, entered into, delivered, and accepted subject to the Affordable Rental Housing Restrictions, regardless of whether the Affordable Rental Housing Restrictions are set forth in or referenced in such contract, deed, or other instrument, until the Affordable Rental Housing Restrictions are completely satisfied.

13. Conflicts with Lease. Landlord and Tenant each have rights, duties, and obligations (and conditions to these rights, duties, and obligations) under the Lease that are not stated in this Memorandum. In the event of any conflict between this Memorandum and the Lease, the terms of the Lease will prevail. Nothing in this Memorandum constitutes any representation or warranty by either Landlord or Tenant. To the extent, if any, that the Lease limits the liability of either Landlord or Tenant, such limitation will apply with the same force and effect to any liability of Landlord or Tenant under this Memorandum.

14. Termination. Without limiting the right or ability of Landlord or any other person or entity described in Section 12 to enforce or pursue Tenant's compliance with the Affordable Rental Housing Restrictions, this Memorandum will automatically terminate and be of no further force or effect upon any expiration or termination of the Lease, including any termination of the Lease following the occurrence of an Event of Default.

15. Release of Memorandum. If the Lease terminates, then Landlord and Tenant will sign, acknowledge (where necessary), and deliver such documents as Landlord, a title insurance company insuring a Permitted Leasehold Security Instrument or a Fee Security Instrument, or an Institutional Lender providing financing secured by a Permitted Leasehold Security Instrument or a Fee Security Instrument may reasonably require to terminate and remove this Memorandum of record.

16. Liens. Under the Lease, Tenant may not authorize or allow, and will be solely responsible for, all mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien against the Fee Estate arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to or on behalf of Tenant (or anyone claiming through Tenant).

16.1 NOTICE IS GIVEN THAT NEITHER LANDLORD NOR LANDLORD'S FEE ESTATE IN THE PROPERTY WILL BE LIABLE FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL FURNISHED OR TO BE FURNISHED TO OR ON BEHALF OF TENANT OR ANY SUBTENANT UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY PROFESSIONAL SERVICES, LABOR, OR MATERIAL WILL ATTACH TO OR AFFECT LANDLORD'S FEE ESTATE. NOTHING IN THE LEASE OR THIS MEMORANDUM WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICE OR LABOR OR THE FURNISHING OF ANY

EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST LANDLORD'S FEE ESTATE.

16.2 ON THE COMMENCEMENT DATE OF THE LEASE, THE FEE ESTATE IN THE PROPERTY IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. THIS MEMORANDUM IS NOTICE TO EACH PROVIDER OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND LANDLORD'S FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDER OF LABOR, SERVICES, EQUIPMENT, OR MATERIAL.

17. Counterparts. This Memorandum may be signed in multiple counterpart originals.

[*Remainder of page intentionally blank. Signatures appear on the following page.*]

SIGNATURE PAGE
TO
MEMORANDUM OF AFFORDABLE HOUSING GROUND LEASE WITH AFFORDABLE RENTAL HOUSING RESTRICTIONS
(Midway Rising)

Landlord and Tenant sign and make this Memorandum of Affordable Housing Ground Lease with Affordable Rental Housing Restrictions by and through the signatures of their respective authorized representative(s) set forth below:

Landlord:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Name: _____
Title: _____

Tenant:

[**INSERT GROUND LEASE TENANT NAME, ENTITY TYPE, AND DOMICILE STATE**]

By: _____
Name: _____
Title: _____

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

CALIFORNIA NOTARY ACKNOWLEDGEMENT
(INDIVIDUAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

On _____ before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

EXHIBIT 1
TO
MEMORANDUM OF AFFORDABLE HOUSING GROUND LEASE WITH AFFORDABLE RENTAL HOUSING RESTRICTIONS
(Midway Rising)

PREMISES LEGAL DESCRIPTION

[To be attached behind this cover page]

[**NOTE TO DRAFT: PREMISES LEGAL DESCRIPTION TO BE OBTAINED FROM SPECIFIC AFFORDABLE HOUSING GROUND LEASE PRELIMINARY REPORT**]

ATTACHMENT 15
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

MARKET RATE HOUSING/RETAIL LEASE FORM

[**Attached behind this cover page**]

MARKET RATE HOUSING/RETAIL GROUND LEASE
(Midway Rising)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

[INSERT TENANT'S NAME IN ALL CAPS],
a [INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY]

MARKET RATE HOUSING/RETAIL GROUND LEASE

([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

This MARKET RATE HOUSING/RETAIL GROUND LEASE (this "**Lease**") is entered into between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and [**NOTE TO DRAFT: INSERT TENANT'S NAME IN ALL CAPS**], a [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**] ("**Tenant**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **LEASE SUMMARY**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 3 and the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

1.1 Premises. The real property specifically described in **EXHIBIT A** attached to this Lease, including all Improvements located on such real property on or after the Commencement Date. **EXHIBIT B** attached to this Lease contains a site plan of the Premises. The Premises are part of a larger mixed-use redevelopment project referred to as the "**Development**" in the DDA that is being developed in phases by Tenant's predecessor-in-interest. **EXHIBIT A** is controlling as to the real property constituting the Premises.

1.2 Commencement Date. [**NOTE TO DRAFT: THE DATE OF THE VERTICAL GROUND LEASE CLOSING FOR THIS MARKET RATE HOUSING/RETAIL GROUND LEASE UNDER THE DDA TO BE INSERTED**].

1.3 Term. The Term of this Lease will: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

1.4 Rent. Collectively, all Lease Minimum Rent, Percentage Rent, and Additional Rent, including Capital Sales Event Payments.

1.5 Permitted Uses. Collectively, (a) the Construction of the Project on the Premises in accordance with this Lease and the related use of vehicles, equipment, and machinery; (b) after the Project Completion Date, operation of the Project as a combination of Market Rate Housing Units and the Retail Space in accordance with this Lease; and (c) other uses directly incidental to the uses described in clauses "(a)" and "(b)" of this Section 1.5 that are not prohibited by this Lease or Law.

2. **PURPOSES**. Landlord owns the Premises that are located in the City of San Diego, County of San Diego, California. Tenant proposes to redevelop the Premises with the Project as part of the Development. The Project will consist of the Market Rate Housing Units and the Retail Space. This Lease is entered into under the terms of the DDA. Before the Commencement Date, certain Horizontal Improvements were Constructed on the Premises by Tenant's predecessor-in-interest in preparation for Tenant's Construction of the Project. Landlord desires to convey the Leasehold Estate in the Premises to Tenant, and Tenant desires to lease the Premises from Landlord, all on the terms of this Lease, for the purposes of Tenant Constructing, operating, and maintaining the Project on the Premises during the Term.

3. **DEFINITIONS**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 1 and the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

3.1 Additional Rent. All money this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Lease Minimum Rent and Percentage Rent.

3.2 Adjustments. Defined in **EXHIBIT D**.

3.3 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" and "**Affiliation**" will have the correlative meanings.

3.4 Annual Revenue Statement. An annual written statement disclosing all of Tenant's income from and expenses of operation of the Premises during the immediately preceding Lease Year, setting forth in reasonable detail Tenant's Gross Revenue and Modified Gross Revenue (each defined in **EXHIBIT D**) from the Premises during the immediately preceding Lease Year, and the Percentage Rent for the immediately preceding Lease Year, all using industry standard accounting practices and GAAP consistently applied.

3.5 Application. Each agreement, application, certificate, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to obtain: (a) any Approval to commence, perform, or complete Construction or Retail Tenant Improvement allowed under this Lease, including each application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument Tenant may reasonably request for the Construction or Retail Tenant Improvement; or (b) any Approval to use, occupy, maintain, or operate the Premises in accordance with this Lease.

3.6 Appraiser. Defined in **EXHIBIT D**.

3.7 Approval. Each license, permit (including building, grading, demolition, alteration, use, and special permits), approval, consent, certificate (including Certificate(s) of Occupancy), ruling,

variance, authorization, or amendment to any of the foregoing necessary or appropriate under any Law to commence, perform, or complete Construction or Retail Tenant Improvement allowed under this Lease, or use, occupy, maintain, or operate the Project or the Premises in accordance with this Lease.

3.8 Approved Signage Plan. Defined in Section 9.12.

3.9 Architect. An architect or engineer (as applicable to the pertinent Construction or Retail Tenant Improvement) that is: (a) selected by Tenant, a Subtenant, or a Sub-User, as applicable; (b) not Affiliated with Tenant, the Subtenant, or the Sub-User; (c) licensed as an architect or engineer (as applicable) in the State; and (d) reasonably qualified and experienced in designing and overseeing Construction or Retail Tenant Improvement similar to the Construction or Retail Tenant Improvement for which they are being retained. Tenant may replace an architect or engineer selected by Tenant, at any time, with a different architect or engineer (as applicable) satisfying the requirements of the first sentence of this Section 3.9 by Notice to Landlord.

3.10 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

3.11 Bankruptcy Sale. A sale of any property, or any interest in any property, under Title 11 United States Code section 363 or otherwise in any Bankruptcy Proceeding affecting the owner of such property.

3.12 Builder's Risk Insurance. Defined in **EXHIBIT E**, Section 1.7.

3.13 Building. All Improvements on the Premises that require the issuance of a Certificate of Occupancy before Persons may legally occupy the Improvements for the intended use.

3.14 Building Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes).

3.15 Business Day. Monday through Friday, except Landlord holidays when Landlord's offices are closed.

3.16 Capital Improvements. Any Restoration or addition of any Building, Building Equipment, or exterior finish on any Building.

3.17 Capital Investment. Defined in **EXHIBIT D**.

3.18 Capital Investment Certification Statement. A written statement detailing Tenant's calculation of the Capital Investment, including back-up documentation generated by an

appropriate Third Person verifying all financial information used by Tenant in calculating the total amount of the Capital Investment.

3.19 Capital Sales Event. Each of the following events occurring after the Project Completion Date that is not a Permitted Transfer: (a) a Transfer; (b) a "change in ownership" of real property with respect to the Leasehold Estate, as defined and described in California Revenue and Taxation Code, chapter 2, sections 60 through 64; or (c) a change in Control of Tenant.

3.20 Capital Sales Event Payment. The First Capital Sales Event Payment and each Subsequent Capital Sales Event Payment, all as defined in **EXHIBIT D**.

3.21 Capital Sales Event Statement. A written statement detailing Tenant's calculation of the amount of each Capital Sales Event Payment becoming due under this Lease after the consummation of the applicable Capital Sales Event, including documentation of all financial information (i.e., escrow closing statements, account statements, ledgers, accounting records, etc.) used by Tenant in making the calculations.

3.22 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.

3.23 Casualty Termination. Termination of this Lease after a Substantial Casualty, when and as this Lease expressly allows such a termination.

3.24 CDTFA. Defined in Section 11.9.1.

3.25 Certificate of Occupancy. A certificate of occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as may be amended from time to time, and as adopted and amended by Landlord, under its Governmental Authority, from time to time.

3.26 Certifying Party. Defined in Section 38.

3.27 City Attorney. The City Attorney of the City of San Diego, California.

3.28 City Council. The City Council of the City of San Diego, California.

3.29 City Treasurer. The City Treasurer of the City of San Diego, California.

3.30 Claim. Each claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), or any judgment.

3.31 Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in

(or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut that causes damage to or interferes with the use of the Premises.

3.32 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for Improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation, including any prepayment under any Security Instrument.

3.33 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

3.34 Confidential Tenant Records. Defined in Section 13.6.

3.35 Construction. Alteration, construction, installation, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including the Project and, to the extent not included in the Project, installation of non-structural items (not part of or incorporated into the Structure or required for operation of a Building) to be installed inside a Building and not visible outside the Building, such as floor coverings, wall coverings, walls and doors that are not load bearing, plumbing fixtures not installed as part of the initial construction of a Building, cabinetry, counters, window treatments, and other similar items. "Construction" does not include Retail Tenant Improvement or installation of non-structural items in a single Market Rate Housing Unit by the Subtenant of that Market Rate Housing Unit or a Third Person hired by the Subtenant at the Subtenant's expense. "**Construct**" and "**Constructed**" will have the correlative meanings.

3.36 Construction Commencement Conditions. All the following conditions precedent to each Major Construction:

(a) *Approvals*. Tenant gives Landlord copies of all Approvals required by Law for Tenant to start and complete such Major Construction, including all Approvals (building permits, grading permits, demolition permits, etc.) for any associated grading, excavation, or demolition, prior to commencement of any part of such Major Construction.

(b) *Assignment of Construction Documents*. Tenant conditionally assigns the Construction Documents and the Plans to Landlord such that after an Event of Default by Tenant that results in a termination of this Lease, Landlord may exercise all rights of Tenant under and to such documents (in Landlord's sole and absolute discretion), subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. Such assignment will include the benefit of

all payments made under the Construction Documents, including payments made before the date of such assignment;

(c) *Character of Major Construction*. Landlord determines, in its reasonable discretion, that such Major Construction, when completed, will not change the use of or reduce the value or utility of the Premises;

(d) *Construction Documents*. Tenant enters into and gives Landlord copies of all Construction Documents;

(e) *Construction Surety*. Tenant gives Landlord the Construction Surety for the Major Construction;

(f) *Funds*. Except in the case of a Lower-Risk Restoration, Tenant gives Landlord written evidence reasonably satisfactory to Landlord of the commitment of funds by or to Tenant to pay all the cost of such Major Construction, as estimated by Tenant's Architect;

(g) *Insurance*. Tenant delivers to Landlord written evidence of all insurance coverage this Lease requires for such Major Construction;

(h) *Lender's Approval of Plans*. Tenant gives Landlord evidence that all Permitted Leasehold Lenders, to the extent required by their respective Security Instruments, have approved the Plans for the Major Construction;

(i) *Performance by Tenant's Architect and General Contractor*. Tenant provides Landlord with agreements (subject to the rights of Permitted Leasehold Lenders) from Tenant's Architect and from the General Contractor to continue to perform for Landlord (if Landlord so elects) all obligations of Tenant's Architect or General Contractor, as applicable, under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect or General Contractor is paid for its services requested by Landlord after termination of this Lease or re-entry on the Premises in accordance with such contract; and

(j) *Plans*. Landlord receives and approves the Plans for the Major Construction under this Lease.

3.37 Construction Commencement Date. For each Major Construction, the first date on which Tenant has: (a) satisfied the Construction Commencement Conditions; and (b) started the physical work of any grading, any demolition or removal of any existing Improvements, any excavation work, or otherwise started the physical work of the Major Construction.

3.38 Construction Completion Date. The first date on which all the following events have occurred:

(a) *Completion Certificate*. Tenant gives Landlord a certificate from Tenant's Architect or General Contractor certifying that: (i) the Major Construction is substantially complete in accordance with the Plans for such Major Construction, except Construction of an insubstantial nature that, if not completed, will not delay issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Construction or the applicable portion thereof or materially interfere with the contemplated use of the Improvements installed during the Major Construction; and (ii) Tenant attaches to the certificate copies of all Approvals necessary for the Major Construction issued to Tenant;

(b) *Certificates of Occupancy*. Tenant gives Landlord a copy of the temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Construction, to the extent Law requires such a certificate to use or occupy any portion of the Premises following such Major Construction;

(c) *Landlord Acceptance*. Landlord, under its Governmental Authority, accepts all improvements constructed as part of the Project that will be Landlord owned or operated to provide public services, if any;

(d) *Survey*. Tenant gives Landlord a survey of the Premises showing the as-built Improvements Constructed during the Major Construction, certified to Landlord by a licensed surveyor; and

(e) *Notice of Completion*. Tenant files a Notice of Completion for the Major Construction with the County Recorder for recordation in the official records of the County.

3.39 Construction Contract. A current, executory agreement between Tenant and a General Contractor for Construction of the applicable Major Construction, including the Project, for a guaranteed maximum price or a stipulated price expressly set forth in such contract, or on a cost plus basis, with a commercially reasonable retention amount not to be paid to the General Contractor until the final payment is due to the General Contractor and providing that such final payment will not be paid to the General Contractor until after the Construction Completion Date for the Construction to which the contract applies, and the contract complies with all the terms of the DDA and this Lease. Each Construction Contract will state that: (i) the General Contractor acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) General Contractor agrees to continue to perform for Landlord, as an express third party beneficiary of the contract, all obligations of General Contractor under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided General Contractor is paid for its services requested by Landlord after the Event of Default, in accordance with such contract.

3.40 Construction Documents. All the following documents for each Major Construction, as Tenant may Modify them from time to time, but not in violation of this Lease:

3.40.1 *Architectural Contract*. A contract between Tenant and Tenant's Architect, relating to Tenant's Architect's preparation of the Plans for the Major Construction in which: (i) Tenant's Architect acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) Tenant's Architect agrees to continue to perform for Landlord, as an express third-party beneficiary of the contract, all obligations of Tenant's Architect under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect is paid for its services requested by Landlord after the Event of Default, in accordance with such contract;

3.40.2 *Construction Contract*. A Construction Contract between General Contractor and Tenant, providing for General Contractor's performance of the Major Construction;

3.40.3 *Other Contracts and Permits*. All other agreements and Approvals in place, as of the Construction Commencement Date for the Major Construction, to which Tenant or anyone claiming through Tenant is a party and relating to the Major Construction.

3.41 Construction Surety. Payment and performance bonds guaranteeing: (a) the performance of the Construction Contract by the General Contractor and that the subject Major Construction will be completed in accordance with the Plans for such Major Construction by the General Contractor or, on the General Contractor's default, the surety or guarantor, in accordance with the terms of this Lease; or (b) the performance of the Retail Tenant Improvement Contract by the Retail Tenant Improvement Contractor and that the subject Major Retail Tenant Improvement will be completed in accordance with the Plans for such Major Retail Tenant Improvement by the Retail Tenant Improvement Contractor or, on the Retail Tenant Improvement Contractor's default, the surety or guarantor, in accordance with the terms of this Lease. Such bonds will be in form and substance reasonably acceptable to Landlord, for an amount of money not less than one hundred percent (100%) of the guaranteed maximum price, stipulated price, or cost-plus price (as approved by the Senior Permitted Leasehold Lender) of the Construction Contract or the Retail Tenant Improvement Contract, for the benefit of Tenant, with Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in California Code of Civil Procedure section 995.120, with an underwriting limitation, under California Insurance Code section 12090, greater than the contract amount of the bond. Each such bond must, by its express terms, remain in full force and effect until, as applicable, the Construction Completion Date for the Major Construction or the Retail Tenant Improvement Completion Date for the Major Retail Tenant Improvement. If the provider of any bond regarding any Major Construction or Major Retail Tenant Improvement becomes the subject of any Bankruptcy Proceeding, Tenant will promptly provide a substitute bond to Landlord for such Major Construction or Major Retail Tenant Improvement. The Construction Surety will be in addition to any public improvement security required by any Government regarding the Major Construction or Major Retail Tenant Improvement. If Tenant determines that any type of payment or performance bond described in this Section 3.41 is no longer reasonably available to the construction industry in the commercial surety bond market on commercially reasonable terms for the Major Construction or Major Retail Tenant Improvement, or in connection with Major Retail

Tenant Improvement only, Tenant determines that an alternative form of credit enhancement is more financially prudent and consistent with industry standards (each, an "**Unavailable Bond**"), Tenant will Notify Landlord in writing within seven (7) days. The Notice will include reasonable documentation demonstrating that one or more of the payment or performance bonds described in this Section 3.41 is an Unavailable Bond and Tenant's alternative proposal for providing the risk protection to Landlord that would have been previously provided by each Unavailable Bond. Landlord will have thirty (30) days to review and approve or disapprove Tenant's proposal, in Landlord's sole discretion. If Landlord does not, in its sole discretion, approve Tenant's alternative proposal to provide the risk protection to Landlord that would have been previously provided by each Unavailable Bond, Tenant will obtain, or will require its General Contractor or Retail Tenant Improvement Contractor, as applicable, to obtain, the payment and performance bonds described in this Section 3.41 for the Major Construction or Major Retail Tenant Improvement, as applicable.

3.42 Contest. A legal proceeding commenced by Tenant to challenge: (a) the amount or validity of any Prohibited Encumbrance; (b) the validity of any Law or its application to the Premises; (c) the terms or conditions of, or requirements for, any Approval; or (d) the validity or merit of any Claim against which this Lease requires Tenant to Indemnify Landlord.

3.43 Contest Security. Cash in an amount equal to one hundred ten percent (110%) of the amount of money being contested.

3.44 Contractor Prequalification Application. The form in **EXHIBIT N**.

3.45 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person, bind such Person to an obligation, and direct or cause the direction of the day-to-day management of such Person, in all cases whether by ownership of Equity Interests, by contract, or otherwise.

3.46 Controlling and Controlled. Exercising or having Control.

3.47 County. The County of San Diego, California.

3.48 County Recorder. The Recorder of or for the County.

3.49 CPI. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties will reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

3.50 CPI Adjustment Factor. As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Commencement Date.

3.51 DDA. The Disposition and Development Agreement between the original Landlord and Master Developer dated [**TO BE DETERMINED**], regarding Master Developer's redevelopment of the Premises, among other things.

3.52 Debt Service. Payments made in a calendar quarter towards obligations secured by Permitted Leasehold Security Instruments.

3.53 Default. Each Monetary Default, Project Construction Default, or Non-Monetary Default.

3.54 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest allowed by Law under the circumstances.

3.55 Depository. An Institutional Lender designated by the Senior Permitted Leasehold Lender or, if no Permitted Leasehold Lender exists, then by Landlord. A Permitted Leasehold Lender that is an Institutional Lender may designate itself as Depository.

3.56 Development Conditions. All the requirements for and limitations on use of the Premises, Retail Tenant Improvement, or Construction on the Premises in **EXHIBIT M**.

3.57 Development Criteria. On or after the Construction Completion Date for each Major Construction or the Retail Tenant Improvement Completion Date for each Major Retail Tenant Improvement, such Major Construction or Major Retail Tenant Improvement will: (a) consist solely of Buildings and other associated Improvements allowed under this Lease that are, collectively, completely self-sufficient and erected wholly within the boundary lines of the Premises; (b) be constructed to a standard of quality (including Structure, Building Equipment, FF&E, finishes, materials, circulation, and all other substantial characteristics) that, considered in the aggregate, is substantially equivalent to similar projects in the County; and (c) consist solely of Buildings and other associated Improvements allowed under this Lease designed to be used in their entirety for the Permitted Uses.

3.58 DIR. Defined in Section 14.

3.59 Disclosure Law. Defined in Section 13.6.

3.60 Eligible Residential Sublease. A Sublease that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length, provided that:

3.60.1 *Purposes*. The Sublease allows the Subtenant to use or occupy a Market Rate Housing Unit within the Premises for residential uses consistent with the Permitted Uses and the character and quality of the Premises;

3.60.2 *Required Provisions*. The Sublease includes the provisions required under Section 27.6;

3.60.3 *Term*. The term of the Sublease (including any option or renewal terms) ends on or before the day before the Scheduled Expiration Date.

3.61 Entertainment Center. The Entertainment Center to be constructed in the Master Development Area, as described in the DDA.

3.62 Environmental Condition. Any of the following events relating to the Premises arising from the negligence or intentional misconduct of one or more Tenant Parties, contractors, Subtenants, Sub-Users, or other Persons entering the Premises during the Term: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

3.63 Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

3.64 Equity Interest. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

3.65 Equity Interest Transfer. Each of the following actions or events, whether occurring by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Tenant (even though Tenant itself is not the transferor), excluding sales of Equity Interests listed on a public stock exchange in the United States by a Person holding ten percent (10%) or less of the Equity Interests in the Person whose Equity Interests are being sold; or (b) each merger, consolidation, sale, lease or the like with respect to Tenant or a series of such mergers, consolidations, sales, leases or the like occurring over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in the assets of Tenant.

3.66 Estoppel Certificate. A written, signed certification of each of the following: (a) the nature of the Certifying Party's interest in this Lease and the Premises, and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been Modifications, that this Lease is in full force and effect, as Modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Tenant Defaults or Landlord Defaults, or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Tenant Defaults or Landlord Defaults, or failures to perform claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

3.67 Event of Default. Defined in Section 32.1.

3.68 Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

3.69 Fair Market Rent. The fair market rent of the space to be used or occupied under a Use Agreement or a Sublease, as applicable, based on a written appraisal report disclosing the then current estimated fair market rent of such space for the uses permitted under the Use Agreement or Sublease, as applicable, and prepared by an Appraiser.

3.70 Federal. Relating or under the authority of the federal government of the United States of America.

3.71 Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

3.72 Fee Lender. An Institutional Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument will not be considered a Fee Lender.

3.73 Fee Security Instrument. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as applicable to Fee Lenders) and containing no provision (and securing no document containing any provision) inconsistent with the Statement of Priorities; (c) otherwise complying with this Lease; (d) a copy of which (recorded or unrecorded) is promptly, after being signed, delivered to Tenant and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by a Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

3.74 FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) located at the Premises and used for the Permitted Uses that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

3.75 Financial Reporting Statements. Collectively, Annual Revenue Statements, Capital Sales Event Statements, and Capital Investment Certification Statements.

3.76 Financing Plan. The plan in **EXHIBIT K** attached to this Lease for Tenant's financing of the acquisition of the rights to this Lease and Construction of the Project under this Lease.

3.77 First Capital Sales Event Payment. Defined in **EXHIBIT D**.

3.78 Foreclosure Event. Any transfer of title to all or any portion of the Fee Estate or the Leasehold Estate through any: (a) judicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Security Instrument; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding and any Bankruptcy Sale), in each case (clauses "(a)" through "(e)") whether the transferee is a Fee Lender or Permitted Leasehold Lender, a Person claiming through a Fee Lender, Permitted Leasehold Lender, or a Third Person.

3.79 GAAP. Generally accepted accounting principles established by the Financial Accounting Standards Board in the United States.

3.80 General Contractor. A State licensed general contractor experienced in the Construction of improvements like the Project or the Major Construction, as applicable, selected by Tenant that has either: (a) been preapproved by Landlord as a prime contractor for Landlord public works projects of similar size to the contractor's proposed scope of work; or (b) submitted its qualifications to both Tenant and Landlord using the Contractor Prequalification Application and been approved by both Tenant and Landlord as having appropriate qualifications and experience to perform the contractor's proposed scope of work.

3.81 Government. All Federal, State, County, district, Landlord acting under its Governmental Authority, or other governments and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any government, whether in existence on the Commencement Date or subsequently established, having, or claiming jurisdiction over any Party, the Premises, the Project, this Lease, or any activity this Lease allows.

3.82 Governmental Authority. Landlord's police power land use regulatory authority or other police powers, separate and distinct from Landlord acting in its proprietary capacity.

3.83 Gross Revenue. Defined in **EXHIBIT D**.

3.84 Hazardous Substance. Each flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy, from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Law; (ii) is subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health or safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal. "Hazardous Substance" will

not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

3.85 Hazardous Substance Discharge. Each deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Premises, or during transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under, in, or from the Premises, including Construction of the Project, whether or not caused by a Party or occurring before or after the Commencement Date.

3.86 Horizontal Improvements. The site preparation work, including grading and installation of utilities, completed by Master Developer on the Premises before the Commencement Date, as further described in Attachment 10 to the DDA.

3.87 Immaterial Loss. A Casualty or Condemnation resulting in a Loss not exceeding twenty-five thousand dollars ($25,000) times the CPI Adjustment Factor.

3.88 Improvements. All improvements located on the Premises from time to time, including all improvements existing as of the Commencement Date and the Project.

3.89 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all Legal Costs, interest, and penalties incurred in enforcing the indemnity obligation under this Lease regarding the Claim. "Indemnified," "Indemnification," or similar terms will have the correlative meanings.

3.90 Indemnitee. Each Person entitled to be Indemnified under this Lease.

3.91 Indemnitor. Each Person agreeing to Indemnify any other Person under this Lease.

3.92 Institutional Lender. Each of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) Federal or State regulated savings bank; (f) pension, welfare, or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Federal or State regulated investment bank; (j) a Fortune 500 company; or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 3.92.

3.93 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

3.94 IRR. Defined in **EXHIBIT D**.

3.95 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor (including a Fee Lender, or anyone acting for a Fee Lender, that has acquired and then disposed of the Fee Estate) will be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

3.96 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 32.12: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

3.97 Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

3.98 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

3.99 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any manner to any Party, the Premises, this Lease, the Project, any Construction on the Premises, any Retail Tenant Improvement on the Premises, any Party's rights, obligations, or remedies under this Lease, or any Transfer, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

3.100 Lease Impairment. Any of the following, whether expressly provided for in this Lease or resulting from any future agreement between Landlord and Tenant or from the unilateral action of either: (a) a Modification of this Lease, in whole or in part; (b) subordination of this Lease to any Fee Security Instrument or other encumbrance on the Fee Estate; (c) making or material modification of any encumbrance affecting the Fee Estate that is senior in recording priority to this Lease; (d) Tenant's consent (or failure to object) to: (i) any of the foregoing; (ii) any Bankruptcy Sale of the Fee Estate; (iii) any other matter of a material nature requiring Tenant's consent under this Lease; (e) delivery of any Notice that impairs or may impair, or purports to limit the exercise of, any Permitted Leasehold Lender's rights and remedies under its Permitted Leasehold Security Instrument or this Lease; or (f) Tenant's exercise of any right to treat this Lease as terminated under 11 U.S.C. § 365(h).

3.101 Lease Memorandum. The Memorandum of Ground Lease recorded with the County Recorder against the Premises in the form of Attachment 13 to the DDA.

3.102 Lease Minimum Rent. Defined in **EXHIBIT D**.

3.103 Lease Year. Each of: (a) the period from the Commencement Date through the immediately following December 31; (b) every subsequent period of twelve (12) calendar months beginning on January 1 and ending on the immediately following December 31 during the Term; and (c) the period from the last January 1 during the Term through the Expiration Date. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," "Lease Year 3," and so on.

3.104 Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms of this Lease.

3.105 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding involving this Lease or the other Party; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested of a Party by Notice from the other Party; (d) requirement under Law or request by Notice from a Party that such Person or its employees act as a witness in any proceeding regarding this Lease or the requesting Party; or (e) review or approval requested of a Party by Notice from the other Party.

3.106 Lender. A Fee Lender or a Permitted Leasehold Lender, as applicable, and its successors and assigns permitted under this Lease.

3.107 Lender Protections. For any Lender, all rights, protections, and privileges of such Lender under this Lease, if any, including: (a) any right to receive Notices or to cure Defaults (including, in the case of a Permitted Leasehold Lender, all Permitted Leasehold Lender's Cure Rights); (b) in the case of a Permitted Leasehold Lender, any requirement for Permitted Leasehold Lender's Consent and all provisions for a New Lease; and (c) all other rights, remedies, protections, privileges, and powers of such Lender and anyone claiming through or under such Lender, including (in the case of a Permitted Leasehold Lender) any New Tenant and any Post-Foreclosure Tenant.

3.108 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

3.109 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

3.110 Lower-Risk Restoration. Any Restoration after an Immaterial Loss or meeting all the following conditions: (a) Restoration Funds equal or exceed the reasonably estimated cost of Restoration; and (b) such Restoration complies with the Development Criteria and contemplates Restoration generally comparable (in size, structure, configuration, use, and quality) to the Premises as existing before the Loss, to the extent Law permits.

3.111 Maintenance Deficiency. Defined in Section 10.3.

3.112 Maintenance Standard. Defined in Section 10.2.

3.113 Major Construction. Tenant's first Construction undertaken under this Lease consisting of the original Construction of the Project or any other Construction (including any coordinated series of related projects) that either: (a) will result in more than twenty percent (20%) of Market Rate Housing Units being unavailable for occupancy for a period of more than one (1) month; (b) will affect the Structure of a Building (other than to a de minimis extent, such as replacement of rooftop chiller units); (c) will involve installation, removal, or modification of load bearing walls or doors; (d) will involve installation, removal, or alteration of major components of Building Equipment; or (e) has an estimated cost exceeding five million dollars ($5,000,000) times the CPI Adjustment Factor.

3.114 Major Construction Period. The period beginning on the Construction Commencement Date for the Major Construction and ending on the Construction Completion Date for such Major Construction.

3.115 Major Retail Tenant Improvement. Each Retail Tenant Improvement that either: (a) affects the Structure of the Building in which the subject Retail Space is located (other than to a de minimis extent, such as replacement of rooftop chiller units); (b) involves installation, removal, or modification of load bearing walls or doors; (c) involves installation, removal, or alteration of major components of Building Equipment; or (d) has an estimated cost exceeding five million dollars ($5,000,000) times the CPI Adjustment Factor.

3.116 Management Agent. As designated by Tenant from time to time, either Tenant or another Person with substantial experience in managing improvements substantially similar to the Project located on the Premises.

3.117 Management Agreement. An agreement between Tenant and a Third Person for that Third Person to act as Management Agent for the Premises.

3.118 Market Rate Housing Unit. Each one of the [**TO BE DETERMINED NUMBER**] multi-family residential rental units within the Project offered for rent at then current market rate rents.

3.119 Market Rate/Retail Leases. Defined in **EXHIBIT D**.

3.120 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date: (a) considered as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) considered as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate, the Rent and Landlord's reversion). The Market Value will be determined as if the Term were to continue until the Scheduled Expiration Date.

3.121 Master Developer. Midway Rising, LLC, a Delaware limited liability company, and its permitted successors or assigns under the DDA or the Master Rent Administration Agreement, as applicable.

3.122 Master Development Area. The real property specifically described in **EXHIBIT P**.

3.123 Master Rent Administration Agreement. Defined in **EXHIBIT D**.

3.124 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function and authority, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

3.125 Minimum Annual Rent. Defined in **EXHIBIT D**.

3.126 Minimum Annual Rent Statement. Defined in **EXHIBIT D**.

3.127 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

3.128 Modified Gross Revenue. Defined in **EXHIBIT D**.

3.129 Modified Gross Revenue Percentage. Defined in **EXHIBIT D**.

3.130 Modify. Agree to, cause, make, or permit any Modification.

3.131 Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any amount of money, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Encumbrances under Section 16; or (d) obtain, replace, maintain, pay premiums for, or give Landlord written evidence of, any insurance coverage or surety bond when and as this Lease requires.

3.132 MRR Tenants. Defined in **EXHIBIT D**.

3.133 NDA. A non-disturbance and attornment agreement, in recordable form, in substantially the form of **EXHIBIT L**, modified as necessary to reflect the parties and the nature and circumstances of the estates such NDA affects.

3.134 Net Cash Flow. Defined in **EXHIBIT D**.

3.135 New Lease. A new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term, through and including the Scheduled

Expiration Date, considered as if this Lease was not terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly states. Any New Lease will include all rights and privileges of Tenant under this Lease, but will not include any Tenant-Specific Obligations.

3.136 New Lease Delivery Date. The first date on which both New Tenant and Landlord have entered into (or are deemed to have entered into) a New Lease.

3.137 New Lease Option Period. If any Expiration Date occurs (except because of: (a) the Scheduled Expiration Date; (b) a Casualty; or (c) a Substantial Condemnation), a period beginning on such Expiration Date and ending three (3) months after Landlord Notifies all Permitted Leasehold Lender(s) of such Expiration Date. The New Lease Option Period will be tolled and extended: (i) during any Bankruptcy Proceeding affecting Landlord or Tenant to the extent such Bankruptcy Proceeding prevents exercise of the New Lease option or entry into the New Lease by the Permitted Leasehold Lender entitled to a New Lease at the time under this Lease; (ii) during any period when the right of the Permitted Leasehold Lender entitled to a New Lease at the time, under this Lease, to require Landlord to enter into a New Lease is otherwise materially restricted or impaired, other than because of such Permitted Leasehold Lender's act or omission; and (iii) for thirty (30) days after the conclusion of an event described in either clause "(i)" or "(ii)" of this Section 3.137. All Permitted Leasehold Lenders, considered as a group, will have only a single New Lease Option Period. No individual Permitted Leasehold Lender will have a separate or sequential New Lease Option Period.

3.138 New Tenant. Either: (a) the Permitted Leasehold Lender that is entitled to and requests (or obtains) a New Lease; or (b) such other Tenant under a New Lease as such Permitted Leasehold Lender will designate by Notice to Landlord, which successor Tenant will be subject to Landlord's prior written consent, in Landlord's reasonable discretion. Any New Tenant will have all the same rights and obligations of Tenant under this Lease, except as otherwise provided in this Lease and subject to the definition of a New Lease and the occurrence of the New Lease Delivery Date.

3.139 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of Tenant to perform any one of its obligations under this Lease, including not meeting any deadline in the Performance Schedule; (b) Tenant's failure to comply with any covenant, condition, restriction, or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

3.140 Notice. Each approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices must be in writing and delivered in accordance with Section 34.

3.141 Notice of Completion. The notice described in and ascribed the same name in California Civil Code section 8182.

3.142 Notice of Default. Each Notice of a Default. A Notice of Default is not required to specify a cure period.

3.143 Notify. Give a Notice.

3.144 Parties. Collectively, Landlord and Tenant.

3.145 Party. Individually, Landlord or Tenant, as applicable.

3.146 Percentage Rent. Defined in **EXHIBIT D**.

3.147 Percentage Rent Threshold. Defined in **EXHIBIT D**.

3.148 Performance Schedule. The schedule for the performance of certain actions under this Lease by Landlord or Tenant in **EXHIBIT F**.

3.149 Permitted Exceptions. All the following matters: (a) all items shown in the Preliminary Report as an exception to coverage under the title insurance policy offered in the Preliminary Report; (b) all taxes not on rolls; (c) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (d) all Laws applicable to the Premises; (e) this Lease and the Lease Memorandum; (f) all Permitted Leasehold Security Instruments; (g) all existing Improvements on the Premises as of the Commencement Date; (h) all Applications made by Tenant or at Tenant's request relating to the Premises; (i) all Approvals relating to the Premises; (j) all matters consented to or otherwise caused by Tenant; (k) all documents or encumbrances expressly required or allowed to be recorded against the Leasehold Estate under this Lease or Law; or (l) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record, as of the Commencement Date.

3.150 Permitted Leasehold Lender. An Institutional Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord will not be bound by the assignment or change of address, unless and until each affected Permitted Leasehold Lender has given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be considered a Permitted Leasehold Lender or affect Landlord in any way. (Only the "lead" Institutional Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Institutional Lender may be replaced at any time upon Notice from that Institutional Lender, but only the designated lead Institutional Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender.)

3.151 Permitted Leasehold Lender's Consent. Any matter expressly referring to "Permitted Leasehold Lender's Consent" means Permitted Leasehold Lender's prior (or, at Permitted Leasehold Lender's option, simultaneous or subsequent) written consent to such matter. If this

Lease requires Permitted Leasehold Lender's Consent for a particular matter, then Permitted Leasehold Lender may only reasonably withhold consent; provided, however, Permitted Leasehold Lender will be entitled to withhold its consent in its sole discretion, if the matter: (i) materially increases or decreases Landlord's obligations under this Lease; (ii) materially increases or decreases Tenant's obligations under this Lease; (iii) eliminates or modifies any Lender Protections; or (iv) will result in a termination of this Lease. When no Permitted Leasehold Lender exists, references to Permitted Leasehold Lender's Consent will be disregarded. Nothing in this definition will require Landlord to obtain (or to confirm that Tenant obtained) any consent from any Permitted Leasehold Lender, except where this Lease expressly requires "Permitted Leasehold Lender's Consent."

3.152 Permitted Leasehold Lender's Cure. Subject to and in accordance with this Lease, any Permitted Leasehold Lender's: (a) actions taken to cure a Default, whether or not successful; or (b) cure of a Default.

3.153 Permitted Leasehold Lender's Cure Rights. All rights of each Permitted Leasehold Lender under this Lease to effectuate any Permitted Leasehold Lender's Cure.

3.154 Permitted Leasehold Security Instrument. Each Security Instrument: (a) encumbering only the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Permitted Leasehold Lenders) and containing no provisions (and securing no other document containing any provisions) inconsistent with the Statement of Priorities; (c) held by an Institutional Lender; and (d) a copy of which is delivered to Landlord promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and Notice address.

3.155 Permitted Transfer. A Transfer, where following the Transfer, either Tenant, an Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, or an Unchanged Entity that has continuously owned an Equity Interest in another Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, continuously has Control over the Transferee, the Transferee is not a Prohibited Transferee, and Tenant is not released from liability under this Lease following the Transfer. If Tenant's Control over a Transferee ends or Control of an Unchanged Entity to which a Transfer is made changes, each such event will be considered a Transfer that is not a Permitted Transfer.

3.156 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

3.157 Plans. The plans and specifications for Major Construction prepared by Tenant's Architect or the plans and specifications for Major Retail Tenant Improvement prepared by Tenant's Architect or a Subtenant's or Sub-User's Architect, as applicable, that have received all necessary Approvals regarding the subject Major Construction or Major Retail Tenant

Improvement, respectively, submitted in both hard copy and such machine-readable format as is then customary in the architectural or engineering profession (as applicable) in the State, using naming conventions and other criteria reasonably approved or required by Landlord, consisting of architectural or engineering plans (as applicable), and elevations and sections indicating principal areas, core design and location; and unless Landlord agrees in writing, in Landlord's sole discretion, at Tenant's request to waive provision of the following information, also location, number, and capacity of elevators, basic structural system, minimum estimated electrical capacity and distribution system, general type of plumbing system, façade, placement, and orientation, gross and rentable square foot analysis, and principal types of HVAC systems.

3.158 Post-Foreclosure Tenant. The following Persons: (a) any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including a Permitted Leasehold Lender; and (b) the direct and indirect successors and assigns of any Person identified in clause "(a)." Any Post-Foreclosure Tenant will have all the rights and obligations of Tenant under this Lease.

3.159 Pre-Approved Signs. Defined in Section 9.12.

3.160 Preliminary Report. The offer to issue an American Land Title Association leasehold title insurance policy attached to this Lease as **EXHIBIT J**.

3.161 Premises Control. For any Permitted Leasehold Lender, any of the following: (a) possession of the Premises by a receiver, trustee, or similar officer appointed in a judicial proceeding commenced by such Permitted Leasehold Lender; (b) possession as mortgagee-in-possession under an affirmative written election to become a mortgagee-in-possession; or (c) acquisition of the Leasehold Estate by a Post-Foreclosure Tenant through a Foreclosure Event initiated by such Permitted Leasehold Lender.

3.162 Prevailing Wage Law. Defined in Section 14.

3.163 Prevailing Wage Determination. Each of the following events: (a) each determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) each determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) each administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776, or applicable Federal law; or (d) each administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781, 1782, or applicable Federal law.

3.164 Prevailing Wages. Defined in Section 14.

3.165 Prohibited Encumbrance. Each lien, Security Instrument, mechanic's lien, easement, property interest, or other encumbrance recorded or asserted against the Premises that is not a Permitted Exception.

3.166 Prohibited Transferee. Each Person: (a) with whom Landlord is in litigation at the time a Transfer to the Person is proposed, made, or to be made, exclusive of defendants in eminent domain litigation commenced by Landlord, under its Governmental Authority, where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (c) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (d) entitled to claim diplomatic immunity; (e) that is a domestic or foreign governmental entity; or (f) that is immune or may elect to be immune from suit under State or Federal law.

3.167 Project. Tenant's Construction of the entirety of the improvements described in **EXHIBIT I**, including all initial interior improvements to Market Rate Housing Units to make them rentable as such, hardscape, landscaping, and on-site and off-site public and private improvements, all in accordance with Plans approved by Landlord through the Vertical Ground Lease Escrow for this Lease under the DDA.

3.168 Project Completion Date. The Construction Completion Date for the Project.

3.169 Project Completion Deadline. The first date that is [**TO BE DETERMINED**] days after the Commencement Date.

3.170 Project Construction Default. Tenant's failure to cause the Project Completion Date to occur on or before the Project Completion Deadline.

3.171 Property Insurance. Defined in **EXHIBIT E**, Section 1.3.

3.172 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance and Builder's Risk Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

3.173 Quitclaim Deed. A quitclaim deed reasonably acceptable to Landlord conveying all of Tenant's right, title and interest in this Lease and the Leasehold Estate to Landlord.

3.174 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district, assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature

whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Building Equipment, or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed will be solely a tax liability of Tenant and will be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date will be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, will be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, will be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

3.175 Recalculation Date. Defined in **EXHIBIT D**.

3.176 Receipt Date. Defined in Section 34.

3.177 Recreational Value Points. Recreational value points under the scoring methodology outlined in the City of San Diego, California, Parks Master Plan adopted August 2021, Appendix D.

3.178 Requesting Party. Defined in Section 38.

3.179 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

3.180 Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

3.181 Restore. Accomplish a Restoration.

3.182 Retail Space. The [**TO BE DETERMINED NUMBER**] gross square feet of floor area of retail/commercial space within the Project.

3.183 Retail Tenant Improvement. All alteration, construction, improvement, addition, installation, demolition, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, build-out work, or other work affecting Retail Space inside a Building, including storefront work, partitions, ceilings, floor coverings, wall finishes, lighting,

electrical, plumbing, mechanical, fire-life-safety, security, point-of-sale equipment, Signs permitted under this Lease, display areas, counters, dressing rooms, restrooms, stock rooms, or other improvements done by or on behalf of a Subtenant of Retail Space.

3.184 Retail Tenant Improvement Completion Date. The first date on which all of the following events have occurred for the Major Retail Tenant Improvement:

3.184.1 *Completion Certificate*. Tenant, the Subtenant, or the Sub-User that entered into the applicable Retail Tenant Improvement Contract gives Landlord all the following information: (i) a certificate from Tenant's Architect or the Subtenant's or Sub-User's Architect or Retail Tenant Improvement Contractor certifying that the Major Retail Tenant Improvement is substantially complete in accordance with the Plans for such Major Retail Tenant Improvement, except work of an insubstantial nature that, if not completed, will not delay issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Retail Tenant Improvement or materially interfere with the contemplated use of the Major Retail Tenant Improvement; (ii) copies of all Approvals issued to Tenant, the Subtenant, or the Sub-User for the Major Retail Tenant Improvement; and (iii) all Plans approved by Landlord, under its Governmental Authority, for the Major Retail Tenant Improvement;

3.184.2 *Certificate of Occupancy*. Tenant gives Landlord a copy of the temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Retail Tenant Improvement, to the extent Law requires such a certificate to use or occupy any portion of the affected Retail Space following such Major Retail Tenant Improvement; and

3.184.3 *Notice of Completion*. Tenant files a Notice of Completion for the Major Retail Tenant Improvement with the County Recorder for recordation in the official records of the County.

3.185 Retail Tenant Improvement Contract. A current, executory agreement between Tenant or a Subtenant or a Sub-User and a Retail Tenant Improvement Contractor for the entirety of the applicable Major Retail Tenant Improvement for a guaranteed maximum price or a stipulated price expressly set forth in such contract, or on a cost plus basis, with a commercially reasonable retention amount not to be paid to the Retail Tenant Improvement Contractor until the final payment is due to the Retail Tenant Improvement Contractor, providing that such final payment will not be paid to the Retail Tenant Improvement Contractor until after the Retail Tenant Improvement Completion Date for the Major Retail Tenant Improvement to which the contract applies, and the contract complies with all the terms of this Lease. Each Retail Tenant Improvement Contract will state that the Retail Tenant Improvement Contractor acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate.

3.186 Retail Tenant Improvement Contractor. A State licensed general contractor selected by Tenant, or by a Subtenant or Sub-User, and approved by Tenant, that is in good standing with the

California Contractors State License Board (or its successor in function) and has appropriate qualifications and experience to perform the contractor's proposed scope of work.

3.187 Revenue. All money, and the monetary value of property or services, received by Tenant from the use or occupancy of or the right to use or occupy any part of the Premises, including all revenue from or relating to money or other consideration paid or payable by Subtenants or Sub-Users. Revenue will be determined on a cash basis.

3.188 Review Date. Defined in **EXHIBIT D**.

3.189 Scheduled Expiration Date. [**NOTE TO DRAFT: PARTIES TO INSERT SPECIFIC DATE THAT IS THE 85TH ANNIVERSARY OF THE COMMENCEMENT DATE**].

3.190 SDMC. San Diego Municipal Code.

3.191 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender or Fee Lender (as applicable), then all such security instruments so consolidated or restated will constitute a single Security Instrument. A Security Instrument may be either a Fee Security Instrument or a Permitted Leasehold Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

3.192 Security Plan. Defined in Section 9.5.1.

3.193 Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien priority position of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien priority position to the specified Security Instrument. Priority of liens will be determined under Section 30.1 titled "Priorities of Multiple Lenders." If only one Security Instrument of a particular type exists, then it will be the "Senior" Security Instrument of such type.

3.194 Sign. Any banner, pennant, flag, poster, sign, electronic reader board, decoration, marquee, awning, or similar device or advertising.

3.195 Specific Plan. The Midway Rising Specific Plan adopted by Landlord, under its Governmental Authority, effective [**TO BE DETERMINED**], and governing the Premises.

3.196 State. The State of California.

3.197 Statement of Priorities. A statement, in or relating to any Security Instrument, substantially in the form and containing all the provisions set forth in Sections 3.197.1 through 3.197.3 as applicable to Fee Security Instruments or Permitted Leasehold Security Instruments, respectively. Such statement reflects the definitions in this Lease. All such terms will be (deemed) modified in any Security Instrument as appropriate to reflect the definitions in such Security Instrument.

3.197.1 *For Fee Security Instruments*. Any Fee Security Instrument attaches solely to the Fee Estate. Any Fee Security Instrument will be subject and subordinate to, and will not encumber or attach to or otherwise affect any of the following (and by accepting its Fee Security Instrument, each Fee Lender unconditionally and irrevocably subordinates and agrees to subordinate its Fee Security Instrument to all the following), unless and until the New Lease Option Period expires without a Permitted Leasehold Lender entitled to request a New Lease requesting a New Lease: (i) this Lease, any New Lease, and the Leasehold Estate under either of them (whether held by Tenant, a Post-Foreclosure Tenant, or a New Tenant); (ii) any estate (including a Permitted Leasehold Security Instrument) directly or indirectly arising from this Lease or any New Lease; (iii) Tenant's, Post-Foreclosure Tenant's, New Tenant's, and any Permitted Leasehold Lender's rights and remedies under this Lease, whether accruing before or after any Foreclosure Event under a Fee Security Instrument; and (iv) any Modification of any of the items described in the foregoing clauses "(i)" through "(iii)," whether or not Fee Lender joins in or consents to it. Upon any Foreclosure Event under a Fee Security Instrument, the resulting owner of the Fee Estate will succeed only to the Fee Estate, subject to the items described in clauses "(i)" through "(iv)."

3.197.2 *For Permitted Leasehold Security Instruments*. Any Permitted Leasehold Security Instrument attaches solely to the Leasehold Estate. A Permitted Leasehold Security Instrument does not encumber the Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Lender's interest in the Fee Estate, or any reversionary interest. Any Foreclosure Event under a Permitted Leasehold Security Instrument will not convey, transfer, extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease), any Fee Security Instrument, or the rights or remedies of any Fee Lender as against Landlord or the Fee Estate. Nothing contained in this Section 3.197.2 will impair a Permitted Leasehold Lender's Cure Rights or rights to a New Lease, as provided in this Lease. This Section 3.197.2 will be subject to any written agreements by and among a Permitted Leasehold Lender and a Fee Lender, except to the extent that any such agreement would cause, allow, or result in a Permitted Leasehold Security Instrument becoming a Fee Security Instrument or otherwise encumbering the Fee Estate.

3.197.3 *For All Security Instruments*. Any Security Instrument is subject to all terms of this Lease. Notwithstanding anything to the contrary in any Security Instrument, no Lender may receive any Loss Proceeds, except to the extent (and under the conditions) payable to such Lender (or its mortgagor) under this Lease. Upon any Foreclosure Event under any Security Instrument, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) will have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease, unless and until such

owner signs, acknowledges, and delivers to the other Party to this Lease an instrument, in recordable form, by which such owner assumes all obligations of Landlord or Tenant under this Lease, as applicable, subject to the other terms of this Lease. Such instrument of assumption will be delivered: (i) promptly following consummation of the Foreclosure Event; and (ii) in any event, before taking possession of the Premises or exercising any rights under this Lease.

3.198 Structure. Only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of any Improvements on the Premises, regardless of when constructed or by whom.

3.199 Sublease. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length: (a) providing a Person other than Tenant with exclusive use or occupancy of any part of the Premises; (b) sub-subleasing or any further level of subleasing any part of the Premises; or (c) Modification or assignment of any of the agreements described in clauses "(a)" or "(b)" of this Section 3.199.

3.200 Sublease Update Package. Defined in Section 27.9.2.

3.201 Sub-Rent. All money due and payable by Subtenants under Subleases or Sub-Users under Use Agreements.

3.202 Sub-Rent Payment Notice. A Notice from Landlord to any Subtenant or Sub-User, directing such Subtenant or Sub-User to pay its Sub-Rent to Landlord and not to Tenant.

3.203 Subsequent Capital Sales Event Payment. Defined in **EXHIBIT D**.

3.204 Substantial Casualty. A Casualty that: (a) before the Project Completion Date, results in the cost of Restoration of the Premises (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by the lesser of: (i) one million dollars ($1,000,000) times the CPI Adjustment Factor; or (ii) twenty percent (20%) of the total Restoration cost; (b) after the Project Completion Date, results in the cost of Restoration of the Premises (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by the lesser of: (y) five hundred thousand dollars ($500,000) times the CPI Adjustment Factor; or (z) fifteen percent (15%) of the Restoration cost; or (c) after the Project Completion Date, under Law, prevents more than fifty percent (50%) of the Premises from being Restored to substantially the same bulk and for substantially the same use(s) as before the Casualty.

3.205 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination (with Permitted Leasehold Lender's Consent) puts the remainder of the Premises in an Uneconomic condition.

3.206 Subtenant. Each Person having exclusive use or occupancy of part of the Premises under any Sublease.

3.207 Subtenant/Sub-User Insurance Requirements. The insurance coverages and requirements that each Subtenant and Sub-User must obtain and comply with as set forth in **EXHIBIT O**.

3.208 Sub-User. Each Person authorized to use part of the Premises under a Use Agreement.

3.209 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

3.210 Tenant. [**NOTE TO DRAFT: INSERT TENANT'S NAME**], [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**], and its permitted Transferees under this Lease.

3.211 Tenant Insurance Requirements. Defined in **EXHIBIT E**, Section 2.

3.212 Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge about operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is [**TO BE DETERMINED**].

3.213 Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

3.214 Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or each owner of an Equity Interest in Tenant.

3.215 Tenant-Specific Default. Any Default that: (a) is not reasonably susceptible of cure by a Permitted Leasehold Lender, such as (to the extent, if any, that it actually constitutes a Default under this Lease) any Default resulting from a Bankruptcy Proceeding affecting Tenant; any prohibited change of management of Tenant; failure to deliver required financial information solely within Tenant's control; (b) by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates; or (c) consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance satisfying all the following criteria: (i) attaches only to the Leasehold Estate; (ii) is junior to the specific Permitted Leasehold Lender's Permitted Leasehold Security Instrument; and (iii) this Lease prohibits.

3.216 Tenant-Specific Obligation. Any obligation the breach of which would constitute a Tenant-Specific Default.

3.217 Third Person. Any Person that is not a Party, an Affiliate of a Party, a Landlord Party, or a Tenant Party.

3.218 Transfer. Each of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Tenant's

legal, beneficial, or equitable interest in this Lease or the Leasehold Estate; (b) any Equity Interest Transfer relating to Equity Interest(s) in Tenant; or (c) any transaction that is in substance equivalent to any of the transactions described in clause "(a)" or "(b)" of this Section 3.218. An Equity Interest Transfer described in clause "(b)" or "(c)" of this Section 3.218 or otherwise, is considered a Transfer by Tenant even though Tenant is not technically the transferor. A "Transfer" will not, however, include Tenant making a Permitted Leasehold Security Instrument or any of the following Equity Interest Transfers (provided that the other Party to this Lease receives Notice of the Permitted Leasehold Security Instrument or Equity Interest Transfer at least fifteen (15) days before the Permitted Leasehold Security Instrument or Equity Interest Transfer is effective): (i) a mere change in form of ownership, with no material change in beneficial ownership, that constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a collateral pledge of the Equity Interests in Tenant to a Permitted Leasehold Lender as security for a loan allowed under this Lease; or (iv) issuance of previously unissued or new Equity Interests in Tenant that increases the amount of outstanding Equity Interests in Tenant by less than ten percent (10%).

3.219 Transferee. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Tenant through an Equity Interest Transfer or acquiring all or any portion of Tenant's interest in this Lease or the Premises through a Transfer. A Prohibited Transferee cannot be a "Transferee."

3.220 Unavailable Bond. Defined in Section 3.41.

3.221 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes described above in this Section 3.221 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

3.222 Unchanged Entity. A Person that is not a natural Person that has not had a change in Control over that Person occur since the Commencement Date.

3.223 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to required parking facilities or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is

smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

3.224 Use Agreement. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length: (a) allowing any Person other than Tenant to use part of the Premises for Permitted Uses consistent with the character and quality of the Premises; (b) not providing exclusive possession of any part of the Premises, and not constituting or creating an interest or estate in land; (c) requiring the Sub-User to carry all the insurance required under the Subtenant/Sub-User Insurance Requirements; and (d) with a duration (including all options or renewal terms) that ends on or before the day before the Scheduled Expiration Date. Subject to the terms of this Lease, examples of Use Agreements include: (i) vendor, concession, and service agreements, including maintenance or repair services, food and beverage, merchandise, security, cleaning, parking, technology, and other operations-related contracts; (iii) advertising, branding, media, and promotional agreements, including related space or asset licenses; or (iii) non-exclusive or non-possessory licenses for a part of the Premises.

3.225 Use Tax. Defined in Section 11.9.1.

4. **LEASING AND HIRING**. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term, upon the terms of this Lease and subject to the Permitted Exceptions. As of the Commencement Date, with the exception of this Lease, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date.

5. **QUIET ENJOYMENT**. Landlord covenants that Tenant will and may peaceably and quietly enjoy the Premises, without hindrance or disturbance by or from Landlord, subject to the terms of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to and does not limit Landlord's Governmental Authority.

6. **PREMISES DELIVERY CONDITION**.

6.1 Delivery. Landlord will deliver possession of the Premises to Tenant on the Commencement Date, subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE

PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) DURING THE PERIOD BEGINNING ON [**TO BE DETERMINED**] AND ENDING ON [**TO BE DETERMINED**], TENANT OR ITS PREDECESSOR-IN-INTEREST HAD EXCLUSIVE POSSESSION OF THE PREMISES AND COMPLETED THE HORIZONTAL IMPROVEMENTS ON THE PREMISES; (C) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (D) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (E) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD WILL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES THE LANDLORD PARTIES AND THEIR REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

_____

Initials of Authorized
Tenant Representative(s)

6.6 Acquisition of Subsequent Interest. ALL PERSONS ACQUIRING ANY INTEREST IN THE PREMISES FROM OR THROUGH TENANT, BY ACCEPTING SUCH INTEREST, WILL BE DEEMED TO HAVE AGREED TO ALL THE ACKNOWLEDGMENTS, AGREEMENTS, WAIVERS, AND RELEASES CONTAINED IN THIS SECTION 6.

6.7 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant will disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915.

6.8 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for performance of any associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to asbestos remediation are fulfilled.

Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's improvements, alterations, or repairs to the Improvements, or associated asbestos removal, management, remediation, or containment.

6.9 Disclosure About Petroleum and Other Hazardous Substances. Tenant acknowledges that: (i) portions of the Premises and the Improvements may contain Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises and any associated chemical seepage; and (ii) one or more underground storage tanks may exist on or under the Premises related to the historical operation of a gasoline station and a car wash facility on a portion of the Premises. Tenant acknowledges receipt of written notice from Landlord of the presence of any such Hazardous Substances and underground storage tanks in accordance with Law.

6.10 Remediation of Petroleum and Other Hazardous Substances. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for all the following: (i) performance of any associated removal, management, remediation, or containment of all Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises; (ii) performance of any associated removal, management, remediation, or containment of all underground storage tanks related to the historical operation of a gasoline station and car wash facility on a portion of the Premises; and (iii) all costs associated with the activities described in clauses (i) and (ii) of this Section 6.10. All such removal, management, remediation, or containment activities will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to all such removal, management, remediation, or containment activities are fulfilled. Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's removal, management, remediation, or containment of Hazardous Substances or underground storage tanks under this Section 6.10.

7. RENT PAYMENTS.

7.1 Lease Minimum Rent and Percentage Rent. Tenant will pay Lease Minimum Rent and Percentage Rent to Landlord as provided in **EXHIBIT D**.

7.2 Additional Rent. In addition to Lease Minimum Rent and Percentage Rent, Tenant will pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant will pay all Additional Rent prior to delinquency.

7.3 Delivery of Rent. Rent payable by Tenant to Landlord is payable to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, electronic funds transfer, or other method designated by Landlord in a Notice to Tenant, all at Landlord's election, in its sole and absolute discretion, to such account or address as Landlord designates by Notice to Tenant from time to time. Rent payments sent by mail must be sent to Landlord by first-class mail through the United States Postal Service with all postage pre-paid. On

the Commencement Date, the addresses for mailing or personally delivering Rent payments to Landlord are as follows:

By first-class mail through the United States Postal Service with all postage pre-paid and addressed to:	By hand delivery to:
The City of San Diego Office of the City Treasurer P.O. Box 129030 San Diego, California 92112-9030	Office of the City Treasurer Civic Center Plaza 1200 Third Avenue, First Floor San Diego, California 92101

7.4 Required Payment Information. Tenant will include Landlord's customer account number for Tenant with each Rent payment. Tenant's failure to include its Landlord customer account number will not, by itself, be a Default, but may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all late payment charges or administrative fees under Section 32.7 arising from its failure to include its Landlord customer account number with a Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Checks only constitute payment when received if the check is honored by the bank on which it is drawn. Tenant assumes all risk of loss and responsibility for late payment charges or administrative fees under Section 32.7 if payments are sent by mail.

7.5 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant will make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.6 No Offsets. Tenant will pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.7 No Allocation to FF&E. No Rent is allocable to any FF&E, Retail Tenant Improvement, or Construction.

8. ADDITIONAL PAYMENTS BY TENANT; TAXES.

8.1 Landlord's Net Return. This Lease will constitute an absolutely "net" lease. The Rent will give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant will pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any way connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Retail Tenant Improvement, Restoration, or Construction affecting, the Premises, except: (a) Landlord's administrative expenses; or (b) liability for any Hazardous Substance Discharge to the extent caused directly by Landlord.

8.2 Real Estate Taxes. Tenant will pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant will also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant will within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant will pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant will also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant will pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code sections 11911, *et seq*., with respect to entry into this Lease, each Modification to this Lease, any extension of this Lease, each Transfer, the Lease Memorandum, any Modification to the Lease Memorandum, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate or Fee Estate Ownership. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes, Tenant agrees to pay all increases in Real Estate Taxes resulting from a Transfer or other change in ownership of the Leasehold Estate. Landlord will pay all increases in Real Estate Taxes resulting from a change in ownership of the Fee Estate, except upon a transfer or conveyance of the Fee Estate to Tenant or an Affiliate of Tenant, in which event Tenant or its Affiliate will pay all such increases in Real Estate Taxes.

8.6 Utilities. Tenant will arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises will be installed underground and will be used for Tenant's operations only, except to the extent that the utilities are part of a larger system, such as sewer mains, water mains, storm drains, or electrical distribution systems, that extends beyond the Premises to provide public services to properties located outside of the Premises. Except when furnishing customary fee-based public utilities or services for the Premises when acting under its Governmental Authority, Landlord will have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord will not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune from such liability under applicable law and subject to any defense to such liability available to Landlord.

8.7 Management Fees. Tenant will timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises under the Management Agreement or otherwise and the provision of services to the Premises.

8.8 Unauthorized Use Charge. Tenant will pay Landlord one hundred percent (100%) of the Revenue, without any deduction, credit, or set-off, from any use of the Premises during the Term that is not a Permitted Use within thirty (30) days after Tenant receives the Revenue. Nothing in this Section 8.8 or Landlord's acceptance of any payment under this Section 8.8 is intended to authorize any use of the Premises that is not a Permitted Uses, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

9. **USE**.

9.1 Permitted Uses. Tenant will only use the Premises during the Term for the Permitted Uses in compliance with Law and this Lease and no other uses.

9.2 Premises Operation. Tenant will operate the Premises in a manner that will provide decent, safe, and sanitary facilities to all users of the Premises during the Term and will comply with all the provisions of this Lease and all applicable Law. Tenant will furnish all equipment and materials necessary for the operation of the Premises in conformity with this Lease at Tenant's sole cost and expense. Tenant will keep the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant will be solely responsible for operation of the Premises. Landlord will have no responsibility for operation of the Premises.

9.3 Competent Management. Tenant will provide competent management of the Permitted Uses to Landlord's reasonable satisfaction. For the purposes of this Section 9.3 the following terms are defined:

9.3.1 "Competent management" means management practices generally considered acceptable within Tenant's industry for the management and operation of activities substantially similar to the Permitted Uses and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner.

9.3.2 "Fiscally responsible manner" means in accordance with GAAP consistently applied and absent financial malfeasance.

9.4 Trash and Refuse. Tenant will, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers will not be located outside the Premises. Tenant will contract to ensure that refuse containers are emptied on a regular basis and will prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant will contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.5 Security and Safety. Tenant will bear sole responsibility for the security and safety of the Premises during the Term, including for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and safety. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the security and safety of the Premises, at Tenant's sole cost and

expense. Landlord has no obligation to provide security or safety staffing or resources for the Permitted Uses or the Premises during the Term.

9.5.1 *Security Plan*. Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant will meet with each other and all other tenants of the Master Development Area in good faith to develop, review, and update a strategic plan governing security and safety operations for the Premises, the Master Development Area, and other areas affected by the Permitted Uses ("**Security Plan**"). The Security Plan is intended to address coordination with public safety agencies; coordination among Master Development Area tenants; delineation of responsibilities for interior, exterior, and perimeter security; Entertainment Center event day and non-event day security operations; ingress and egress procedures for Master Development Area tenants, subtenants, patrons, staff, and emergency responders; crowd management strategies tailored to anticipated attendance and event type; deployment of security technology and communications systems; and any requirements associated with conditional use permits or other Approvals. Tenant will be solely responsible for implementing its obligations under the Security Plan. Landlord will have no responsibility for implementing the Security Plan. Any Landlord public safety support or coordination, under Landlord's Governmental Authority, relating to security of the Premises or any other part of the Master Development Area will be provided, if at all, in Landlord's sole discretion. The Parties acknowledge that security needs for large scale venues and in the areas immediately surrounding such venues evolve over time and may vary based on event type, anticipated attendance, and industry standards. Accordingly, the Security Plan will be updated as necessary to reflect evolving best practices, changes in Law or Approvals, and operational experience at the Premises, within the Master Development Area, and within other areas affected by the Permitted Uses. Nothing in this Section 9.5.1: (a) limits Tenant's obligation to provide security for the Premises under this Lease; (b) obligates Tenant to provide security or public safety services outside the scope of Section 9.5 or the Security Plan; (c) limits any authority of Landlord's public safety personnel under law; or (d) limits Landlord's Governmental Authority.

9.6 Parking Plan. Tenant will bear sole responsibility for parking operations at the Premises during the Term. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the parking operations at the Premises, at Tenant's sole cost and expense. Landlord has no obligation to provide staffing or resources related to parking operations at the Premises during the Term. Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant shall meet with each other and all other Master Development Area tenants in good faith to develop, review, and update a strategic plan governing parking operations for the Premises and the Master Development Area and transportation services supporting the Premises, the Master Development Area, and surrounding areas. The strategic plan is intended to address matters such as event day and non-event day parking operations, ingress and egress routes for vehicles and pedestrians, coordination with public safety and transit agencies, potential street or lane closures for games or events, traffic circulation strategies, designated loading and vendor access points, marked and signaled crosswalks where appropriate, and directional signage and wayfinding improvements designed to enhance the experience of patrons and the surrounding community. Tenant shall be responsible for coordinating its parking operations with other Master Development Area tenants to the extent necessary to address parking impacts from planned events within the Master

Development Area. Landlord has no obligation under this Lease, or any other Lease with a Master Development Area tenant, to ensure that Tenant's parking operations on the Premises are not impacted by planned events within or outside the Master Development Area.

9.7 Public Use. The general public will have access to the portions of the Premises that Tenant opens to the general public during Tenant's normal hours of operation. Tenant will not wholly or permanently exclude the general public from the portions of the Premises that Tenant customarily opens to the general public during Tenant's normal hours of operation. Tenant may develop reasonable restrictions for the general public's use of such portions of the Premises.

9.8 Continuous Operation. Other than reasonable temporary closures during the occurrence of an Unavoidable Delay preventing operation of the Premises, during Restoration following a Loss (other than an Immaterial Loss), during Major Construction approved by Landlord, or during Major Retail Tenant Improvement, Tenant will conduct its business and operate the Premises diligently and continuously and without interruption during normal hours of operation throughout the Term with the intent of reasonably maximizing Gross Revenue and Percentage Rent. Tenant will Notify Landlord in advance of any closure of all or any part of the Premises that will continue for more than one week (other than in the event of an emergency, in which case Tenant will notify Landlord within two (2) Business Days following such emergency arising).

9.9 Abandonment. Tenant will not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term. Reasonable temporary closures during the occurrence of an Unavoidable Delay preventing operation of the Premises, during a Restoration following a Loss (other than an Immaterial Loss), or during Major Construction approved by Landlord or Major Retail Tenant Improvement will not be considered an abandonment, vacation, or surrender of the Leasehold Estate.

9.10 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5, except as specified in that Article. Specifically, Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound exceeding the sound level limits in SDMC Chapter 5, Article 9.5, Division 4, except as allowed in compliance with SDMC Chapter 5, Article 9, Division 6, or a "Special Event Permit" issued under SDMC Chapter 2, Article 2, Division 40. [**NOTE TO DRAFT: REFERENCE TO SDMC CHAPTER 5, ARTICLE 9, DIVISION 6 IS CONTINGENT ON ADOPTION OF THIS NEW MUNICIPAL CODE SECTION BY THE CITY COUNCIL AND CONFIRMATION OF THE MUNICIPAL CODE REFERENCE**].

9.11 Nuisance. Tenant will not itself and will not allow any other Person to use the Premises for any unlawful purpose or to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance under Law or a violation of Law.

9.12 Signs. Notwithstanding anything to the contrary in this Lease, Tenant shall comply with the SDMC requirements relating to Signs on the Premises, at all times. Tenant will have the sole and exclusive right, throughout the Term of this Lease, to display, sell, license, or otherwise exploit all advertising Signs and sponsorship Signs on the interior and exterior of a Building, subject to

compliance with Law. All cash or in-kind consideration, revenues, royalties, or other economic benefits derived from such Signs during the Term of the Lease shall be included in Gross Revenue. Notwithstanding anything to the contrary in this Lease, all Signs must not: (a) be obscene; (b) violate Law; or (c) contain racial slurs, obscenities, or display products or messages of an explicit sexual nature. The following Signs are "**Pre-Approved Signs**": (i) Signs located within a Building and not visible outside of the Building; (ii) Signs required by Law; or (iii) Signs that are consistent with a Premises signage plan approved by Landlord in its sole discretion ("**Approved Signage Plan**"). If there is no Approved Signage Plan, only Signs described in clauses "(i)" or "(ii)" of the immediately preceding sentence will be Pre-Approved Signs. Pre-Approved Signs may be placed on the Premises without any further Landlord approval after Landlord's approval of the Approved Signage Plan. No Sign, other than a Pre-Approved Sign, may be placed on the Premises without Landlord's prior written approval, in each instance, which approval may be given or withheld in Landlord's sole discretion. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense, unless such removal is expressly waived in a Notice from Landlord to Tenant. Tenant will comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant will remove all unauthorized Signs at Tenant's sole cost and expense within twenty-four (24) hours after the Receipt Date of Notice from Landlord requesting the removal. If Tenant does not remove all unauthorized Signs within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Sign at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.12, Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after the Receipt Date of Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.12 that is not paid within fifteen (15) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest from the date incurred until paid.

9.13 Food Handling Services. Tenant will ensure that the type and quality of all food-handling services furnished by Tenant, Subtenants, or Sub-Users at all times satisfies all the conditions and requirements of the "A" Card issued by the San Diego County Health Department to operators of food-handling establishments.

9.14 Single Use Plastic Restriction. Tenant, Subtenants, or Sub-Users shall all comply with SDMC Chapter 6, Article 6, Division 9: Single Use Plastic Reduction.

9.15 Alcohol. No alcohol or alcoholic beverages may be served in, on, or about the Premises unless Tenant, Subtenants, or Sub-Users (as applicable) have obtained all Approvals required to serve alcohol at the respective location(s). Tenant will provide to Landlord a complete copy of all required Approvals allowing alcohol to be served in, on, or about the Premises prior to serving alcohol or alcoholic beverages. Tenant, Subtenants, or Sub-Users will comply at all times with all Laws related to serving alcohol and all terms, conditions, and restrictions in the required Approvals related to serving alcohol in, on, or about the Premises. Tenant will bear full responsibility, at its

sole risk and cost, for compliance with all Laws and Approval conditions related to service of alcohol whenever Tenant, Subtenants, or Sub-Users (as applicable) obtain permission to serve alcohol in, on, or about the Premises.

9.16 No Artist's Rights. Tenant will not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.17 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable about this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by reasonable advance Notice to Tenant.

9.18 Compliance with Law. Tenant will, during the Term, at Tenant's sole cost and expense, in all material respects: (a) comply with all Laws and Permitted Exceptions; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord, under its Governmental Authority, or any other Government under the authority of current or future Law.

9.19 Prohibited Uses. Notwithstanding anything to the contrary in this Lease, including Section 1.5, Tenant will not allow any of the following uses or activities on the Premises:

9.19.1 A mobile home park, trailer court, labor camp, junkyard or stockyard; provided, however, that this prohibition will not preclude the temporary use of construction trailers during periods of construction or Restoration;

9.19.2 Dumping, disposing, incineration or reduction of garbage; provided, however, that this prohibition will not preclude garbage compactors located near the rear of any building, grease traps and collection for restaurants, or consumer trash or recycling collection receptacles/areas;

9.19.3 A fire sale, bankruptcy sale (unless pursuant to a court order), or auction house operation;

9.19.4 A central laundry or dry cleaning plant; provided, however, that this prohibition will not preclude nominal supportive facilities for on-site service oriented pickup and delivery by the ultimate consumer, as found in retail shopping centers in the metropolitan area where the Premises are located;

9.19.5 A mortuary or funeral home;

9.19.6 Selling or exhibiting "obscene" material, except that this provision will not prohibit: (a) first-class book stores with a national presence that are not perceived to be, nor hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals that may contain pornographic materials, so long as such sale is not from any special or segregated

section in the store and, provided further, that such pornographic materials are not considered objectionable or offensive to accepted standards of decency within the local community; or (b) a first class, first-run movie theatre that may show or display "R"-rated or "NC-17" rated films or telecasts or "X"-rated films or telecasts; provided, however, that (1) the theatre operator believes, in its reasonable business judgment, that such "X"-rated motion picture or telecast has artistic merit or is a so-called "legitimate" film, and (2) the theatre operator, as a general policy, does not exhibit "X" rated films and telecasts;

9.19.7 Exhibiting either live or by other means to any degree, nude or partially clothed dancers or wait staff;

9.19.8 Selling or exhibiting drugs or drug-related paraphernalia (e.g., medical marijuana and smoke shops);

9.19.9 A check cashing business;

9.19.10 A fraternal organization;

9.19.11 A fortunetelling business;

9.19.12 A pawn shop or retail sales operation primarily involving second-hand merchandise, including used clothing stores, used appliance sales or service business, and used furniture stores;

9.19.13 An adult business or facility as defined and regulated in the SDMC. Such uses include, without limitation, massage establishments (to the extent defined and regulated in the SDMC as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters, and paraphernalia businesses;

9.19.14 A gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns;

9.19.15 Sale or display on the Premises of any written or pictorial matter with prurient sexual appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, as determined by Landlord, in Landlord's sole and absolute discretion;

9.19.16 Use by any Person: (a) Landlord reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (b) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) entitled to claim diplomatic immunity; (d) that is a

domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law;

9.19.17 A coin laundry or laundromat (other than such facilities provided as part of a hotel);

9.19.18 Any music performance that requires a performance license of any type from ASCAP, Broadcast Music, Inc., SESAC, or any other required musical industry licensing entity;

9.19.19 A swap meet or flea market; or

9.19.20 Gambling, including virtual sports gaming, sports trading, prediction markets platforms, or online, telephonic, or other remote betting operated or facilitated by Tenant, a Subtenant, or a Sub-User.

10. **MAINTENANCE**.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant will during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or Restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. Tenant will remove trash and debris from the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises and maintain all such areas in a reasonably clean condition. Landlord has no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises consistent with comparable facilities of similar age, type, and use. Tenant's obligation to maintain the Premises described in the immediately preceding sentence will include, all at the sole cost and expense of Tenant: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and

replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as will be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant will remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following the Receipt Date of Notice of the Maintenance Deficiency, Landlord will have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 will be reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements will be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord will have the right (but no obligation) to enter the Premises and remove the graffiti. All money expended by Landlord for the removal of graffiti from the Premises under this Section 10.4 will be reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

11. **PROJECT AND OTHER CONSTRUCTION**.

11.1 Timeliness. Tenant will cause the Project Completion Date to occur on or before the Project Completion Deadline. Tenant is solely responsible for payment of all hard and soft costs of installation of the Project. All Construction or Retail Tenant Improvement on the Premises are subject to the Development Conditions.

11.2 Project Labor Agreement Certification. Tenant will cause its General Contractor (including Tenant, if Tenant is a General Contractor) for Construction of the Project to enter into and comply with the terms of a project labor agreement under the terms of that certain Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022. Tenant will deliver to Landlord a certification in substantially the form of **EXHIBIT Q** signed by an authorized representative of the San Diego County Building & Construction Trades Council certifying that Tenant's General Contractor for Construction of the Project has entered into the project labor agreement required under this Section 11.2, within fifteen (15) days after the General Contractor enters into the agreement.

11.3 Subsequent Construction and Retail Tenant Improvement Rights. Except as set forth in this Section 11.3, Tenant will not Construct or materially alter any Improvements on the Premises, without Landlord's prior written approval, which may be given or withheld in Landlord's sole and absolute discretion. Tenant will have the right to make the following alterations or improvements to the Premises, without Landlord's approval, except to the extent such alterations or improvements constitute Major Construction or Major Retail Tenant Improvement: (a) Construction or Retail Tenant Improvement not affecting any Structure or diminishing the value or utility of the Fee Estate or the Premises (including capacity) for its existing use immediately preceding such Construction or Retail Tenant Improvement; (b) reasonable and customary alterations to the interior spaces of Buildings on the Premises; (c) alterations required by Law; or (d) alterations reasonably required to Restore or repair Improvements on the Premises after a Casualty or Condemnation. All alterations or Improvements on the Premises by Tenant will comply with all Laws and Approvals and will be performed by appropriate State licensed contractors.

11.4 Construction Surety. For each Major Construction or Major Retail Tenant Improvement, Tenant will deposit Construction Surety with Landlord for such Major Construction or Major Retail Tenant Improvement prior to the commencement of any work of such Major Construction or Major Retail Tenant Improvement, including any excavation or demolition work. Tenant will maintain the Construction Surety in full force and effect, until the Construction Completion Date for the Major Construction or the Retail Tenant Improvement Completion Date for the Major Retail Tenant Improvement. Tenant will not assign or encumber or attempt to assign or encumber any Construction Surety, except: (a) to the Transferee of all of Tenant's interest in this Lease through a Transfer that complies with this Lease; (b) to a Post-Foreclosure Tenant or a New Tenant, when either acquires all of Tenant's interest in this Lease; or (c) to a Permitted Leasehold Lender as collateral for a loan secured by a Permitted Leasehold Security Instrument.

11.5 Major Construction. Tenant will not commence demolition or removal of then existing Improvements, excavation, or any other substantial on-site or off-site physical element of any Major Construction, unless and until Tenant satisfies the Construction Commencement Conditions for such Major Construction. The Parties acknowledge that all Construction Commencement Conditions for the initial Construction of the Project were satisfied prior to the Commencement Date as a condition to the Vertical Ground Lease Closing (defined in the DDA) for this Lease under the DDA.

11.6 Major Retail Tenant Improvement. Tenant will not commence any Major Retail Tenant Improvement until it has obtained and delivered to Landlord all the following: (a) copies of all Approvals necessary for such Major Retail Tenant Improvement; (b) copies of all Plans for the Major Retail Tenant Improvement; (c) the original Construction Surety for the Major Retail Tenant Improvement; and (d) written evidence of all insurance coverage this Lease requires for such Major Retail Tenant Improvement. If Tenant makes material changes to any Plans for a Major Retail Tenant Improvement, excluding ordinary minor field changes, then Tenant will deliver a final copy of Plans reflecting all such changes with the documents required to be delivered to Landlord to cause the Retail Tenant Improvement Completion Date to occur. Landlord's prior approval of Plans is not required for any Retail Tenant Improvement.

11.7 Plans. Landlord will have forty-five (45) days after receiving any Plans for Major Construction to Notify Tenant that such Plans do not comply with this Lease. If Landlord does not give such Notice within such forty-five (45) day period, then Landlord will have waived any right to assert that such Plans or any Construction performed substantially in compliance with such Plans do not comply with this Lease. Landlord approved certain Plans for the Construction of the Project before the Commencement Date as a condition to the Vertical Ground Lease Closing for this Lease under the DDA. If Tenant makes any material changes to any Plans for Major Construction (including any Plans approved by Landlord before the Commencement Date), excluding ordinary minor field changes, then Tenant will promptly deliver copies of such changes to Landlord for its approval in the same manner provided for approval of Plans in the first two sentences of this Section 11.7. Neither the retention of any Plans nor any other action Landlord takes regarding any Plans will constitute Landlord's opinion or representation on their sufficiency. Landlord's review or approval of any Plans for Major Construction under this Section 11.7 is solely in Landlord's proprietary capacity as a Party to this Lease and is separate from and in addition to any review or approval of such Plans by Landlord acting under its Governmental Authority. Tenant will reimburse Landlord for all costs and expenses (including Legal Costs) incurred by Landlord in reviewing any Plans for Major Construction under this Section 11.7 (exclusive of and in addition to Landlord's costs and expenses in reviewing such Plans under its Governmental Authority) for each integrated project or Application, within thirty (30) days after the Receipt Date of Notice of such costs and expenses. All such costs and expenses not reimbursed to Landlord by Tenant within such thirty (30) day period will accrue Default Interest from the date of the Notice of such costs and expenses, until paid in full. This Section 11.7 does not apply to Retail Tenant Improvement.

11.8 Prosecution and Completion. To the extent such work is permitted by this Lease, if Tenant starts to demolish any Improvements on the Premises, or starts excavation, then Tenant will prosecute such work with reasonable diligence to completion. Tenant will with reasonable promptness and reasonable diligence commence, prosecute, and complete all of Tenant's Major Construction or Major Retail Tenant Improvement in a good and workmanlike manner in compliance with Law, all Approvals, the Performance Schedule, the Development Criteria, the Development Conditions, and this Lease.

11.9 Business Cooperation Program Participation. Tenant will be responsible for the following actions in connection with the Business Cooperation Program of the City of San Diego, California, as long as the program is in effect:

11.9.1 Exercise its right to obtain a California Department of Tax and Fee Administration ("**CDTFA**") sub-permit for the Premises and allocate all eligible Bradley-Burns Uniform Local Sales and Use Tax ("**Use Tax**") to the City of San Diego, California, on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with all Construction or Retail Tenant Improvement on the Premises.

11.9.2 Ensure that the General Contractor and all other Persons performing Construction or Retail Tenant Improvement on the Premises exercise their right to obtain a CDTFA sub-permit and allocate all eligible Use Tax to the City of San Diego, California, on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with Construction or Retail Tenant Improvement on the Premises.

11.10 Approvals. Tenant will apply to each applicable Government, including Landlord acting under its Governmental Authority, for all Approvals required for any Construction or Retail Tenant Improvement. Tenant will pay all Government fees, including those of Landlord acting under its Governmental Authority, necessary to obtain such Approvals.

11.11 Completion Deliveries. Within three (3) months after Tenant obtains a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for a Major Construction, Tenant will obtain and give Landlord copies of: (a) two (2) complete sets of "as-built" Plans for the entire Major Construction and an "as-built" survey; and (b) a final Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the entire Major Construction; provided, however, that where issuance of a final Certificate of Occupancy (or equivalent approval) for the Major Construction does not occur within three (3) months after Tenant obtains a temporary Certificate of Occupancy (or equivalent approval) for the Major Construction and the delay is solely due to unreasonable delay by Landlord acting under its Governmental Authority, then such delay will be an Unavoidable Delay subject to the provisions of Section 40.11.

11.12 Tenant Attendance at Landlord Meetings. Tenant agrees to have one or more of its employees or consultants who are knowledgeable regarding this Lease and any Major Construction

or Major Retail Tenant Improvement planned, in progress, or recently completed, such that such Person(s) can meaningfully respond to Landlord or Landlord staff questions regarding the progress of such Major Construction or Major Retail Tenant Improvement, attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by Landlord's staff, with reasonable advance Notice to Tenant.

12. **FINANCING PLAN**. Tenant's acquisition of the rights to this Lease and Construction of the Project on the Premises must be financed as described in the Financing Plan.

13. **FINANCIAL REPORTING; AUDIT RIGHTS**. Tenant will deliver Financial Reporting Statements to Landlord as follows: (a) an Annual Revenue Statement within ninety (90) days after the end of each Lease Year; (b) a Capital Investment Certification Statement within ninety (90) days after the Project Completion Date; and (c) a Capital Sales Event Statement within sixty (60) days after each pertinent Capital Sales Event is consummated.

13.1 Preparation and Content of Statements. Each Financial Reporting Statement will be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Financial Reporting Statement will be certified by an executive level officer of Tenant with substantial knowledge about the factual background and content of the Financial Reporting Statement. Each Financial Reporting Statement will certify that the accounting practices of Tenant conform to industry standards, use GAAP consistently applied, categorize revenues by source and deductions by type, and otherwise comply with the requirements of this Lease. If such certification cannot be made, then the Financial Reporting Statement will show any adjustments necessary to conform Tenant's accounting practices such that the certification can be made. Each Financial Reporting Statement will be in a customary form reasonably satisfactory to Landlord and supported by source documents such as Sub-Rent rolls and payment records, sales receipts, Construction cost records, capital contribution records, purchase and sale agreements, assignment agreements, escrow closing statements, and tax statements (which may be in electronic form) as necessary to allow Landlord to easily verify all amounts and calculations in the statement. Tenant will comply with all reasonable requests from Landlord to modify the form and content of Financial Reporting Statements. Tenant will provide all additional information reasonably requested by Landlord regarding Gross Revenue, Modified Gross Revenue, and the calculation of Minimum Annual Rent, Lease Minimum Rent, Percentage Rent, Capital Sales Event Payments, or the Capital Investment.

13.2 Overpayment or Underpayment; Landlord's Right to Audit. If any Financial Reporting Statement, as it may be adjusted under this Section 13.2, indicates an overpayment or underpayment of money owed to Landlord (e.g., an overpayment or underpayment of Lease Minimum Rent or Percentage Rent for the subject Lease Year revealed by an Annual Revenue Statement), the amount of any overpayment will be refunded by Landlord to Tenant or the amount of any underpayment will be paid by Tenant to Landlord, within thirty (30) days after the Receipt Date of Notice of the particular overpayment or underpayment. On ten (10) Business Days' Notice (Notice will not be required during the continuance of an Event of Default), only during normal business hours, and (so long as no Event of Default has occurred) no more often than once each

Lease Year, Landlord's auditor may audit Tenant's financial statements and all information referenced in the pertinent Financial Reporting Statements. Tenant will, without charge, assist in such audit, as Landlord's auditor may reasonably request.

13.3 Retention. Tenant will, during the Term and for a period of six (6) years following the Expiration Date, maintain and cause Tenant's Affiliates to maintain, safe and intact, all Financial Reporting Statements and supporting information. From time to time, upon Notice from Landlord requesting such information, Tenant will make all Financial Reporting Statements and supporting information, whether in the custody or control of Tenant or Tenant's Affiliates available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises or another reasonable location in the County at any reasonable time, on five (5) days advance Notice.

13.4 Audit Costs. If any Landlord audit of one or more Annual Revenue Statements discloses that Tenant's Gross Revenue, Modified Gross Revenue, Lease Minimum Rent, or Percentage Rent was under-reported in any Annual Revenue Statement to an extent of four percent (4%) or more on an annual basis for one or more Lease Years, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in the Lease Minimum Rent or Percentage Rent payable for each under-reported Lease Year, with Default Interest on such Lease Minimum Rent or Percentage Rent deficiency amount from the date such amount was originally due, until paid in full to Landlord. If any Landlord audit of a Capital Sales Event Statement or a Capital Investment Certification Statement discloses that Tenant incorrectly reported any amount in the statement by five percent (5%) or more, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in any monetary amount payable to Landlord, with Default Interest on such deficiency amount from the date such amount was originally due, until paid in full to Landlord. If any Landlord audit of one or more Annual Revenue Statements discloses Tenant's overpayment of any Lease Minimum Rent or Percentage Rent, the overpaid amount will be credited to Tenant against future Lease Minimum Rent or Percentage Rent payments, as applicable, becoming due to Landlord under this Lease (Landlord will be under no obligation to make payments of any overpaid Lease Minimum Rent or Percentage Rent amount to Tenant during the Term), unless this Lease has terminated, in which case Landlord will pay any overpaid Lease Minimum Rent or Percentage Rent amount to Tenant within thirty (30) days after Landlord's receipt of the audit report disclosing the overpayment; provided, however, that Landlord may first apply any such overpayment to any amount(s) owed to Landlord by Tenant before making any such payment to Tenant.

13.5 Identity and Retention of Auditor. Landlord's auditor will be either: (1) an employee of Landlord; or (2) a certified public accountant. Landlord's auditor will comply with such reasonable restrictions on time and access as Tenant may require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Landlord's auditor will not work under a contract providing a contingency fee for amounts determined to have been underpaid to Landlord by Tenant.

13.6 Confidentiality. Landlord shall not disclose information to Third Persons that is clearly identified by Tenant at the time such information is provided to Landlord as proprietary or confidential information of Tenant ("**Confidential Tenant Records**"), unless such disclosure is required by Law (including the California Public Records Act) or court order (collectively "**Disclosure Law**"), as determined by Landlord in its sole discretion, or the disclosure is related to the pursuit of any remedies or the assertion of any rights of Landlord under this Lease. Tenant shall only mark information as Confidential Tenant Records if the information has independent economic value as a result of generally not being known to another Person that could obtain economic value from using or disclosing it, and Tenant takes reasonable efforts to maintain its confidentiality other than disclosing it to Landlord as required under this Lease. Tenant shall provide Landlord an explanation for the basis of identifying information as a Confidential Tenant Record, and Tenant shall not adopt a practice of marking all information as Confidential Tenant Records if such information or communication does not meet the standard in the immediately preceding sentence. If Landlord receives a request or order under Disclosure Law that requires disclosure of Confidential Tenant Records, Landlord will endeavor to provide Notice to Tenant of such request. Landlord has the responsibility to make determinations about disclosure of information under Disclosure Law in Landlord's sole discretion, and to disclose information as required by Disclosure Law if Landlord determines that particular information is disclosable. As a result of the Landlord's obligations under Disclosure Law, Landlord's disclosure of any Confidential Tenant Records in response to a request or order under Disclosure Law, with or without prior Notice to Tenant, will not be a Landlord Default under this Lease.

14. **PREVAILING WAGES**. [**NOTE TO DRAFT: APPLICABILITY OF THIS SECTION WILL BE DETERMINED UNDER SECTION 25 OF THE DDA**.] Tenant will cause all workers of Tenant or contractors or subcontractors of Tenant performing Construction, Retail Tenant Improvement, or maintenance work on the Premises, including work performed during the design and preconstruction phases of Construction or Retail Tenant Improvement, such as inspection and land surveying work, to be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work, all as determined by the Director of the California Department of Industrial Relations ("**DIR**") under California Labor Code sections 1770 through 1785 (these wages are, collectively, referred to in this Lease as "**Prevailing Wages**"). Additionally, Tenant, all Subtenants, and all Sub-Users shall comply with all provisions of California Labor Code sections 1720 through 1861 (collectively, "**Prevailing Wage Law**") and **EXHIBIT H**.

15. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. Notwithstanding anything to the contrary in this Lease, all Improvements (exclusive of public improvements that have been accepted by Landlord, under its Governmental Authority, after their Construction by Tenant, or public right-of-way, public utilities, public storm water improvements, or other improvements located on the Premises on the Commencement Date that are or were part of a system owned or operated by Landlord, under its Governmental Authority, or another Government or public utility), Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises will, during the Term, be owned by, and belong to, Tenant. All

benefits and burdens of ownership of such Improvements, Building Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations will be and remain in Tenant during the Term.

16. **PROHIBITED ENCUMBRANCES**.

16.1 Tenant's Covenant. Tenant will Notify Landlord of each Prohibited Encumbrance within twenty (20) days following Tenant's receipt of notice of such Prohibited Encumbrance. Tenant will, within thirty (30) days after receiving notice of a Prohibited Encumbrance (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Encumbrance), cause such Prohibited Encumbrance to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Encumbrance in good faith, Tenant may maintain an appropriate dispute of such Prohibited Encumbrance without payment, if Tenant records a bond complying with the provisions of California Civil Code section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Encumbrance. Tenant will, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Encumbrance, then Landlord will Notify Tenant.

16.2 Protection of Landlord. LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL WILL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION OR RETAIL TENANT IMPROVEMENT, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT WILL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION OR RETAIL TENANT IMPROVEMENT UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED ENCUMBRANCES.

16.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES,

LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD WILL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT WILL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ALL MAJOR CONSTRUCTION OR MAJOR RETAIL TENANT IMPROVEMENT ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

17. **INSURANCE**. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, Construction of the Project, any other Construction on the Premises, any Retail Tenant Improvement on the Premises, or the Permitted Uses, Tenant will maintain, at its sole expense, throughout the Term, all the insurance coverage described in the Tenant Insurance Requirements. Tenant will also require and cause each Subtenant and Sub-User to carry all the insurance coverage described in the Subtenant/Sub-User Insurance Requirements. Once each Lease Year, starting with Lease Year 3, either Party may initiate a review of this Lease's insurance requirements (either or both the Tenant Insurance Requirements or the Subtenant/Sub-User Insurance Requirements) to determine whether any required insurance coverage needs to be modified to protect the interests of Landlord or Tenant. Such an insurance review may be commenced by one Party Notifying the other Party of the commencement of such a review. The Receipt Date of a Notice initiating an insurance review will commence a sixty (60) day period during which Landlord and Tenant will negotiate in good faith regarding modifying the insurance coverage required under this Lease. Neither Party will unreasonably withhold, condition, or delay its consent to a requested modification in the insurance coverage required under this Lease.

18. **LOSSES AND LOSS PROCEEDS**.

18.1 Notice. If either Party becomes aware of any Loss, such Party will Notify the other Party of such Loss within a reasonable time.

18.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent will abate and Tenant will, except as otherwise provided in this Section 18.2, Restore with reasonable promptness. On the occurrence of a Substantial Casualty, Tenant may, by Notice to Landlord given within ninety (90) days after the Substantial Casualty with the consent of each Permitted Leasehold Lender, elect a Casualty Termination of this Lease in its entirety, effective ninety (90) days after the Receipt Date of such Notice. Upon any Casualty Termination, all Property Insurance Proceeds arising from such Substantial Casualty will be allocated in accordance with Section 18.8. If Tenant does not timely and validly elect a Casualty Termination following a Substantial Casualty: (a) this Lease will not terminate and Tenant will Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant will be solely responsible for: (i) negotiating and adjusting all Property Insurance Proceeds regarding the Casualty, subject to the rights of Permitted Leasehold Lenders; and (ii) the costs of Restoration.

18.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease will terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant will settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, Tenant will not be required to obtain the consent of Landlord to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award will be paid to Depository under Section 18.6. For a Substantial Condemnation, subject to the rights of Lenders, Landlord and Tenant will allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

18.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

18.3.2 *Tenant's Costs*. To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

18.3.3 *Tenant's Claim*. Tenant will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

18.3.4 *Landlord's Claim*. Landlord will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

18.3.5 *Residual Claim*. If Landlord is the condemning authority, Tenant will receive the entire remaining Condemnation Award, and otherwise, Landlord will receive the entire remaining Condemnation Award.

18.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) will be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant will, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award will be distributed to Landlord and Tenant in accordance with Section 18.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

18.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent will abate under this Lease and this Lease will not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term

will belong to Landlord. Otherwise, subject to the rights of Permitted Leasehold Lenders, Tenant will receive the Condemnation Award (to the extent attributable to periods within the Term).

18.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds will be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord will remit them to Depository. If a Loss is an Immaterial Loss, then subject to the terms of the Senior Permitted Leasehold Security Instrument on disbursement of Loss Proceeds for Restoration, Depository will release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository will retain the Loss Proceeds and pay them over to Tenant, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds will be paid to Landlord and Tenant as provided in Section 18.3. Depository will first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository will release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository will release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant will hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Encumbrance is filed against the Premises, Tenant will not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Encumbrance under Section 16.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant will nevertheless Restore at Tenant's sole cost and expense. Depository will not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord will determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

18.7 Continuation of Lease. Except as this Lease expressly provides, this Lease will not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease will exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, will continue unabated.

18.8 Tenant Obligation to Clear Premises. If Tenant elects a Casualty Termination in accordance with the terms of this Lease, then Landlord may, by Notice to Tenant within sixty (60) days after the Receipt Date of Tenant's Notice of Casualty Termination, require Tenant to cause the Improvements on or to the Premises to be demolished and the debris removed and all substantial excavations filled in and compacted, so that Tenant returns the Premises to Landlord as vacant and compacted land, free of Improvements, demolition debris, and substantial excavations. The Parties will cooperate to make available for such work, in installments as the

work proceeds, all available Property Insurance Proceeds arising from the Casualty, substantially in accordance with the disbursement procedures that would govern use of Property Insurance Proceeds to Restore. Tenant will perform such work with reasonable promptness, but its completion will not be a condition to any Casualty Termination. Tenant's obligation to complete such work will survive the Casualty Termination. After completion of and full payment for such work, any remaining Property Insurance Proceeds will belong to Landlord. The provisions of this Section 18.8 will survive the Expiration Date.

18.9 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor will be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease will be considered any type or form of Condemnation.

19. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant will not commit or suffer to be committed any waste of the Premises, Improvements, or Building Equipment. Tenant agrees to keep the Premises, Improvements, and Building Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Building Equipment, or FF&E. Tenant will immediately Notify Landlord of any waste affecting the Premises. If waste affecting the Premises arises from the Permitted Uses, at Landlord's election, in Landlord's sole and absolute discretion, Tenant will make, or cause to be made, full repair of the waste and Restore the Premises to its condition existing immediately prior to the waste. After Notice from Landlord electing to have Tenant repair or Restore the Premises, Tenant will commence repair or Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the Receipt Date of Landlord's Notice. Tenant will complete all required repair or Restoration of the Premises within ninety (90) days after the Receipt Date of Landlord's Notice electing to have Tenant repair or Restore the Premises. Tenant must obtain all Approvals required for repair or Restoration of all waste affecting the Premises.

20. **ENVIRONMENTAL CONDITIONS**. Tenant will not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant will Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following Tenant becoming aware of such Environmental Condition.

20.1 Remediation. If an Environmental Condition occurs, Tenant will remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant will take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

20.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant will remove all such Hazardous Substances from the Premises prior to the Expiration Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant will be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 20.2.

20.3 Reports. Tenant will deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant will also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

20.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be performed at Tenant's sole cost and expense. Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after the Receipt Date of Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 20.4 that is not paid within fifteen (15) days after the Receipt Date of Notice to Tenant of such amount, will accrue Default Interest until paid.

21. **ACCESS AND INSPECTION**. Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible occurrence of an Environmental Condition; provided, however, no invasive testing will be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld or delayed. In entering the Premises, Landlord and its agents will not unreasonably interfere with Tenant's Permitted Uses of the Premises and will comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 21 will not entitle Tenant to any rights or remedies, except as expressly provided in this Section 21, and such entry will not constitute an actual or constructive eviction of Tenant from the Premises, nor will it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency. All Landlord representatives or agents who enter the Premises will identify themselves at the main entrance to the Premises and will always be accompanied by a Tenant representative while on the Premises. Tenant will make a Tenant representative available for this purpose during all regular hours of operation for the Premises upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord will have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord

inspections are for the sole purpose of protecting Landlord's rights under this Lease, are made solely for Landlord's benefit, may be superficial and general in nature, and are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (ii) Tenant will not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

22. **INDEMNIFICATION**.

22.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant will Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises, including personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises; (b) Tenant's Construction of the Project or any other Improvements; (c) the wrongful intentional act or negligence of one or more Tenant Parties, Subtenants, or Sub-Users; (d) strict liability relating to the Tenant's use or occupancy of the Premises; (e) all Applications made by or at the request of one or more of the Tenant Parties, Subtenants, or Sub-Users; (f) all agreements that one or more of the Tenant Parties make with Third Persons regarding this Lease, the Project, or the Premises; (g) all services, labor, material, or equipment supplied to, for, or on behalf of one or more of the Tenant Parties, Subtenants, or Sub-Users; (h) all workers' compensation claims by one or more employees or contractors of one or more of the Tenant Parties, Subtenants, or Sub-Users; (i) all Prevailing Wage Determinations, except to the extent prohibited by Law; (j) all Environmental Conditions occurring on or after the Commencement Date; (k) the existence of asbestos on or in the Premises or the Improvements; (l) all removal, management, remediation, or containment of Hazardous Substances or underground storage tanks on or affecting the Premises; (m) the incorrect calculation of Lease Minimum Rent or Percentage Rent for Tenant or any other Market Rate Housing/Retail Lease tenant to the extent caused by Tenant providing Landlord or Master Developer, under the Master Rent Administration Agreement, with incorrect or inaccurate information; (n) one or more project labor agreements entered into under Section 11.2; and (o) all Retail Tenant Improvement. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties exclude Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

22.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease will not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

22.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will survive the Expiration Date, until all actual or prospective Claims subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

22.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

22.4.1 *Notice*. The affected Landlord Parties will Notify Tenant of the Claim within a reasonable time.

22.4.2 *Selection of Counsel*. Tenant will select legal counsel reasonably acceptable to the City Council. Even though Tenant will defend the Claim, each affected Landlord Party may, at its option and expense, engage separate counsel to advise the affected Landlord Party regarding the Claim and its defense (except that Tenant will pay the Legal Costs of separate legal counsel for an affected Landlord Party where: (a) Tenant provides a defense to the affected Landlord Party under a reservation of rights, (b) a conflict of interest between Tenant or another Person and the affected Landlord Party exists that requires the affected Landlord Party to be represented by separate legal counsel from Tenant's legal counsel, or (c) the affected Landlord Party reasonably determines that Tenant's legal counsel is not competent to represent the affected Landlord Party's interests). The separate legal counsel representing an affected Landlord Party may attend all proceedings and meetings. Tenant's legal counsel will actively consult with separate legal counsel representing an affected Landlord Party, subject to applicable conflict of interest and privileged communication limitations, if any.

22.4.3 *Cooperation*. The affected Landlord Parties will reasonably cooperate with Tenant's defense of the Landlord Parties.

22.4.4 *Settlement*. Tenant may only settle a Claim against the Landlord Parties with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

22.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Tenant Parties or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claims.

22.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties will be reduced to the extent required to comply with applicable Law.

23. **RIGHT OF CONTEST**.

23.1 Tenant's Right. Notwithstanding anything to the contrary in this Lease, Tenant will have the exclusive right to commence and prosecute a Contest, at its sole cost. Tenant will Notify Landlord of Tenant's commencement of a Contest, within thirty (30) days following Tenant's commencement of such Contest. Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions to remain satisfied throughout the period of the Contest:

23.1.1 *No Criminal Act*. Such deferral or non-compliance will not constitute a criminal act by Landlord or Tenant or subject Landlord or the Fee Estate to a material risk of any fine or penalty.

23.1.2 *No Liability*. Such deferral or non-compliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate.

23.1.3 *No Forfeiture*. Such deferral or non-compliance will not place the Fee Estate in material danger of being forfeited or lost.

23.1.4 *No Cost to Landlord*. Such Contest will be without cost, liability, or expense to Landlord and Tenant will Indemnify Landlord against any cost, liability or other expense arising from such Contest.

23.1.5 *Diligence*. Tenant will prosecute such Contest with reasonable diligence and in good faith.

23.1.6 *Payment*. If required for such Contest, Tenant will have paid all required amounts of money.

23.1.7 *Security*. If the amount of money at issue in such Contest (and all other Contests then pending) exceeds five hundred thousand dollars ($500,000) multiplied by the CPI Adjustment Factor, then Tenant will, before proceeding with such Contest, give Landlord Contest Security equal to such excess.

23.1.8 *Named Parties*. If Landlord has been named as a party in any action, Tenant will cause Landlord to be removed as a party.

23.2 Landlord Obligations and Protections. Landlord need not join in any Contest. Tenant will pay all reasonable costs and expenses, including Legal Costs, of any Contest and Indemnify Landlord against such costs and expenses.

23.3 Miscellaneous. Upon final determination of Tenant's Contest of a Law, Tenant will comply with such final determination. So long as all the conditions under Section 23.1 remain satisfied, Landlord will enter no objection to any Contest, except to the extent involving any Landlord Governmental Authority. Landlord may commence a Contest as to any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant

of Landlord's intention to do so; (b) Tenant fails to commence such Contest within fifteen (15) days after the Receipt Date of such Notice; and (c) Landlord's Contest complies with all conditions and covenants that would apply to a Contest by Tenant, transposing references to the Parties and their interests, as appropriate.

23.4 Contest Security. Landlord will promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

24. LANDLORD'S TRANSFERS AND FINANCING.

24.1 Transfers. If Landlord intends to transfer or convey the Fee Estate, Landlord will Notify Tenant of Landlord's intent and provide Tenant with a period of thirty (30) days to Notify Landlord of Tenant's non-binding offer to purchase the Fee Estate. Landlord will not negotiate or complete a sale of the Fee Estate to a Third Person during this 30-day period. Landlord will not be obligated to accept Tenant's non-binding purchase offer or negotiate with Tenant in response to such purchase offer. Except as otherwise expressly provided in this Section 24.1, Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord will Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the entire Fee Estate (including any transfer or conveyance of the Fee Estate by or in lieu of exercise of remedies under a Fee Security Instrument), the grantor will be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance; provided, however, that such transferee will assume and be bound by all covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease will bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

24.2 Fee Security Instruments. Subject to the terms of this Lease and the Statement of Priorities, Landlord will have the right, at any time and from time to time during the Term, to make and deliver Fee Security Instrument(s). All Fee Security Instruments will be subject and subordinate to this Lease. Landlord will not enter into any Fee Security Instrument violating the immediately preceding sentence. Tenant will not subordinate this Lease to any Fee Security Instrument without consent from all Permitted Leasehold Lenders. Tenant will reasonably cooperate with Landlord and each actual or prospective Fee Lender by providing information reasonably requested by the Fee Lender and entering into agreements or signing and delivering documents reasonably requested by each actual or prospective Fee Lender.

24.3 Protection of Fee Lenders. If Tenant gives Landlord any Notice of a Landlord Default, Tenant will simultaneously give a copy of such Notice to all Fee Lender(s) of which Tenant has received Notice and contact information for delivery of Notices. Such Fee Lender(s) will have the right (but no obligation) to cure the Landlord Default within sixty (60) days following expiration of the cure period allowed to Landlord under this Lease, and with like effect as if Landlord had effected such cure. Tenant's failure to give Fee Lender(s) the Notice required by this Section 24.3

will not be a Default by Tenant, but no Notice by Tenant of any Landlord Default (or any resulting exercise of rights or remedies by Tenant) will be effective against such Fee Lender(s), unless and until Tenant has given to such Fee Lender(s) the Notice and opportunity to cure required by this Section 24.3.

25. **TENANT'S TRANSFERS**.

25.1 During Project Construction. During the period beginning on the Commencement Date and ending on the Project Completion Date, no Transfer, except a Permitted Transfer, is permitted.

25.2 After Project Construction. During the period beginning on the Project Completion Date, except for a Permitted Transfer or except as otherwise expressly provided in this Lease, Tenant will not have any right to make or allow any Transfer without the prior written approval of Landlord, which may not be unreasonably withheld. Landlord's disapproval of a proposed Transfer will be deemed reasonable if, among other circumstances evaluated in Landlord's reasonable discretion, the proposed Transferee: (a) does not have sufficient expertise in the management and leasing of developments similar to the Project located on the Premises (or, if such proposed Transferee does not have such expertise, such proposed Transferee has not engaged third parties with such expertise); (b) is not in sound financial condition and does not have the sufficient financial resources to manage the Project as required by this Lease and to comply with Tenant's obligations under this Lease; (c) is in violation of any Landlord policies under its Governmental Authority; or (d) is in violation of Law. Tenant acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Landlord will not approve a Transfer if a Notice of Default to Tenant is outstanding as of the date of Tenant's Notice to Landlord of the Transfer or at any time following the date of such Notice through and including the effective date of the Transfer. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable. Tenant will provide prompt Notice to Landlord regarding any Permitted Transfer.

25.3 Transfers to Lender. At any time, a Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument, without Landlord's approval; or (b) a Transferee who obtains an Equity Interest or the Leasehold Estate through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written approval, in Landlord's sole and absolute discretion.

25.4 Annual Information on Equity Interests in Tenant. Within thirty (30) days after the first day of each Lease Year, Tenant will certify Tenant's then current ownership structure to Landlord, including the identity of all the then current owners of Equity Interests in Tenant.

25.5 Notice and Documentation. Tenant will Notify Landlord of each proposed Transfer, including each proposed Permitted Transfer, including all the following information:

(a) A current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with GAAP and sufficiently detailed to allow Landlord to evaluate the proposed Transferee's current assets, liabilities, and the monetary amount by which the total

monetary value of all assets of the proposed Transferee exceed the total monetary value of all liabilities of the proposed Transferee;

(b) All written agreements between Tenant and the proposed Transferee effectuating such Transfer, conditioned on Landlord's approval of such Transfer;

(c) A description of all properties owned or operated by the proposed Transferee that are similar to the Premises (if any);

(d) A certification by the Chief Financial Officer or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the Laws of the State, that the proposed Transferee is not a Prohibited Transferee;

(e) An Estoppel Certificate covering all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the Receipt Date of Tenant's Notice to Landlord requesting approval of the Transfer (and updated on the effective date of such Transfer to cover all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of such Transfer); and

(f) In addition, following delivery of the initial Notice of Transfer, Tenant will provide all other information regarding the proposed Transferee reasonably requested by Landlord.

25.6 Landlord Approval Time. Landlord will either approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required under Section 25.5. Any Notice of disapproval of a proposed Transfer shall include an explanation of the reasons for the disapproval. If Landlord does not approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required under Section 25.5, the Transfer will be considered disapproved by Landlord.

25.7 Transfer Taxes. Tenant will pay all transfer and other taxes payable because of any Transfer by Tenant.

25.8 Future Transfers. The provisions of this Section 25 will also apply to any future Transfers by any Tenant previously approved by Landlord under this Section 25.

25.9 Landlord's Costs. Tenant will reimburse Landlord for all reasonable costs (including Legal Costs) Landlord incurs in reviewing or approving each proposed Transfer requiring Landlord's approval under this Lease.

25.10 Charter Section 225. Under San Diego City Charter section 225, Tenant and each of its Transferees will disclose to Landlord the names and identities of all natural persons who own more than 10% of Tenant, each Transferee, each Subtenant under a Sublease that requires Landlord approval, and each Sub-User under a Use Agreement that requires Landlord approval.

25.11 Release of Tenant upon Certain Transfers. Notwithstanding anything in this Lease to the contrary, following a Landlord approved Transfer of all of Tenant's interest under this Lease to a Transferee that is not a Prohibited Transferee (but not following a Permitted Transfer), the transferring Tenant will be released from all obligations under this Lease that accrue from and after the date of the Transfer.

26. USE AGREEMENTS.

26.1 Use Agreement Prevailing Wage Requirements. Except as specified in this Section 26.1, Tenant shall not enter into any Use Agreement providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Use Agreement that provides for the Sub-User to pay less than the Fair Market Rent, Tenant shall require in the Use Agreement that: (a) all workers of the Sub-User or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 14, for all Construction, Retail Tenant Improvement, or maintenance performed by the Sub-User or its contractors or subcontractors; and (b) the Sub-User and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Use Agreement requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Use Agreement and the Use Agreement does not include the requirements in clauses "(a)" and "(b)" of this Section 26.1.

26.2 Tenant's Entry into Use Agreements. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into, Modify, terminate, or give any consent under any Use Agreement and evict any Sub-User, all without Landlord's approval. No later than thirty (30) days following the last day of each Lease Year, Tenant shall Notify Landlord of all Use Agreements entered into during the Lease Year. Additionally, no later than fifteen (15) days after entering into a Use Agreement that generates Revenue, Tenant shall Notify Landlord of each such Use Agreement.

27. SUBLEASING.

27.1 Eligible Residential Subleases. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Eligible Residential Subleases for Market Rate Housing Units within the Premises, Modify any Eligible Residential Sublease subject to Section 27.11, terminate any Eligible Residential Sublease, evict any Subtenant under an Eligible Residential Sublease, or give any consent under any Eligible Residential Sublease subject to Section 27.11, all without Landlord's consent.

27.2 Retail Space Subleases. Except as otherwise expressly provided in the last sentence of this Section 27.2, Tenant may not enter into or amend a Sublease for any Retail Space without the Landlord's prior written approval, which shall not be unreasonably withheld. In addition to all other requirements for Subleases under this Lease, each proposed Sublease for Retail Space shall require that: (a) the Retail Space Subtenant carries all the insurance required under the Subtenant/Sub-User Insurance Requirements; (b) the Retail Space subtenant enters into a separate

NDA with Landlord; and (c) if any Permitted Leasehold Security Instrument or Fee Security Instrument exists and if required by a Permitted Leasehold Lender or Fee Lender, then such Permitted Leasehold Lender or Fee Lender has entered (or simultaneously enters or has agreed in writing to enter) into a subordination, non-disturbance, and attornment agreement with such Retail Space Subtenant and Tenant has given Landlord written evidence of such agreement. Notwithstanding the first sentence of this Section 27.2, Tenant may amend or modify a Sublease for Retail Space without Landlord's approval, so long as the amendment or modification does not change the uses authorized in the Sublease previously approved by Landlord, the term of the Sublease, or the rental rate, and the amendment or modification complies with this Lease, all Approvals, and applicable Law.

27.3 General Sublease Requirements. Notwithstanding any provision of this Lease to the contrary, Tenant has no right to enter into any Sublease for the entire Premises. No Sublease shall affect any obligation of Tenant or right of Landlord under this Lease, all of which shall continue in full force and effect, notwithstanding any Sublease. All Subleases shall be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant's obligation to cure all Defaults. Tenant shall take all steps reasonable and necessary to prevent Defaults caused by Subtenants.

27.4 Sublease Prevailing Wage Requirements. Except as specified in this Section 27.4, Tenant shall not enter into any Sublease providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Sublease that provides for the Subtenant to pay less than the Fair Market Rent, Tenant shall require in the Sublease that: (a) all workers of the Subtenant or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 14, for all Construction, Retail Tenant Improvement, or maintenance performed by the Subtenant or its contractors or subcontractors; and (b) the Subtenant and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Sublease requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Sublease and the Sublease does not include the requirements in clauses "(a)" and "(b)" of this Section 27.4.

27.5 Assignment of Sub-Rents. To secure Tenant's performance under this Lease, Tenant assigns, transfers, and sets over to Landlord, subject to the conditions in this Section 27.5 (and the rights of Permitted Leasehold Lenders), Tenant's right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Sub-Rent during the pendency of an Event of Default. Landlord's exercise of such rights shall not constitute an eviction of Tenant. Unless and until an Event of Default by Tenant or on a termination of this Lease, Tenant shall have a license to exercise its right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Landlord may revoke such license, at Landlord's option, only during the pendency of an Event of Default by Tenant or on a termination of this Lease. Upon any such revocation, Landlord may collect Sub-Rent directly from Subtenants and

Sub-Users and apply the net amount collected to amounts owed to Landlord by Tenant, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. No such condition shall be, or be deemed to be, Landlord's waiver of any term of this Lease, acceptance of any Subtenant or Sub-User as Tenant, or release of Tenant from any obligation under this Lease. All sums Landlord collects prior to termination of this Lease and in excess of the net amount Landlord applies against amounts owed to Landlord by Tenant shall belong to Tenant and be refunded to Tenant (subject to the rights of Permitted Leasehold Lenders).

27.6 Required Provisions. Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section 27.6. By entering into its Sublease, each Subtenant shall agree to these provisions that reflect the definitions in this Lease. All such defined terms shall be modified in the required provision, as appropriate, to reflect the definitions in the Sublease.

> *All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this Sublease shall automatically and concurrently terminate subject to the rights of Subtenant under an NDA. In that event, Subtenant, only at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease, in accordance with the NDA between Subtenant and Landlord. Subtenant shall sign and deliver, at any time and from time to time, upon the request of Tenant, Landlord, or any Permitted Leasehold Lender, any instrument necessary or appropriate to evidence such attornment. This appointment is coupled with an interest and is irrevocable. Subtenant, for the express benefit of Landlord, waives its rights under any Law that may allow Subtenant to terminate this Sublease or surrender possession of the demised subpremises, if the Lease terminates.*

27.7 Delivery of Subleases. Tenant shall deliver to Landlord a copy of each fully signed Sublease and all associated agreements, all certified as accurate by both Tenant and Subtenant; within fifteen (15) days following Tenant entering into the particular Sublease.

27.8 Non-Disturbance of Subtenants. Landlord shall, within thirty (30) days after the Receipt Date of Notice from Tenant at any time or from time to time, enter into (and cause each Fee Lender to enter into) a recordable NDA with any Subtenant or proposed Subtenant of Retail Space, provided that: (a) such Subtenant's Sublease is approved in writing by Landlord prior to or concurrent with Landlord, Tenant, and Subtenant entering into the associated NDA; (b) Tenant gives Landlord a certified copy of such Sublease (or proposed Sublease, as the case may be), which Sublease contains all provisions required by this Lease and otherwise complies with this Lease; and (c) no Event of Default exists.

27.9 Tenant's Obligations Regarding Subleases.

27.9.1 **Sublease Lists and Enforcement**. Tenant shall, upon request (no more frequently than once every six (6) months), give Landlord a current list of all Subleases. Tenant shall perform its obligations under all Subleases and Tenant shall enforce all its rights under Subleases in a commercially reasonable manner.

27.9.2 **Sublease Update Packages**. Tenant shall give Landlord copies of all Subleases and amendments to Subleases, to the extent that such copies have not previously been delivered to Landlord, or a certificate that no such new Subleases or new Sublease amendments have been entered into (such copies or certificates, a "**Sublease Update Package**"), at least, once each Lease Year, within thirty (30) calendar days following the first day of each Lease Year, together with a current rent roll for the Premises, listing all Subleases and Subtenants and their respective current Sub-Rent and security deposits.

27.10 Future Subleasing. The provisions of this Section 27 shall also apply to any future subleasing or assignment by any Subtenant previously approved by Landlord under this Section 27.

27.11 Amendments to Eligible Residential Subleases. Tenant shall give Landlord Notice (which Notice includes a certified copy of the subject amendments(s)) of any and all amendments of each Eligible Residential Sublease within fifteen (15) calendar days following Tenant's entry into such amendment. Any Modification to an Eligible Residential Sublease, including those resulting from Tenant's consent under the Eligible Residential Sublease, that would make the Sublease not an Eligible Residential Sublease may only be made with Landlord's prior written consent, in Landlord's sole and absolute discretion.

27.12 Collection of Sub-Rent. Landlord shall not send any Sub-Rent Payment Notice unless an Event of Default has occurred. If Landlord collects any Sub-Rent prior to termination of this Lease, then Landlord shall apply it first to pay all of Landlord's costs in collecting such Sub-Rent, including Legal Costs, then to pay all Rent then due, and then to cure all Defaults and Events of Default of Tenant and then to pay all costs of the Premises. Landlord shall then remit to Tenant, any such remaining Sub-Rent. All Sub-Rent collected by Landlord after termination of this Lease is the sole property of Landlord. Tenant directs Landlord accordingly. If Landlord sends a Sub-Rent Payment Notice, Tenant cures all Events of Default, and this Lease has not been terminated, then Landlord shall, at Tenant's expense (including Landlord's Legal Costs), give each Subtenant or Sub-User a Notice rescinding Landlord's Sub-Rent Payment Notice.

28. PERMITTED LEASEHOLD SECURITY INSTRUMENTS.

28.1 Tenant's Rights. Subject to the terms of this Lease and the Statement of Priorities, Tenant will have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instrument(s) encumbering this Lease and the Leasehold Estate, provided that all Defaults and Events of Default are cured before or on the effective date of the Permitted Leasehold Security Instruments; and (b) assign (absolutely or collaterally) Tenant's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

28.2 Limitations on Permitted Leasehold Security Instruments. Landlord will not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances will the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Tenant or any Person other than Landlord. Prior to the Project Completion Date, Permitted Leasehold Security Instruments may only secure repayment of financing being applied solely to pay the cost of the original Construction of the Project. Notwithstanding anything to the contrary contained in this Lease, at no time prior to the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the costs of the original Construction of the Project. At no time following the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the then current appraised Market Value of the Leasehold Estate (including any Improvements and business operations of Tenant on the Premises). Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Tenant is outstanding under this Lease will not encumber the Leasehold Estate and will be a Default by Tenant, subject to applicable Notice and cure periods, unless all Defaults of Tenant under this Lease are cured concurrent with the grant of such Security Instrument.

28.3 Effect on Landlord. No Permitted Leasehold Security Instrument will affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. Any Lender Protections applicable to Permitted Leasehold Lenders may be exercised only by, and will only benefit, Permitted Leasehold Lenders, New Tenants, and Post-Foreclosure Tenants. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then such Permitted Leasehold Security Instrument will be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. If this Lease terminates and the New Lease Option Period expires, without any Permitted Leasehold Lender timely requesting and entering into a New Lease, then Permitted Leasehold Lender(s) will no longer be entitled to any Permitted Leasehold Lender's Cure Rights or other Lender Protections. The priority of the Leasehold Estate and the consequences of a Foreclosure Event under a Permitted Leasehold Security Instrument are as described in the Statement of Priorities. Nothing in any Permitted Leasehold Security Instrument binds Landlord or imposes any obligation or liability on Landlord.

28.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a Foreclosure Event and exercise any other rights or remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any other provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it will, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Tenant under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) will have any personal liability under this Lease unless and until (and then only so long as) it is Tenant under this Lease. Any such personal liability will be limited to the Person's interest in this Lease.

28.5 Transfer of Escrows, Reserves, Security, and Other Deposits Held by Landlord. Upon any Foreclosure Event or New Lease Delivery Date, the Tenant's right, title, and interest in any security deposit, letter of credit (subject to the issuer's consent), reserve account, escrow account (for Real Estate Taxes, insurance premiums, Rent, or any other purpose), security, prepaid Rent, or other amount of money the former Tenant previously paid Landlord under this Lease, any Restoration Funds, and any Construction Surety (subject to the surety's consent) will automatically be assigned to the New Tenant or Post-Foreclosure Tenant, as applicable. In such event, such former Tenant will no longer have any right, title, or interest in or to the foregoing. Instead, New Tenant or Post-Foreclosure Tenant will hold all such rights, free of any claim of the former Tenant. To the extent that on any New Lease Delivery Date, the New Lease requires Tenant to restore the amount of any security deposit, bond, or account, New Tenant's failure to do so will constitute a Monetary Default, subject to all applicable Notices and opportunity to cure, including Permitted Leasehold Lender's Cure Rights.

28.6 Termination of Permitted Leasehold Lender's Rights. If a Permitted Leasehold Lender is entitled to Lender Protections, then such entitlement will not terminate, unless and until such time, if any, as either: (a) its Permitted Leasehold Security Instrument is satisfied, except through a Foreclosure Event (in which event the Permitted Leasehold Lender will proceed under Section 28.9); (b) such Permitted Leasehold Lender consents in writing to termination of its Lender Protections; or (c) after Landlord complies with all Lender Protections, Landlord validly terminates this Lease, no Permitted Leasehold Lender validly requests (and is entitled to) and enters into a New Lease, and the New Lease Option Period expires. Upon the occurrence of the circumstances described in clause "(c)" in the immediately preceding sentence, the obligations formerly secured by Permitted Leasehold Security Instrument(s) will no longer be secured by Permitted Leasehold Security Instruments and no Permitted Leasehold Security Instrument will encumber the Leasehold Estate.

28.7 Lease Impairments. Any Lease Impairment made or entered into without Permitted Leasehold Lender's Consent will (at the option of the Senior Permitted Leasehold Lender) not be effective and not bind Permitted Leasehold Lenders or any New Tenant or Post-Foreclosure Tenant. Nothing in this Section 28.7 limits Landlord's right to terminate this Lease after an Event of Default and the expiration of all Permitted Leasehold Lender's Cure Rights, without cure of such Event of Default, subject however to: (a) provisions of this Lease limiting Landlord's right to terminate this Lease because of Tenant-Specific Default(s); and (b) the right of a Permitted Leasehold Lender to obtain a New Lease.

28.8 Permitted Leasehold Lender Notice of Default. Any Landlord right to terminate this Lease following any Tenant Default will be conditioned upon Landlord first Notifying each Permitted Leasehold Lender of which Landlord received Notice and an address for service of Notice of the Default, and no Permitted Leasehold Lender timely curing such Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 28.9.

28.9 Permitted Leasehold Lender's Cure Rights. If any Tenant Default occurs, then any Permitted Leasehold Lender will have the time provided for below in this Section 28.9 within which to take (if such Permitted Leasehold Lender so elects, and no Permitted Leasehold Lender will have any duty to undertake any Permitted Leasehold Lender's Cure of any kind) whichever of the actions set forth below as will apply to such Default:

28.9.1 *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender may, at its option, cure such Default, within fifteen (15) days following expiration of Tenant's cure period under this Lease for such Monetary Default.

28.9.2 *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender can reasonably cure without obtaining possession of the Premises (excluding any Tenant-Specific Default), provided that Permitted Leasehold Lender has cured all Monetary Defaults, Permitted Leasehold Lender may: (a) Notify Landlord of the Permitted Leasehold Lender's intent to cure the Non-Monetary Default; (b) within thirty (30) days following expiration of Tenant's cure period for such Non-Monetary Default, commence to cure such Non-Monetary Default; and (c) diligently prosecute the cure of such Non-Monetary Default to completion within a reasonable time under the circumstances.

28.9.3 *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises (including any Construction-related Default), Permitted Leasehold Lender will be entitled (but not required) to do the following (but only so long as, for any Defaults other than a Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises, such Permitted Leasehold Lender has exercised or is exercising, within the applicable cure periods, the applicable Permitted Leasehold Lender's Cure Rights):

(a) **Pursue Premises Control**. At any time within thirty (30) days following expiration of the cure period (if any) applicable to Tenant, or if no cure period applies to Tenant, then within thirty (30) days after the Receipt Date of Notice of the Non-Monetary Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and (subject to any applicable stay in any Bankruptcy Proceeding affecting Tenant or any applicable injunction) then diligently prosecute such proceedings to completion. If a Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control in accordance with this Section 28.9.3(a) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender or Post-Foreclosure Tenant will proceed with reasonable diligence to cure all Non-Monetary Defaults (excluding Tenant-Specific Defaults) within: (i) thirty (30) days after such Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control; or (ii) if such Non-Monetary Default is not reasonably susceptible of cure within such thirty (30) day period, then within a reasonable time under the circumstances.

(b) **Performance of Lease Obligations**. Perform all the Tenant's covenants and obligations under this Lease that can be performed by such Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold

Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

28.10 Security Instrument Defaults. If a Permitted Leasehold Security Instrument is in default, the Permitted Leasehold Lender will, as provided by Law, have the right, without Landlord's prior consent, subject to the other provisions of this Lease and the other provisions of this Section 28.10, to:

28.10.1 *Assignment in Lieu of Foreclosure*. Accept an assignment of the Leasehold Estate in lieu of foreclosure; or

28.10.2 *Foreclosure Sale*. Cause a foreclosure sale of the Leasehold Estate to be held through either judicial proceedings or power of sale under the applicable Permitted Leasehold Security Instrument.

28.11 Landlord's Exercise of Other Rights and Remedies. Whenever a Permitted Leasehold Lender is exercising, or is entitled to exercise, Permitted Leasehold Lender's Cure Rights, Landlord may, notwithstanding anything to the contrary in this Lease, continue to deliver Notices of Default to, collect actual damages from, and seek equitable relief (including a negative or mandatory injunction) against Tenant on account of any Default, and may require Tenant to Indemnify the Landlord Parties (and other Indemnitees) in each case when, as, and to the extent this Lease requires.

28.12 Permitted Leasehold Lender Exercise of Tenant's Rights. So long as such Permitted Leasehold Lender's cure rights (and right to obtain a New Lease) under this Lease have not expired, such Permitted Leasehold Lender may, at any time, exercise (and will always have standing to exercise and assert) all rights or remedies of Tenant under this Lease, subject to all limitations on such rights. Any exercise of such rights by any Permitted Leasehold Lender will be as effective as if done by Tenant.

28.13 Indemnity Regarding Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Permitted Leasehold Lender desires to enter the Premises to cure any Default, then, as a condition to such entry, such Permitted Leasehold Lender will agree in writing to Indemnify the Landlord Parties regarding Claims arising from any negligence or willful misconduct of such Permitted Leasehold Lender in pursuing the cure of any such Default, except Claims arising solely from the active negligence or willful misconduct of the Landlord Parties.

28.14 Limited Assignment of Security Instruments. No Permitted Leasehold Lender will assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender Controlling such Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by such Permitted Leasehold Security Instrument.

29. **NEW LEASE**.

29.1 New Lease Notice. If the Expiration Date occurs before the Scheduled Expiration Date for any reason (including because of any Event of Default or rejection in a Bankruptcy Proceeding or any Permitted Leasehold Lender's failing to timely exercise its Permitted Leasehold Lender's Cure Rights), but excluding any termination with Permitted Leasehold Lender's Consent because of a Loss or otherwise, then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Permitted Leasehold Lender), Landlord will, within ten (10) Business Days, Notify all Permitted Leasehold Lenders of such termination. If a Permitted Leasehold Lender requests a New Lease during the New Lease Option Period, then from the Expiration Date to the New Lease Delivery Date, Landlord will not: (a) operate the Premises in an unreasonable manner; or (b) lease the Premises (except Market Rate Housing Unit Subleases) to anyone other than New Tenant. Upon a Permitted Leasehold Lender's request for a New Lease made during the New Lease Option Period, Landlord will enter into a New Lease with New Tenant, provided that on the New Lease Delivery Date, New Tenant: (i) pays Landlord all monetary amounts then due under this Lease, as if this Lease had not terminated; and (ii) agrees to cure with reasonable diligence all then-uncured Non-Monetary Defaults (except Tenant-Specific Defaults), within a reasonable period after the New Lease Delivery Date. Nothing in this Lease will prevent Landlord from terminating this Lease in accordance with its terms (after compliance with all Permitted Leasehold Lender's Cure Rights), but any such termination will, thereafter, be subject to Permitted Leasehold Lenders' and New Tenant's rights to obtain a New Lease (even if any Permitted Leasehold Lender could have prevented such termination by exercising its Permitted Leasehold Lender's Cure Rights). The following additional provisions will apply to any New Lease:

29.1.1 *Priority*. Any New Lease and New Tenant's Leasehold Estate under such New Lease, and Landlord's obligation to deliver possession of the Premises under any New Lease, will all be subject to: (a) the rights of all Persons in possession of the Premises; (b) any matters that encumbered the previous Leasehold Estate and were senior and prior to the Permitted Leasehold Security Instrument held by the Permitted Leasehold Lender that requested the New Lease; and (c) Permitted Exceptions.

29.1.2 *Adjustment for Net Income*. On the New Lease Delivery Date, Landlord will pay New Tenant an amount of money equal to the Revenue Landlord received from the Premises, less (a) Rent and (b) operating expenses expended or incurred by Landlord, from the Expiration Date to the New Lease Delivery Date, provided that New Tenant simultaneously pays Landlord (or credits Landlord an amount of money equal to) all amounts of money required to be paid Landlord under this Lease upon entry into such New Lease (including any Rent due, but unpaid), and not otherwise paid by Landlord from Revenue received by Landlord.

29.1.3 *Transfer of Certain Items*. On the New Lease Delivery Date, Landlord will assign and convey, without recourse to New Tenant, Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Tenant (or Permitted Leasehold Lender) would have been entitled to receive, but for Tenant's Event of Default and Landlord's termination of this Lease; (b) all Market Rate Housing Unit Subleases

arising from the terminated Lease, except to the extent a Market Rate Housing Unit Sublease expired or was terminated in compliance with its terms and this Lease (which Market Rate Housing Unit Subleases, upon such assignment by Landlord to New Tenant, shall become Market Rate Housing Unit Subleases arising from the Leasehold Estate under the New Lease); (c) security deposits under Market Rate Housing Unit Subleases actually held by Landlord; and (d) Improvements, to the extent of the former Tenant's former interest in such Improvements under the terminated Lease.

29.1.4 *Preservation of Former Market Rate Housing Unit Subleases*. Between the Expiration Date and the New Lease Delivery Date (or the expiration of the New Lease Option Period, if no Permitted Leasehold Lender requests a New Lease), all Market Rate Housing Unit Subleases shall temporarily be direct leases between Landlord and the former Subtenants, but this circumstance shall not be deemed to impose any obligation on Landlord. On the New Lease Delivery Date, the reinstatement or assignment of the Market Rate Housing Unit Subleases (or direct leases with former Subtenants) from Landlord to New Tenant shall be without warranty from Landlord or recourse of any kind whatsoever to Landlord.

29.1.5 *Landlord's Costs and Expenses*. If a Permitted Leasehold Lender requests Landlord enter into a New Lease, then on the New Lease Delivery Date (and as a condition to Landlord's delivery of the New Lease) such Permitted Leasehold Lender will pay all reasonable expenses, including documentary transfer taxes and Legal Costs, incurred or payable by Landlord in connection with any Event of Default and termination of this Lease, recovery of possession of the Premises, preparation, signature, and delivery of the New Lease, any memorandum of the New Lease requested by New Tenant and recordation of any such memorandum, and all other documents New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

29.1.6 *Survival*. All rights of any Permitted Leasehold Lender, and obligations of Landlord, regarding a New Lease will survive termination of this Lease for the duration of the New Lease Option Period.

30. **INTERACTION OF MULTIPLE ESTATES**.

30.1 Priorities of Multiple Lenders. If more than one Lender of a particular type (Fee or Leasehold) desires to exercise any Lender Protections applicable to such Lender, then the Party against whom such Lender Protections are to be exercised will be required to recognize either: (a) only the Lender desiring to exercise such Lender Protections and whose Security Instrument is most Senior (as against other Security Instruments of like type); or (b) such other Lender as all Fee Lenders or all Permitted Leasehold Lenders, as applicable, designate in writing to exercise such Lender Protections. Priority of Security Instruments will be conclusively evidenced by (in order of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of the same type (Fee or Leasehold, as applicable); or (ii) a report or certificate of a title insurance company licensed to do business in the State. Neither Tenant nor Landlord will be obligated to determine the relative priorities of any Security Instruments.

30.2 No Merger. Notwithstanding any acquisition of both the Fee Estate and the Leasehold Estate by Tenant, any Post-Foreclosure Tenant, a New Tenant, any Lender, or a Third Person, without the written consent of Landlord, Tenant, and all Permitted Leasehold Lenders (the consent of Landlord, Tenant, and Permitted Leasehold Lenders only being required until their respective rights under this Lease are terminated), the Fee Estate and the Leasehold Estate will always remain separate and distinct estates.

31. LANDLORD'S RESERVATION OF RIGHTS.

31.1 Government Action. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its Governmental Authority or constitute an Approval by Landlord under its Governmental Authority. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Uses, or otherwise. Tenant will diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord, under its Governmental Authority, and other Governments necessary for the Permitted Uses. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary Landlord's exercise of its Governmental Authority.

31.2 Proprietary Agreement. The Parties acknowledge and agree that Landlord is entering into this Lease in its proprietary capacity as the owner of the Premises and as a market participant, not under its Governmental Authority. Therefore, the Parties intend that: (a) this Lease is separate and distinct from all agreements entered into by Landlord with Tenant under Landlord's Governmental Authority, including any statutory development agreement; (b) if there is any conflict or inconsistency between this Lease and any agreement entered into by Landlord with Tenant under Landlord's Governmental Authority, the terms, conditions, covenants, restrictions, or agreements in this Lease will control; and (c) Landlord is not subject to the limitations on the exercise of its Governmental Authority in entering into this Lease or exercising its rights under this Lease.

31.3 Natural Resources. Landlord reserves all right, title, and interest in all subsurface natural resources relating to the Premises, including natural gas, oil, minerals, and water, on or within the Premises; provided, however, Landlord will not unreasonably interfere with Tenant's use, occupancy, or development of the Premises in connection with Landlord's rights to such subsurface natural resources.

31.4 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property; provided, however, Landlord will not unreasonably interfere with Tenant's use, occupancy, or development of the Premises in connection with Landlord's rights to grant, establish, or use such access rights.

32. **EVENTS OF DEFAULT; REMEDIES**.

32.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

32.1.1 *Monetary Default*. A Monetary Default that continues for seven (7) days after the Receipt Date of Notice to Tenant of the Monetary Default.

32.1.2 *Project Construction Default*. A Project Construction Default that continues for thirty (30) days after the Receipt Date of Notice to Tenant of the Project Construction Default.

32.1.3 *Bankruptcy or Insolvency*. Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

32.1.4 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 32.1.2 or 32.1.3, that is not cured within thirty (30) days after the Receipt Date of Notice to Tenant describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the Receipt Date of Notice of the Non-Monetary Default to Tenant, Tenant will not be in Default if it does all the following: (a) within thirty (30) days after the Receipt Date of the Notice of the Non-Monetary Default, Notifies Landlord of Tenant's intention to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the Receipt Date of the Notice of the Non-Monetary Default, commences curing the Non-Monetary Default; and (c) completes the cure of the Non-Monetary Default within a reasonable time, but in no event more than one hundred eighty (180) days after the Receipt Date of the Notice of the Non-Monetary Default.

32.2 Remedies. If an Event of Default occurs, then Landlord will, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy will not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

32.2.1 *Termination of Tenant's Rights*; *Conditional Limitation*. Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term will automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant will then quit and surrender the Premises to Landlord in accordance with Section 33 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term will terminate and expire as set forth in this

Section 32.2.1. This Section 32.2.1 is intended to establish a conditional limitation and not a condition subsequent.

32.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease will also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) 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.

(e) The "worth at the time of award" of the amounts referred to in Sections 32.2.2(a) and 32.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 32.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

32.2.3 *Taking Possession*. Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 32.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, will absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord will apply all rents from any such reletting in the manner provided in Section 32.6. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 32.2.3 in Landlord's name and will be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant will nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all amounts required to be paid by Tenant under this Lease, plus Landlord's

expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 32.2.3 will constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

32.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

32.2.5 *Receipt of Money*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease will reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later becoming due, or Landlord's right to recover possession of the Premises by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

32.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, will waive any such Default, Event of Default, or such covenant, agreement, term, condition, or restriction. No covenant, agreement, term, condition, or restriction of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, will be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default will Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease will continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

32.2.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Event of Default, including as set forth in Section 32.2.2 and reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Event of Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Event of Default but may bring and prosecute a single combined action for all such Rent or damages.

32.3 Continue Lease. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil Code section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject

only to reasonable limitations). If Landlord elects to exercise the remedy described in California Civil Code section 1951.4 and maintain Tenant's right to possession of the Premises after an Event of Default, this Lease will continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable considering that the Lease Minimum Rent and Percentage Rent under this Lease are completely dependent on Tenant's successful Construction of the Project and profitable operation of the Project for many years such that Tenant's reputation in the applicable industry, ability to obtain reasonable financing for Construction and operation of the Project as provided in the Financing Plan, ability to coordinate successfully with Landlord, creditworthiness, operational efficiency, and similar attributes are all critical to achievement of Landlord's financial expectations for this Lease.

32.4 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

32.5 Restoration Funds. Upon any termination of this Lease after an Event of Default or otherwise, to the extent Landlord or Depository then holds any Restoration Funds, such funds will be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

32.6 Proceeds of Reletting. Landlord will apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

32.6.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

32.6.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

32.6.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord will maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

32.6.4 *Residue*. Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

32.7 Tenant's Late Payments; Administrative Charges. If Landlord sends a Notice of Monetary Default to Tenant, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant will pay five percent (5%) of the

unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant will pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence will be no less than $25. Nothing in this Section 32.7 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 32.7 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 32.7 are not a penalty or compensation for use of funds and will not be credited against any other obligation of Tenant under this Lease.

32.8 Landlord's Right to Cure. If an Event of Default occurs, then Landlord, after five (5) Business Days' Notice to Tenant (except where Landlord determines that immediate action is necessary to protect person or property, then with such notice (if any) as is reasonably practicable under the circumstances) and without waiving or releasing Tenant from any obligation, Default, or Event of Default and without waiving Landlord's right to take such action as this Lease may permit following such Default or Event of Default, may (but need not) make such payment or take such action. Within ten (10) days after the Receipt Date of Notice of such payment amount, Tenant will reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 32.8; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 32.8 from the date paid until the date of reimbursement to Landlord.

32.9 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease will be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment will not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

32.10 Survival. No termination of this Lease and no taking possession of or reletting the Premises will relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

32.11 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

32.12 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant will give Landlord Notice of the Landlord Default and thirty (30) days following the Receipt Date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the Receipt Date of the Notice of such Landlord Default, the cure period for the Landlord Default will be extended for such further period as Landlord will reasonably require to cure the Landlord Default, provided that Landlord will: (a) within thirty (30) days following the Receipt Date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default. If Landlord does not cure a Landlord Default after receiving the Notice and opportunity to cure required under this Lease for the Landlord Default, except as otherwise prohibited under this Lease, Tenant may pursue any remedy available at Law or in equity for such Landlord Default.

33. **END OF TERM**.

33.1 Surrender. Upon any Expiration Date: (a) all Building(s), Building Equipment, and Improvements will become Landlord's property; (b) Tenant will deliver possession of the Premises to Landlord, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore; (c) Tenant will deliver the Premises free and clear of all: (i) Use Agreements and Subleases, unless otherwise requested in writing by Landlord, and (ii) liens except: (1) Permitted Exceptions, exclusive of Permitted Leasehold Security Instruments; and (2) liens that Landlord caused; (d) Tenant will assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (e) the Parties will cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; (f) the Parties will adjust for all expenses and income of the Premises and will make such payments as will be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant will first be applied to cure any Default), provided, however, that Tenant will be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the end of the Term (if any) and Landlord will not be required to pay or credit Tenant for any Real Estate Taxes paid by, or on behalf of, Tenant; and (g) the Parties will terminate the Lease Memorandum by signing and recording the Quitclaim Deed in accordance with Section 33.2. Notwithstanding anything to the contrary in this Lease, after the Expiration Date, Landlord may, in its sole discretion, by Notice to Tenant, require Tenant to demolish all Improvements on the Premises and remove all associated debris from the Premises, all at Tenant's sole expense. Notwithstanding anything to the contrary in this Section 33, Tenant may remove from the Premises at any time and from time-to-time any FF&E, but Tenant must do so, if at all, prior to the Expiration Date. Tenant will immediately repair

all material damage to the Premises from removal of FF&E. All FF&E not removed before the Expiration Date will be deemed abandoned.

33.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant will sign, acknowledge, and deliver to Landlord a Quitclaim Deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such Quitclaim Deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such Quitclaim Deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a Quitclaim Deed, which appointment is irrevocable and coupled with an interest.

34. **NOTICES**. All Notices submitted by one Party to the other Party under or as required by this Lease must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). All Notices must be sent to the Party representative and address designated in **EXHIBIT C** attached to this Lease. Either Party may designate a different representative or address for delivery of Notice under this Lease by Notice given in accordance with this Section 34. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A Notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the Notice is sent by messenger for immediate personal delivery and delivered to the Notice address before 5:30 p.m. Pacific Time, on the Business Day the Notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the Notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is delivered to the United States Postal Service in accordance with this Section 34 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices delivered via email.

34.1 Replacement of Statutory Notice Requirements. When this Lease requires service of a Notice, that Notice will replace, rather than supplement, any equivalent or similar Notice required by Law, including any notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by this Section 34 will replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

34.2 Refused, Unclaimed, or Undeliverable Notices. The Receipt Date for any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be Notified will be the first date the Notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

35. **NO BROKER**. Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) will Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 35.

36. **NON-RECOURSE**. Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and the other Landlord Parties, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Leasehold Estate (including the proceeds of the Leasehold Estate). No property or assets of Landlord whatsoever, except Landlord's interest in the Leasehold Estate (including the proceeds of the Leasehold Estate, but excluding Landlord's ownership of the Fee Estate and reversionary interest), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Tenant arising under or in connection with this Lease. The limitation of liability and remedies in this Section 36 applies not only to Claims under the express terms of this Lease, but also to Claims of any kind whatsoever arising from the relationship between the Parties or any rights or obligations the Parties may have relating to the Premises, this Lease, or anything related to either this Lease or the Premises.

37. **LIMITATIONS ON DAMAGES**. Subject to Section 36, whenever either Party may seek or claim damages against the other Party (whether by reason of a Default, Event of Default, or Landlord Default, as the case may be, under this Lease by such Party, in enforcement of any Indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, collateral, special, punitive or indirect damages, whether such Default, Event of Default, or Landlord Default, as the case may be, shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded to either Party arising from this Lease (whether or not this Lease has been terminated) shall be limited to: (a) actual, direct damages sustained by the aggrieved Party, including all damages recoverable under California Civil Code section 1951.2; and (b) consequential damages sustained by the aggrieved Party (but not actual, direct damages) not exceeding One Million Dollars ($1,000,000) times the CPI Adjustment Factor (on an occurrence basis). Notwithstanding anything to the contrary in this Section 37, nothing in this Section 37 limits recovery of Legal Costs as provided in this Lease.

38. **ESTOPPEL CERTIFICATES**. Up to twice each Lease Year, each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party will sign and deliver such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in

Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate within the required fifteen (15) day period, then the Certifying Party will pay the Requesting Party liquidated damages of two hundred fifty dollars ($250) times the CPI Adjustment Factor per day for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party will pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate. Any such Estoppel Certificate may be relied upon by the Requesting Party and its designated Third Person, if any.

39. **HOLDOVER**. If Tenant continues to occupy the Premises after the Expiration Date, such occupancy will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent will be a month-to-month tenancy and all other terms of this Lease will continue in full force and effect, except that Landlord may then demand and receive rental payments from Tenant equal to the then fair market rental value of the Premises, as determined by Landlord. Additionally, Tenant will be liable for all damages incurred by Landlord as a result of Tenant remaining in the Premises after the Expiration Date. Landlord's acceptance of any Rent from Tenant after the Expiration Date will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

40. **MISCELLANEOUS**.

40.1 Compliance with Landlord Standard Contract Provisions. Tenant will comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

40.2 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor will be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

40.3 Mayoral Implementation. Landlord will implement this Lease through its Mayor. The Mayor is authorized by Landlord to issue approvals, interpretations, waivers and enter into amendments to this Lease on behalf of Landlord, to the extent that any such action(s) does/do not materially or substantially change the Project, the Permitted Uses, the Premises, the Development Conditions, the Performance Schedule, any amount of money payable to Landlord, or other material terms of this Lease. Nothing in this Section 40.3 will restrict the submission to the City Council of any matter within the Mayor's authority under this Section 40.3, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 40.3 is to authorize certain actions by the Mayor on behalf of Landlord, but not to require that such actions be taken by the Mayor, without consideration by the City Council.

40.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

40.5 Successors and Assigns. This Lease will bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 40.5 will not limit, supersede, or Modify any Transfer restrictions in this Lease.

40.6 Costs and Expenses; Legal Costs. In the event of any litigation (including court required mediation or arbitration) between the Parties arising from this Lease (including to enforce or interpret this Lease, seek declaratory or injunctive relief in connection with this Lease, exercise any right or remedy under or arising from this Lease, or terminate this Lease) or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party or the Party that is not the subject of the Bankruptcy Proceeding will be entitled to reimbursement from the other Party of its Legal Costs, with Default Interest. The Legal Costs recoverable by one Party from the other Party in each litigation (consolidated matters or matters arising from the same facts and circumstances are a single litigation) arising from this Lease or a Bankruptcy Proceeding affecting the other Party will not exceed Two Hundred Fifty Thousand Dollars ($250,000) multiplied by 1 plus the result of multiplying .03 times the Lease Year number in which the earliest Claim included in the litigation arises (i.e., if the earliest Claim included in the litigation arises in Lease Year 10 the maximum recoverable Legal Costs amount would be $250,000 x (1+(.03x10)) = $325,000).

40.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party will not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default will waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

40.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted will have the right to perform the obligation under protest, which will not be regarded as voluntary performance. If a Party performs an obligation under protest and the performance of that obligation is later determined by the Parties or final judgment of a court of competent jurisdiction not to be required, the performing Party may institute appropriate proceedings to recover the reasonable cost of performing the obligation, with Default Interest from the date of performance.

40.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date will survive any such Expiration Date.

40.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> 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 will 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.

40.11 Unavoidable Delay. Neither Party shall be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay will Notify the other Party of the Unavoidable Delay within a reasonable time after the claiming Party knows of the Unavoidable Delay and within a reasonable time after such Unavoidable Delay ceases to exist. To be effective, Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice of the Unavoidable Delay is timely given under this Section 40.11 commences on the date the condition causing the Unavoidable Delay begins, but not earlier than twenty (20) days preceding the Receipt Date of the Notice of the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay will exercise reasonable efforts to cure the condition causing the Unavoidable Delay within a reasonable time.

40.12 ASSUMPTION OF ECONOMIC RISKS. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE WILL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, WILL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)	INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

40.13 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

40.14 Counterparts. This Lease may be signed in multiple counterpart originals, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

40.15 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms for this Lease. Breach of the representations or warranties of this Section 40.15 will entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant will immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to this Lease, the Premises, the Project, or any other Improvements Constructed by Tenant on the Premises, prior to the date of any such termination.

40.16 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

40.17 Survival of Lease. All the provisions of this Lease will be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms of this Lease relating to dispute resolution or remedies will survive any Expiration Date.

40.18 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) will be personally liable to Tenant in the event of any Landlord Default under this Lease or for any amount that may become due to Tenant on any obligation under this Lease. No Tenant Party (other than Tenant itself) will be personally liable to Landlord in the event of any Event of Default on Tenant's part or for any amount of money that may be or become due to Landlord on any obligation under this Lease.

40.19 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

40.20 Tax Consequences. Tenant will bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease, including all Transfers.

40.21 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

40.22 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days will be to consecutive calendar days, all references to time periods in this Lease measured in months will be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years will be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days will be to consecutive Business Days.

40.23 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, conditions, restrictions, and agreements between the Parties regarding the use and occupancy of the Premises during the Term. Except as set forth in the DDA, the Parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises. If any conflict or inconsistency exists between the DDA and this Lease regarding the use and occupancy of the Premises during the Term, the provisions of this Lease will control.

40.24 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, will be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles. The Parties acknowledge and agree that this Lease is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Lease will be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

40.25 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance will to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected by such invalidity. All remaining provisions of this Lease will be valid and be enforced to the fullest extent Law allows.

40.26 Interpretation Principles. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" will be construed to be followed by the words: "without limitation." Each collective noun used in this Lease will be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. The words "will" and "shall" have the same meaning as the word "must" and denote a mandatory action. The word "may" denotes a permissive action. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification violating this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar

governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time. Where this Lease provides for a Party to approve or disapprove a specified matter in its sole discretion or take some other action in its sole discretion, that Party may approve, disapprove, or condition approval of the matter for any reason or no reason or take, not take, or condition the taking of the action for any reason or no reason. A Party's decision to either disapprove or condition approval of a matter over which it has sole discretion or not take or condition the taking of other action over which it has sole discretion will not be a Default or Landlord Default by that Party.

40.27 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant will cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

40.28 Reasonableness. Wherever this Lease states that a Party will not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval will not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval will be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this will not waive its right to require such consent or approval for any further or similar matter.

40.29 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

40.30 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A	Premises Legal Description.
EXHIBIT B	Premises Site Plan.
EXHIBIT C	Notice Addresses.
EXHIBIT D	Minimum Annual Rent, Lease Minimum Rent, Percentage Rent, and Capital Sales Event Payments.

EXHIBIT E	Tenant Insurance Requirements.
EXHIBIT F	Performance Schedule.
EXHIBIT G	Landlord Standard Contract Provisions.
EXHIBIT H	Prevailing Wage Requirements.
EXHIBIT I	Project.
EXHIBIT J	Preliminary Report.
EXHIBIT K	Financing Plan.
EXHIBIT L	Non-Disturbance and Attornment Agreement Form.
EXHIBIT M	Development Conditions.
EXHIBIT N	Contractor Prequalification Application Form.
EXHIBIT O	Subtenant/Sub-User Insurance Requirements.
EXHIBIT P	Master Development Area Legal Description.
EXHIBIT Q	Project Labor Agreement Certification Form.

[***Remainder of page intentionally blank. Signatures appear on the immediately following page.***]

SIGNATURE PAGE
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
[**TO BE DETERMINED**]

Approved as to form on
_____.

HEATHER FERBERT,
City Attorney

By: _____
[**TO BE DETERMINED**]

TENANT:

[**NOTE TO DRAFT: INSERT TENANT'S NAME IN ALL CAPS**], [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**]

By: _____
[**TO BE DETERMINED**]

EXHIBIT A
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PREMISES LEGAL DESCRIPTION

[**TO BE INSERTED**]

EXHIBIT B
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PREMISES SITE PLAN

[**TO BE INSERTED**]

EXHIBIT C
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

NOTICE ADDRESSES

Tenant:

[**INSERT TENANT'S NOTICE ADDRESS(ES), INCLUDING NAME & EMAIL**]

Landlord:

[**INSERT LANDLORD'S NOTICE ADDRESS(ES), INCLUDING NAME & EMAIL**]

EXHIBIT D
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

MINIMUM ANNUAL RENT; LEASE MINIMUM RENT; PERCENTAGE RENT; AND CAPITAL SALES EVENT PAYMENTS

1. **DEFINITIONS**. All words, terms, or phrases indicated to be defined words, terms, or phrases by initial capitalization in this **EXHIBIT D** that are not specifically defined in this exhibit will have the meaning given to the same word, term, or phrase, respectively, in the main body of this Lease. As used in this exhibit, the following words, terms, or phrases will have the following meanings:

1.1 Adjustments. To the extent not paid or payable by one or more Subtenants or Sub-Users of the Premises, all the following: (a) all Federal, State, County, or local governmental or municipal taxes, fees, assessments, levies, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Premises) because of or in connection with the ownership, leasing and operation of the Premises; (b) capital reserves for the performance of capital work or capital improvements solely at the Premises; (c) the amortized cost with interest (determined using sound real estate management and accounting practices, consistently applied) of any capital improvements or capital expenditures performed or funded by Tenant at the Premises; (d) insurance costs; and (e) the expenses incurred by Tenant in the operation, management, repair, ownership, and maintenance of the Premises. "Adjustments" do not include debt service or financing costs.

1.2 Appraiser. An independent appraiser that is a State Certified General Real Estate Appraiser in good standing, is a member in good standing of the Appraisal Institute, an Illinois not-for-profit corporation, or an equivalent nationally recognized professional real estate appraisal organization, and has, at least, ten (10) years of experience appraising properties similar to the Premises.

1.3 Capital Investment. Tenant's equity (defined as cash contributions) used to pay for the initial Construction of the Project.

1.4 First Capital Sales Event Payment. Defined in Section 6.1.4.

1.5 Gross Revenue. All fees and payments made to Tenant by Subtenants or Sub-Users of the Premises, including rent and parking charges. The only exclusions from "Gross Revenue" are: (i) interest or service fees; or (ii) costs and expenses due from Subtenants or Sub-Users of the Premises as a reimbursement to Tenant for costs incurred by Tenant for maintenance or operation of the Premises.

1.6 IRR. The annualized percentage return on Tenant's Capital Investment calculated using the XIRR Function in Microsoft Excel software or comparable function of software with calculation functions, compounded monthly, measuring the rate at which the present value of the distributions of Net Cash Flow from the Premises equals the present value of Tenant's Capital Investment calculated on the date such Capital Investment occurred. The IRR represents the annual percentage rate at which Tenant recoups its Capital Investment plus a specified return through cash distributions from the Premises. As an illustration, Tenant achieves an IRR of X percent on an initial Capital Investment of Y dollars when the net present value of all distributions to Tenant with respect to its initial Capital Investment, discounted at an interest rate of X percent, is equal to Y.

1.7 Lease Minimum Rent. The amount of Minimum Annual Rent allocated to this Lease for each Lease Year under the Master Rent Administration Agreement or under this Lease. Prior to the Lease Year immediately following the Lease Year in which Landlord first receives a total of $500,000.00 in aggregated annual Percentage Rent under all Market Rate/Retail Leases, Lease Minimum Rent will be zero.

1.8 Market Rate/Retail Leases. Each ground lease entered into by The City of San Diego, a California municipal corporation, under the DDA for development and operation of a combination of Market Rate Housing Units and Retail Space.

1.9 Master Rent Administration Agreement. That certain Master Rent Administration Agreement, dated as of [**TO BE DETERMINED**], by and between Landlord and Midway Rising, LLC, a Delaware limited liability company.

1.10 Minimum Annual Rent. Defined in Section 2.

1.11 Minimum Annual Rent Statement. The annual statement of Minimum Annual Rent and Lease Minimum Rent provided to Tenant by the "Master Developer" under the Master Rent Administration Agreement.

1.12 Modified Gross Revenue. Gross Revenue minus Adjustments.

1.13 Modified Gross Revenue Percentage. The percentage of Modified Gross Revenue used to calculate Percentage Rent.

1.14 MRR Tenants. Defined in Section 3.

1.15 Net Cash Flow. Annual Modified Gross Revenue.

1.16 Percentage Rent. An amount equal to the following percentages of Modified Gross Revenue, subject to Section 4, attributable to each Lease Year during the specified Lease Years:

Percentage of Modified Gross Revenue	Period of the Lease Term
One-Half Percent (0.5%)	Lease Years 0-55

EXHIBIT D – 2
Minimum Annual Rent; Lease Minimum Rent; Percentage Rent; and Capital Sales Event Payments

Two- and One-Half Percent (2.5%)	Lease Years 56 – end of the Term

1.17 Percentage Rent Threshold. The first date on which Tenant recovers the Capital Investment from Gross Revenue, a Capital Sales Event, or a loan or other financing secured by a Permitted Leasehold Security Instrument, or a combination of any of the preceding sources.

1.18 Recalculation Date. Defined in Section 3.

1.19 Review Date. Each of the first days of Lease Years 56 and 71.

1.20 Subsequent Capital Sales Event Payment. Defined in Section 6.2.4.

2. **LEASE MINIMUM RENT DETERMINATION**. Lease Minimum Rent under this Lease is determined under the Master Rent Administration Agreement or as otherwise provided in this Lease. While the Master Rent Administration Agreement is in effect, this Lease is subject to the Minimum Annual Rent provisions of the Master Rent Administration Agreement. Tenant represents and warrants to Landlord that Tenant received a copy of the Master Rent Administration Agreement before the Commencement Date and Tenant entered into this Lease with full knowledge of the terms of the Master Rent Administration Agreement. If the "Master Developer" under the Master Rent Administration Agreement fails to determine or allocate Lease Minimum Rent or the Master Rent Administration Agreement terminates, Landlord may make such determination or allocation, without any obligation to do so, in the manner provided for determining or allocating Lease Minimum Rent under the Master Rent Administration Agreement.

3. **MINIMUM ANNUAL RENT DETERMINATION**. Commencing in the Lease Year immediately following the Lease Year in which Landlord first receives a total of $500,000.00 in aggregate total annual Percentage Rent under Market Rate/Retail Leases and in each subsequent Lease Year, Landlord will be entitled to receive annually from all the "Tenants" under all Market Rate/Retail Leases then in effect (collectively, "**MRR Tenants**") the greater of: (i) the aggregate total annual Percentage Rent under all Market Rate/Retail Leases for the Lease Year; and (ii) Minimum Annual Rent. "**Minimum Annual Rent**" means: (a) $500,000.00 commencing in the Lease Year immediately following the particular Lease Year in which Landlord first receives a total of $500,000.00 in aggregated annual Percentage Rent under Market Rate/Retail Leases; (b) then, commencing in the Lease Year immediately following the Lease Year in which Landlord first receives a total of $1,000,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under Market Rate/Retail Leases, Minimum Annual Rent will increase to $1,000,000.00; (c) then, commencing in the Lease Year immediately following the Lease Year in which Landlord first receives a total of $1,500,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under Market Rate/Retail Leases, the Minimum Annual Rent will increase to $1,500,000.00; (d) then, commencing in the Lease Year immediately following the Lease Year in which Landlord first receives a total of $2,000,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under Market Rate/Retail Leases, the Minimum Annual Rent will increase to $2,000,000.00; and (e) then, on the first day of the tenth (10^{th}) Lease Year after the Lease Year in which Landlord first receives a total of $2,000,000.00 in aggregated annual Minimum Annual Rent and Percentage

Rent under Market Rate/Retail Leases and on the first day of every tenth (10th) Lease Year thereafter in which any Market Rate/Retail Lease is in effect (each such date, a "**Recalculation Date**"), the Minimum Annual Rent will be recalculated to be the greater of: (y) the Minimum Annual Rent in effect on the day before the Recalculation Date; and (z) seventy-five percent (75%) of the aggregate total annual Percentage Rent payable under all Market Rate/Retail Leases in effect during the Lease Year ended on the day before the Recalculation Date. On the first day of each Lease Year following a Lease Year in which a Market Rate/Retail Lease "Scheduled Expiration Date" (as defined in the Market Rate/Retail Lease) occurs, the Minimum Annual Rent will be reduced by the amount of the Minimum Annual Rent allocated for the preceding Lease Year to the Market Rate/Retail Lease(s) that expired during the preceding Lease Year. A sample calculation of Minimum Annual Rent and allocation of Lease Minimum Rent among all Market Rate/Retail Leases for a hypothetical Lease Year is provided in **Schedule 1** attached to this **EXHIBIT D**.

4. **MODIFIED GROSS REVENUE PERCENTAGE REVIEW**. As of the first Review Date, the Modified Gross Revenue Percentage applicable as of Lease Year 56 will be revalued to be the greater of: (a) 2.5%; and (b) the fair market value Modified Gross Revenue Percentage determined under Section 4.1 of this **EXHIBIT D** as of the date that is twenty-four (24) months before the first Review Date. As of the second Review Date, the Modified Gross Revenue Percentage applicable as of Lease Year 71 will be revalued to be the greater of: (y) 2.5%; and (z) the fair market value Modified Gross Revenue Percentage determined under Section 4.1 of this **EXHIBIT D** as of the date that is twenty-four (24) months before the second Review Date. Notwithstanding anything to the contrary in this Lease, if the Modified Gross Revenue Percentage is revalued as of one or both Review Dates through a fair market value determination under this Section 4, then the revalued Modified Gross Revenue Percentage applicable as of the first day of Lease Year 56 cannot be more than 2.93%, and the Modified Gross Revenue Percentage applicable as of the first day of Lease Year 71 cannot be more than 3.38%.

4.1 Determination of Market Modified Gross Revenue Percentage. Before each Review Date, the Parties will endeavor to agree upon the fair market Modified Gross Revenue Percentage for that Review Date taking into consideration the actual performance (i.e. rents, occupancy rates, condition, sales tax, or other economic metrics) of the Premises. If one hundred eighty (180) days before a Review Date, the Parties have not agreed on the fair market Modified Gross Revenue Percentage for that Review Date, then either Party will Notify the other Party of the impasse. Each Party will within ten (10) Business Days after the Receipt Date of such Notice of impasse designate an Appraiser. The two Appraisers so designated will within ten (10) Business Days designate a third independent Appraiser that has not been retained by either Party within the previous three (3) years. If either Party fails to timely designate an Appraiser and does not cure such failure within ten (10) Business Days after Notice of such failure, then the one Appraiser the other Party designated will resolve the impasse. Within ten (10) Business Days after designation of the Appraiser(s), each Party will simultaneously submit to the Appraiser(s), with a copy to the other Party, such Party's proposed fair market Modified Gross Revenue Percentage, with such information and supporting materials as each submitter determines appropriate. Within ten (10) Business Days after the Parties submit their fair market Modified Gross Revenue Percentage proposals to the Appraiser(s), the Appraiser(s), by majority vote (or by the determination of the one Appraiser, if only one Appraiser is designated), will select as the fair market Modified Gross

Revenue Percentage either Landlord's proposal or Tenant's proposal. The Appraiser(s) will have no authority to designate any fair market Modified Gross Revenue Percentage other than Landlord's proposal or Tenant's proposal. If a Party fails to timely submit a fair market Modified Gross Revenue Percentage proposal to the Appraiser(s) and does not cure such failure within ten (10) Business Days after Notice of such failure, then the fair market Modified Gross Revenue Percentage proposal submitted by the other Party (if the Party timely submitted such proposal) will automatically be the fair market Modified Gross Revenue Percentage, provided only that the Appraiser(s) determine(s) that such proposal is not commercially unreasonable, arbitrary, or capricious. The fair market Modified Gross Revenue Percentage the Appraiser(s) select(s) or that becomes the fair market Modified Gross Revenue Percentage because a Party did not submit a fair market Modified Gross Revenue Percentage proposal will be the fair market Modified Gross Revenue Percentage for all purposes of this Lease as of the applicable Review Date until the next Review Date, if any. The Parties will promptly confirm each fair market Modified Gross Revenue Percentage in writing.

5. **PAYMENT OF LEASE MINIMUM RENT AND PERCENTAGE RENT**. For each Lease Year, on or before the one hundred fiftieth (150th) day after the end of the Lease Year (including the final Lease Year of the Term), and within thirty (30) days after receipt of any revised Minimum Annual Rent Statement, in addition to all other amounts payable by Tenant under this Lease, Tenant will pay to Landlord an amount equal to the greater of Lease Minimum Rent for the Lease Year and the total Percentage Rent payable under this Lease for the Lease Year; provided, however, that no Percentage Rent is due under this Lease until the first day of the calendar month following the occurrence of the Percentage Rent Threshold and no Lease Minimum Rent will be allocated to this Lease until the first Lease Year beginning after the occurrence of the Percentage Rent Threshold. Tenant shall Notify Landlord of the date of the occurrence of the Percentage Rent Threshold, including all supporting information and calculations, within ten (10) Business Days after the date of the occurrence of the Percentage Rent Threshold. Landlord shall refund to Tenant any amounts overpaid by Tenant as Lease Minimum Rent or Percentage Rent identified through a City Treasurer Audit of this Lease within thirty (30) days after receipt of a revised Minimum Annual Rent Statement specifying such overpayment. Tenant shall pay to Landlord all amounts underpaid by Tenant as Lease Minimum Rent or Percentage Rent identified in a revised Minimum Annual Rent Statement within thirty (30) days after receipt of the revised Minimum Annual Rent Statement. Additionally, Tenant shall pay to Landlord all amounts of Lease Minimum Rent or Percentage Rent underpaid by other Market Rate/Retail Lease tenants to the extent caused by Tenant providing Landlord or Master Developer, under the Master Rent Administration Agreement, incorrect or inaccurate information, plus all Legal Costs Landlord incurs in collecting such underpayments. The Percentage Rent Threshold will only occur one time, and after the occurrence of the Percentage Rent Threshold, the Percentage Rent Threshold does not apply to any later successor or future Tenant under this Lease.

6. **CAPITAL SALES EVENT PAYMENTS**. Upon the occurrence of each Capital Sales Event, the proceeds of the Capital Sales Event will be distributed as follows:

6.1 First Capital Sales Event. For the first Capital Sales Event under this Lease:

6.1.1 The costs of the Capital Sales Event will be paid (such costs would include, without limitation, finder's fees, closing costs, and Legal Costs).

6.1.2 Tenant will receive the amount necessary for Tenant to receive a nineteen percent (19%) levered IRR on the greater of (i) the Capital Investment and (ii) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.1.3 Tenant will receive the amount equal to the costs of Capital Improvements made to the Premises by Tenant prior to the Capital Sales Event, except to the extent included in the Capital Investment, deducted from Modified Gross Revenue, or paid for by insurance proceeds.

6.1.4 Except as otherwise provided in Section 6.1.5, Landlord will receive five percent (5%) of the proceeds after deducting the amounts in Sections 6.1.1 through 6.1.3 ("**First Capital Sales Event Payment**").

6.1.5 Tenant will receive all remaining proceeds after deducting the amounts in Sections 6.1.1 through 6.1.4. Notwithstanding any provision of this Section 6.1 to the contrary, the First Capital Sales Event Payment will increase to ten percent (10%) of the proceeds after deducting the amounts in Sections 6.1.1 through 6.1.3 if the total amount received by Tenant under this Section 6.1 results in a thirty percent (30%) or higher levered IRR on the greater of: (a) the Capital Investment; and (b) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.2 Subsequent Capital Sales Events. For the second and each subsequent Capital Sales Event under this Lease:

6.2.1 The costs of the Capital Sales Event will be paid.

6.2.2 Tenant will receive the amount necessary for Tenant to receive a nineteen percent (19%) levered IRR on the greater of (i) the Tenant's purchase price for this Lease and (ii) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.2.3 Tenant will receive the amount equal to the costs of Capital Improvements made to the Premises during its period of ownership of this Lease, except to the extent deducted from Modified Gross Revenue or paid for by insurance proceeds.

6.2.4 Except as otherwise provided in Section 6.2.5, Landlord will receive five percent (5%) of the proceeds after deducting the amounts in Sections 6.2.1 through 6.2.3 ("**Subsequent Capital Sales Event Payment**").

6.2.5 Tenant will receive all remaining proceeds after deducting the amounts in Sections 6.2.1 through 6.2.4. Notwithstanding any provision of this Section 6.2 to the contrary, the Subsequent Capital Sales Event Payment will increase to ten percent (10%) of the proceeds after deducting the amounts in Sections 6.2.1 through 6.2.3 if the total amount received by Tenant under this Section 6.2 results in a thirty percent (30%) or higher levered IRR on the greater of: (a) the

Tenant's purchase price for this Lease; and (b) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

SCHEDULE 1 TO EXHIBIT D -
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

EXAMPLE CALCULATION

Midway Rising - Example Vertical Ground Lease Rent [1]

	Total	Pad 1	Pad 2	Pad 3
Year 1				
Year 1 Percentage Rent	550,000	300,000	250,000	NA
Year 1 Percentage Rent % of Total	100.0%	54.5%	45.5%	
Year 1 Minimum Annual Rent % Share	NA	NA	NA	NA
Year 1 Minimum Annual Rent Hurdle	NA	NA	NA	NA
Year 1 Minimum Annual Rent Owed	NA	NA	NA	NA
Year 1 Total Rent Paid	**550,000**	**300,000**	**250,000**	**NA**
Year 2				
Year 2 Percentage Rent	450,000	250,000	200,000	NA
Year 2 Percentage Rent % of Total	100.0%	55.6%	44.4%	
Year 2 Minimum Annual Rent % Share [2]	100.0%	54.5%	45.5%	NA
Year 2 Minimum Annual Rent Hurdle	500,000	272,727	227,273	NA
Year 2 Minimum Annual Rent Owed	50,000	22,727	27,273	NA
Year 2 Total Rent Paid	**500,000**	**272,727**	**227,273**	**NA**
Year 3				
Year 3 Percentage Rent	650,000	300,000	250,000	100,000
Year 3 Percentage Rent % of Total	100.0%	46.2%	38.5%	15.4%
Year 3 Minimum Annual Rent % Share [2]	100.0%	55.6%	44.4%	NA
Year 3 Minimum Annual Rent Hurdle	500,000	277,778	222,222	NA
Year 3 Minimum Annual Rent Owed	NA	NA	NA	NA
Year 3 Total Rent Paid	**650,000**	**300,000**	**250,000**	**100,000**
Year 4				
Year 4 Percentage Rent	450,000	225,000	175,000	50,000
Year 4 Percentage Rent % of Total	100.0%	50.0%	38.9%	11.1%
Year 4 Minimum Annual Rent % Share [2]	100.0%	46.2%	38.5%	15.4%
Year 4 Minimum Annual Rent Hurdle	500,000	230,769	192,308	76,923
Year 4 Minimum Annual Rent Owed	50,000	5,769	17,308	26,923
Year 4 Total Rent Paid	**500,000**	**230,769**	**192,308**	**76,923**

[1] For illustrative purposes only

[2] Minimum Annual Rent share based on previous year percentage of total Percentage Rent paid

EXHIBIT E
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

TENANT INSURANCE REQUIREMENTS

1. **Required Insurance Coverage**. Tenant will maintain all the following insurance policies:

1.1. *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant written on the then current version of ISO form CA 00 01 12 90 or equivalent form providing coverage at least as broad, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000) combined single limit per accident. Such insurance will be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which will be subject to pre-approval by Landlord, which pre-approval will not be unreasonably withheld. All costs of defense covered by Automobile Liability Insurance must be outside the policy limits.

1.2. *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, written on the then current version of ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad, with a minimum annual aggregate liability limit of not less than the following: (a) other than products/completed operations $10,000,000; (b) products/completed operations $10,000,000; (c) personal injury limit $5,000,000; and (d) each occurrence $5,000,000. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit will apply separately to the Premises. The policy shall not include an endorsement or modification limiting the scope of coverage for either insured vs. insured claims or contractual liability. All costs of defense covered by Liability Insurance must be outside the policy limits.

1.3. *Property Insurance*. Insurance providing coverage for the Premises and all Improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all Improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance will include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased

cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4. *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

1.5. *Contractors Pollution Liability Insurance*. Contractors Pollution Liability Insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Tenant or on Tenant's behalf, Tenant's products, Tenant's work (including Tenant's completed operations performed by Tenant or on Tenant's behalf), or premises owned, leased, controlled, or used by Tenant, with minimum liability limits of Two Million Dollars ($2,000,000) for any one claim or occurrence and Four Million Dollars ($4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance must be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars ($25,000) per claim unless and until Tenant obtains Landlord's separate written approval of a higher deductible amount. With Landlord's separate prior written approval, Tenant may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its contractor or subcontractor maintaining Contractors Pollution Liability Insurance as required under these Tenant Insurance Requirements (defined below). When Tenant requests Landlord's approval to use its contractor's or subcontractor's Contractors Pollution Liability Insurance, Tenant will certify to Landlord that all activities requiring Contractors Pollution Liability Insurance under these Tenant Insurance Requirements will be performed exclusively by the contractor or subcontractor that will maintain the Contractors Pollution Liability Insurance and provide Landlord with a copy of its contractor's or subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on an occurrence basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences. Policies issued on a claims made basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences, be maintained for the duration of all activity covered by the Contractors Pollution Liability Insurance and include a 12-month extended claims discovery period applicable to all activity covered by the Contractors Pollution Liability Insurance or the policy or policies must be maintained for at least 12 months after completion of all activities covered by the Contractors Pollution Liability Insurance without advancing the retroactive date.

1.6. *Contractors Hazardous Transporters Pollution Liability Insurance*. Contractors Hazardous Transporters Pollution Liability Insurance, including contractual liability coverage to cover liability arising out of transportation of Hazardous Substances or any other pollutants by Tenant or any contractor or subcontractor in an amount no less than $2,000,000 limit per occurrence and $4,000,000 aggregate per policy period of one year. All costs of defense covered by Contractors Hazardous Transporters Pollution Liability Insurance must be outside the limits of the policy. Landlord's prior written approval is required for a contractor or subcontractor to provide Contractors Hazardous Transporters Pollution Liability Insurance. To obtain Landlord approval of a contractor's or subcontractor's Contractors Hazardous Transporters Pollution

Liability Insurance coverage, Tenant shall certify that all activities under the Contractors Hazardous Transporters Pollution Liability Insurance will be performed exclusively by the contractor or subcontractor providing the insurance. The deductible under Contractors Hazardous Transporters Pollution Liability Insurance shall not exceed $25,000 per claim without prior approval of the Landlord. Occurrence based policies shall be procured before any activity covered by the Contractors Hazardous Transporters Pollution Liability Insurance commences. Claims made policies shall be procured before any activity covered by the Contractors Hazardous Transporters Pollution Liability Insurance commences, shall be maintained for the duration of the activities, and shall include a 12-month extended claims discovery period applicable to the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance or the existing policy or policies shall continue to be maintained for 12 months after completion of the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance, without advancing the retroactive date.

1.7. *Builder's Risk Insurance*. Special form builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the replacement value of the subject Construction, including cost of debris removal (including demolition), excavations, grading, and filling, plus fifteen percent (15%) to cover administrative costs, design costs, and the costs of inspections and Construction management. Such insurance will also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location or in transit intended for use in, or in connection with, the Premises. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the Premises.

1.8. *Professional Liability Insurance*. All architects and engineers providing services to Tenant or the Project must provide Landlord with written evidence of Professional Liability Insurance coverage with a limit of no less than $1,000,000 per claim and $2,000,000 aggregate per policy period of one year. The policy retroactive date must be on or before the date of commencement of the services. The policy must be maintained in force for a period of three (3) years after completion of the Project and there will be no changes or endorsements to the policy that affect the specified coverage. If professional engineering services are to be provided solely by a subcontractor, Tenant must certify this fact to Landlord in writing and require the subcontractor to procure Professional Liability Insurance coverage in accordance with this Section 1.8.

2. **Nature of Insurance**. The contents of this **EXHIBIT E** are sometimes referred to as the "**Tenant Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, Builder's Risk Insurance, Contractors Pollution Liability Insurance, Contractors Hazardous Transporters Pollution Liability Insurance, and Professional Liability Insurance policies required by these Tenant Insurance Requirements will be issued by carriers that: (a) have a minimum financial strength rating of "A-" and a minimum financial size category of "VI" (exception may be made for the State Compensation Insurance Fund when not specifically rated) from A.M. Best Company, Inc. (or equivalent rating service, as determined by Landlord); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under

a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy specifies the amount(s) of the total insurance allocated to the Premises, which amount(s) will equal or exceed the amount(s) required by these Tenant Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Tenant Insurance Requirements. Landlord will accept insurance provided by a non-admitted, “surplus lines” carrier only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list) maintained by the State Department of Insurance. All policies of insurance carried by non-admitted carriers shall be subject to all of these Tenant Insurance Requirements for policies of insurance provided by admitted carriers described in this Lease.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Tenant Insurance Requirements will contain (by endorsement or otherwise) the following provisions:

3.1. *Insured*. To the extent allowed by Law: (a) Liability Insurance, Contractors Pollution Liability Insurance, and Contractors Hazardous Transporters Pollution Liability Insurance policies will name the Landlord Parties as “additional insured”; (b) Builder’s Risk Insurance policies will name Landlord as a “loss payee”; and (c) The coverage afforded to the Landlord Parties will be at least as broad as that afforded to Tenant regarding the Premises or the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2. *Primary Coverage*. All insurance coverage required by these Tenant Insurance Requirements will be primary to all insurance or self-insurance maintained by the Landlord Parties and all insurance or self-insurance maintained by the Landlord Parties will be excess of all insurance maintained by Tenant and will not contribute with any insurance maintained by Tenant.

3.3. *Commencement of Property Related Coverage*. Before contractor mobilization for any Construction, including the Project, Tenant shall have Builder’s Risk Insurance covering the Construction in place. Effective as of the earliest possible date and no later than the date of issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Project, Tenant shall have Property Insurance covering the Premises in place.

3.4. *Contractual Liability*. Liability Insurance and Contractors Pollution Liability Insurance policies will contain contractual liability coverage for Tenant’s Indemnity obligations under this Lease. Tenant’s maintaining or failing to maintain such contractual liability coverage will not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.5. *Deliveries to Landlord*. Original certificates of all insurance policies required by these Tenant Insurance Requirements, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by these Tenant Insurance Requirements), will be delivered by Tenant to Landlord before the Commencement Date. Landlord has the right to require Tenant to deliver to Landlord complete, certified copies of all insurance policies required by these Tenant Insurance Requirements, including all required endorsements. No later than ten (10) days before any insurance required by these Tenant Insurance Requirements expires, is cancelled, or its liability limits are reduced or exhausted, Tenant will

deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Tenant Insurance Requirements. Each insurance policy required by these Tenant Insurance Requirements will be endorsed to state that coverage will not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company" will not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Tenant Insurance Requirements.

3.6. *Waiver of Certain Claims*. Tenant will cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Tenant Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

3.7. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Tenant Insurance Requirements are adequate or sufficient.

3.8. *No Claims Made Coverage*. None of the insurance coverage required by these Tenant Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.

3.9. *Fully Paid and Non-Assessable*. All insurance maintained by Tenant in satisfaction of these Tenant Insurance Requirements will be fully paid for and non-assessable.

3.10. *Separation of Insured*. All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance will provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Tenant Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but will not exclude suits between named insured Persons and additional insured Persons.

3.11. *Severability of Interest*. All insurance coverage required by these Tenant Insurance Requirements will apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3.12. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Tenant Insurance Requirements will be declared to and approved by Landlord. Landlord may require the purchase of coverage with a lower retention or proof of ability to pay losses and related investigations, claim administration,

and defense expenses within the retention. Tenant will pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Tenant Insurance Requirements will provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties under these Tenant Insurance Requirements will be reimbursed to Landlord by Tenant in the same manner that insurance costs are reimbursable to Landlord from Tenant under Section 5 of these Tenant Insurance Requirements.

3.13. *No Separate Insurance*. Tenant will not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Tenant Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Tenant Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and will not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor will the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to maintain any insurance coverage required by these Tenant Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord will be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after the Receipt Date of Notice from Landlord with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Tenant Insurance Requirements to be carried by Tenant will not relieve Tenant of any Default or Event of Default or Tenant's obligation to maintain all insurance coverage required by these Tenant Insurance Requirements.

EXHIBIT F
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PERFORMANCE SCHEDULE

[**PARTIES TO INSERT THE PERFORMANCE SCHEDULE AFTER IT IS AGREED UPON UNDER SECTION 34.8 OF THE DDA**]

EXHIBIT G
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease at Tenant's sole cost and expense. Tenant's failure to comply with, or ensure the compliance of its licensees, contractors, subcontractors, operators, or concessionaires with, any such requirements will be a Default under this Lease. All Council Policies and other Landlord requirements referenced in this **EXHIBIT G** are incorporated by reference into this Lease.

1.1 Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the ADA requirements of the City of San Diego, California, under Council Policy 100-04, which is incorporated into this Lease by this reference. Tenant agrees that all contracts and subcontracts relating to this Lease or the Premises will contain the contractor's agreement to abide by the provisions of Council Policy 100-04.

1.2 Equal Benefits Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.3 Equal Pay Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Tenant will certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to each contractor and subcontractor who performs work on behalf of Tenant, a Subtenant, or a Sub-User to the same extent as it would apply to Tenant. Tenant will require all its contractors, subcontractors, Subtenants, and Sub-Users to certify compliance with the Equal Pay Ordinance in written contracts.

1.4 No Discrimination or Segregation. Neither Tenant, nor any Subtenant, nor any Sub-User, nor any other Person claiming under or through Tenant will establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, and occupancy of the Premises or in the selection, location, number, use, or occupancy of Subtenants or Sub-Users on or about the Premises.

1.5 Equal Employment Opportunity Outreach Program. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with SDMC sections 22.2701 through 22.2707. Tenant

and all Subtenants and Sub-Users will not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant and all Subtenants and Sub-Users will provide equal opportunity in all employment practices. Tenant and all Subtenants and Sub-Users will ensure that their contractors and subcontractors comply with this program. Nothing in this Section 1.5 will be interpreted to hold Tenant or any Subtenant or Sub-User liable for any discriminatory practice of its contractors or subcontractors.

1.6 Product Endorsement. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to the City of San Diego, California, as a user of a good or service must have the prior written approval of the Mayor.

1.7 Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant or the applicable Subtenant or Sub-User is exempt from the payment of business tax, Tenant and each Subtenant and Sub-User is required to obtain a business tax certificate from the City Treasurer and provide a copy of such certificate to Landlord before commencing the Permitted Uses on the Premises.

1.8 Employment of Landlord Staff. Under Council Policy 300-11, if Tenant employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a Landlord officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the entry into this Lease, Landlord, in its sole and absolute discretion, will have the right to unilaterally and immediately terminate this Lease by Notice to Tenant. This provision is not intended to apply to members of the City Council.

1.9 Zero Emissions Municipal Buildings and Operation Policy. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with all requirements of Council Policy 900-03.

1.10 Living Wage. In performing its obligations under this Lease, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the provisions of the City of San Diego, California, Living Wage Ordinance, codified in SDMC sections 22.4201, et seq.

EXHIBIT H
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

[NOTE TO DRAFT: APPLICABILITY OF THIS EXHIBIT WILL BE DETERMINED UNDER SECTION 25 OF THE DDA]

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGE REQUIREMENTS**. In performing all Construction, Retail Tenant Improvement, or maintenance work under this Lease, Tenant, its contractors and subcontractors will cause all workers who perform Construction, Retail Tenant Improvement, or maintenance work on or for the Premises (including work performed during the design and preconstruction phases of Construction or Retail Tenant Improvement, such as inspection and land surveying work) to be paid not less than Prevailing Wages and will comply with Prevailing Wage Law and the provisions of this **EXHIBIT H**.

1.1 Prevailing Wage Rates. Copies of the DIR prevailing wage rates are on file with Landlord and are available for inspection to any interested Person on request. Copies of the prevailing rate of wages also may be found at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant, its contractors and subcontractors will all post a copy of the prevailing wage rate determination at each job site and will make this information available to all interested Persons upon request. Tenant, its contractors and subcontractors will all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.1 *Wage Duration.* The prevailing wage rates determined by DIR refer to expiration dates. If the published prevailing wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published wage rate will be in effect for the duration of this Lease or until changed by DIR. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate will become effective on the date following the expiration date of the previous wage rate and will apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate will apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate will apply to the balance of the Term, unless otherwise increased under applicable law.

1.2 Penalties for Violations. Tenant, its contractors and subcontractors will be subject to and proceed in accordance with California Labor Code section 1775 in the event a worker is paid less

than Prevailing Wages for the work or craft in which the worker is employed, in addition to all other applicable penalties allowed under Prevailing Wage Law.

1.3 Payroll Records. Tenant, its contractors and subcontractors will all maintain all the records, make all the verifications and certifications, and submit or make available, as applicable, all such records, verifications, and certifications as described in California Labor Code section 1776. Tenant, its contractors and subcontractors will include provisions requiring performance of all actions described in California Labor Code section 1776 in all contracts with all contractors or subcontractors, including submitting certified payroll records to DIR through its online system for submission of certified payroll records, and furnishing the records specified in California Labor Code section 1776 directly to the California Labor Commissioner in the manner required in California Labor Code section 1771.4. Tenant shall contractually require that each of Tenant's contractors and subcontractors submit certified payroll records to Landlord, the California Labor Commissioner, and DIR.

1.4 Apprentices. Tenant, its contractors and subcontractors will all employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6 and 1777.7. Tenant will be held responsible for Tenant's own failure and the failure of Tenant's contractors and subcontractors to employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant, its contractors and subcontractors will all comply with the working hours requirements described in California Labor Code sections 1810 through 1815, including: (i) restricting working hours to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day a worker works more than 8 hours per day and 40 hours per week.

1.6 Required Provisions for Subcontracts. Tenant, its contractors and subcontractors will all include, at a minimum, a copy of and compliance with the following provisions of the Prevailing Wage Law in each contract any of them enters into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. As described in California Labor Code section 3700, Tenant, its contractors and subcontractors will all secure the payment of compensation of their respective employees and, by signing this Lease or any contract or subcontract, respectively, Tenant, its contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant, its contractors and subcontractors will include this certification in all contracts with each of their contractors or subcontractors.

1.8 Registration Requirements. All Construction, Retail Tenant Improvement, or maintenance work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor

will not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104 or engage in the performance of any such contract unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the California Business and Professions Code or by section 10164 or 2103.5 of the California Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation will not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under California Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor that does not comply with California Labor Code section 1771.1(a) will be subject to cancellation, provided that a contract will not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it is registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and has verified or will verify that all of Tenant's contractors and subcontractors performing Construction, Retail Tenant Improvement, or maintenance work under this Lease are registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and will provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant will timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of each filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant will record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of each recorded notice of completion to Landlord.

1.11 Awarding Body for Subleases and Use Agreements. Tenant acknowledges and agrees that, for any Sublease or Use Agreement requiring the payment of Prevailing Wages, (a) Tenant (not Landlord) is the awarding body as that term is used in Prevailing Wage Law, (b) Tenant will comply with all obligations of Prevailing Wage Law applicable to awarding bodies, and (c) Tenant

will be responsible for all penalties, fines, damages or other liabilities that may be imposed on an awarding body for failing to comply with Prevailing Wage Law.

1.12 Subtenants and Sub-Users. If one or more Subtenants or Sub-Users perform any work on any portion of the Premises that requires the payment of Prevailing Wages under Sections 14, 26.1, or 27.4 of this Lease, then all requirements of this **EXHIBIT H** shall apply to those Subtenants or Sub-Users and their respective contractors and subcontractors, and all references in this **EXHIBIT H** to "contractors and subcontractors" shall include those Subtenants and Sub-Users and their respective contractors and subcontractors.

EXHIBIT I
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PROJECT

[**PARTIES TO INSERT THE PROJECT DESCRIPTION AFTER IT IS AGREED UPON UNDER SECTION 34.7 OF THE DDA**]

EXHIBIT J
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PRELIMINARY REPORT

[**TO BE INSERTED**]

EXHIBIT K
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

FINANCING PLAN

[**PARTIES TO INSERT FINANCING PLAN AFTER IT IS AGREED UPON UNDER SECTION 34.8 OF THE DDA**]

EXHIBIT L
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

NON-DISTURBANCE AND ATTORNMENT AGREEMENT FORM

RECORDING REQUESTED BY: Chicago Title Company Commercial Division **AND WHEN RECORDED MAIL TO:** City of San Diego 1200 Third Avenue, Suite 1400 San Diego, CA 92101 Attn: Director, Economic Development Dept.	

APNs: [**TO BE DETERMINED**]

Exempt from Recording Fees – Cal. Govt. Code § 27383

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made by and among THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), [**TO BE DETERMINED**] ("**Tenant**"), and [**TO BE DETERMINED**] ("**Subtenant**"), effective on the date this Agreement is approved as to form by the San Diego City Attorney, as shown on the signature page to this Agreement. Landlord, Tenant, and Subtenant are sometimes referred to in this Agreement, individually, as a "**Party**" or, collectively, as the "**Parties**."

1. **Background**. Landlord is the owner of certain real property in the City of San Diego, County of San Diego, State of California described on **Exhibit 1** attached to this Agreement and incorporated into this Agreement by this reference ("**Property**"). Landlord and Tenant entered into that certain Market Rate Housing/Retail Ground Lease, dated [**TO BE DETERMINED**] ("**Ground Lease**") regarding the Property. Tenant and Subtenant have entered into that certain Sublease Agreement dated [**TO BE DETERMINED**] ("**Sublease**"), in which Tenant subleased a portion of the Property, as further described in **Exhibit 2** attached to this Agreement ("**Sublease Premises**"), to Subtenant under the Ground Lease. Tenant and Subtenant represent and warrant to

Landlord that a true and correct copy of the Sublease was delivered to Landlord on [**TO BE DETERMINED**]. Landlord, Tenant, and Subtenant desire to enter into this Agreement for the purpose, among other things, of providing various rights and protections to Landlord and Subtenant in the event of an early termination of the Ground Lease by Landlord as a result of an Event of Default under the Ground Lease by Tenant.

2. **Non-Disturbance and Attornment**. If the Ground Lease is terminated before its Scheduled Expiration Date (as defined in the Ground Lease) ("**Triggering Event**") and subject to all the terms of the Ground Lease regarding Subleases (as defined in the Ground Lease), including the provisions of the Ground Lease regarding a New Lease (as defined in the Ground Lease), Landlord agrees to recognize the Sublease as a direct lease between Landlord and Subtenant, and Subtenant agrees to recognize and attorn to Landlord as Subtenant's direct landlord under the Sublease, subject to all the following:

2.1 The Sublease is in full force and effect and has not been terminated, and no state of facts then exist that would permit Tenant to terminate the Sublease by virtue of the default of Subtenant under the Sublease.

2.2 Landlord shall retain all rights under the Sublease in the event of any default by Subtenant.

2.3 Landlord shall not be liable to Subtenant for any default under the Sublease by Tenant, as sublandlord, any amount owed by Tenant to Subtenant, any offset right, claim for damages, refund, rebate, payment or other performance that Subtenant may have against Tenant relating to any event or occurrence before the date of the Triggering Event, including any claim for damages of any kind whatsoever as the result of any breach of the Sublease by Tenant that occurred before the date of the Triggering Event.

2.4 Landlord shall not be required to return to Subtenant any security deposit not received by Landlord.

2.5 Landlord shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one (1) month in advance.

2.6 Landlord shall not be bound by any modification or amendment of the Sublease or any waiver of any term of the Sublease, unless made with Landlord's written consent.

2.7 Landlord shall not be liable for any construction work, including tenant improvement work (as opposed to typical landlord structural maintenance obligations), made by or obligated to be made by Tenant under the Sublease.

3. **Notices**. All notices from one Party to another Party under or as required by this Agreement must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing

the recipient Party in response to a notice email). All notices must be sent to the Party representative and address designated below in this Section 3. A Party may designate a different representative or address for delivery of notice under this Agreement by notice given in accordance with this Section 3. To conserve resources and reduce administrative burden, the Parties intend to deliver notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the notice is sent by messenger for immediate personal delivery and delivered to the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the notice is delivered to the United States Postal Service in accordance with this Section 3 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices delivered via email. The notice addresses for the Parties on the effective date of this Agreement are as follows:

Landlord:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Tenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Subtenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

4. **Miscellaneous Provisions**.

4.1 No Merger. The Parties agree that the respective ownerships or estates of Landlord and Tenant in and to the Property shall not merge, and shall remain separate and distinct, notwithstanding the union of such ownerships or estates in either Tenant, Landlord, or any third party by purchase, assignment, or otherwise.

4.2 Further Assurances. From time to time as required to more effectively carry out the terms of this Agreement, each of the Parties shall, at the reasonable request of another Party (a)

sign and deliver to the requesting Party other ancillary instruments and documents, and (b) take other ancillary actions.

4.3 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original of this Agreement and all of which together shall constitute one and the same instrument.

4.4 Further Documentation. The provisions of this Agreement shall be effective and self-operative, without any need for Landlord, Tenant, or Subtenant to sign any further document; provided, however, upon request after a Triggering Event, the Parties shall sign and deliver a writing documenting the effects of the provisions of this Agreement on the Sublease.

4.5 Entire Agreement. This Agreement and the documents specifically referenced and incorporated into this Agreement set forth the entire agreement between the Parties regarding the subject matter of this Agreement. Except as specifically set forth in this Agreement, there are no agreements, representations, or warranties whatsoever as to any matter. Any prior conversations or writings are merged into this Agreement, superseded by this Agreement, and extinguished.

4.6 Modifications, Successors and Assigns. This Agreement may only be modified in a writing signed by all the Parties or their respective successors in interest. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

4.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Sole and proper venue for any action to enforce or interpret any of the terms and provisions of this Agreement shall be in the County of San Diego, California.

[***Remainder of page intentionally blank. Signatures appear on the following page.***]

SIGNATURE PAGE
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

Landlord, Tenant, and Subtenant make and enter into this Agreement by and through the signatures of their respective authorized representatives below.

LANDLORD:

The City of San Diego, a California municipal corporation

By:_____
Name:_____
Its:_____

Approved as to form on: _____.

[**TO BE DETERMINED**],

City Attorney

By: _____

TENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

SUBTENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

EXHIBIT 1
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property Legal Description

[**TO BE INSERTED**]

EXHIBIT 2
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Sublease Premises Legal Description

[**TO BE INSERTED**]

EXHIBIT M
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

DEVELOPMENT CONDITIONS

	Development Condition	**Specifications**
1.	Parking Structures	The facades of all parking structures shall be wrapped with a building or architectural screening capable of blocking 80 percent of the parking structure facade.
2.	Structure Height	To the extent permitted by Law, the maximum structure height on the Premises will be 105 feet, with the following exception: (a) Up to 10 percent of the surface area of the Master Development Area (approximately 214,446 square feet) may include structures (other than the Entertainment Center) with a maximum height of 250 feet. Building footprint area will be used for calculating the percentage of the surface area of the Master Development Area used by a building.
3.	Park Frontage Setback	As shown on Specific Plan Figure 39, Buildings with ground floor uses fronting a Park shall have an open setback area with a minimum width of 7 feet measured from the nearest building facade to the edge of the Park to create a separation between the building and the Park, unless a greater distance is required by the California Building Code.
4.	Public Streets	All as shown on Figures 7 through 19 in the Specific Plan and all to the satisfaction of the City Engineer of the City of San Diego, California, based on City of San Diego, California, standards for these improvements, Tenant shall Construct: (a) Kemper Street and Frontier Drive as public streets to connect Sports Arena Boulevard and Kurtz Street; (b) frontage improvements along Sports Arena Boulevard and Kurtz Street; (c) the roundabout at Kurtz Street; and (d) the offsite street improvements.
5.	Public Access	All private drives, Promenades, Paseo Greens, Paseo Greenways, The Plaza, The Green and The Square (each as described in the

	Development Condition	Specifications
		Specific Plan) shall be publicly accessible from at least 8:00 a.m. to 8:00 p.m. seven days a week, 365 days a year. Wayfinding signs shall be provided and include the hours these areas are open to the public in conformance with a Detailed Sign Concept Plan as described in Appendix B of the Specific Plan.
6.	Street Trees	Two rows of street trees shall be provided on Sports Arena Boulevard, Kurtz Street, and Kemper Street, respectively, to provide shade on each multi-use path, and to provide a buffer from vehicular traffic.
7.	Landscaping	All streets, whether public or private, and all parking structures located on the Premises shall contain a minimum of 4.75 percent (4.75%) landscaping, consisting of street trees and groundcovers located within bulb-outs. For vehicular use areas located on the rooftops of parking structures, photovoltaic solar canopies or other shade structures may be provided in lieu of shade trees. Shade structures or photovoltaic solar canopies used in lieu of the shade tree requirement shall meet the following criteria: (1) shade structures or photovoltaic solar canopies shall either (a) cover a minimum of fifty percent (50%) of each individual parking stall, or (b) cover a minimum of fifty percent (50%) of each vehicular use area with no photovoltaic solar canopy or shade structure located more than fifteen (15) feet from any parking stall; and (2) on the rooftops of parking structures or on structural podiums, shade structures with a maximum of fifty percent (50%) transparency or photovoltaic solar canopies may be provided. A minimum 14-foot-wide landscape buffer shall be provided between all residential buildings and the western boundary of the Master Development Area.
8.	Roof Top Mounted Solar Photovoltaic	All building rooftops will install roof-top mounted solar photovoltaic cells.
9.	Park Amenities	Each Park shall include one or more of the following amenities: • Play Area • Nature Exploration Playground

	Development Condition	Specifications
		• Multi-Purpose Turf Area • Active Recreation Fields • Hardcourt Areas • Specialty Recreation Areas • Lighting • Multi-use Pathways • Bike Path or Cycle Track • Fitness Circuit • Off-Leash Dog Area • Community Garden • Food Area/Concessions/ Café/ Restaurants • Performance/Event Space • All-weather Shade Cover/Pavilion with tables/seating • Seating Area with movable seats • Restroom Building • Amphitheater • Wayfinding Signage System • Interactive/Technology Element • Public Art/Placemaking Elements • Native Planting Restoration Area

	Development Condition	Specifications
10.	The Green	"The Green" identified in Specific Plan Figure 38 shall: (1) Have a minimum average width of at least 67 feet measured from the outer edge of all adjacent residential entry/dining patio zones; (2) Have a minimum area of 2.32 acres (101,059 square feet); and (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (4) Include one or more of the following amenities: (a) Recreational Amenity; (b) Seating Area; (c) Shade Structure/Pavilion with seating; (d) Performance or Event Space; or (e) Multi-modal Shared Use Path.
11.	The Square	"The Square" identified in Specific Plan Figure 40 shall: (1) Have a minimum width of 90 feet (measured from the face of the Entertainment Center to an opposing building's residential entry/dining patio zone); (2) Have a minimum area of 2.93 acres (127,630 square feet); (3) Include frontage on Sports Arena Boulevard; (4) Include a fire access lane; (5) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as

	Development Condition	Specifications
		identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (6) Include one or more of the following amenities: (a) Seating Areas with fixed and moveable seating; (b) Shade Structure/Pavilion with seating; (c) Interactive Water Feature; or (d) Multi-modal Shared Use Path.
12.	The Plaza	"The Plaza" identified in Specific Plan Figure 41 shall: (1) Have a minimum width of 27 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 0.54 acres (23,520 square feet); (3) Include a fire access lane; (4) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (5) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
13.	Paseo Greens	The "Paseo Greens" identified in Specific Plan Figure 42 shall: (1) Have a minimum width of 36 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 1.06 acres (46,174 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as

	Development Condition	Specifications
		identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
14.	Paseo Greenways	The "Paseo Greenways" identified in Specific Plan Figure 43 shall: (1) Have a minimum width of 45 feet (measured from the frontage of all adjacent residential entry/dining patio zones); and (2) Have a minimum area of 1.27 acres (55,321 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
15.	Wood and Gas Fireplaces	Wood and gas fireplaces shall not be permitted within any Market Rate Housing Unit or other residential unit located on the Premises.
16.	Building Base	The building base of each building shall have a minimum of 1 story and shall not exceed 3 stories. A minimum of 50 percent of the building base facade shall incorporate a change in at least one of the following: material, color, or transparency that is different from the building facade material, color, or transparency above the building base. Building base facades without windows shall incorporate changes in wall texture, material and color, artistic features, or murals to provide varied and articulated facades.

	Development Condition	Specifications
17.	Restrictions on Visitor Accommodations and Other Uses	Neither the Premises, nor any Market Rate Housing Unit or other residential unit on the Premises will, at any time, be Constructed as, or converted to, accessory dwelling units, visitor accommodation units, or units rented for short-term residential occupancy or be used as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, other transient use, or any other use not expressly allowed under the Specific Plan or this Lease.
18.	Agreements Regarding Certain Programs	No Construction on the Premises, nor the Premises, nor any Market Rate Housing Unit or other residential unit on the Premises will, at any time, be eligible to participate in any residential development bonus incentive program adopted by the original Landlord under its Governmental Authority that is not required by State law, such as Complete Communities Housing Solutions, the Accessory Dwelling Unit Bonus Program, or Micro-Unit Density Bonus, unless otherwise authorized by City Council ordinance specifically applicable to the Premises.

EXHIBIT N
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

CONTRACTOR PREQUALIFICATION APPLICATION FORM

[**Attached behind this cover page**]

CONTRACTOR PREQUALIFICATION APPLICATION

1. Applicant Information

Name of Company ("Applicant"): _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Address(es), phone and fax number(s) of Applicant facilities located in San Diego County (if different from above):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Type of Business: _____

Type of License: _____

Company Representative for this Application (Name and Title): _____

2. Applicant Exceptions – Pass / Fail

2.1 If the Applicant takes exception to any portion of the contract terms, the Applicant must identify and explain to the Landlord in writing the basis for the exception. The Applicant must submit any claimed exception within 10 calendar days of the date of Applicant submittal.

3. Project Team and General Qualifications (5 Points Max)

3.1 Describe the proposed management plan for this Applicant's submittal and include all relevant evidence of State licenses. Describe the qualifications of key proposed construction and technical personnel, and subcontractors, from applicable fields including the following:

3.1.1 Civil; and

3.1.2 Environmental.

4. Technical Approach and Design Concept (15 Points Max)

4.1 Describe in detail the proposed design concept for this Project. Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow Landlord and Tenant to make an informed evaluation of the Applicant's technical approach. The completeness and technical merit of the design concept will be evaluated. The following elements shall be included in this Applicant submittal:

4.1.1 Proposed Design Schedule: Outline the proposed design schedule, including sequencing of each major design component (30%, 60%, 100%, and Final Design) and proposed durations.

4.2 Scope of improvement description and locations.

4.3 Storm Water Pollution Control Best Management Practices.

4.4 Quality Assurance/Quality Control Plan (QA/QC Plan): The Applicant shall submit a QA/QC Plan specifically developed for this project. The Applicant's QA/QC Plan shall comply with Landlord's Quality Assurance/Quality Control Plan Guidelines. The QA/QC Plan shall describe the tools, process, and resources the Applicant will use to ensure that it provides facilities that meet the Landlord's requirements.

4.5 Curb Ramp Design and Installation plan pursuant to the Access Law Compliance Section's Preliminary Engineering Assessment Report and clarification amendment memo regarding changes to the 2020 California Building Code requirements and highlight any modification, if any.

4.6 Permits: the Applicant shall identify what permits are required and what is the proposed plan/timeline to obtain the required permit(s).

5. Construction Plan (20 Points Max)

5.1 Describe the proposed construction plan for this Project, including the following, at a minimum:

5.1.1 Description of relevant phase(s) and lease(s) in which the construction will take place;

5.1.2 Construction approach and methods;

5.1.3 Plan for operation of facility during construction; and

5.1.4 Plan for phasing of construction activities.

5.2 General plan for functional testing and start-up.

5.3 Proposed safety program

5.4 Proposed emergency response plan

5.5 Proposed construction schedule

5.6 Traffic Control Management

5.7 Community Impact

6. Equal Opportunity Contracting Program (20 Points Max)

6.1 Failure to submit the required EOCP information will result in Applicant's submittal being deemed incomplete and Applicant's submittal will be rejected.

6.2 Subcontractor Documentation of EOCP information, if applicable.

7. Financial Viability (30 Points Max)

7.1 Provide financial statements for the past three (3) years of operations.

8. Reference Checks (5 Points Max)

8.1 Three references are required

Reference #1 name:

Reference #1 Company

Reference #1 Phone:

Reference # email:

8.2 Reference #2 name:

Reference #2 Company

Reference #2 Phone:

Reference #2 email:

8.3 Reference #3 name:

Reference #3 Company

Reference #3 Phone:

Reference #3 email:

EXHIBIT O
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

SUBTENANT/SUB-USER INSURANCE REQUIREMENTS

[NOTE TO DRAFT: THE SUBTENANT/SUB-USER INSURANCE REQUIREMENTS WILL BE INSERTED AFTER BEING AGREED UPON BY THE PARTIES PRIOR TO THE FIRST MARKET RATE HOUSING RETAIL GROUND LEASE CLOSING AND WILL BE BASED ON THE CITY'S THEN STANDARD INSURANCE REQUIREMENTS FOR LEASES AND LICENSE AGREEMENTS WITH SIMILAR USES.]

EXHIBIT P
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

MASTER DEVELOPMENT AREA LEGAL DESCRIPTION

[**LEGAL DESCRIPTION OF THE FULL PROPERTY DEFINED IN THE DDA TO BE INSERTED**]

EXHIBIT Q
TO
MARKET RATE HOUSING/RETAIL GROUND LEASE
([INSERT NAME OF TENANT AND DEVELOPMENT PARCEL NUMBER])

PROJECT LABOR AGREEMENT CERTIFICATION FORM

[DATE]

City of San Diego
[ADDRESS]
Attention: Economic Development Director

RE: Midway Rising Disposition and Development Agreement:
Project Labor Agreement Certification

Dear [**TO BE DETERMINED**],

The letter constitutes our certification of compliance with the project labor agreement requirements of Section 11.2 of that certain Market Rate Housing/Retail Ground Lease by and between the City of San Diego, a municipal corporation ("**City**"), and [**TO BE DETERMINED**], dated [**TO BE DETERMINED**] ("**Lease**").

The undersigned represents and warrants to the City that: (1) [**INSERT NAME OF GENERAL CONTRACTOR AND ITS CSLB GENERAL CONTRACTOR LICENSE NUMBER**] entered into that certain Project Labor Agreement, dated [**TO BE DETERMINED**] ("**PLA**"), with the San Diego County Building & Construction Trades Council regarding construction work to be performed on Development Parcel [**TO BE DETERMINED**], as defined in the DDA; (2) The duration of the PLA is [**TO BE DETERMINED COMMENCEMENT AND TERMINATIONS DATES OF PLA**]; and (3) the PLA complies with all the terms of that certain Memorandum of Understanding between Master Developer, as defined in the DDA, and San Diego County Building & Construction Trades Council, dated March 28, 2022, and Section 11.2 of the Lease.

SAN DIEGO COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL

By:_____
Name:_____
Title:_____
Date:_____

ATTACHMENT 16
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

ENTERTAINMENT CENTER LEASE FORM

[**Attached behind this cover page**]

ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

by and between

THE CITY OF SAN DIEGO,
a California municipal corporation

and

[INSERT TENANT'S NAME IN ALL CAPS],
a [INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY]

ATTACHMENT 16-2
Entertainment Center Lease Form

ENTERTAINMENT CENTER GROUND LEASE

(Midway Rising)

This ENTERTAINMENT CENTER GROUND LEASE (this "**Lease**") is entered into between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and [**NOTE TO DRAFT: INSERT TENANT'S NAME IN ALL CAPS**], [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**] ("**Tenant**").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, LANDLORD AND TENANT AGREE AS FOLLOWS:

1. **LEASE SUMMARY**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 3 and the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

1.1 Premises. The real property specifically described in **EXHIBIT A** attached to this Lease, as **EXHIBIT A** is revised from time to time to incorporate completed Park areas as described in this Section 1.1, including all Improvements located on such real property on or after the Commencement Date. **EXHIBIT B** attached to this Lease contains a site plan of the Premises. The Premises are part of a larger mixed-use redevelopment project referred to as the "**Development**" in the DDA that is being developed in phases by Tenant's predecessor-in-interest, including the Parks. Under the DDA, all Parks are to be incorporated into the Premises under this Lease. On the Commencement Date, certain Parks may have been completed and included in **EXHIBIT A** and **EXHIBIT B**. The Parties also anticipate that certain other Parks will be completed after the Commencement Date and incorporated into the Premises within ninety (90) days following their completion. Whenever a newly completed Park is incorporated into the Premises, Tenant will prepare new versions of **EXHIBIT A** and **EXHIBIT B** and deliver them to Landlord for review to confirm that the revised exhibits accurately reflect the Park area being added. Once the Parties are in agreement that the revised exhibits accurately reflect the Park area being added to the Premises, the Parties will administratively, without the need for City Council approval, enter into an amendment to this Lease to delete the then existing **EXHIBIT A** and **EXHIBIT B** and replace them with the revised **EXHIBIT A** and **EXHIBIT B** showing the added Park area. At all times, the then current **EXHIBIT A** is controlling as to the real property constituting the Premises.

1.2 Commencement Date. [**NOTE TO DRAFT: THE DATE OF THE VERTICAL GROUND LEASE CLOSING FOR THIS ENTERTAINMENT CENTER GROUND LEASE UNDER THE DDA TO BE INSERTED**].

1.3 Term. The Term of this Lease will: (a) begin on the Commencement Date; and (b) end on the earlier of the Scheduled Expiration Date or an earlier Expiration Date occurring under the terms of this Lease.

1.4 Rent. Collectively, all Ticket Charge Payments and all Additional Rent, including Capital Sales Event Payments.

1.5 Permitted Uses. Collectively: (a) the Construction of the Project on the Premises in accordance with this Lease and the related use of vehicles, equipment, and machinery; (b) after the Project Completion Date, subject to compliance with all other provisions of this Lease: (i) staging and hosting of sports and other sporting activities (professional, collegiate, scholastic, and amateur), entertainment, civic, community and cultural uses, including charitable and for-profit events and concerts, and all activities incidental to such events; (ii) operation of one or more professional sports teams, including the playing, exhibition, presentation and broadcasting (or other transmission or reproduction) of home games, training, practices and exhibitions, promotional activities and events, community and public relations, advertising and other marketing of games and other events, ticket sales, fantasy camps and all other activities that, from time to time, are customarily conducted by or are related to the operation of a professional sports team; (iii) the entry into Use Agreements for broadcasting (or other transmission or reproduction) of events held within the Entertainment Center; (iv) operation of restaurants, clubs, and bars within the Entertainment Center; (v) sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items within the Entertainment Center that are sold and marketed in similar sports and entertainment facilities; (vi) conducting public tours of the Entertainment Center; (vii) parking in the areas of the Premises designed for parking, if any; (viii) retail uses, including a team store and other similar uses located in the Entertainment Center, along the street level of the Entertainment Center, or in kiosks, carts, or similar movable or temporary retail facilities; (ix) conducting day-to-day business operations, including front office operations for any sports team or other organization using space within the Entertainment Center for events; (x) training facilities for any sports team or other organization using space within the Entertainment Center for events; (xi) ancillary studio and related facilities for radio, television, and other broadcast and entertainment media within the Entertainment Center, including support and production facilities, transmission equipment, antennas and other transceivers and related facilities and equipment primarily for the broadcast or other transmission of sports or other events taking place within the Entertainment Center; and (xii) advertising and marketing displays for any sports team or other organization using space within the Entertainment Center for events, including naming rights displays; (c) management and maintenance of the Parks as required and permitted under **EXHIBIT L**; (d) storage of maintenance equipment and supplies used in the operation of the Premises; (e) maintenance, repairs, and other work permitted or required under this Lease; or (f) uses directly incidental to the uses described in clauses "(a)" through "(e)" in this Section 1.5 that are not prohibited by this Lease or Law. The Permitted Uses may be conducted directly by Tenant or indirectly through other Persons under Subleases or Use Agreements in accordance with this Lease. Notwithstanding anything to the contrary in this Section 1.5 or elsewhere in this Lease, use of the Parks must comply with and shall only be permitted as described in **EXHIBIT L**.

2. **PURPOSES**. Landlord owns the Premises that are located in the City of San Diego, County of San Diego, California. Tenant proposes to redevelop the Premises with the Project as part of the Development. This Lease is entered into under the terms of the DDA. Before the Commencement Date, certain Horizontal Improvements were Constructed on the Premises by Tenant's predecessor-in-interest in preparation for Tenant's Construction of the Project. Landlord

desires to convey the Leasehold Estate in the Premises to Tenant, and Tenant desires to lease the Premises from Landlord, all on the terms of this Lease, for the purposes of Tenant Constructing, operating, and maintaining the Project on the Premises during the Term.

3. **DEFINITIONS**. In addition to words, terms, or phrases defined elsewhere in this Lease, including in Section 1 and the attached exhibits, the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

3.1 Additional Rent. All money this Lease requires Tenant to pay Landlord or any other Person, whether or not expressly called Additional Rent, except Ticket Charge Payments.

3.2 Adjustments. Defined in **EXHIBIT D**.

3.3 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" and "**Affiliation**" will have the correlative meanings.

3.4 Annual Revenue Statement. An annual written statement disclosing all of Tenant's income from and expenses of operation of the Premises during the immediately preceding Lease Year, setting forth in reasonable detail Tenant's Gross Revenue and Modified Gross Revenue (each defined in **EXHIBIT D**) from the Premises during the immediately preceding Lease Year, the Ticket Charge Payment for the immediately preceding Lease Year, and all Ticket Charge Payments accrued from previous Lease Years, including in the Lease Year in which the IRR Hurdle is achieved showing the date on which the IRR Hurdle is achieved, all using industry standard accounting practices and GAAP consistently applied.

3.5 Application. Each agreement, application, certificate, document, or submission (or amendment of any of the foregoing) necessary or appropriate for Tenant to obtain: (a) any Approval to commence, perform, or complete Construction or Interior Improvement allowed under this Lease, including each application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument Tenant may reasonably request for the Construction or Interior Improvement; or (b) any Approval to use, occupy, maintain, or operate the Premises in accordance with this Lease.

3.6 Appraiser. Defined in **EXHIBIT D**.

3.7 Approval. Each license, permit (including building, grading, demolition, alteration, use, and special permits), approval, consent, certificate (including Certificate(s) of Occupancy), ruling, variance, authorization, or amendment to any of the foregoing necessary or appropriate under any Law to commence, perform, or complete Construction or Interior Improvement allowed under this

Lease, or use, occupy, maintain, or operate the Project or the Premises in accordance with this Lease.

3.8 Approved Signage Plan. Defined in Section 9.13.

3.9 Architect. An architect or engineer (as applicable to the pertinent Construction or Interior Improvement) that is: (a) selected by Tenant, a Subtenant, or a Sub-User, as applicable; (b) not Affiliated with Tenant, the Subtenant, or the Sub-User; (c) licensed as an architect or engineer (as applicable) in the State; and (d) reasonably qualified and experienced in designing and overseeing Construction or Interior Improvement similar to the Construction or Interior Improvement for which they are being retained. Tenant may replace an architect or engineer selected by Tenant, at any time, with a different architect or engineer (as applicable) satisfying the requirements of the first sentence of this Section 3.9 by Notice to Landlord.

3.10 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

3.11 Bankruptcy Sale. A sale of any property, or any interest in any property, under Title 11 United States Code section 363 or otherwise in any Bankruptcy Proceeding affecting the owner of such property.

3.12 Builder's Risk Insurance. Defined in **EXHIBIT E**, Section 1.7.

3.13 Building. All Improvements on the Premises that require the issuance of a Certificate of Occupancy before Persons may legally occupy the Improvements for the intended use.

3.14 Building Equipment. All fixtures incorporated in the Premises by either Landlord or Tenant, and used, useful, or necessary to operate the Premises (including boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes).

3.15 Business Day. Monday through Friday, except Landlord holidays when Landlord's offices are closed.

3.16 Capital Improvements. Any Restoration or addition of any Building, Building Equipment, or exterior finish on any Building.

3.17 Capital Investment. Defined in **EXHIBIT D**.

3.18 Capital Investment Certification Statement. A written statement detailing Tenant's calculation of the Capital Investment, including back-up documentation generated by an

appropriate Third Person verifying all financial information used by Tenant in calculating the total amount of the Capital Investment.

3.19 Capital Sales Event. Each of the following events occurring after the Project Completion Date that is not a Permitted Transfer: (a) a Transfer; (b) a "change in ownership" of real property with respect to the Leasehold Estate, as defined and described in California Revenue and Taxation Code, chapter 2, sections 60 through 64; or (c) a change in Control of Tenant.

3.20 Capital Sales Event Payment. The First Capital Sales Event Payment and each Subsequent Capital Sales Event Payment, all as defined in **EXHIBIT D**.

3.21 Capital Sales Event Statement. A written statement detailing Tenant's calculation of the amount of each Capital Sales Event Payment becoming due under this Lease after the consummation of the applicable Capital Sales Event, including documentation of all financial information (i.e., escrow closing statements, account statements, ledgers, accounting records, etc.) used by Tenant in making the calculations, whether or not any Capital Sales Event Payment is due.

3.22 Casualty. Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting the Premises, whether or not insured or insurable.

3.23 Casualty Termination. Termination of this Lease after a Substantial Casualty, when and as this Lease expressly allows such a termination.

3.24 CDTFA. Defined in Section 11.9.1.

3.25 Certificate of Occupancy. A certificate of occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as may be amended from time to time, and as adopted and amended by Landlord, under its Governmental Authority, from time to time.

3.26 Certifying Party. Defined in Section 38.

3.27 City Attorney. The City Attorney of the City of San Diego, California.

3.28 City Council. The City Council of the City of San Diego, California.

3.29 City Treasurer. The City Treasurer of the City of San Diego, California.

3.30 Claim. Each claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), or any judgment.

3.31 Condemnation. All the following: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) Government action not resulting in an actual transfer of an interest in

(or of the right to use or occupy) all or any part of the Premises, but creating a right to compensation, such as a change in grade of any street upon which the Premises abut that causes damage to or interferes with the use of the Premises.

3.32 Condemnation Award. All award(s) paid or payable (whether or not in a separate award) to a Party after the Commencement Date, because of or as compensation for a Condemnation, including: (a) an award made for Improvements that are the subject of the Condemnation; (b) the full amount of money paid or payable or other value deliverable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation proceeding; (c) all interest on such award; and (d) all other monetary amounts payable on account of such Condemnation, including any prepayment under any Security Instrument.

3.33 Condemnation Effective Date. For any Condemnation, the earlier of: (a) the first date when the condemning authority acquires title to or possession of any part of the Premises that is the subject of the Condemnation; or (b) the commencement of Government action creating a physical right to compensation, but not resulting in an actual transfer of an interest in or right to use or occupy the Premises.

3.34 Confidential Tenant Records. Defined in Section 13.6.

3.35 Construction. Alteration, construction, installation, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, or other work affecting the Premises, including the Project and, to the extent not included in the Project, installation of non-structural items (not part of, or incorporated into, the Structure, or required for operation, of a Building) to be installed inside a Building and not visible outside the Building, such as seats, floor coverings, wall coverings, walls and doors that are not load bearing, plumbing fixtures not installed as part of the initial construction of a Building, cabinetry, counters, window treatments, and other similar items. "Construction" does not include Interior Improvement. "**Construct**" and "**Constructed**" will have the correlative meanings.

3.36 Construction Commencement Conditions. All the following conditions precedent to each Major Construction:

(a) *Approvals*. Tenant gives Landlord copies of all Approvals required by Law for Tenant to start and complete such Major Construction, including all Approvals (building permits, grading permits, demolition permits, etc.) for any associated grading, excavation, or demolition, prior to commencement of any part of such Major Construction.

(b) *Assignment of Construction Documents*. Tenant conditionally assigns the Construction Documents and the Plans to Landlord such that after an Event of Default by Tenant that results in a termination of this Lease, Landlord may exercise all rights of Tenant under and to such documents (in Landlord's sole and absolute discretion), subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. Such assignment will include the benefit of all payments made under the Construction Documents, including payments made before the date of such assignment;

(c) *Character of Major Construction*. Landlord determines, in its reasonable discretion, that such Major Construction, when completed, will not change the use of or reduce the value or utility of the Premises;

(d) *Construction Documents*. Tenant enters into and gives Landlord copies of all Construction Documents;

(e) *Construction Surety*. Tenant gives Landlord the Construction Surety for the Major Construction;

(f) *Funds*. Except in the case of a Lower-Risk Restoration, Tenant gives Landlord written evidence reasonably satisfactory to Landlord of the commitment of funds by or to Tenant to pay all the cost of such Major Construction, as estimated by Tenant's Architect;

(g) *Insurance*. Tenant delivers to Landlord written evidence of all insurance coverage this Lease requires for such Major Construction;

(h) *Lender's Approval of Plans*. Tenant gives Landlord evidence that all Permitted Leasehold Lenders, to the extent required by their respective Security Instruments, have approved the Plans for the Major Construction;

(i) *Performance by Tenant's Architect and General Contractor*. Tenant provides Landlord with agreements (subject to the rights of Permitted Leasehold Lenders) from Tenant's Architect and from the General Contractor to continue to perform for Landlord (if Landlord so elects) all obligations of Tenant's Architect or General Contractor, as applicable, under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect or General Contractor is paid for its services requested by Landlord after termination of this Lease or re-entry onto the Premises in accordance with such contract; and

(j) *Plans*. Landlord receives and approves the Plans for the Major Construction under this Lease.

3.37 Construction Commencement Date. For each Major Construction, the first date on which Tenant has: (a) satisfied the Construction Commencement Conditions; and (b) started the physical work of any grading, any demolition or removal of any existing Improvements, any excavation work, or otherwise started the physical work of the Major Construction.

3.38 Construction Completion Date. The first date on which all the following events have occurred:

(a) *Completion Certificate*. Tenant gives Landlord a certificate from Tenant's Architect or General Contractor certifying that: (i) the Major Construction is substantially complete in accordance with the Plans for such Major Construction, except Construction of an insubstantial nature that, if not completed, will not delay issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Construction

or the applicable portion thereof or materially interfere with the contemplated use of the Improvements installed during the Major Construction; and (ii) Tenant attaches to the certificate copies of all Approvals necessary for the Major Construction issued to Tenant;

(b) *Certificates of Occupancy*. Tenant gives Landlord a copy of the temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Construction, to the extent Law requires such a certificate to use or occupy any portion of the Premises following such Major Construction;

(c) *Landlord Acceptance*. Landlord, under its Governmental Authority, accepts all improvements constructed as part of the Project that will be Landlord owned or operated to provide public services, if any;

(d) *Survey*. Tenant gives Landlord a survey of the Premises showing the as-built Improvements Constructed during the Major Construction, certified to Landlord by a licensed surveyor; and

(e) *Notice of Completion*. Tenant files a Notice of Completion for the Major Construction with the County Recorder for recordation in the official records of the County.

3.39 Construction Contract. A current, executory agreement between Tenant and a General Contractor for Construction of the applicable Major Construction, including the Project, for a guaranteed maximum price or a stipulated price expressly set forth in such contract, or on a cost plus basis, with a commercially reasonable retention amount not to be paid to the General Contractor until the final payment is due to the General Contractor and providing that such final payment will not be paid to the General Contractor until after the Construction Completion Date for the Construction to which the contract applies, and the contract complies with all the terms of the DDA and this Lease. Each Construction Contract will state that: (i) the General Contractor acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) General Contractor agrees to continue to perform for Landlord, as an express third party beneficiary of the contract, all obligations of General Contractor under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided General Contractor is paid for its services requested by Landlord after the Event of Default, in accordance with such contract.

3.40 Construction Documents. All the following documents for each Major Construction, as Tenant may Modify them from time to time, but not in violation of this Lease:

3.40.1 *Architectural Contract*. A contract between Tenant and Tenant's Architect, relating to Tenant's Architect's preparation of the Plans for the Major Construction in which: (i) Tenant's Architect acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate; and (ii) Tenant's Architect agrees to continue to perform for Landlord, as an express third-party beneficiary of the contract, all obligations of Tenant's Architect under its contract with Tenant, if this Lease terminates or Landlord re-enters the Premises

after an Event of Default (and expiration of Permitted Leasehold Lender's Cure Rights and rights to obtain a New Lease), provided Tenant's Architect is paid for its services requested by Landlord after the Event of Default, in accordance with such contract;

3.40.2 *Construction Contract*. A Construction Contract between General Contractor and Tenant, providing for General Contractor's performance of the Major Construction;

3.40.3 *Other Contracts and Permits*. All other agreements and Approvals in place, as of the Construction Commencement Date for the Major Construction, to which Tenant or anyone claiming through Tenant is a party and relating to the Major Construction.

3.41 Construction Surety. Payment and performance bonds guaranteeing: (a) the performance of the Construction Contract by the General Contractor and that the subject Major Construction will be completed in accordance with the Plans for such Major Construction by the General Contractor or, on the General Contractor's default, the surety or guarantor, in accordance with the terms of this Lease; or (b) the performance of the Interior Improvement Contract by the Interior Improvement Contractor and that the subject Major Interior Improvement will be completed in accordance with the Plans for such Major Interior Improvement by the Interior Improvement Contractor or, on the Interior Improvement Contractor's default, the surety or guarantor, in accordance with the terms of this Lease. Such bonds will be in form and substance reasonably acceptable to Landlord, for an amount of money not less than one hundred percent (100%) of the guaranteed maximum price, stipulated price, or cost-plus price (as approved by the Senior Permitted Leasehold Lender) of the Construction Contract or the Interior Improvement Contract, for the benefit of Tenant, with Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in California Code of Civil Procedure section 995.120, with an underwriting limitation, under California Insurance Code section 12090, greater than the contract amount of the bond. Each such bond must, by its express terms, remain in full force and effect until, as applicable, the Construction Completion Date for the Major Construction or the Interior Improvement Completion Date for the Major Interior Improvement. If the provider of any bond regarding any Major Construction or Major Interior Improvement becomes the subject of any Bankruptcy Proceeding, Tenant will promptly provide a substitute bond to Landlord for such Major Construction or Major Interior Improvement. The Construction Surety will be in addition to any public improvement security required by any Government regarding the Major Construction or Major Interior Improvement. If Tenant determines that any type of payment or performance bond described in this Section 3.41 is no longer reasonably available to the construction industry in the commercial surety bond market on commercially reasonable terms for the Major Construction or Major Interior Improvement, or in connection with Major Interior Improvement only, Tenant determines that an alternative form of credit enhancement is more financially prudent and consistent with industry standards (each, an "**Unavailable Bond**"), Tenant will Notify Landlord in writing within seven (7) days. The Notice will include reasonable documentation demonstrating that one or more of the payment or performance bonds described in this Section 3.41 is an Unavailable Bond and Tenant's alternative proposal for providing the risk protection to Landlord that would have been previously provided by each Unavailable Bond. Landlord will have thirty (30) days to review and approve or disapprove Tenant's proposal, in Landlord's sole discretion. If Landlord does not, in its sole

discretion, approve Tenant's alternative proposal to provide the risk protection to Landlord that would have been previously provided by each Unavailable Bond, Tenant will obtain, or will require its General Contractor or Interior Improvement Contractor, as applicable, to obtain the payment and performance bonds described in this Section 3.41 for the Major Construction or Major Interior Improvement, as applicable.

3.42 Contest. A legal proceeding commenced by Tenant to challenge: (a) the amount or validity of any Prohibited Encumbrance; (b) the validity of any Law or its application to the Premises; (c) the terms or conditions of, or requirements for, any Approval; or (d) the validity or merit of any Claim against which this Lease requires Tenant to Indemnify Landlord.

3.43 Contest Security. Cash in an amount equal to one hundred ten percent (110%) of the amount of money being contested.

3.44 Contractor Prequalification Application. The form in **EXHIBIT O**.

3.45 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person, bind such Person to an obligation, and direct or cause the direction of the day-to-day management of such Person, in all cases whether by ownership of Equity Interests, by contract, or otherwise.

3.46 Controlling and Controlled. Exercising or having Control.

3.47 County. The County of San Diego, California.

3.48 County Recorder. The Recorder of or for the County.

3.49 CPI. The United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for all Urban Consumers (CPI-U) all items published for the San Diego Metropolitan Statistical Area currently using a base of 1982-1984 = 100 or any revision to this index or successor index that tracks the same data. If the CPI ceases to be published, with no successor index, then the Parties will reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

3.50 CPI Adjustment Factor. As of any date, the greater of: (a) 1.00; or (b) the CPI for such date divided by the CPI for the Commencement Date.

3.51 DDA. The Disposition and Development Agreement between the original Landlord and Master Developer dated [**TO BE DETERMINED**], regarding Master Developer's redevelopment of the Premises, among other things.

3.52 Debt Service. Payments made in a calendar quarter towards obligations secured by Permitted Leasehold Security Instruments.

3.53 Default. Each Monetary Default, Project Construction Default, or Non-Monetary Default.

3.54 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest allowed by Law under the circumstances.

3.55 Depository. An Institutional Lender designated by the Senior Permitted Leasehold Lender or, if no Permitted Leasehold Lender exists, then by Landlord. A Permitted Leasehold Lender that is an Institutional Lender may designate itself as Depository.

3.56 Development Conditions. All the requirements for and limitations on use of the Premises, Interior Improvement, or Construction on the Premises in **EXHIBIT F**.

3.57 Development Criteria. On or after the Construction Completion Date for each Major Construction or the Interior Improvement Completion Date for each Major Interior Improvement, such Major Construction or Major Interior Improvement will: (a) consist solely of Buildings and other associated Improvements allowed under this Lease that are, collectively, completely self-sufficient and erected wholly within the boundary lines of the Premises; (b) be constructed to a standard of quality (including Structure, Building Equipment, FF&E, finishes, materials, circulation, and all other substantial characteristics) that, considered in the aggregate, is substantially equivalent to similar projects in the County; and (c) consist solely of Buildings and other associated Improvements allowed under this Lease designed to be used in their entirety for the Permitted Uses.

3.58 DIR. Defined in Section 14.

3.59 Disclosure Law. Defined in Section 13.6.

3.60 Eligible Sublease. A Sublease that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length, provided that:

3.60.1 *Purposes*. The Sublease allows the Subtenant to use or occupy part of the Premises for Permitted Uses consistent with the character and quality of the Premises;

3.60.2 *Insurance*. The Subtenant carries all the insurance required under the Subtenant/Sub-User Insurance Requirements;

3.60.3 *Attornment to Landlord*. The Subtenant has entered into a separate NDA with Landlord;

3.60.4 *Required Provisions*. The Sublease includes the provisions required under Section 27.5;

3.60.5 *SNDA with Permitted Leasehold Lender*. If any Permitted Leasehold Security Instrument or Fee Security Instrument exists and if required by a Permitted Leasehold Lender or Fee Lender, then such Permitted Leasehold Lender or Fee Lender has entered (or simultaneously enters or has agreed in writing to enter) into a subordination, non-disturbance, and attornment agreement with such Subtenant and Tenant has given Landlord written evidence of such agreement; and

3.60.6 *Term*. The term of the Sublease (including any option or renewal terms) ends on or before the day before the Scheduled Expiration Date.

3.61 Entertainment Center. A new multipurpose arena with a minimum of 380,000 square feet in floor area and a capacity of 16,000 seats. The total number of seats in the Entertainment Center may be reduced before Construction of the Project by up to five percent (5%), provided that the total number of seats in the Entertainment Center shall never be less than 15,200 and the Ticket Charge shall be increased under **EXHIBIT D**, Section 2.

3.62 Environmental Condition. Any of the following events relating to the Premises arising from the negligence or intentional misconduct of one or more Tenant Parties, contractors, Subtenants, Sub-Users, or other Persons entering the Premises during the Term: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

3.63 Environmental Law. Each Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability, or standards of conduct concerning, Hazardous Substances.

3.64 Equity Interest. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any Person.

3.65 Equity Interest Transfer. Each of the following actions or events, whether occurring by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Tenant (even though Tenant itself is not the transferor), excluding sales of Equity Interests listed on a public stock exchange in the United States by a Person holding ten percent (10%) or less of the Equity Interests in the Person whose Equity Interests are being sold; or (b) each merger, consolidation, sale, lease or the like with respect to Tenant or a series of such mergers, consolidations, sales, leases or the like occurring over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in the assets of Tenant.

3.66 Estoppel Certificate. A written, signed certification of each of the following: (a) the nature of the Certifying Party's interest in this Lease and the Premises, and all Transfers of which the Certifying Party is aware, except as otherwise disclosed in the public record; (b) this Lease is unmodified and in full force and effect, or, if there have been Modifications, that this Lease is in full force and effect, as Modified, in the manner specified in the certification; (c) to the Certifying Party's knowledge (meaning to the current, actual knowledge of the Mayor, in the case of Landlord, or the Tenant Official, in the case of Tenant, each without any duty of inquiry or investigation), there are no uncured breaches, Tenant Defaults or Landlord Defaults, or failures to perform under this Lease on the part of the Requesting Party or the Certifying Party or specifying any such breaches, Tenant Defaults or Landlord Defaults, or failures to perform claimed to exist; (d) the dates to which any amounts of Rent have been paid by or to the Requesting Party in

advance; (e) the Commencement Date and the Scheduled Expiration Date; and (f) any other matters reasonably requested by the Requesting Party.

3.67 Event of Default. Defined in Section 32.1.

3.68 Expiration Date. The date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord's exercise of remedies after an Event of Default, or otherwise.

3.69 Fair Market Rent. The fair market rent of the space to be used or occupied under a Use Agreement or a Sublease, as applicable, based on a written appraisal report disclosing the then current estimated fair market rent of such space for the uses permitted under the Use Agreement or Sublease, as applicable, and prepared by an Appraiser.

3.70 Federal. Relating to or under the authority of the federal government of the United States of America.

3.71 Fee Estate. Landlord's fee estate in the Premises, including Landlord's reversionary interest in the Premises after the Expiration Date.

3.72 Fee Lender. An Institutional Lender holding a Fee Security Instrument. Any participant or partial assignee holding any direct or indirect interest in a Fee Security Instrument will not be considered a Fee Lender.

3.73 Fee Security Instrument. Any Security Instrument: (a) encumbering all or part of the Fee Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as applicable to Fee Lenders) and containing no provision (and securing no document containing any provision) inconsistent with the Statement of Priorities; (c) otherwise complying with this Lease; (d) a copy of which (recorded or unrecorded) is promptly, after being signed, delivered to Tenant and all Permitted Leasehold Lender(s), with a certification by the Fee Lender that the copy is accurate and stating the Fee Lender's name and Notice address; and (e) held by a Fee Lender that is subject to the personal jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit.

3.74 FF&E. All movable furniture, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) located at the Premises and used for the Permitted Uses that may be removed, without material damage to the Premises, and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. FF&E includes items such as furniture, telephone, telecommunications, and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems, and peripherals.

3.75 Financial Reporting Statements. Collectively, Annual Revenue Statements, Capital Sales Event Statements, and Capital Investment Certification Statements.

3.76 Financing Plan. The plan in **EXHIBIT N** attached to this Lease for Tenant's financing of the acquisition of the rights to this Lease and Construction of the Project under this Lease.

3.77 First Capital Sales Event Payment. Defined in **EXHIBIT D**.

3.78 Foreclosure Event. Any transfer of title to all or any portion of the Fee Estate or the Leasehold Estate through any: (a) judicial foreclosure; (b) trustee's sale; (c) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (d) other similar exercise of rights or remedies under any Security Instrument; or (e) transfer by operation of or through any Bankruptcy Proceeding (including an auction or plan of reorganization in any Bankruptcy Proceeding and any Bankruptcy Sale), in each case (clauses "(a)" through "(e)") whether the transferee is a Fee Lender or Permitted Leasehold Lender, a Person claiming through a Fee Lender, Permitted Leasehold Lender, or a Third Person.

3.79 GAAP. Generally accepted accounting principles established by the Financial Accounting Standards Board in the United States.

3.80 General Contractor. A State licensed general contractor experienced in the Construction of improvements like the Project or the Major Construction, as applicable, selected by Tenant that has either: (a) been preapproved by Landlord as a prime contractor for Landlord public works projects of similar size to the contractor's proposed scope of work; or (b) submitted its qualifications to both Tenant and Landlord using the Contractor Prequalification Application and been approved by both Tenant and Landlord as having appropriate qualifications and experience to perform the contractor's proposed scope of work.

3.81 Government. All Federal, State, County, district, Landlord acting under its Governmental Authority, or other governments and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any government, whether in existence on the Commencement Date or subsequently established, having, or claiming jurisdiction over any Party, the Premises, the Project, this Lease, or any activity this Lease allows.

3.82 Governmental Authority. Landlord's police power land use regulatory authority or other police powers, separate and distinct from Landlord acting in its proprietary capacity.

3.83 Gross Revenue. Defined in **EXHIBIT D**.

3.84 Hazardous Substance. Each flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy, from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Law; (ii) is subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health or safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any Law requiring special handling in its use,

transportation, generation, collection, storage, treatment, or disposal. "Hazardous Substance" will not include any household chemical products in normal quantities used for operation and maintenance of the Premises in compliance with Law.

3.85 Hazardous Substance Discharge. Each deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Premises, or during transportation of any Hazardous Substance to or from the Premises (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Premises or any activities conducted at, on, under, in, or from the Premises, including Construction of the Project, whether or not caused by a Party or occurring before or after the Commencement Date.

3.86 Horizontal Improvements. The site preparation work, including grading and installation of utilities, completed by Master Developer on the Premises before the Commencement Date, as further described in Attachment 10 to the DDA.

3.87 Immaterial Loss. A Casualty or Condemnation resulting in a Loss not exceeding twenty-five thousand dollars ($25,000) times the CPI Adjustment Factor.

3.88 Improvements. All improvements, including all Park elements described in **EXHIBIT L** and all Park amenities, located on the Premises from time to time, including all improvements existing as of the Commencement Date, the Project, and all other improvements Constructed on or added to the Premises (i.e., Parks) after the Commencement Date.

3.89 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all Legal Costs, interest, and penalties incurred in enforcing the indemnity obligation under this Lease regarding the Claim. "Indemnified," "Indemnification," or similar terms will have the correlative meanings.

3.90 Indemnitee. Each Person entitled to be Indemnified under this Lease.

3.91 Indemnitor. Each Person agreeing to Indemnify any other Person under this Lease.

3.92 Institutional Lender. Each of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) Federal or State regulated savings bank; (f) pension, welfare, or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Federal or State regulated investment bank; (j) a Fortune 500 company; or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 3.92.

3.93 Insubstantial Condemnation. Any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

3.94 Interior Improvement. All improvements, alterations, additions, installations, fixtures, equipment, construction, installation, demolition, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, Restoration, build-out work, or other work, including storefront work, partitions, ceilings, floor coverings, wall finishes or coverings, walls and doors that are not load bearing, lighting, electrical, plumbing, mechanical, fire-life-safety, security, point-of-sale equipment, Signs permitted under this Lease, display areas, cabinetry, counters, dressing rooms, locker rooms, restrooms, stock rooms, window treatments, or other improvements within the Entertainment Center made by Tenant (other than as part of Construction of the Project) under the terms of a Sublease or Use Agreement, or made by a Subtenant or a Sub-User under the terms of its Sublease or Use Agreement, as applicable.

3.95 Interior Improvement Completion Date. The first date on which all of the following events have occurred for a Major Interior Improvement:

3.95.1 *Completion Certificate*. Tenant, the Subtenant, or the Sub-User that entered into the applicable Interior Improvement Contract gives Landlord all the following: (i) a certificate from the Architect or Interior Improvement Contractor certifying that the Major Interior Improvement is substantially complete in accordance with the Plans for such Major Interior Improvement, except work of an insubstantial nature that, if not completed, will not delay issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Interior Improvement or materially interfere with the contemplated use of the Major Interior Improvement; (ii) copies of all Approvals issued to Tenant, the Subtenant, or the Sub-User for the Major Interior Improvement; and (iii) copies of all Plans approved by Landlord, under its Governmental Authority, for the Major Interior Improvement;

3.95.2 *Certificates of Occupancy*. Tenant, the Subtenant, or the Sub-User that entered into the applicable Interior Improvement Contract gives Landlord a copy of the temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Major Interior Improvement, to the extent Law requires such a certificate to use or occupy any portion of the Entertainment Center following such Major Interior Improvement; and

3.95.3 *Notice of Completion*. Tenant, the Subtenant, or the Sub-User that entered into the applicable Interior Improvement Contract files a Notice of Completion for the Major Interior Improvement with the County Recorder for recordation in the official records of the County.

3.96 Interior Improvement Contract. A current, executory agreement between Tenant or a Subtenant or Sub-User and an Interior Improvement Contractor for Construction of the applicable Major Interior Improvement for a guaranteed maximum price or a stipulated price expressly set forth in such contract, or on a cost plus basis, with a commercially reasonable retention amount not to be paid to the Interior Improvement Contractor until the final payment is due to the Interior Improvement Contractor and providing that such final payment will not be paid to the Interior Improvement Contractor until after the Interior Improvement Completion Date for the Major Interior Improvement to which the contract applies, and the contract complies with all the terms of this Lease. Each Interior Improvement Contract will state that the Interior Improvement

Contractor acknowledges and agrees that it may enforce any mechanics liens only against the Leasehold Estate and not the Fee Estate.

3.97 Interior Improvement Contractor. A State licensed general contractor experienced in the Construction of improvements like the Interior Improvement selected by Tenant, or by a Subtenant or Sub-User, and approved by Tenant, that is in good standing with the California Contractors State License Board (or its successor in function) and has appropriate qualifications and experience to perform the contractor's proposed scope of work.

3.98 IRR. Defined in **EXHIBIT D**.

3.99 IRR Hurdle. Defined in **EXHIBIT D**.

3.100 Landlord. Initially, means the Landlord named in the initial paragraph of this Lease. After every transfer or conveyance of the Fee Estate, "Landlord" means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a transfer or conveyance of the Fee Estate occurs (in all cases in compliance with this Lease), the transferor (including a Fee Lender, or anyone acting for a Fee Lender, that has acquired and then disposed of the Fee Estate) will be entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such transfer or conveyance.

3.101 Landlord Default. The occurrence of any of the following, subject to Landlord's right to Notice and opportunity to cure in accordance with Section 32.11: (a) any material failure by Landlord to perform its obligations under this Lease; or (b) Landlord's failure to comply with any material restriction or prohibition in this Lease.

3.102 Landlord Parties. Collectively, Landlord, its City Council, elected officials, officers, employees, and agents.

3.103 Landlord Party. Individually, Landlord, its City Council, elected officials, officers, employees, or agents.

3.104 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any manner to any Party, the Premises, this Lease, the Project, any Construction on the Premises, any Interior Improvement on the Premises, any Party's rights, obligations, or remedies under this Lease, or any Transfer, whether in force on the Commencement Date or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

3.105 Lease Impairment. Any of the following, whether expressly provided for in this Lease or resulting from any future agreement between Landlord and Tenant or from the unilateral action of either: (a) a Modification of this Lease, in whole or in part; (b) subordination of this Lease to any Fee Security Instrument or other encumbrance on the Fee Estate; (c) making or material modification of any encumbrance affecting the Fee Estate that is senior in recording priority to this Lease; (d) Tenant's consent (or failure to object) to: (i) any of the foregoing; (ii) any Bankruptcy

Sale of the Fee Estate; (iii) any other matter of a material nature requiring Tenant's consent under this Lease; (e) delivery of any Notice that impairs or may impair, or purports to limit the exercise of, any Permitted Leasehold Lender's rights and remedies under its Permitted Leasehold Security Instrument or this Lease; or (f) Tenant's exercise of any right to treat this Lease as terminated under 11 U.S.C. § 365(h).

3.106 Lease Memorandum. The Memorandum of Ground Lease recorded with the County Recorder against the Premises in the form of Attachment 13 to the DDA.

3.107 Lease Year. Each of: (a) the period from the Commencement Date through the immediately following December 31; (b) every subsequent period of twelve (12) calendar months beginning on January 1 and ending on the immediately following December 31 during the Term; and (c) the period from the last January 1 during the Term through the Expiration Date. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and continuing with "Lease Year 2," "Lease Year 3," and so on.

3.108 Leasehold Estate. Tenant's leasehold estate in the Premises, and all Tenant's rights and privileges under this Lease, upon and subject to all the terms of this Lease.

3.109 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding involving this Lease or the other Party; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested of a Party by Notice from the other Party; (d) requirement under Law or request by Notice from a Party that such Person or its employees act as a witness in any proceeding regarding this Lease or the requesting Party; or (e) review or approval requested of a Party by Notice from the other Party.

3.110 Lender. A Fee Lender or a Permitted Leasehold Lender, as applicable, and its successors and assigns permitted under this Lease.

3.111 Lender Protections. For any Lender, all rights, protections, and privileges of such Lender under this Lease, if any, including: (a) any right to receive Notices or to cure Defaults (including, in the case of a Permitted Leasehold Lender, all Permitted Leasehold Lender's Cure Rights); (b) in the case of a Permitted Leasehold Lender, any requirement for Permitted Leasehold Lender's Consent and all provisions for a New Lease; and (c) all other rights, remedies, protections, privileges, and powers of such Lender and anyone claiming through or under such Lender, including (in the case of a Permitted Leasehold Lender) any New Tenant and any Post-Foreclosure Tenant.

3.112 Limited Duration Events. Defined in **EXHIBIT L**, Section 5.3.

3.113 Loss. Any Casualty, Condemnation, or other damage or injury to the Premises.

3.114 Loss Proceeds. Any Condemnation Award(s) or Property Insurance Proceeds.

3.115 Lower-Risk Restoration. Any Restoration after an Immaterial Loss or meeting all the following conditions: (a) Restoration Funds equal or exceed the reasonably estimated cost of Restoration; and (b) such Restoration complies with the Development Criteria and contemplates Restoration generally comparable (in size, structure, configuration, use, and quality) to the Premises as existing before the Loss, to the extent Law permits.

3.116 Maintenance Deficiency. Defined in Section 10.3.

3.117 Maintenance Standard. Defined in Section 10.2.

3.118 Major Construction. Tenant's first Construction undertaken under this Lease consisting of the original Construction of the Project or any other Construction (including any coordinated series of related projects) that either: (a) will result in the Entertainment Center being closed for more than two (2) weeks; (b) will result in any of the Parks being closed to the public for more than two (2) weeks; (c) will affect the Structure of a Building (other than to a de minimis extent, such as replacement of rooftop chiller units); (d) will involve installation, removal, or modification of load bearing walls or doors; (e) will involve installation, removal, or alteration of major components of Building Equipment; or (f) has an estimated cost exceeding five million dollars ($5,000,000) times the CPI Adjustment Factor.

3.119 Major Construction Period. The period beginning on the Construction Commencement Date for the Major Construction and ending on the Construction Completion Date for such Major Construction.

3.120 Major Interior Improvement. Each Interior Improvement that either: (a) affects the Structure of the Building in which the subject Interior Improvement is located (other than to a de minimis extent, such as replacement of rooftop chiller units); (b) involves installation, removal, or modification of load bearing walls or doors; (c) involves installation, removal, or alteration of major components of Building Equipment; or (d) has an estimated cost exceeding five million dollars ($5,000,000) times the CPI Adjustment Factor.

3.121 Management Agent. As designated by Tenant from time to time, either Tenant or another Person with substantial experience in managing improvements substantially similar to the Project located on the Premises.

3.122 Management Agreement. An agreement between Tenant and a Third Person for that Third Person to act as Management Agent for the Premises.

3.123 Market Value. Regarding either the Fee Estate or the Leasehold Estate, as applicable, means, as of any date of determination, the present fair market value of such estate (including the fair market value of the rights of the holder of such estate in and to any Improvements) as of such date: (a) considered as if no Loss occurred; (b) without adjusting for any expectation of any Loss; (c) considered as if the Leasehold Estate was not terminated; (d) taking into account the benefits and burdens of this Lease, the remaining Term, and all other matters affecting such estate and its valuation, in accordance with then current appraisal practices; and (e) discounting to present value all the obligations and benefits associated with such estate (including, in the case of the Fee Estate,

the Rent and Landlord's reversion). The Market Value will be determined as if the Term were to continue until the Scheduled Expiration Date.

3.124 Master Developer. Midway Rising, LLC, a Delaware limited liability company, and its permitted successors or assigns under the DDA.

3.125 Master Development Area. The real property specifically described in **EXHIBIT Q**.

3.126 Mayor. The Mayor, from time to time, of Landlord or such Person's designee or successor in function and authority, or, if the Fee Estate is transferred to a Person other than Landlord, then such Fee Estate owner's representative designated in a Notice to Tenant.

3.127 Modification. Any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of a specified agreement, document, or terms.

3.128 Modified Gross Revenue. Defined in **EXHIBIT D**.

3.129 Modify. Agree to, cause, make, or permit any Modification.

3.130 Monetary Default. Any failure by Tenant to: (a) pay, when and as this Lease requires, any amount of money, whether to Landlord or to a Third Person; (b) properly apply any Loss Proceeds or other money, if any, that this Lease requires Tenant to apply in a particular manner or for a particular purpose; (c) comply with all obligations regarding Prohibited Encumbrances under Section 16; or (d) obtain, replace, maintain, pay premiums for, or give Landlord written evidence of, any insurance coverage or surety bond when and as this Lease requires.

3.131 Music Licensing Entity. Defined in Section 9.18.

3.132 NDA. A non-disturbance and attornment agreement, in recordable form, in substantially the form of **EXHIBIT M**, modified as necessary to reflect the parties and the nature and circumstances of the estates such NDA affects.

3.133 Net Cash Flow. Defined in **EXHIBIT D**.

3.134 New Lease. A new lease of the Premises, effective as of (or retroactively to) the Expiration Date of this Lease, for the remainder of the Term, through and including the Scheduled Expiration Date, considered as if this Lease was not terminated, with New Tenant, on all the same terms and provisions of this Lease, and in the same form as this Lease, except as this Lease otherwise expressly states. Any New Lease will include all rights and privileges of Tenant under this Lease, but will not include any Tenant-Specific Obligations.

3.135 New Lease Delivery Date. The first date on which both New Tenant and Landlord have entered into (or are deemed to have entered into) a New Lease.

3.136 New Lease Option Period. If any Expiration Date occurs (except because of: (a) the Scheduled Expiration Date; (b) a Casualty; or (c) a Substantial Condemnation), a period beginning on such Expiration Date and ending three (3) months after Landlord Notifies all Permitted Leasehold Lender(s) of such Expiration Date. The New Lease Option Period will be tolled and extended: (i) during any Bankruptcy Proceeding affecting Landlord or Tenant to the extent such Bankruptcy Proceeding prevents exercise of the New Lease option or entry into the New Lease by the Permitted Leasehold Lender entitled to a New Lease at the time under this Lease; (ii) during any period when the right of the Permitted Leasehold Lender entitled to a New Lease at the time, under this Lease, to require Landlord to enter into a New Lease is otherwise materially restricted or impaired, other than because of such Permitted Leasehold Lender's act or omission; and (iii) for thirty (30) days after the conclusion of an event described in either clause "(i)" or "(ii)" of this Section 3.136. All Permitted Leasehold Lenders, considered as a group, will have only a single New Lease Option Period. No individual Permitted Leasehold Lender will have a separate or sequential New Lease Option Period.

3.137 New Tenant. Either: (a) the Permitted Leasehold Lender that is entitled to and requests (or obtains) a New Lease; or (b) such other Tenant under a New Lease as such Permitted Leasehold Lender will designate by Notice to Landlord, which successor Tenant will be subject to Landlord's prior written consent, in Landlord's reasonable discretion. Any New Tenant will have all the same rights and obligations of Tenant under this Lease, except as otherwise provided in this Lease and subject to the definition of a New Lease and the occurrence of the New Lease Delivery Date.

3.138 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of Tenant to perform any one of its obligations under this Lease, including not meeting any deadline in the Performance Schedule; (b) Tenant's failure to comply with any covenant, condition, restriction, or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease by Tenant.

3.139 Notice. Each approval, consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default or termination of this Lease or Notice of a Landlord Default. Notices must be in writing and delivered in accordance with Section 34.

3.140 Notice of Completion. The notice described in and ascribed the same name in California Civil Code section 8182.

3.141 Notice of Default. Each Notice of a Default. A Notice of Default is not required to specify a cure period.

3.142 Notify. Give a Notice.

3.143 Operational Use Agreement. Defined in Section 26.1.

3.144 Parks Management and Maintenance Requirements. The requirements in **EXHIBIT L**.

3.145 Parks. The 8.2 acres of defined areas throughout the Development shown in the Specific Plan to be developed as park, including "The Green," "The Square," "The Plaza," "Paseo Greens," and "Paseo Greenways" (all as defined in the Specific Plan). "**Park**" refers, individually, to each distinct area shown in the Specific Plan as being developed as park.

3.146 Parties. Collectively, Landlord and Tenant.

3.147 Party. Individually, Landlord or Tenant, as applicable.

3.148 Performance Schedule. The schedule for the performance of certain actions under this Lease by Landlord or Tenant in **EXHIBIT I**.

3.149 Permanent Seat Reduction. A reduction in the total number of seats in the Entertainment Center below the total number of seats in the Entertainment Center as of the Project Completion Date that continues for more than seven (7) consecutive days. For the avoidance of doubt, event-specific seating reconfigurations, curtaining, staging configurations, hospitality areas, premium seating configurations and similar event-related seating modifications shall not constitute a Permanent Seat Reduction unless the resulting reduction is below the total number of seats in the Entertainment Center as of the Project Completion Date for more than seven (7) consecutive days.

3.150 Permitted Exceptions. All the following matters: (a) all items shown in the Preliminary Report as an exception to coverage under the title insurance policy offered in the Preliminary Report; (b) all taxes not on rolls; (c) the lien of Real Estate Taxes, if any, relating to the Leasehold Estate because of the creation of the Leasehold Estate under this Lease; (d) all Laws applicable to the Premises; (e) this Lease and the Lease Memorandum; (f) all Permitted Leasehold Security Instruments; (g) all existing Improvements on the Premises as of the Commencement Date; (h) all Applications made by Tenant or at Tenant's request relating to the Premises; (i) all Approvals relating to the Premises; (j) all matters consented to or otherwise caused by Tenant; (k) all documents or encumbrances expressly required or allowed to be recorded against the Leasehold Estate under this Lease or Law; or (l) all liens, encumbrances, covenants, conditions, restriction, reservations, contracts, permits, licenses, easement or rights-of-way relating to or affecting the Premises, whether or not of record, as of the Commencement Date.

3.151 Permitted Leasehold Lender. An Institutional Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord will not be bound by the assignment or change of address, unless and until each affected Permitted Leasehold Lender has given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument will not be considered a Permitted Leasehold Lender or affect Landlord in any way. (Only the "lead" Institutional Lender in any syndicated loan arrangement or loan participation arrangement will be considered a Permitted Leasehold Lender. A lead Institutional Lender may be replaced at any time upon Notice from that Institutional Lender, but only the designated lead Institutional Lender in any syndication or participation arrangement will be a Permitted Leasehold Lender.)

3.152 Permitted Leasehold Lender's Consent. Any matter expressly referring to "Permitted Leasehold Lender's Consent" means Permitted Leasehold Lender's prior (or, at Permitted Leasehold Lender's option, simultaneous or subsequent) written consent to such matter. If this Lease requires Permitted Leasehold Lender's Consent for a particular matter, then Permitted Leasehold Lender may only reasonably withhold consent; provided, however, Permitted Leasehold Lender will be entitled to withhold its consent in its sole discretion, if the matter: (i) materially increases or decreases Landlord's obligations under this Lease; (ii) materially increases or decreases Tenant's obligations under this Lease; (iii) eliminates or modifies any Lender Protections; or (iv) will result in a termination of this Lease. When no Permitted Leasehold Lender exists, references to Permitted Leasehold Lender's Consent will be disregarded. Nothing in this definition will require Landlord to obtain (or to confirm that Tenant obtained) any consent from any Permitted Leasehold Lender, except where this Lease expressly requires "Permitted Leasehold Lender's Consent."

3.153 Permitted Leasehold Lender's Cure. Subject to and in accordance with this Lease, any Permitted Leasehold Lender's: (a) actions taken to cure a Default, whether or not successful; or (b) cure of a Default.

3.154 Permitted Leasehold Lender's Cure Rights. All rights of each Permitted Leasehold Lender under this Lease to effectuate any Permitted Leasehold Lender's Cure.

3.155 Permitted Leasehold Security Instrument. Each Security Instrument: (a) encumbering only the Leasehold Estate or any interest in the Leasehold Estate; (b) containing or incorporating by reference, and fully complying with, the Statement of Priorities (as it applies to Permitted Leasehold Lenders) and containing no provisions (and securing no other document containing any provisions) inconsistent with the Statement of Priorities; (c) held by an Institutional Lender; and (d) a copy of which is delivered to Landlord promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and Notice address.

3.156 Permitted Transfer. A Transfer, where following the Transfer, either Tenant, an Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, or an Unchanged Entity that has continuously owned an Equity Interest in another Unchanged Entity that has continuously owned an Equity Interest in Tenant since the Commencement Date, continuously has Control over the Transferee, the Transferee is not a Prohibited Transferee, and Tenant is not released from liability under this Lease following the Transfer. If Tenant's Control over a Transferee ends or Control of an Unchanged Entity to which a Transfer is made changes, each such event will be considered a Transfer that is not a Permitted Transfer.

3.157 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

3.158 Plans. The plans and specifications for Major Construction prepared by Tenant's Architect or the plans and specifications for Major Interior Improvement prepared by Tenant's Architect or a Subtenant's or Sub-User's Architect, as applicable, that have received all necessary Approvals regarding the subject Major Construction or Major Interior Improvement, respectively, submitted in both hard copy and such machine-readable format as is then customary in the architectural or engineering profession (as applicable) in the State, using naming conventions and other criteria reasonably approved or required by Landlord, consisting of architectural or engineering plans (as applicable), and elevations and sections indicating principal areas, core design and location; and unless Landlord agrees in writing, in Landlord's sole discretion, at Tenant's request to waive provision of the following information, also location, number, and capacity of elevators, basic structural system, minimum estimated electrical capacity and distribution system, general type of plumbing system, façade, placement, and orientation, gross and rentable square foot analysis, and principal types of HVAC systems.

3.159 Post-Foreclosure Tenant. The following Persons: (a) any assignee, purchaser, or transferee of the Leasehold Estate through a Foreclosure Event, including a Permitted Leasehold Lender; and (b) the direct and indirect successors and assigns of any Person identified in clause "(a)." Any Post-Foreclosure Tenant will have all the rights and obligations of Tenant under this Lease.

3.160 Pre-Approved Signs. Defined in Section 9.13.

3.161 Preliminary Report. The offer to issue an American Land Title Association leasehold title insurance policy attached to this Lease as **EXHIBIT K**.

3.162 Premises Control. For any Permitted Leasehold Lender, any of the following: (a) possession of the Premises by a receiver, trustee, or similar officer appointed in a judicial proceeding commenced by such Permitted Leasehold Lender; (b) possession as mortgagee-in-possession under an affirmative written election to become a mortgagee-in-possession; or (c) acquisition of the Leasehold Estate by a Post-Foreclosure Tenant through a Foreclosure Event initiated by such Permitted Leasehold Lender.

3.163 Prevailing Wage Law. Defined in Section 14.

3.164 Prevailing Wage Determination. Each of the following events: (a) each determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) each determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) each administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776, or applicable Federal law; or (d) each administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781, 1782, or applicable Federal law.

3.165 Prevailing Wages. Defined in Section 14.

3.166 Prohibited Encumbrance. Each lien, Security Instrument, mechanic's lien, easement, property interest, or other encumbrance recorded or asserted against the Premises that is not a Permitted Exception.

3.167 Prohibited Transferee. Each Person: (a) with whom Landlord is in litigation at the time a Transfer to the Person is proposed, made, or to be made, exclusive of defendants in eminent domain litigation commenced by Landlord, under its Governmental Authority, where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (c) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (d) entitled to claim diplomatic immunity; (e) that is a domestic or foreign governmental entity; or (f) that is immune or may elect to be immune from suit under State or Federal law.

3.168 Project. Tenant's Construction of the entirety of the improvements described in **EXHIBIT J**, including all initial interior improvements to the Entertainment Center to make it operational for events, such as installing lighting, seating, etc., hardscape, landscaping, and on-site and off-site public and private improvements, all in accordance with Plans approved by Landlord through the Vertical Ground Lease Escrow for this Lease under the DDA.

3.169 Project Completion Date. The Construction Completion Date for the Project.

3.170 Project Completion Deadline. The first date that is [**TO BE DETERMINED**] days after the Commencement Date.

3.171 Project Construction Default. Tenant's failure to cause the Project Completion Date to occur on or before the Project Completion Deadline.

3.172 Property Insurance. Defined in **EXHIBIT E**, Section 1.3.

3.173 Property Insurance Proceeds. Net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance and Builder's Risk Insurance, when and as received by Landlord, Tenant, or Depository, excluding proceeds of Tenant's business interruption insurance exceeding Rent.

3.174 Quitclaim Deed. A quitclaim deed reasonably acceptable to Landlord conveying all of Tenant's right, title and interest in this Lease and the Leasehold Estate to Landlord.

3.175 Real Estate Taxes. All general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes and the like), supplemental taxes, possessory interest taxes, special taxes imposed under the Mello-Roos Community Facilities District Act or other special taxing district,

assessments, municipal water and sewer rents, rates or charges, excises, levies, license and permit fees, fines, penalties and other Governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that at any time during the Term and applicable to the Term or any part of it that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or any vault, passageway or space in, over or under any street constituting a portion of the Premises, or any FF&E, Building Equipment, or other facility used in the operation of the Premises, or the rent or income received from the Premises, or any use or occupancy of the Premises. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest. Any possessory interest tax imposed will be solely a tax liability of Tenant and will be paid before delinquency by Tenant. If at any time during the Term, the method of taxation prevailing at the Commencement Date will be altered so that any new tax, assessment, levy (including any municipal, State or Federal levy), imposition, or charge, or any part thereof, will be measured by or be based in whole or in part upon the Premises or any rent or income from the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, real estate taxes, or charges, or the part thereof, to the extent that they are so measured or based, will be deemed to be included within the term "Real Estate Taxes," to the extent that such Real Estate Taxes would be payable, if the Premises were the only property of Landlord subject to such Real Estate Taxes.

3.176 Receipt Date. Defined in Section 34.

3.177 Recreational Value Points. Recreational value points under the scoring methodology outlined in the City of San Diego, California, Parks Master Plan adopted August 2021, Appendix D.

3.178 Requesting Party. Defined in Section 38.

3.179 Restoration. After a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially equivalent to their condition before the Loss, subject to any changes in Law limiting the foregoing.

3.180 Restoration Funds. Any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

3.181 Restore. Accomplish a Restoration.

3.182 Revaluation Date. Defined in **EXHIBIT D**.

3.183 Revenue. All money, and the monetary value of property or services, received by Tenant from the use or occupancy of or the right to use or occupy any part of the Premises, including all revenue from or relating to money or other consideration paid or payable by Subtenants or Sub-Users. Revenue will be determined on a cash basis.

3.184 Scheduled Expiration Date. [**NOTE TO DRAFT: PARTIES TO INSERT SPECIFIC DATE THAT IS THE 85TH ANNIVERSARY OF THE COMMENCEMENT DATE**].

3.185 SDMC. San Diego Municipal Code.

3.186 Security Fence. Defined in **EXHIBIT L**, Section 3.18.

3.187 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate or the Fee Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender or Fee Lender (as applicable), then all such security instruments so consolidated or restated will constitute a single Security Instrument. A Security Instrument may be either a Fee Security Instrument or a Permitted Leasehold Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

3.188 Security Plan. Defined in Section 9.6.1.

3.189 Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien priority position of the same type (Fee or Leasehold). Where "Senior" is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien priority position to the specified Security Instrument. Priority of liens will be determined under Section 30.1 titled "Priorities of Multiple Lenders." If only one Security Instrument of a particular type exists, then it will be the "Senior" Security Instrument of such type.

3.190 Sign. Any banner, pennant, flag, poster, sign, electronic reader board, decoration, marquee, awning, or similar device or advertising.

3.191 Specific Plan. The Midway Rising Specific Plan adopted by Landlord, under its Governmental Authority, effective [**TO BE DETERMINED**], and governing the Premises.

3.192 State. The State of California.

3.193 Statement of Priorities. A statement, in or relating to any Security Instrument, substantially in the form and containing all the provisions set forth in Sections 3.193.1 through 3.193.3 as applicable to Fee Security Instruments or Permitted Leasehold Security Instruments, respectively. Such statement reflects the definitions in this Lease. All such terms will be (deemed) modified in any Security Instrument as appropriate to reflect the definitions in such Security Instrument.

3.193.1 *For Fee Security Instruments*. Any Fee Security Instrument attaches solely to the Fee Estate. Any Fee Security Instrument will be subject and subordinate to, and will not encumber or attach to or otherwise affect any of the following (and by accepting its Fee Security Instrument, each Fee Lender unconditionally and irrevocably subordinates and agrees to subordinate its Fee Security Instrument to all the following), unless and until the New Lease Option Period expires without a Permitted Leasehold Lender entitled to request a New Lease requesting a New Lease: (i) this Lease, any New Lease, and the Leasehold Estate under either of them (whether held by Tenant, a Post-Foreclosure Tenant, or a New Tenant); (ii) any estate (including a Permitted Leasehold Security Instrument) directly or indirectly arising from this Lease or any New Lease; (iii) Tenant's, Post-Foreclosure Tenant's, New Tenant's, and any Permitted Leasehold Lender's rights and remedies under this Lease, whether accruing before or after any Foreclosure Event under a Fee Security Instrument; and (iv) any Modification of any of the items described in the foregoing clauses "(i)" through "(iii)," whether or not Fee Lender joins in or consents to it. Upon any Foreclosure Event under a Fee Security Instrument, the resulting owner of the Fee Estate will succeed only to the Fee Estate, subject to the items described in clauses "(i)" through "(iv)."

3.193.2 *For Permitted Leasehold Security Instruments*. Any Permitted Leasehold Security Instrument attaches solely to the Leasehold Estate. A Permitted Leasehold Security Instrument does not encumber the Fee Estate, or any interest in the Fee Estate, including Landlord's or any Fee Lender's interest in the Fee Estate, or any reversionary interest. Any Foreclosure Event under a Permitted Leasehold Security Instrument will not convey, transfer, extinguish, terminate, or otherwise adversely affect the Fee Estate (subject to this Lease), any Fee Security Instrument, or the rights or remedies of any Fee Lender as against Landlord or the Fee Estate. Nothing contained in this Section 3.193.2 will impair a Permitted Leasehold Lender's Cure Rights or rights to a New Lease, as provided in this Lease. This Section 3.193.2 will be subject to any written agreements by and among a Permitted Leasehold Lender and a Fee Lender, except to the extent that any such agreement would cause, allow, or result in a Permitted Leasehold Security Instrument becoming a Fee Security Instrument or otherwise encumbering the Fee Estate.

3.193.3 *For All Security Instruments*. Any Security Instrument is subject to all terms of this Lease. Notwithstanding anything to the contrary in any Security Instrument, no Lender may receive any Loss Proceeds, except to the extent (and under the conditions) payable to such Lender (or its mortgagor) under this Lease. Upon any Foreclosure Event under any Security Instrument, the resulting owner of the Fee Estate or Leasehold Estate (as applicable) will have no rights as Landlord or as Post-Foreclosure Tenant (or otherwise) under this Lease, unless and until such owner signs, acknowledges, and delivers to the other Party to this Lease an instrument, in recordable form, by which such owner assumes all obligations of Landlord or Tenant under this Lease, as applicable, subject to the other terms of this Lease. Such instrument of assumption will be delivered: (i) promptly following consummation of the Foreclosure Event; and (ii) in any event, before taking possession of the Premises or exercising any rights under this Lease.

3.194 Structure. Only the concrete floors, footings, foundation, load-bearing walls, roof, roof support system, and structural steel or other structural support system of any Improvements on the Premises, regardless of when constructed or by whom.

3.195 Sublease. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length: (a) providing a Person other than Tenant with exclusive use or occupancy of any part of the Premises; (b) sub-subleasing or any further level of subleasing any part of the Premises; or (c) Modification or assignment of any of the agreements described in clauses "(a)" or "(b)" of this Section 3.195.

3.196 Sublease Update Package. Defined in Section 27.8.2.

3.197 Sub-Rent. All money due and payable by Subtenants under Subleases or Sub-Users under Use Agreements.

3.198 Sub-Rent Payment Notice. A Notice from Landlord to any Subtenant or Sub-User, directing such Subtenant or Sub-User to pay its Sub-Rent to Landlord and not to Tenant.

3.199 Subsequent Capital Sales Event Payment. Defined in **EXHIBIT D**.

3.200 Substantial Casualty. A Casualty that: (a) before the Project Completion Date, results in the cost of Restoration of the Premises (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by the lesser of: (i) one million dollars ($1,000,000) times the CPI Adjustment Factor; or (ii) twenty percent (20%) of the total Restoration cost; (b) after the Project Completion Date, results in the cost of Restoration of the Premises (excluding overhead to Tenant or its Affiliates) exceeding the Property Insurance Proceeds allocable to and actually paid for such Restoration by the lesser of: (y) five hundred thousand dollars ($500,000) times the CPI Adjustment Factor; or (z) fifteen percent (15%) of the Restoration cost; or (c) after the Project Completion Date, under Law, prevents more than fifty percent (50%) of the Premises from being Restored to substantially the same bulk and for substantially the same use(s) as before the Casualty.

3.201 Substantial Condemnation. Any Condemnation that: (a) takes the entire Premises; or (b) in Tenant's reasonable determination (with Permitted Leasehold Lender's Consent) puts the remainder of the Premises in an Uneconomic condition.

3.202 Subtenant. Each Person having exclusive use or occupancy of part of the Premises under any Sublease.

3.203 Subtenant/Sub-User Insurance Requirements. The insurance coverages and requirements that each Subtenant and Sub-User must obtain and comply with as set forth in **EXHIBIT R**.

3.204 Sub-User. Each Person authorized to use part of the Premises under a Use Agreement.

3.205 Temporary Condemnation. A Condemnation of the temporary right to use or occupy all or part of the Premises.

3.206 Tenant. [**NOTE TO DRAFT: INSERT TENANT'S NAME**], [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**], and its permitted Transferees under this Lease.

3.207 Tenant Insurance Requirements. Defined in **EXHIBIT E**, Section 2.

3.208 Tenant Official. A Person holding a senior level management position with Tenant who has intimate knowledge about operation of the Premises, as designated by Notice from Tenant to Landlord, from time to time. On the Commencement Date, the Tenant Official is [**TO BE DETERMINED**].

3.209 Tenant Parties. Collectively, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, and owners of Equity Interests in Tenant.

3.210 Tenant Party. Individually, Tenant, its directors, officers, members, managers, partners, employees, agents, attorneys, or each owner of an Equity Interest in Tenant.

3.211 Tenant-Specific Default. Any Default that: (a) is not reasonably susceptible of cure by a Permitted Leasehold Lender, such as (to the extent, if any, that it actually constitutes a Default under this Lease) any Default resulting from a Bankruptcy Proceeding affecting Tenant; any prohibited change of management of Tenant; failure to deliver required financial information solely within Tenant's control; (b) by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates; or (c) consists of Tenant's failure to satisfy or discharge any lien, charge, or encumbrance satisfying all the following criteria: (i) attaches only to the Leasehold Estate; (ii) is junior to the specific Permitted Leasehold Lender's Permitted Leasehold Security Instrument; and (iii) this Lease prohibits.

3.212 Tenant-Specific Obligation. Any obligation the breach of which would constitute a Tenant-Specific Default.

3.213 Third Person. Any Person that is not a Party, an Affiliate of a Party, a Landlord Party, or a Tenant Party.

3.214 Ticket Charge. Defined in **EXHIBIT D**.

3.215 Ticket Charge Payment. Defined in **EXHIBIT D**.

3.216 Ticket Charge Payment Start Date. Defined in **EXHIBIT D**.

3.217 Transfer. Each of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease or the Leasehold Estate; (b) any Equity Interest Transfer relating to Equity Interest(s) in Tenant; or (c) any transaction that is in substance equivalent to any of the transactions described in clause "(a)" or "(b)" of this Section 3.217. An Equity Interest Transfer described in clause "(b)" or "(c)" of this Section 3.217 or otherwise, is

considered a Transfer by Tenant even though Tenant is not technically the transferor. A "Transfer" will not, however, include Tenant making a Permitted Leasehold Security Instrument or any of the following Equity Interest Transfers (provided that the other Party to this Lease receives Notice of the Permitted Leasehold Security Instrument or Equity Interest Transfer at least fifteen (15) days before the Permitted Leasehold Security Instrument or Equity Interest Transfer is effective): (i) a mere change in form of ownership, with no material change in beneficial ownership, that constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; (iii) a collateral pledge of the Equity Interests in Tenant to a Permitted Leasehold Lender as security for a loan allowed under this Lease; or (iv) issuance of previously unissued or new Equity Interests in Tenant that increases the amount of outstanding Equity Interests in Tenant by less than ten percent (10%).

3.218 Transferee. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Tenant through an Equity Interest Transfer or acquiring all or any portion of Tenant's interest in this Lease or the Premises through a Transfer. A Prohibited Transferee cannot be a "Transferee."

3.219 Unavailable Bond. Defined in Section 3.41.

3.220 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes described above in this Section 3.220 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

3.221 Unchanged Entity. A Person that is not a natural Person that has not had a change in Control over that Person occur since the Commencement Date.

3.222 Uneconomic. The Premises: (a) are materially diminished in value or utility; (b) cannot be used for the intended purpose; (c) are subject to material impairment of access to required parking facilities or any material service(s) necessary or appropriate for economic operation; (d) require Restoration at a total cost that Tenant reasonably estimates in writing would exceed 1.5 times the then-current Market Value of the Premises; (e) do not comply with the operating requirements under a necessary Approval held by Tenant; or (f) cannot reasonably be operated as the Premises, whether in a manner substantially equivalent to past practice or on a scale that is smaller but nevertheless profitable (after taking into account the payment of all expenses, including Rent as adjusted after any Condemnation) and reasonably feasible.

3.223 Use Agreement. Each agreement that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length: (a) allowing any Person other than Tenant to

use part of the Premises for Permitted Uses consistent with the character and quality of the Premises; (b) not providing exclusive possession of any part of the Premises and not constituting or creating an interest or estate in land; (c) requiring the Sub-User to carry all the insurance required under the Subtenant/Sub-User Insurance Requirements; and (d) with a duration (including all options or renewal terms) that ends on or before the day before the Scheduled Expiration Date. Subject to the terms of this Lease, examples of Use Agreements include: (i) event related or short term use agreements, such as licenses for suites, clubs, premium areas, and event/program spaces; (ii) vendor, concession, and service agreements, including maintenance or repair services, food and beverage, merchandise, security, cleaning, parking, ticketing, technology, and other operations-related contracts; (iii) sponsorship, naming rights, advertising, branding, media, and promotional agreements, including related space or asset licenses; or (iv) non-exclusive or non-possessory licenses for a part of the Premises.

3.224 Use Tax. Defined in Section 11.9.1.

4. **LEASING AND HIRING**. Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term, upon the terms of this Lease and subject to the Permitted Exceptions. As of the Commencement Date, with the exception of this Lease, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's entry upon, use, occupancy, or operation of the Premises are terminated, except as to any payments, rights, or remedies accrued to either Party under those agreements prior to the Commencement Date.

5. **QUIET ENJOYMENT**. Landlord covenants that Tenant will and may peaceably and quietly enjoy the Premises, without hindrance or disturbance by or from Landlord, subject to the terms of this Lease. The covenant of quiet enjoyment under this Lease is limited to occupancy of the Premises and express rights under this Lease. No implied or inferred rights are intended under this covenant. This covenant also is not intended to and does not limit Landlord's Governmental Authority.

6. **PREMISES DELIVERY CONDITION**.

6.1 Delivery. Landlord will deliver possession of the Premises to Tenant on the Commencement Date, subject to the Permitted Exceptions.

6.2 Acceptance. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5, ON THE COMMENCEMENT DATE, TENANT ACCEPTS THE PREMISES IN THE PREMISES' "AS IS/WHERE IS" CONDITION, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO TITLE, PHYSICAL CONDITION, SOIL CONDITION, THE PRESENCE OR ABSENCE OF FILL, OCEAN OR TIDAL IMPACTS, SHORING OR BLUFF STABILITY OR SUPPORT, SUB-SURFACE SUPPORT, ZONING, LAND USE RESTRICTIONS, THE AVAILABILITY OR LOCATION OF UTILITIES OR SERVICES, THE LOCATION OF ANY PUBLIC INFRASTRUCTURE ON OR OFF OF THE PREMISES (ACTIVE, INACTIVE OR ABANDONED), THE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR THE EXISTENCE OR ABSENCE OF HAZARDOUS SUBSTANCES (EXCEPTING ANY HAZARDOUS SUBSTANCE

DISCHARGE DIRECTLY BY LANDLORD) AND WITH FULL KNOWLEDGE OF THE PHYSICAL CONDITION OF THE PREMISES, THE NATURE OF LANDLORD'S INTEREST IN AND USE OF THE PREMISES, ALL LAWS APPLICABLE TO THE PREMISES, AND THE PERMITTED EXCEPTIONS. TENANT ACKNOWLEDGES, AGREES, AND REPRESENTS TO LANDLORD ALL THE FOLLOWING: (A) TENANT HAD AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES TENANT IS ENTITLED TO CONDUCT ON THE PREMISES; (B) DURING THE PERIOD BEGINNING ON [**TO BE DETERMINED**] AND ENDING ON [**TO BE DETERMINED**], TENANT OR ITS PREDECESSOR-IN-INTEREST HAD EXCLUSIVE POSSESSION OF THE PREMISES AND COMPLETED THE HORIZONTAL IMPROVEMENTS ON THE PREMISES; (C) TENANT HAS RELIED AND WILL RELY ENTIRELY ON TENANT'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE IN ENTERING INTO THIS LEASE; (D) TENANT ACCEPTS THE PREMISES IN THE PREMISES' CONDITION ON THE COMMENCEMENT DATE; AND (E) TO THE EXTENT TENANT'S OWN EXPERTISE WITH RESPECT TO ANY MATTER RELATING TO THE PREMISES IS INSUFFICIENT TO ENABLE TENANT TO REACH AN INFORMED CONCLUSION ABOUT SUCH MATTER, TENANT ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE TENANT WITH RESPECT TO SUCH MATTERS. TENANT'S SIGNATURE ON THIS LEASE CONSTITUTES TENANT'S ACKNOWLEDGMENT, AGREEMENT, REPRESENTATION AND WARRANTY TO LANDLORD THAT TENANT RECEIVED ASSURANCES ACCEPTABLE TO TENANT BY MEANS INDEPENDENT OF THE LANDLORD PARTIES OF THE TRUTH OF ALL FACTS MATERIAL TO TENANT'S ENTRY INTO THIS LEASE AND THAT TENANT IS ENTERING INTO THIS LEASE AS A RESULT OF ITS OWN KNOWLEDGE, INSPECTION, AND INVESTIGATION OF THE PREMISES AND NOT AS A RESULT OF ANY REPRESENTATION MADE BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE PREMISES. TENANT HAS NOT RELIED AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATION OR WARRANTY MADE BY ANY LANDLORD PARTY OR ITS REPRESENTATIVE. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PREMISES ON THE COMMENCEMENT DATE.

6.3 Hazardous Substances. LANDLORD WILL HAVE NO LIABILITY TO TENANT OR TENANT'S SUCCESSORS, ASSIGNS, OR OTHERS WHO ACQUIRE AN INTEREST IN THE PREMISES FROM OR THROUGH TENANT WITH RESPECT TO THE CURRENT OR FUTURE PRESENCE OF ANY HAZARDOUS SUBSTANCE ON THE PREMISES, EXCEPT TO THE EXTENT OF A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD.

6.4 Waivers and Releases. BY ENTERING INTO THIS LEASE, TENANT WAIVES AND RELEASES THE LANDLORD PARTIES AND THEIR REPRESENTATIVES FROM ALL CLAIMS RELATING TO THE CONDITION OF THE PREMISES AS OF THE COMMENCEMENT DATE, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR

UNSUSPECTED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.5. WITH RESPECT TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 6.4, TENANT WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL SIMILAR PROVISIONS AND PRINCIPLES OF LAW. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6.5 Specific Exclusions. THE FOREGOING GENERAL RELEASE NOTWITHSTANDING, TENANT IS NOT RELEASING LANDLORD FROM: (1) LANDLORD'S EXPRESS COVENANTS UNDER THIS LEASE; OR (2) LIABILITY FOR A HAZARDOUS SUBSTANCE DISCHARGE DIRECTLY BY LANDLORD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, LANDLORD RETAINS ALL AVAILABLE DEFENSES OR IMMUNITIES OF LANDLORD UNDER APPLICABLE LAW.

_____

Initials of Authorized
Tenant Representative(s)

6.6 Acquisition of Subsequent Interest. ALL PERSONS ACQUIRING ANY INTEREST IN THE PREMISES FROM OR THROUGH TENANT, BY ACCEPTING SUCH INTEREST, WILL BE DEEMED TO HAVE AGREED TO ALL THE ACKNOWLEDGMENTS, AGREEMENTS, WAIVERS, AND RELEASES CONTAINED IN THIS SECTION 6.

6.7 Asbestos Disclosure. Portions of the Improvements may contain asbestos. Tenant acknowledges receipt of written notice from Landlord of the presence of such asbestos in accordance with California Health and Safety Code section 25915. Tenant will disclose to all appropriate Persons the existence of asbestos on the Premises as required by California Health and Safety Code section 25915.

6.8 Asbestos Remediation. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for performance of any associated asbestos removal, management, remediation, or containment and all costs associated with such activities. Asbestos removal, management, remediation, or containment will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to asbestos remediation are fulfilled. Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's improvements, alterations, or repairs to the Improvements, or associated asbestos removal, management, remediation, or containment.

6.9 Disclosure About Petroleum and Other Hazardous Substances. Tenant acknowledges that: (i) portions of the Premises and the Improvements may contain Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises and any associated chemical seepage; and (ii) one or more underground storage tanks may exist on or under the Premises related to the historical operation of a gasoline station and car wash facility on a portion of the Premises. Tenant acknowledges receipt of written notice from Landlord of the presence of any such Hazardous Substances and underground storage tanks in accordance with Law.

6.10 Remediation of Petroleum and Other Hazardous Substances. If Tenant makes improvements, alterations, or repairs to the Improvements, Tenant will be responsible for all the following: (i) performance of any associated removal, management, remediation, or containment of all Hazardous Substances, including gasoline, petroleum products, and automotive fluids, related to the historical operation of surface parking lot areas, a gasoline station, and a car wash facility on portions of the Premises; (ii) performance of any associated removal, management, remediation, or containment of all underground storage tanks related to the historical operation of a gasoline station and car wash facility on a portion of the Premises; and (iii) all costs associated with the activities described in clauses (i) and (ii) of this Section 6.10. All such removal, management, remediation, or containment activities will be conducted in accordance with all applicable Laws. Landlord may, at its sole discretion, station supervisory personnel at the work site on the Premises to ensure that Tenant's obligations related to all such removal, management, remediation, or containment activities are fulfilled. Supervisory personnel stationed by Landlord on the Premises shall not unreasonably interfere with Tenant's removal, management, remediation, or containment of Hazardous Substances or underground storage tanks under this Section 6.10.

7. TICKET CHARGE PAYMENTS AND OTHER RENT PAYMENTS.

7.1 Ticket Charge Payments. Tenant will pay Ticket Charge Payments to Landlord as provided in **EXHIBIT D**.

7.2 Additional Rent. In addition to Ticket Charge Payments, Tenant will pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant will pay all Additional Rent prior to delinquency.

7.3 Delivery of Rent. Rent payable by Tenant to Landlord is payable to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, electronic funds transfer, or other method designated by Landlord in a Notice to Tenant, all at Landlord's election, in its sole and absolute discretion, to such account or address as Landlord designates by Notice to Tenant from time to time. Rent payments sent by mail must be sent to Landlord by first-class mail through the United States Postal Service with all postage pre-paid. On

the Commencement Date, the addresses for mailing or personally delivering Rent payments to Landlord are as follows:

By first-class mail through the United States Postal Service with all postage pre-paid and addressed to:	By hand delivery to:
The City of San Diego Office of the City Treasurer P.O. Box 129030 San Diego, California 92112-9030	Office of the City Treasurer Civic Center Plaza 1200 Third Avenue, First Floor San Diego, California 92101

7.4 Required Payment Information. Tenant will include Landlord's customer account number for Tenant with each Rent payment. Tenant's failure to include its Landlord customer account number will not, by itself, be a Default, but may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all late payment charges or administrative fees under Section 32.6 arising from its failure to include its Landlord customer account number with a Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Checks only constitute payment when received if the check is honored by the bank on which it is drawn. Tenant assumes all risk of loss and responsibility for late payment charges or administrative fees under Section 32.6 if payments are sent by mail.

7.5 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant will make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

7.6 No Offsets. Tenant will pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

7.7 No Allocation to FF&E. No Rent is allocable to any FF&E, Interior Improvement, or Construction.

8. ADDITIONAL PAYMENTS BY TENANT; TAXES.

8.1 Landlord's Net Return. This Lease will constitute an absolutely "net" lease. The Rent will give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises. Tenant will pay as Additional Rent and discharge before delinquency each item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or in any way connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Interior Improvement, Restoration or Construction affecting, the Premises, except: (a) Landlord's administrative expenses; or (b) liability for any Hazardous Substance Discharge to the extent caused directly by Landlord.

8.2 Real Estate Taxes. Tenant will pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term before delinquency. Tenant will also pay all interest and penalties assessed for late payment of Real Estate Taxes this Lease requires Tenant to pay. Tenant will within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant paid all Real Estate Taxes this Lease requires Tenant to pay. Tenant acknowledges and agrees that this Lease creates a possessory interest in the Premises subject to property taxation and that Real Estate Taxes include all possessory interest taxes imposed as a result of this Lease.

8.3 Personal Property Taxes. Tenant will pay and discharge all personal property taxes payable or accruing for all period(s) within the Term relating to all personal property stored at, used in the operation of, or otherwise relating to the Premises before delinquency. Tenant will also pay all interest and penalties assessed for late payment of any such personal property tax.

8.4 Documentary Transfer Tax. Tenant will pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code sections 11911, *et seq*., with respect to entry into this Lease, each Modification to this Lease, any extension of this Lease, each Transfer, the Lease Memorandum, any Modification to the Lease Memorandum, or otherwise imposed regarding this Lease or Tenant.

8.5 Transfer of Leasehold Estate or Fee Estate Ownership. Without limiting the generality of Tenant's obligations to pay Real Estate Taxes, Tenant agrees to pay all increases in Real Estate Taxes resulting from a Transfer or other change in ownership of the Leasehold Estate. Landlord will pay all increases in Real Estate Taxes resulting from a change in ownership of the Fee Estate, except upon a transfer or conveyance of the Fee Estate to Tenant or an Affiliate of Tenant, in which event Tenant or its Affiliate will pay all such increases in Real Estate Taxes.

8.6 Utilities. Tenant will arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, television, internet, satellite, and other similar charges or services, and the expenses of installation, maintenance, use, and service relating to all such items for the Premises during the Term. All utilities on the Premises will be installed underground and will be used for Tenant's operations only, except to the extent that the utilities are part of a larger system, such as sewer mains, water mains, storm drains, or electrical distribution systems, that extends beyond the Premises to provide public services to properties located outside of the Premises. Except when furnishing customary fee-based public utilities or services for the Premises when acting under its Governmental Authority, Landlord will have no responsibility for providing or paying for any utilities or services for the Premises during the Term. Landlord will not be liable for any interference with or disruption of any utilities or services for the Premises, unless such interference or disruption results solely from Landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune from such liability under applicable law and subject to any defense to such liability available to Landlord.

8.7 Management Fees. Tenant will timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises under the Management Agreement or otherwise and the provision of services to the Premises.

8.8 Unauthorized Use Charge. Tenant will pay Landlord one hundred percent (100%) of the Revenue, without any deduction, credit, or set-off, from any use of the Premises during the Term that is not a Permitted Use within thirty (30) days after Tenant receives the Revenue. Nothing in this Section 8.8 or Landlord's acceptance of any payment under this Section 8.8 is intended to authorize any use of the Premises that is not a Permitted Use, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

9. **USE**.

9.1 Permitted Uses. Tenant will only use the Premises during the Term for the Permitted Uses in compliance with Law and this Lease and no other uses.

9.2 Parks. Tenant shall be responsible for management and maintenance of the Parks in accordance with the Parks Management and Maintenance Requirements.

9.3 Premises Operation. Tenant will operate the Premises in a manner that will provide decent, safe, and sanitary facilities to all users of the Premises during the Term and will comply with all the provisions of this Lease and all applicable Law. Tenant will furnish all equipment and materials necessary for the operation of the Premises, including the Entertainment Center, in conformity with this Lease at Tenant's sole cost and expense. Tenant will keep the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises clean and clear of refuse and obstructions. Tenant will be solely responsible for operation of the Premises. Landlord will have no responsibility for operation of the Premises.

9.4 Competent Management. Tenant will provide competent management of the Permitted Uses to Landlord's reasonable satisfaction. For the purposes of this Section 9.4 the following terms are defined:

9.4.1 "Competent management" means management practices generally considered acceptable within Tenant's industry for the management and operation of activities substantially similar to the Permitted Uses and in compliance with all applicable Law, and regulations, and in a fiscally responsible manner.

9.4.2 "Fiscally responsible manner" means in accordance with GAAP consistently applied and absent financial malfeasance.

9.5 Trash and Refuse. Tenant will, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers will not be located outside the Premises. Tenant will contract to ensure that refuse containers are emptied on a regular basis and will prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. Tenant will contract to ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable Law at the time of refuse collection.

9.6 Security and Safety. Tenant will bear sole responsibility for the security and safety of the Premises during the Term, including for the maintenance, cleanup, and securing of the Premises

daily, as appropriate to ensure security and safety. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the security and safety of the Premises, at Tenant's sole cost and expense. Landlord has no obligation to provide security or safety staffing or resources for the Permitted Uses or the Premises during the Term.

9.6.1 *Security Plan*. Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant will meet with each other and all other tenants of the Master Development Area in good faith to develop, review, and update a strategic plan governing security and safety operations for the Premises, the Master Development Area, and other areas affected by the Permitted Uses ("**Security Plan**"). The Security Plan is intended to address coordination with public safety agencies; coordination among Master Development Area tenants; delineation of responsibilities for interior, exterior, and perimeter security; Existing Arena and Entertainment Center event day and non-event day security operations; ingress and egress procedures for Master Development Area tenants, subtenants, patrons, staff, and emergency responders; crowd management strategies tailored to anticipated attendance and event type; deployment of security technology and communications systems; and any requirements associated with conditional use permits or other Approvals. Tenant will be solely responsible for implementing its obligations under the Security Plan. Landlord will have no responsibility for implementing the Security Plan. Any Landlord public safety support or coordination, under Landlord's Governmental Authority, relating to security of the Premises or any other part of the Master Development Area will be provided, if at all, in Landlord's sole discretion. The Parties acknowledge that security needs for large scale venues and in the areas immediately surrounding such venues evolve over time and may vary based on event type, anticipated attendance, and industry standards. Accordingly, the Security Plan will be updated as necessary to reflect evolving best practices, changes in Law or Approvals, and operational experience at the Premises, within the Master Development Area, and within other areas affected by the Permitted Uses. Nothing in this Section 9.6.1: (a) limits Tenant's obligation to provide security for the Premises under this Lease; (b) obligates Tenant to provide security or public safety services outside the scope of Section 9.6 or the Security Plan; (c) limits any authority of Landlord's public safety personnel under law; or (d) limits Landlord's Governmental Authority.

9.7 Parking Plan. Tenant will bear sole responsibility for parking operations at the Premises during the Term. Tenant will comply with this Lease, all Laws, and all Approvals with respect to the parking operations at the Premises, at Tenant's sole cost and expense. Landlord has no obligation to provide staffing or resources related to parking operations at the Premises during the Term. Periodically, as determined by the Parties, but no less than annually, Landlord and Tenant shall meet with each other and all other Master Development Area tenants in good faith to develop, review, and update a strategic plan governing parking operations for the Premises and the Master Development Area and transportation services supporting the Premises, the Master Development Area, and surrounding areas. The strategic plan is intended to address matters such as event day and non-event day parking operations, ingress and egress routes for vehicles and pedestrians, coordination with public safety and transit agencies, potential street or lane closures for games or events, traffic circulation strategies, designated loading and vendor access points, marked and signaled crosswalks where appropriate, and directional signage and wayfinding improvements designed to enhance the experience of patrons and the surrounding community. Tenant shall be

responsible for coordinating its parking operations with other Master Development Area tenants to the extent necessary to address parking impacts from planned events within the Master Development Area. Landlord has no obligation under this Lease, or any other Lease with a Master Development Area tenant, to ensure that Tenant's parking operations on the Premises are not impacted by planned events within or outside the Master Development Area.

9.8 Public Use. The general public will have access to the portions of the Premises that Tenant opens to the general public during Tenant's normal hours of operation. Tenant will not wholly or permanently exclude the general public from the portions of the Premises that Tenant customarily opens to the general public during Tenant's normal hours of operation. Tenant may develop reasonable restrictions for the general public's use of such portions of the Premises. This Section 9.8 does not apply to the Parks, which are subject to the Parks Management and Maintenance Requirements.

9.9 Continuous Operation. Other than reasonable temporary closures during the occurrence of an Unavoidable Delay preventing operation of the Premises, during Restoration following a Loss (other than an Immaterial Loss), during Major Construction approved by Landlord, or during Major Interior Improvement, Tenant will conduct its business and operate the Premises, including the Entertainment Center, diligently and continuously and without interruption during normal hours of operation throughout the Term with the intent of reasonably maximizing Gross Revenue and Ticket Charge Payments. Tenant will Notify Landlord in advance of any closure of all or any part of the Premises that will continue for more than one week (other than in the event of an emergency, in which case Tenant will Notify Landlord within two (2) Business Days following such emergency arising).

9.10 Abandonment. Tenant will not abandon, vacate, or surrender the Leasehold Estate created by this Lease or any portion of the Premises during the Term. Reasonable temporary closures during the occurrence of an Unavoidable Delay preventing operation of the Premises, during a Restoration following a Loss (other than an Immaterial Loss), or during Major Construction approved by Landlord or Major Interior Improvement will not be considered an abandonment, vacation, or surrender of the Leasehold Estate.

9.11 Noise. Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound violating SDMC Chapter 5, Article 9.5, except as specified in that Article. Specifically, Tenant shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound exceeding the sound level limits in SDMC Chapter 5, Article 9.5, Division 4, except as allowed in compliance with SDMC Chapter 5, Article 9, Division 6, or a "Special Event Permit" issued under SDMC Chapter 2, Article 2, Division 40. [**NOTE TO DRAFT: REFERENCE TO SDMC CHAPTER 5, ARTICLE 9, DIVISION 6 IS CONTINGENT ON ADOPTION OF THIS NEW MUNICIPAL CODE SECTION BY THE CITY COUNCIL AND CONFIRMATION OF THE MUNICIPAL CODE REFERENCE**].

9.12 Nuisance. Tenant will not itself, and will not allow any other Person, to use the Premises for any unlawful purpose or to perform, permit or suffer any act or omission upon or about the Premises that would result in a nuisance under Law or a violation of Law.

9.13 Signs. Notwithstanding anything to the contrary in this Lease, Tenant shall comply with the SDMC requirements relating to Signs on the Premises, at all times. Tenant will have the sole and exclusive right, throughout the Term of this Lease, to display, sell, license, or otherwise exploit all advertising Signs and sponsorship Signs on the interior and exterior of the Entertainment Center, subject to compliance with Law. All cash or in-kind consideration, revenues, royalties, or other economic benefits derived from such Signs during the Term of the Lease shall be included in Gross Revenue. Notwithstanding anything to the contrary in this Lease, all Signs must not: (a) be obscene; (b) violate Law; (c) contain racial slurs, obscenities, or display products or messages of an explicit sexual nature; or (d) include the name of another Government or territorial jurisdiction in a manner that reasonably suggests the Entertainment Center is located outside the City of San Diego, California. The following Signs are "**Pre-Approved Signs**": (i) Signs located within the Entertainment Center and not visible outside of the Entertainment Center; (ii) Signs required by Law; or (iii) Signs that are consistent with a Premises signage plan approved by Landlord in its sole discretion ("**Approved Signage Plan**"). If there is no Approved Signage Plan, only Signs described in clauses "(i)" or "(ii)" of the immediately preceding sentence will be Pre-approved Signs. Pre-Approved Signs may be placed on the Premises without any further Landlord approval after Landlord's approval of the Approved Signage Plan. No Sign, other than a Pre-Approved Sign, may be placed on the Premises without Landlord's prior written approval, in each instance, which approval may be given or withheld in Landlord's sole discretion. All Signs on the Premises will be maintained by Tenant in good, clean, and operating condition during the Term. Tenant will remove all Signs from the Premises on or before the Expiration Date and repair all damage caused by installation or removal of Signs, all at Tenant's sole cost and expense, unless such removal is expressly waived in a Notice from Landlord to Tenant. Tenant will comply with all Laws requiring the posting of Signs on the Premises. If any unauthorized Sign is found on the Premises, Tenant will remove all unauthorized Signs at Tenant's sole cost and expense within twenty-four (24) hours after the Receipt Date of Notice from Landlord requesting the removal. If Tenant does not remove all unauthorized Signs within such twenty-four (24) hour period, Landlord may enter the Premises and remove the Signs at Tenant's sole cost and expense. If Landlord removes a Sign from the Premises under this Section 9.13, Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after the Receipt Date of Notice to Tenant of such costs. Any amount of money reimbursable to Landlord by Tenant under this Section 9.13 that is not paid within fifteen (15) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest from the date incurred until paid.

9.14 Advertising, Naming, and Sponsorship Rights. Tenant will have the exclusive right, throughout the Term, to name the Entertainment Center, and any portion thereof, and to sell, assign, license, pledge, or otherwise exploit all naming, sponsorship, entitlement, and related intellectual property rights associated with the Entertainment Center. All cash or in-kind consideration, revenues, royalties, or other economic benefits derived from such rights during the Term shall be included in Gross Revenue. Notwithstanding anything to the contrary in this Lease, no name shall: (a) be obscene; (b) violate Law; (c) contain racial slurs, obscenities, or products or messages of an explicit sexual nature; or (d) include the name of another Government or territorial

jurisdiction in a manner that reasonably suggests the Entertainment Center is located outside the City of San Diego, California.

9.15 Food Handling Services. Tenant will ensure that the type and quality of all food-handling services furnished by Tenant, Subtenants, or Sub-Users at all times satisfies all the conditions and requirements of the "A" Card issued by the San Diego County Health Department to operators of food-handling establishments.

9.16 Single Use Plastic Restriction. Tenant, Subtenants, or Sub-Users shall all comply with SDMC Chapter 6, Article 6, Division 9: Single Use Plastic Reduction.

9.17 Alcohol. No alcohol or alcoholic beverages may be served in, on, or about the Premises unless Tenant, Subtenants, or Sub-Users (as applicable) have obtained all Approvals required to serve alcohol at the respective location(s). Tenant will provide to Landlord a complete copy of all required Approvals allowing alcohol to be served in, on, or about the Premises prior to serving alcohol or alcoholic beverages. Tenant, Subtenants, or Sub-Users will comply at all times with all Laws related to serving alcohol and all terms, conditions, and restrictions in the required Approvals related to serving alcohol in, on, or about the Premises. Tenant will bear full responsibility, at its sole risk and cost, for compliance with all Laws and Approval conditions related to service of alcohol whenever Tenant, Subtenants, or Sub-Users (as applicable) obtain permission to serve alcohol in, on, or about the Premises.

9.18 Music. Tenant, each Subtenant, or each Sub-User will only perform music in, on, or about the Premises for which Tenant, the Subtenant, or the Sub-User has obtained a "non-dramatic" performance license from ASCAP, Broadcast Music, Inc., SESAC, or any other required musical industry licensing entity (each, a "**Music Licensing Entity**"). For a list of approved music and artists, Tenant may contact each Music Licensing Entity. It will be Tenant's sole responsibility to ensure music for which Tenant, the Subtenant, or the Sub-User (as applicable) have obtained a valid music performance license from each appropriate Music Licensing Entity is performed in, on, or about the Premises. Tenant will ensure that for each "non-dramatic" performance license: (1) Landlord is named in the license; (2) the Premises are identified in the license; and (3) Tenant has provided Landlord with a fully signed copy of the license before the performance of the subject music.

9.19 No Artist's Rights. Tenant will not install any artwork on the Premises that may provide the creator or owner of such artwork with any right to prevent removal of such artwork from the Premises under any Law.

9.20 Availability of Tenant Employees. Tenant agrees to have one or more of its employees who is/are knowledgeable about this Lease and the operation of the Premises, such that such Person(s) can meaningfully respond to Landlord or Landlord's staff regarding operation of the Premises attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by reasonable advance Notice to Tenant.

9.21 Compliance with Law. Tenant will, during the Term, at Tenant's sole cost and expense, in all material respects: (a) comply with all Laws and Permitted Exceptions; (b) procure and comply with all Approvals required by Law; and (c) comply with all notices issued by Landlord, under its Governmental Authority, or any other Government under the authority of current or future Law.

9.22 Prohibited Uses. Notwithstanding anything to the contrary in this Lease, including Section 1.5, Tenant will not allow any of the following uses or activities on the Premises:

9.22.1 A mobile home park, trailer court, labor camp, junkyard or stockyard; provided, however, that this prohibition will not preclude the temporary use of construction trailers during periods of construction or Restoration;

9.22.2 Dumping, disposing, incineration or reduction of garbage; provided, however, that this prohibition will not preclude garbage compactors located near the rear of any building, grease traps and collection for restaurants, or consumer trash or recycling collection receptacles/areas;

9.22.3 A fire sale, bankruptcy sale (unless pursuant to a court order), or auction house operation, as distinguished from events with an auction or trade component, such as a card trading event or antique auction;

9.22.4 A central laundry or dry cleaning plant; provided, however, that this prohibition will not preclude nominal supportive facilities for on-site service oriented pickup and delivery by the ultimate consumer, as found in retail shopping centers in the metropolitan area where the Premises are located;

9.22.5 A mortuary or funeral home;

9.22.6 Selling or exhibiting "obscene" material, except that this provision will not prohibit: (a) first-class book stores with a national presence that are not perceived to be, nor hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals that may contain pornographic materials, so long as such sale is not from any special or segregated section in the store and, provided further, that such pornographic materials are not considered objectionable or offensive to accepted standards of decency within the local community; or (b) a first class, first-run movie theatre that may show or display "R"-rated or "NC-17" rated films or telecasts or "X"-rated films or telecasts; provided, however, that (1) the theatre operator believes, in its reasonable business judgment, that such "X"-rated motion picture or telecast has artistic merit or is a so-called "legitimate" film, and (2) the theatre operator, as a general policy, does not exhibit "X" rated films and telecasts;

9.22.7 Exhibiting either live or by other means to any degree, nude or partially clothed dancers or wait staff, as distinguished from cheerleaders, dance teams or similar, wearing attire consistent with the practices of comparable sporting venues;

9.22.8 Selling or exhibiting drugs or drug-related paraphernalia (e.g., medical marijuana and smoke shops);

9.22.9 A check cashing business;

9.22.10 A fraternal organization, as distinguished from events with a fraternal organization component, such as an alumni event or fraternity reunion;

9.22.11 A fortunetelling business;

9.22.12 A pawn shop or retail sales operation primarily involving second-hand merchandise, including used clothing stores, used appliance sales or service business, and used furniture stores, as distinguished from fundraising events with second-hand merchandise for sale;

9.22.13 An adult business or facility as defined and regulated in the SDMC. Such uses include, without limitation, massage establishments (to the extent defined and regulated in the SDMC as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters, and paraphernalia businesses;

9.22.14 A gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns, as distinguished from an event with a broader main purpose, but may include gun sales, such as a hunting show;

9.22.15 Sale or display on the Premises of any written or pictorial matter with prurient sexual appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, as determined by Landlord, in Landlord's sole and absolute discretion;

9.22.16 Use by any Person: (a) Landlord reasonably determines has any connection with any terrorist organization, including any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (b) identified as a specially designated national or blocked person by the United States Department of the Treasury by being listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law;

9.22.17 A coin laundry or laundromat (other than such facilities provided as part of a hotel);

9.22.18 A swap meet or flea market; or

9.22.19 Gambling, including virtual sports gaming, sports trading, prediction markets platforms, or online, telephonic, or other remote betting operated or facilitated by Tenant, a Subtenant, or a Sub-User.

10. **MAINTENANCE**.

10.1 Obligation to Maintain. Except to the extent that this Lease otherwise expressly provides or allows, or Tenant is performing Construction in compliance with this Lease, Tenant will during the Term keep and maintain the Premises in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Lease expressly does not require Tenant to repair or Restore. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises, including the Improvements, may require under applicable Law. Tenant will remove trash and debris from the Premises and all public sidewalk, pedestrian right-of-way, or walkable space areas immediately adjacent to the Premises and maintain all such areas in a reasonably clean condition. Landlord has no obligation to maintain or repair the Premises. To the maximum extent allowed by Law, Tenant expressly waives all Landlord's obligations to maintain or repair the Premises, all right to terminate this Lease under California Civil Code sections 1932 or 1933 or any similar Law, and all right to make repairs at Landlord's expense under California Civil Code sections 1941 through 1942 or any similar Law.

10.2 Maintenance Standard. Tenant's obligation to maintain the Premises under Section 10.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Premises, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Premises consistent with comparable facilities of similar age, type, and use. Tenant's obligation to maintain the Premises described in the immediately preceding sentence will include, all at the sole cost and expense of Tenant: (a) maintaining the surfaces of the Premises in an evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 10.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as will be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Premises; (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping; and (h) maintaining all Parks in accordance with the Parks Management and Maintenance Requirements. Tenant's obligation to maintain the Premises described in the two immediately preceding sentences is, collectively, referred to in this Lease as the "**Maintenance Standard**." Tenant may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of Tenant to maintain the Premises; provided, however, that Tenant will remain responsible and liable for complying with the Maintenance Standard for the Premises during the Term.

10.3 Maintenance Default. At any time during the Term, if there is an occurrence of an adverse condition on any area of the Premises in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then Landlord may Notify Tenant of the Maintenance Deficiency. If Tenant fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following the Receipt Date of Notice of the Maintenance Deficiency, Landlord will have the right (but no obligation) to enter the Premises following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to Landlord to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 will be reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of the amount. Any amount of money expended by Landlord for the cure or abatement of a Maintenance Deficiency under this Section 10.3 that is not reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

10.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface of the Improvements will be removed by Tenant by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 10.3, if any such graffiti is not removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Tenant discovers the graffiti or the Receipt Date of Notice of the graffiti, whichever is earlier, if Tenant does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Tenant, Landlord will have the right (but no obligation) to enter the Premises and remove the graffiti. All money expended by Landlord for the removal of graffiti from the Premises under this Section 10.4 will be reimbursed to Landlord by Tenant within thirty (30) days after the Receipt Date of Notice to Tenant of such amount. Any amount of money expended by Landlord for removal of graffiti under this Section 10.4 not reimbursed to Landlord within thirty (30) days after the Receipt Date of Notice to Tenant of such amount will accrue Default Interest until paid in full.

11. PROJECT AND OTHER CONSTRUCTION.

11.1 Timeliness. Tenant will cause the Project Completion Date to occur on or before the Project Completion Deadline. Tenant is solely responsible for payment of all hard and soft costs of installation of the Project. All Construction or Interior Improvement on the Premises are subject to the Development Conditions.

11.2 Project Labor Agreement Certification. Tenant will cause its General Contractor (including Tenant, if Tenant is a General Contractor) for Construction of the Project to enter into and comply with the terms of a project labor agreement under the terms of that certain Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022. Tenant will deliver to Landlord a certification in substantially the form of **EXHIBIT P** signed by an authorized representative of the San Diego

County Building & Construction Trades Council certifying that Tenant's General Contractor for Construction of the Project has entered into the project labor agreement required under this Section 11.2, within fifteen (15) days after the General Contractor enters into the agreement.

11.3 Subsequent Construction and Interior Improvement Rights. Except as set forth in this Section 11.3, Tenant will not Construct or materially alter any Improvements on the Premises, without Landlord's prior written approval, which may be given or withheld in Landlord's sole and absolute discretion. Tenant will have the right to make the following alterations or improvements to the Premises, without Landlord's approval, except to the extent such alterations or improvements constitute Major Construction or Major Interior Improvement: (a) Construction or Interior Improvement not affecting any Structure or diminishing the value or utility of the Fee Estate or the Premises (including capacity) for its existing use immediately preceding such Construction or Interior Improvement; (b) reasonable and customary alterations to the interior spaces of Buildings on the Premises; (c) alterations required by Law; or (d) alterations reasonably required to Restore or repair Improvements on the Premises after a Casualty or Condemnation. All alterations or Improvements on the Premises by Tenant will comply with all Laws and Approvals, and will be performed by appropriate State licensed contractors.

11.4 Construction Surety. For each Major Construction or Major Interior Improvement, Tenant will deposit Construction Surety with Landlord for such Major Construction or Major Interior Improvement prior to the commencement of any work of such Major Construction or Major Interior Improvement, including any excavation or demolition work. Tenant will maintain the Construction Surety in full force and effect, until the Construction Completion Date for the Major Construction or the Interior Improvement Completion Date for the Major Interior Improvement. Tenant will not assign or encumber or attempt to assign or encumber any Construction Surety, except: (a) to the Transferee of all of Tenant's interest in this Lease through a Transfer that complies with this Lease; (b) to a Post-Foreclosure Tenant or a New Tenant, when either acquires all of Tenant's interest in this Lease; or (c) to a Permitted Leasehold Lender as collateral for a loan secured by a Permitted Leasehold Security Instrument.

11.5 Major Construction. Tenant will not commence demolition or removal of then existing Improvements, excavation, or any other substantial on-site or off-site physical element of any Major Construction, unless and until Tenant satisfies the Construction Commencement Conditions for such Major Construction. The Parties acknowledge that all Construction Commencement Conditions for the initial Construction of the Project were satisfied prior to the Commencement Date as a condition to the Vertical Ground Lease Closing (defined in the DDA) for this Lease under the DDA.

11.6 Major Interior Improvement. Tenant will not commence any Major Interior Improvement until it has obtained and delivered to Landlord all the following: (a) copies of all Approvals necessary for such Major Interior Improvement; (b) copies of all Plans for the Major Interior Improvement; (c) the original Construction Surety for the Major Interior Improvement; and (d) written evidence of all insurance coverage this Lease requires for such Major Interior Improvement. If Tenant makes material changes to any Plans for a Major Interior Improvement, excluding ordinary minor field changes, then Tenant will deliver a final copy of Plans reflecting

all such changes, with the documents required to be delivered to Landlord to cause the Interior Improvement Completion Date to occur. Landlord's prior approval of Plans is not required for any Interior Improvement.

11.7 Plans. Landlord will have forty-five (45) days after receiving any Plans for Major Construction to Notify Tenant that such Plans do not comply with this Lease. If Landlord does not give such Notice within such forty-five (45) day period, then Landlord will have waived any right to assert that such Plans or any Construction performed substantially in compliance with such Plans do not comply with this Lease. Landlord approved certain Plans for the Construction of the Project before the Commencement Date as a condition to the Vertical Ground Lease Closing for this Lease under the DDA. If Tenant makes any material changes to any Plans for Major Construction (including any Plans approved by Landlord before the Commencement Date), excluding ordinary minor field changes, then Tenant will promptly deliver copies of such changes to Landlord for its approval in the same manner provided for approval of Plans in the first two sentences of this Section 11.7. Neither the retention of any Plans nor any other action Landlord takes regarding any Plans will constitute Landlord's opinion or representation on their sufficiency. Landlord's review or approval of any Plans for Major Construction under this Section 11.7 is solely in Landlord's proprietary capacity as a Party to this Lease and is separate from and in addition to any review or approval of such Plans by Landlord acting under its Governmental Authority. Tenant will reimburse Landlord for all costs and expenses (including Legal Costs) incurred by Landlord in reviewing any Plans for Major Construction under this Section 11.7 (exclusive of and in addition to Landlord's costs and expenses in reviewing such Plans under its Governmental Authority) for each integrated project or Application, within thirty (30) days after the Receipt Date of Notice of such costs and expenses. All such costs and expenses not reimbursed to Landlord by Tenant within such thirty (30) day period will accrue Default Interest from the date of the Notice of such costs and expenses, until paid in full. This Section 11.7 does not apply to Interior Improvement.

11.8 Prosecution and Completion. To the extent such work is permitted by this Lease, if Tenant starts to demolish any Improvements on the Premises, or starts excavation, then Tenant will prosecute such work with reasonable diligence to completion. Tenant will with reasonable promptness and reasonable diligence commence, prosecute, and complete all of Tenant's Major Construction or Major Interior Improvement in a good and workmanlike manner in compliance with Law, all Approvals, the Performance Schedule, the Development Criteria, the Development Conditions, and this Lease.

11.9 Business Cooperation Program Participation. Tenant will be responsible for the following actions in connection with the Business Cooperation Program of the City of San Diego, California, as long as the program is in effect:

11.9.1 Exercise its right to obtain a California Department of Tax and Fee Administration ("**CDTFA**") sub-permit for the Premises and allocate all eligible Bradley-Burns Uniform Local Sales and Use Tax ("**Use Tax**") to the City of San Diego, California, on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired,

installed, or furnished in connection with all Construction or Interior Improvement on the Premises.

11.9.2 Ensure that the General Contractor and all other Persons performing Construction or Interior Improvement on the Premises exercise their right to obtain a CDTFA sub-permit and allocate all eligible Use Tax to the City of San Diego, California, on all taxable materials, fixtures, machinery, and equipment, as defined in CDTFA Regulation 1521, purchased, acquired, installed, or furnished in connection with Construction or Interior Improvement on the Premises.

11.10 Approvals. Tenant will apply to each applicable Government, including Landlord acting under its Governmental Authority, for all Approvals required for any Construction or Interior Improvement. Tenant will pay all Government fees, including those of Landlord acting under its Governmental Authority, necessary to obtain such Approvals.

11.11 Completion Deliveries. Within three (3) months after Tenant obtains a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for a Major Construction, Tenant will obtain and give Landlord copies of: (a) two (2) complete sets of "as-built" Plans for the entire Major Construction and an "as-built" survey; and (b) a final Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the entire Major Construction; provided, however, that where issuance of a final Certificate of Occupancy (or equivalent approval) for the Major Construction does not occur within three (3) months after Tenant obtains a temporary Certificate of Occupancy (or equivalent approval) for the Major Construction and the delay is solely due to unreasonable delay by Landlord acting under its Governmental Authority, then such delay will be an Unavoidable Delay subject to the provisions of Section 40.11.

11.12 Tenant Attendance at Landlord Meetings. Tenant agrees to have one or more of its employees or consultants who are knowledgeable regarding this Lease and any Major Construction or Major Interior Improvement planned, in progress, or recently completed, such that such Person(s) can meaningfully respond to Landlord or Landlord staff questions regarding the progress of such Major Construction or Major Interior Improvement, attend meetings with Landlord's staff or meetings of the City Council, when requested to do so by Landlord's staff, with reasonable advance Notice to Tenant.

12. **FINANCING PLAN**. Tenant's acquisition of the rights to this Lease and Construction of the Project on the Premises must be financed as described in the Financing Plan.

13. **FINANCIAL REPORTING; AUDIT RIGHTS**. Tenant will deliver Financial Reporting Statements to Landlord as follows: (a) an Annual Revenue Statement within ninety (90) days after the end of each Lease Year; (b) a Capital Investment Certification Statement within ninety (90) days after the Project Completion Date; and (c) a Capital Sales Event Statement within sixty (60) days after each pertinent Capital Sales Event is consummated.

13.1 Preparation and Content of Statements. Each Financial Reporting Statement will be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged

in the practice of the accounting profession. Additionally, each Financial Reporting Statement will be certified by an executive level officer of Tenant with substantial knowledge about the factual background and content of the Financial Reporting Statement. Each Financial Reporting Statement will certify that the accounting practices of Tenant conform to industry standards, use GAAP consistently applied, categorize revenues by source and deductions by type, and otherwise comply with the requirements of this Lease. If such certification cannot be made, then the Financial Reporting Statement will show any adjustments necessary to conform Tenant's accounting practices such that the certification can be made. Each Financial Reporting Statement will be in a customary form reasonably satisfactory to Landlord and supported by source documents such as ticket sales receipts, food and merchandise sales receipts, Sub-Rent rolls (including payment records), Construction cost records, capital contribution records, purchase and sale agreements, assignment agreements, escrow closing statements, and tax statements (which may be in electronic form) as necessary to allow Landlord to easily verify all amounts and calculations in the statement. Tenant will comply with all reasonable requests from Landlord to modify the form and content of Financial Reporting Statements. Tenant will provide all additional information reasonably requested by Landlord regarding Gross Revenue, Modified Gross Revenue, and the calculation of Ticket Charge Payments, Capital Sales Event Payments, or the Capital Investment.

13.2 Overpayment or Underpayment; Landlord's Right to Audit. If any Financial Reporting Statement, as it may be adjusted under this Section 13.2, indicates an overpayment or underpayment of money owed to Landlord (e.g., an overpayment or underpayment of the Ticket Charge Payment for the subject Lease Year revealed by an Annual Revenue Statement), the amount of any overpayment will be refunded by Landlord to Tenant or the amount of any underpayment will be paid by Tenant to Landlord, within thirty (30) days after the Receipt Date of Notice of the particular overpayment or underpayment. On ten (10) Business Days' Notice (Notice will not be required during the continuance of an Event of Default), only during normal business hours, and (so long as no Event of Default has occurred) no more often than once each Lease Year, Landlord's auditor may audit Tenant's financial statements and all information referenced in the pertinent Financial Reporting Statements. Tenant will, without charge, assist in such audit, as Landlord's auditor may reasonably request.

13.3 Retention. Tenant will, during the Term and for a period of six (6) years following the Expiration Date, maintain and cause Tenant's Affiliates to maintain, safe and intact, all Financial Reporting Statements and supporting information. From time to time, upon Notice from Landlord requesting such information, Tenant will make all Financial Reporting Statements and supporting information, whether in the custody or control of Tenant or Tenant's Affiliates available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises or another reasonable location in the County at any reasonable time, on five (5) days advance Notice.

13.4 Audit Costs. If any Landlord audit of one or more Annual Revenue Statements discloses that a Ticket Charge Payment was under-reported in any Annual Revenue Statement to an extent of four percent (4%) or more on an annual basis for one or more Lease Years, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in the Ticket Charge Payment payable for each under-reported Lease Year, with Default Interest on such Ticket

Charge Payment deficiency amount from the date such amount was originally due, until paid in full to Landlord. If any Landlord audit of a Capital Sales Event Statement or a Capital Investment Certification Statement discloses that Tenant incorrectly reported any amount in the statement by five percent (5%) or more, Tenant will pay to Landlord the reasonable out of pocket cost of the audit, in addition to any deficiency in any monetary amount payable to Landlord, with Default Interest on such deficiency amount from the date such amount was originally due, until paid in full to Landlord. If any Landlord audit of one or more Annual Revenue Statements discloses Tenant's overpayment of any Ticket Charge Payment, the overpaid amount will be credited to Tenant against future Ticket Charge Payments becoming due to Landlord under this Lease (Landlord will be under no obligation to make payments of any overpaid Ticket Charge Payment amount to Tenant during the Term), unless this Lease has terminated, in which case Landlord will pay any overpaid Ticket Charge Payment amount to Tenant within thirty (30) days after Landlord's receipt of the audit report disclosing the overpayment; provided, however, that Landlord may first apply any such overpayment to any amount(s) owed to Landlord by Tenant before making any such payment to Tenant.

13.5 Identity and Retention of Auditor. Landlord's auditor will be either: (1) an employee of Landlord; or (2) a certified public accountant. Landlord's auditor will comply with such reasonable restrictions on time and access as Tenant may require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Landlord's auditor will not work under a contract providing a contingency fee for amounts determined to have been underpaid to Landlord by Tenant.

13.6 Confidentiality. Landlord shall not disclose information to Third Persons that is clearly identified by Tenant at the time such information is provided to Landlord as proprietary or confidential information of Tenant ("**Confidential Tenant Records**"), unless such disclosure is required by Law (including the California Public Records Act) or court order (collectively "**Disclosure Law**"), as determined by Landlord in its sole discretion, or the disclosure is related to the pursuit of any remedies or the assertion of any rights of Landlord under this Lease. Tenant shall only mark information as Confidential Tenant Records if the information has independent economic value as a result of generally not being known to another Person that could obtain economic value from using or disclosing it, and Tenant takes reasonable efforts to maintain its confidentiality other than disclosing it to Landlord as required under this Lease. Tenant shall provide Landlord an explanation for the basis of identifying information as a Confidential Tenant Record, and Tenant shall not adopt a practice of marking all information as Confidential Tenant Records if such information or communication does not meet the standard in the immediately preceding sentence. If Landlord receives a request or order under Disclosure Law that requires disclosure of Confidential Tenant Records, Landlord will endeavor to provide Notice to Tenant of such request. Landlord has the responsibility to make determinations about disclosure of information under Disclosure Law in Landlord's sole discretion, and to disclose information as required by Disclosure Law if Landlord determines that particular information is disclosable. As a result of the Landlord's obligations under Disclosure Law, Landlord's disclosure of any

Confidential Tenant Records in response to a request or order under Disclosure Law, with or without prior Notice to Tenant, will not be a Landlord Default under this Lease.

14. **PREVAILING WAGES**. [**NOTE TO DRAFT: APPLICABILITY OF THIS SECTION WILL BE DETERMINED UNDER SECTION 25 OF THE DDA.**] Tenant will cause all workers of Tenant or contractors or subcontractors of Tenant performing Construction, Interior Improvement, or maintenance work on the Premises, including work performed during the design and preconstruction phases of Construction or Interior Improvement, such as inspection and land surveying work, to be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work, all as determined by the Director of the California Department of Industrial Relations ("**DIR**") under California Labor Code sections 1770 through 1785 (these wages are, collectively, referred to in this Lease as "**Prevailing Wages**"). Additionally, Tenant, all Subtenants, and all Sub-Users shall comply with all provisions of California Labor Code sections 1720 through 1861 (collectively, "**Prevailing Wage Law**") and **EXHIBIT H**.

15. **TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY**. Notwithstanding anything to the contrary in this Lease, all Improvements (exclusive of public improvements that have been accepted by Landlord, under its Governmental Authority, after their Construction by Tenant, or public right-of-way, public utilities, public storm water improvements, or other improvements located on the Premises on the Commencement Date that are or were part of a system owned or operated by Landlord, under its Governmental Authority, or another Government or public utility), Building Equipment, and FF&E located in, on, or at the Premises or otherwise constituting part of the Premises will, during the Term, be owned by, and belong to, Tenant. All benefits and burdens of ownership of such Improvements, Building Equipment, or FF&E, including title, depreciation, taxes, tax credits, assessments, and all other tax items and obligations will be and remain in Tenant during the Term.

16. **PROHIBITED ENCUMBRANCES**.

16.1 Tenant's Covenant. Tenant will Notify Landlord of each Prohibited Encumbrance within twenty (20) days following Tenant's receipt of notice of such Prohibited Encumbrance. Tenant will, within thirty (30) days after receiving notice of a Prohibited Encumbrance (but in any case within fifteen (15) days after Tenant receives notice of commencement of foreclosure proceedings regarding any Prohibited Encumbrance), cause such Prohibited Encumbrance to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if Tenant disputes such Prohibited Encumbrance in good faith, Tenant may maintain an appropriate dispute of such Prohibited Encumbrance without payment, if Tenant records a bond complying with the provisions of California Civil Code section 3143 and causes the release of the Leasehold Estate from the disputed Prohibited Encumbrance. Tenant will, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Encumbrance, then Landlord will Notify Tenant.

16.2 Protection of Landlord. LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR, SERVICES, EQUIPMENT, OR MATERIAL WILL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE WILL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY PROFESSIONAL, CONTRACTOR, SUBCONTRACTOR, LABORER, OR EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICES OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR ANY CONSTRUCTION OR INTERIOR IMPROVEMENT, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY EQUIPMENT OR MATERIAL THAT WOULD GIVE RISE TO THE FILING OF ANY LIEN AGAINST THE FEE ESTATE. TENANT WILL INDEMNIFY LANDLORD AGAINST ALL LIABILITY ARISING FROM OR RELATING TO CONSTRUCTION OR INTERIOR IMPROVEMENT UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT AND AGAINST ALL PROHIBITED ENCUMBRANCES.

16.3 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, EQUIPMENT, OR MATERIAL. LANDLORD WILL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ALL NOTICES LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. TENANT WILL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ALL MAJOR CONSTRUCTION OR MAJOR INTERIOR IMPROVEMENT ON THE PREMISES TO ENABLE LANDLORD TO POST SUCH NOTICES.

17. **INSURANCE**. To protect the Landlord Parties against Claims arising from or related to this Lease, the Premises, Construction of the Project, any other Construction on the Premises, any Interior Improvement on the Premises, or the Permitted Uses, Tenant will maintain, at its sole expense, throughout the Term, all the insurance coverage described in the Tenant Insurance Requirements. Tenant will also require and cause each Subtenant and Sub-User to carry all the insurance coverage described in the Subtenant/Sub-User Insurance Requirements. Once each Lease Year, starting with Lease Year 3, either Party may initiate a review of this Lease's insurance requirements (either or both the Tenant Insurance Requirements or the Subtenant/Sub-User Insurance Requirements) to determine whether any required insurance coverage needs to be

modified to protect the interests of Landlord or Tenant. Such an insurance review may be commenced by one Party Notifying the other Party of the commencement of such a review. The Receipt Date of a Notice initiating an insurance review will commence a sixty (60) day period during which Landlord and Tenant will negotiate in good faith regarding modifying the insurance coverage required under this Lease. Neither Party will unreasonably withhold, condition, or delay its consent to a requested modification in the insurance coverage required under this Lease.

18. **LOSSES AND LOSS PROCEEDS**.

18.1 Notice. If either Party becomes aware of any Loss, such Party will Notify the other Party of such Loss within a reasonable time.

18.2 Casualty. If any Casualty occurs after the Commencement Date, no Rent will abate and Tenant will, except as otherwise provided in this Section 18.2, Restore with reasonable promptness. On the occurrence of a Substantial Casualty, Tenant may, by Notice to Landlord given within ninety (90) days after the Substantial Casualty with the consent of each Permitted Leasehold Lender, elect a Casualty Termination of this Lease in its entirety, effective ninety (90) days after the Receipt Date of such Notice. Upon any Casualty Termination, all Property Insurance Proceeds arising from such Substantial Casualty will be allocated in accordance with Section 18.8. If Tenant does not timely and validly elect a Casualty Termination following a Substantial Casualty: (a) this Lease will not terminate and Tenant will Restore with reasonable promptness (regardless of the availability or sufficiency of Property Insurance Proceeds for such purpose); and (b) Tenant will be solely responsible for: (i) negotiating and adjusting all Property Insurance Proceeds regarding the Casualty, subject to the rights of Permitted Leasehold Lenders; and (ii) the costs of Restoration.

18.3 Substantial Condemnation. On the occurrence of a Substantial Condemnation, this Lease will terminate in its entirety, on the Condemnation Effective Date. Neither Landlord nor Tenant will settle or compromise any Condemnation Award without consent from the other Party, not to be unreasonably withheld; provided, however, Tenant will not be required to obtain the consent of Landlord to settle or compromise any Condemnation Award when Landlord is the condemning authority. Any Condemnation Award will be paid to Depository under Section 18.6. For a Substantial Condemnation, subject to the rights of Lenders, Landlord and Tenant will allocate the Condemnation Award as follows and in the following order of priority, without duplication, until exhausted:

18.3.1 *Landlord's Costs*. For a Substantial Condemnation where Landlord is not the condemning authority, to reimburse Landlord for Landlord's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

18.3.2 *Tenant's Costs*. To reimburse Tenant for Tenant's actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

18.3.3 *Tenant's Claim*. Tenant will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Leasehold Estate taken as of the Condemnation Effective Date.

18.3.4 *Landlord's Claim*. Landlord will receive such portion of the Condemnation Award equal to the Market Value of the portion of the Fee Estate taken as of the Condemnation Effective Date.

18.3.5 *Residual Claim*. If Landlord is the condemning authority, Tenant will receive the entire remaining Condemnation Award, and otherwise, Landlord will receive the entire remaining Condemnation Award.

18.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) will be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Regardless of whether the Condemnation Award is adequate, Tenant will, at its expense, Restore in compliance with this Lease. After Tenant completes and pays for Restoration, any remaining Condemnation Award will be distributed to Landlord and Tenant in accordance with Section 18.3, as if it arose from a Substantial Condemnation affecting only the part of the Premises taken.

18.5 Temporary Condemnation. If a Temporary Condemnation occurs after the Commencement Date, then no Rent will abate under this Lease and this Lease will not be affected in any way, except as to use restrictions resulting from the Temporary Condemnation. To the extent that the period of a Temporary Condemnation includes any period outside the Term, the Condemnation Award from such Temporary Condemnation allocable to a period outside the Term will belong to Landlord. Otherwise, subject to the rights of Permitted Leasehold Lenders, Tenant will receive the Condemnation Award (to the extent attributable to periods within the Term).

18.6 Use of Loss Proceeds. Landlord assigns to Tenant the right to receive all Loss Proceeds, subject to the terms of this Lease. All Loss Proceeds will be paid to Depository, to be disbursed by Depository under the terms of this Lease. If Landlord receives any Loss Proceeds, Landlord will remit them to Depository. If a Loss is an Immaterial Loss, then subject to the terms of the Senior Permitted Leasehold Security Instrument on disbursement of Loss Proceeds for Restoration, Depository will release all Loss Proceeds to Tenant, to be applied first to Restoration. If a Loss is not an Immaterial Loss, then Depository will retain the Loss Proceeds and pay them over to Tenant, from time to time, upon the following terms, for Restoration, unless there is a Substantial Condemnation in which case the Loss Proceeds will be paid to Landlord and Tenant as provided in Section 18.3. Depository will first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository will release Loss Proceeds to Tenant, from time to time, in proportion to the percentage of completion of the Restoration, subject to a reasonable retention (at least ten percent (10%)). When Tenant has completed and paid for Restoration, Depository will release to Tenant, and Tenant may retain all remaining Loss Proceeds. Until Tenant has completed and paid for Restoration, Tenant will hold all Loss Proceeds in trust for the benefit of Landlord to be used first to Restore and for no other purpose. If any Prohibited Encumbrance is filed against the Premises,

Tenant will not be entitled to receive any further installment of Loss Proceeds, until Tenant has bonded, satisfied, or otherwise discharged such Prohibited Encumbrance under Section 16.1. If Loss Proceeds are insufficient to Restore and there is no Substantial Condemnation affecting the portion of the Premises requiring Restoration, then Tenant will nevertheless Restore at Tenant's sole cost and expense. Depository will not release any Loss Proceeds, unless and until Tenant expends an amount of money equal to the insufficiency of Loss Proceeds for such Restoration. Landlord will determine the amount of the insufficiency between the total amount of Loss Proceeds available for Restoration and the total costs of such Restoration.

18.7 Continuation of Lease. Except as this Lease expressly provides, this Lease will not terminate, be forfeited, or be affected in any other manner by any Loss. Tenant waives all right to quit or surrender the Premises because of any Loss or any resulting untenantability, including the provisions of California Civil Code sections 1932 and 1933, and agrees that the provisions of this Lease will exclusively govern the rights and responsibilities of the Parties in the event of a Loss. Unless and until this Lease is validly terminated in accordance with its terms, Tenant's obligations under this Lease, including the obligation to pay Rent, will continue unabated.

18.8 Tenant Obligation to Clear Premises. If Tenant elects a Casualty Termination in accordance with the terms of this Lease, then Landlord may, by Notice to Tenant within sixty (60) days after the Receipt Date of Tenant's Notice of Casualty Termination, require Tenant to cause the Improvements on or to the Premises to be demolished and the debris removed and all substantial excavations filled in and compacted, so that Tenant returns the Premises to Landlord as vacant and compacted land, free of Improvements, demolition debris, and substantial excavations. The Parties will cooperate to make available for such work, in installments as the work proceeds, all available Property Insurance Proceeds arising from the Casualty, substantially in accordance with the disbursement procedures that would govern use of Property Insurance Proceeds to Restore. Tenant will perform such work with reasonable promptness, but its completion will not be a condition to any Casualty Termination. Tenant's obligation to complete such work will survive the Casualty Termination. After completion of and full payment for such work, any remaining Property Insurance Proceeds will belong to Landlord. The provisions of this Section 18.8 will survive the Expiration Date.

18.9 No Effect on Landlord Eminent Domain Authority; No Condemnation. Nothing in this Lease is intended to, nor will be interpreted to, waive, limit, or restrict any Landlord power of eminent domain over the Premises or any other property. No action by Landlord in pursuing its rights or performing its obligations under this Lease will be considered any type or form of Condemnation.

19. **WASTE**. Subject to the provisions of this Lease concerning Construction, Condemnation and Casualty, Tenant will not commit or suffer to be committed any waste of the Premises, Improvements, or Building Equipment. Tenant agrees to keep the Premises, Improvements, and Building Equipment clean and clear of refuse and obstructions, to promptly dispose of all garbage, trash, and rubbish and to pay all taxes, fees, and other charges levied regarding this Lease, the Leasehold Estate, the Premises, Improvements, Building Equipment, or FF&E. Tenant will immediately Notify Landlord of any waste affecting the Premises. If waste affecting the Premises

arises from the Permitted Uses, at Landlord's election, in Landlord's sole and absolute discretion, Tenant will make, or cause to be made, full repair of the waste and Restore the Premises to its condition existing immediately prior to the waste. After Notice from Landlord electing to have Tenant repair or Restore the Premises, Tenant will commence repair or Restoration of the Premises as soon as practicable, but no later than thirty (30) days after the Receipt Date of Landlord's Notice. Tenant will complete all required repair or Restoration of the Premises within ninety (90) days after the Receipt Date of Landlord's Notice electing to have Tenant repair or Restore the Premises. Tenant must obtain all Approvals required for repair or Restoration of all waste affecting the Premises.

20. **ENVIRONMENTAL CONDITIONS**. Tenant will not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant will Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following Tenant becoming aware of such Environmental Condition.

20.1 Remediation. If an Environmental Condition occurs, Tenant will remediate the Environmental Condition in accordance with Law to allow all uses of the Premises permitted by Law immediately before the Environmental Condition is discovered, at Tenant's sole cost and expense. If Tenant knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Tenant will take all actions necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

20.2 Removal. If a Tenant Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with Law, Tenant will remove all such Hazardous Substances from the Premises prior to the Expiration Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant will be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Premises by Tenant in accordance with this Section 20.2.

20.3 Reports. Tenant will deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant will also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

20.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, Landlord may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment will be performed at Tenant's sole cost and expense. Tenant will reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after the Receipt Date of Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant under this Section 20.4 that is not paid within fifteen (15) days after the Receipt Date of Notice to Tenant of such amount, will accrue Default Interest until paid.

21. **ACCESS AND INSPECTION**. Notwithstanding anything to the contrary in this Lease, Landlord and its agents may enter the Premises upon reasonable advance Notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as Landlord determines are necessary or appropriate relating to possible (non)compliance with Law or possible occurrence of an Environmental Condition; provided, however, no invasive testing will be conducted by Landlord without Tenant's prior written consent, not to be unreasonably withheld or delayed. In entering the Premises, Landlord and its agents will not unreasonably interfere with Tenant's Permitted Uses of the Premises and will comply with Tenant's reasonable instructions. Landlord's entry onto the Premises under this Section 21 will not entitle Tenant to any rights or remedies, except as expressly provided in this Section 21, and such entry will not constitute an actual or constructive eviction of Tenant from the Premises, nor will it entitle Tenant to any offset, deduction, or abatement of Rent. Landlord may enter the Premises without Notice to Tenant in the event of an emergency. All Landlord representatives or agents who enter the Premises will identify themselves at the main entrance to the Premises and will always be accompanied by a Tenant representative while on the Premises. Tenant will make a Tenant representative available for this purpose during all regular hours of operation for the Premises upon reasonable advance Notice from Landlord. If in Landlord's reasonable judgment it is necessary, Landlord will have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Tenant with this Lease. Tenant acknowledges and agrees that: (i) all such Landlord inspections are for the sole purpose of protecting Landlord's rights under this Lease, are made solely for Landlord's benefit, may be superficial and general in nature, and are for the purposes of informing Landlord of the conformity of the Premises with this Lease; and (ii) Tenant will not be entitled to rely on any such inspection(s) as constituting Landlord's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Tenant agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

22. **INDEMNIFICATION**.

22.1 Tenant Indemnity Obligations. In addition to Tenant's obligations to Indemnify the Landlord Parties under other provisions of this Lease, Tenant will Indemnify the Landlord Parties against all Claims arising from: (a) Tenant's use or occupancy of the Premises, including personal injury (including death) or property damage (to property of Tenant or any other Person) occurring on the Premises; (b) Tenant's Construction of the Project or any other Improvements; (c) the wrongful intentional act or negligence of one or more Tenant Parties, Subtenants, or Sub-Users; (d) strict liability relating to the Tenant's use or occupancy of the Premises; (e) all Applications made by or at the request of one or more of the Tenant Parties, Subtenants, or Sub-Users; (f) all agreements that one or more of the Tenant Parties make with Third Persons regarding this Lease, the Project, or the Premises; (g) all services, labor, material, or equipment supplied to, for, or on behalf of one or more of the Tenant Parties, Subtenants, or Sub-Users; (h) all workers' compensation claims by one or more employees or contractors of one or more of the Tenant Parties, Subtenants, or Sub-Users; (i) all Prevailing Wage Determinations, except to the extent prohibited by Law; (j) all Environmental Conditions occurring on or after the Commencement

Date; (k) the existence of asbestos on or in the Premises or the Improvements; (l) all removal, management, remediation, or containment of Hazardous Substances or underground storage tanks on or affecting the Premises; (m) one or more project labor agreements entered into under Section 11.2; and (n) all Interior Improvement. Notwithstanding anything to the contrary in this Lease, Tenant's obligations to Indemnify the Landlord Parties exclude Claims arising solely from the established active negligence or willful misconduct of a Landlord Party.

22.2 Independence of Insurance and Indemnity Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will not be construed or interpreted as in any way restricting, limiting, or Modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations and other obligations under this Lease will not in any way restrict, limit, or Modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties and other obligations under this Lease.

22.3 Survival of Indemnification Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease will survive the Expiration Date, until all actual or prospective Claims subject to Tenant's obligations to Indemnify the Landlord Parties under this Lease are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

22.4 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

22.4.1 *Notice*. The affected Landlord Parties will Notify Tenant of the Claim within a reasonable time.

22.4.2 *Selection of Counsel*. Tenant will select legal counsel reasonably acceptable to the City Council. Even though Tenant will defend the Claim, each affected Landlord Party may, at its option and expense, engage separate counsel to advise the affected Landlord Party regarding the Claim and its defense (except that Tenant will pay the Legal Costs of separate legal counsel for an affected Landlord Party where: (a) Tenant provides a defense to the affected Landlord Party under a reservation of rights, (b) a conflict of interest between Tenant or another Person and the affected Landlord Party exists that requires the affected Landlord Party to be represented by separate legal counsel from Tenant's legal counsel, or (c) the affected Landlord Party reasonably determines that Tenant's legal counsel is not competent to represent the affected Landlord Party's interests). The separate legal counsel representing an affected Landlord Party may attend all proceedings and meetings. Tenant's legal counsel will actively consult with separate legal counsel representing an affected Landlord Party, subject to applicable conflict of interest and privileged communication limitations, if any.

22.4.3 *Cooperation*. The affected Landlord Parties will reasonably cooperate with Tenant's defense of the Landlord Parties.

22.4.4 *Settlement*. Tenant may only settle a Claim against the Landlord Parties with the prior written consent of the affected Landlord Parties, in their respective sole and absolute discretion.

22.5 Immediate Duty to Defend. The duty to defend that is within Tenant's obligations to Indemnify the Landlord Parties under this Lease includes Claims for which the Landlord Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Tenant Parties or the Landlord Parties have been determined. The duty to defend applies immediately, regardless of whether the Landlord Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claims.

22.6 Savings Provision. Notwithstanding anything in this Lease to the contrary, if the extent of Tenant's obligation to Indemnify the Landlord Parties under this Lease exceeds the indemnity obligation allowed by applicable Law, Tenant's obligation to Indemnify the Landlord Parties will be reduced to the extent required to comply with applicable Law.

23. **RIGHT OF CONTEST**.

23.1 Tenant's Right. Notwithstanding anything to the contrary in this Lease, Tenant will have the exclusive right to commence and prosecute a Contest, at its sole cost. Tenant will Notify Landlord of Tenant's commencement of a Contest, within thirty (30) days following Tenant's commencement of such Contest. Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions to remain satisfied throughout the period of the Contest:

23.1.1 *No Criminal Act*. Such deferral or non-compliance will not constitute a criminal act by Landlord or Tenant or subject Landlord or the Fee Estate to a material risk of any fine or penalty.

23.1.2 *No Liability*. Such deferral or non-compliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate.

23.1.3 *No Forfeiture*. Such deferral or non-compliance will not place the Fee Estate in material danger of being forfeited or lost.

23.1.4 *No Cost to Landlord*. Such Contest will be without cost, liability, or expense to Landlord and Tenant will Indemnify Landlord against any cost, liability or other expense arising from such Contest.

23.1.5 *Diligence*. Tenant will prosecute such Contest with reasonable diligence and in good faith.

23.1.6 *Payment*. If required for such Contest, Tenant will have paid all required amounts of money.

23.1.7 *Security*. If the amount of money at issue in such Contest (and all other Contests then pending) exceeds five hundred thousand dollars ($500,000) multiplied by the CPI Adjustment Factor, then Tenant will, before proceeding with such Contest, give Landlord Contest Security equal to such excess.

23.1.8 *Named Parties*. If Landlord has been named as a party in any action, Tenant will cause Landlord to be removed as a party.

23.2 Landlord Obligations and Protections. Landlord need not join in any Contest. Tenant will pay all reasonable costs and expenses, including Legal Costs, of any Contest and Indemnify Landlord against such costs and expenses.

23.3 Miscellaneous. Upon final determination of Tenant's Contest of a Law, Tenant will comply with such final determination. So long as all the conditions under Section 23.1 remain satisfied, Landlord will enter no objection to any Contest, except to the extent involving any Landlord Governmental Authority. Landlord may commence a Contest as to any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; (b) Tenant fails to commence such Contest within fifteen (15) days after the Receipt Date of such Notice; and (c) Landlord's Contest complies with all conditions and covenants that would apply to a Contest by Tenant, transposing references to the Parties and their interests, as appropriate.

23.4 Contest Security. Landlord will promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

24. LANDLORD'S TRANSFERS AND FINANCING.

24.1 Transfers. If Landlord intends to transfer or convey the Fee Estate, Landlord will Notify Tenant of Landlord's intent and provide Tenant with a period of thirty (30) days to Notify Landlord of Tenant's non-binding offer to purchase the Fee Estate. Landlord will not negotiate or complete a sale of the Fee Estate to a Third Person during this 30-day period. Landlord will not be obligated to accept Tenant's non-binding purchase offer or negotiate with Tenant in response to such purchase offer. Except as otherwise expressly provided in this Section 24.1, Landlord may transfer or convey the Fee Estate to any Person at any time. Landlord will Notify Tenant of each transfer or conveyance of the Fee Estate promptly following such transfer or conveyance. Upon any transfer or conveyance of the entire Fee Estate (including any transfer or conveyance of the Fee Estate by or in lieu of exercise of remedies under a Fee Security Instrument), the grantor will be relieved from all liability (excluding liability arising before such transfer or conveyance) for performance of any covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance; provided, however, that such transferee will assume and be bound by all covenants or obligations to be performed by Landlord under this Lease after the effective date of the transfer or conveyance. This Lease will bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations under this Lease arising before the effective date of transfer or conveyance of the Fee Estate.

24.2 Fee Security Instruments. Subject to the terms of this Lease and the Statement of Priorities, Landlord will have the right, at any time and from time to time during the Term, to make and deliver Fee Security Instrument(s). All Fee Security Instruments will be subject and subordinate to this Lease. Landlord will not enter into any Fee Security Instrument violating the immediately preceding sentence. Tenant will not subordinate this Lease to any Fee Security Instrument without consent from all Permitted Leasehold Lenders. Tenant will reasonably cooperate with Landlord and each actual or prospective Fee Lender by providing information reasonably requested by the Fee Lender and entering into agreements or signing and delivering documents reasonably requested by each actual or prospective Fee Lender.

24.3 Protection of Fee Lenders. If Tenant gives Landlord any Notice of a Landlord Default, Tenant will simultaneously give a copy of such Notice to all Fee Lender(s) of which Tenant has received Notice and contact information for delivery of Notices. Such Fee Lender(s) will have the right (but no obligation) to cure the Landlord Default within sixty (60) days following expiration of the cure period allowed to Landlord under this Lease, and with like effect as if Landlord had effected such cure. Tenant's failure to give Fee Lender(s) the Notice required by this Section 24.3 will not be a Default by Tenant, but no Notice by Tenant of any Landlord Default (or any resulting exercise of rights or remedies by Tenant) will be effective against such Fee Lender(s), unless and until Tenant has given to such Fee Lender(s) the Notice and opportunity to cure required by this Section 24.3.

25. **TENANT'S TRANSFERS**.

25.1 During Project Construction. During the period beginning on the Commencement Date and ending on the Project Completion Date, no Transfer, except a Permitted Transfer, is permitted.

25.2 After Project Construction. During the period beginning on the Project Completion Date, except for a Permitted Transfer or except as otherwise expressly provided in this Lease, Tenant will not have any right to make or allow any Transfer without the prior written approval of Landlord, which may not be unreasonably withheld. Landlord's disapproval of a proposed Transfer will be deemed reasonable if, among other circumstances evaluated in Landlord's reasonable discretion, the proposed Transferee: (a) does not have sufficient expertise in the management and leasing of developments similar to the Project located on the Premises (or, if such proposed Transferee does not have such expertise, such proposed Transferee has not engaged third parties with such expertise); (b) is not in sound financial condition and does not have the sufficient financial resources to manage the Project as required by this Lease and to comply with Tenant's obligations under this Lease; (c) is in violation of any Landlord policies under its Governmental Authority; or (d) is in violation of Law. Tenant acknowledges and agrees that Landlord will not approve a Transfer to a Prohibited Transferee. Landlord will not approve a Transfer if a Notice of Default to Tenant is outstanding as of the date of Tenant's Notice to Landlord of the Transfer or at any time following the date of such Notice through and including the effective date of the Transfer. Tenant further acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable. Tenant will provide prompt Notice to Landlord regarding any Permitted Transfer.

25.3 Transfers to Lender. At any time, a Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument, without Landlord's approval; or (b) a Transferee who obtains an Equity Interest or the Leasehold Estate through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written approval, in Landlord's sole and absolute discretion.

25.4 Annual Information on Equity Interests in Tenant. Within thirty (30) days after the first day of each Lease Year, Tenant will certify Tenant's then current ownership structure to Landlord, including the identity of all the then current owners of Equity Interests in Tenant.

25.5 Notice and Documentation. Tenant will Notify Landlord of each proposed Transfer, including each proposed Permitted Transfer, including all the following information:

(a) A current financial statement of the proposed Transferee prepared by a certified public accountant in accordance with GAAP and sufficiently detailed to allow Landlord to evaluate the proposed Transferee's current assets, liabilities, and the monetary amount by which the total monetary value of all assets of the proposed Transferee exceed the total monetary value of all liabilities of the proposed Transferee;

(b) All written agreements between Tenant and the proposed Transferee effectuating such Transfer, conditioned on Landlord's approval of such Transfer;

(c) A description of all properties owned or operated by the proposed Transferee that are similar to the Premises (if any);

(d) A certification by the Chief Financial Officer or equivalent Person responsible for the business of the proposed Transferee, under penalty of perjury under the Laws of the State, that the proposed Transferee is not a Prohibited Transferee;

(e) An Estoppel Certificate covering all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the Receipt Date of Tenant's Notice to Landlord requesting approval of the Transfer (and updated on the effective date of such Transfer to cover all time periods beginning on the date of Tenant's acquisition of the Leasehold Estate through and including the effective date of such Transfer); and

(f) In addition, following delivery of the initial Notice of Transfer, Tenant will provide all other information regarding the proposed Transferee reasonably requested by Landlord.

25.6 Landlord Approval Time. Landlord will either approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required under Section 25.5. Any Notice of disapproval of a proposed Transfer shall include an explanation of the reasons for the disapproval. If Landlord does not approve or disapprove a Transfer requiring Landlord's approval under this Lease within thirty (30) Business Days after the Receipt Date of the Notice of the proposed Transfer and all the information about the proposed Transfer required under Section 25.5, the Transfer will be considered disapproved by Landlord.

25.7 Transfer Taxes. Tenant will pay all transfer and other taxes payable because of any Transfer by Tenant.

25.8 Future Transfers. The provisions of this Section 25 will also apply to any future Transfers by any Tenant previously approved by Landlord under this Section 25.

25.9 Landlord's Costs. Tenant will reimburse Landlord for all reasonable costs (including Legal Costs) Landlord incurs in reviewing or approving each proposed Transfer requiring Landlord's approval under this Lease.

25.10 Charter Section 225. Under San Diego City Charter section 225, Tenant and each of its Transferees will disclose to Landlord the names and identities of all natural persons who own more than 10% of Tenant, each Transferee, each Subtenant under a Sublease that requires Landlord approval, and each Sub-User under a Use Agreement that requires Landlord approval.

25.11 Release of Tenant upon Certain Transfers. Notwithstanding anything in this Lease to the contrary, following a Landlord approved Transfer of all of Tenant's interest under this Lease to a Transferee that is not a Prohibited Transferee (but not following a Permitted Transfer), the transferring Tenant will be released from all obligations under this Lease that accrue from and after the date of the Transfer.

26. **USE AGREEMENTS**.

26.1 Use Agreement Prevailing Wage Requirements. Except as specified in this Section 26.1, Tenant shall not enter into any Use Agreement providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Use Agreement that provides for the Sub-User to pay less than the Fair Market Rent, Tenant shall require in the Use Agreement that: (a) all workers of the Sub-User or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 14, for all Construction, Interior Improvement, or maintenance performed by the Sub-User or its contractors or subcontractors; and (b) the Sub-User and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Use Agreement requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Use Agreement and the Use Agreement does not include the requirements in clauses "(a)" and "(b)" of this Section 26.1.

26.2 Operational Use Agreements. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into, Modify, terminate or give any consent under any Use Agreements for janitorial services, HVAC maintenance, food and beverage services, merchandise sales, events, programming, suite and other premium seating license agreements, and other operations-related agreements entered into in the ordinary course of the operation, maintenance, programming and management of the Premises that do not result in a Permanent Seat Reduction (collectively, "**Operational Use Agreements**") without Landlord's approval and without prior Notice to Landlord regardless of duration. No later than thirty (30) days

following the last day of each Lease Year, Tenant shall Notify Landlord of all Operational Use Agreements then in effect that provide substantial or exclusive rights to the Sub-User or that have an effect on programming, revenue, use, or availability of the Premises, and for any suite or other premium seating agreement shall specify the number of seats and the location of the seats.

26.3 Programming Use Agreements. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into, Modify, terminate or give any consent under any Use Agreements for programming and events at the Entertainment Center without Landlord's approval and without prior Notice to Landlord regardless of duration, so long as the same do not result in a Permanent Seat Reduction. Within fifteen (15) days after the last day of each calendar quarter during the Term (or up to monthly, if requested by Landlord), Tenant shall Notify Landlord, on a quarterly basis, of the schedule of the then anticipated events and programming for the immediately following twelve (12) months. Any changes to the schedule of anticipated events and programming shall be included with the next schedule Notice to Landlord.

26.4 Use Agreements Only Requiring Notice to Landlord. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into, Modify, terminate, or give any consent under Use Agreements that do not require, cause, or result in a Permanent Seat Reduction without Landlord's approval, provided that Tenant shall Notify Landlord of each such Use Agreement within thirty (30) days after entering into the Use Agreement.

26.5 Use Agreements Requiring Landlord Approval. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may only enter into, Modify, terminate, or give any consent under Use Agreements requiring, causing, or resulting in a Permanent Seat Reduction, with the prior written approval of Landlord, in Landlord's sole discretion.

27. **SUBLEASING**.

27.1 Tenant’s Right. Subject to the other terms of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Eligible Subleases, Modify any Eligible Sublease, terminate any Eligible Sublease, evict any Subtenant, or give any consent under any Eligible Sublease, all without Landlord’s consent; provided, however, that no individual Sublease of any area of more than ten thousand (10,000) gross square feet shall be valid without Landlord’s prior written consent, which shall not be unreasonably withheld.

27.2 General Sublease Requirements. Notwithstanding any provision of this Lease to the contrary, Tenant has no right to enter into any Sublease for the entire Premises. No Sublease shall affect any obligation of Tenant or right of Landlord under this Lease, all of which shall continue in full force and effect, notwithstanding any Sublease. All Subleases shall be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant’s obligation to cure all Defaults. Tenant shall take all steps reasonable and necessary to prevent Defaults caused by Subtenants.

27.3 Sublease Prevailing Wage Requirements. Except as specified in this Section 27.3, Tenant shall not enter into any Sublease providing for the payment of rent and other consideration that is cumulatively less than the Fair Market Rent. If Tenant enters into a Sublease that provides for the Subtenant to pay less than the Fair Market Rent, Tenant shall require in the Sublease that: (a) all workers of the Subtenant or its contractors or subcontractors must be paid Prevailing Wages, as required under Section 14, for all Construction, Interior Improvement, or maintenance performed by the Subtenant or its contractors or subcontractors; and (b) the Subtenant and its contractors and subcontractors will comply with Prevailing Wage Law and the provisions of **EXHIBIT H**. If a Sublease requires Landlord approval, it shall not be unreasonable for Landlord to withhold its approval if Landlord determines, in its sole discretion, that Prevailing Wages are required to be paid under such Sublease and the Sublease does not include the requirements in clauses "(a)" and "(b)" of this Section 27.3.

27.4 Assignment of Sub-Rents. To secure Tenant's performance under this Lease, Tenant assigns, transfers, and sets over to Landlord, subject to the conditions in this Section 27.4 (and the rights of Permitted Leasehold Lenders), Tenant's right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Sub-Rent during the pendency of an Event of Default. Landlord's exercise of such rights shall not constitute an eviction of Tenant. Unless and until an Event of Default by Tenant or on a termination of this Lease, Tenant shall have a license to exercise its right, title, and interest in and to all Subleases, Use Agreements, and Sub-Rent. Landlord may revoke such license, at Landlord's option, only during the pendency of an Event of Default by Tenant or on a termination of this Lease. Upon any such revocation, Landlord may collect Sub-Rent directly from Subtenants and Sub-Users and apply the net amount collected to amounts owed to Landlord by Tenant, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. No such condition shall be, or be deemed to be, Landlord's waiver of any term of this Lease, acceptance of any Subtenant or Sub-User as Tenant, or release of Tenant from any obligation under this Lease. All sums Landlord collects prior to termination of this Lease and in excess of the net amount Landlord applies against amounts owed to Landlord by Tenant shall belong to Tenant and be refunded to Tenant (subject to the rights of Permitted Leasehold Lenders).

27.5 Required Provisions. Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section 27.5. By entering into its Sublease, each Subtenant shall agree to these provisions that reflect the definitions in this Lease. All such defined terms shall be modified in the required provision, as appropriate, to reflect the definitions in the Sublease.

> *All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this Sublease shall automatically and concurrently terminate subject to the rights of Subtenant under an NDA. In that event, Subtenant, only at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this*

Sublease, in accordance with the NDA between Subtenant and Landlord. Subtenant shall sign and deliver, at any time and from time to time, upon the request of Tenant, Landlord, or any Permitted Leasehold Lender, any instrument necessary or appropriate to evidence such attornment. This appointment is coupled with an interest and is irrevocable. Subtenant, for the express benefit of Landlord, waives its rights under any Law that may allow Subtenant to terminate this Sublease or surrender possession of the demised subpremises, if the Lease terminates.

27.6 Delivery of Subleases. Tenant shall deliver to Landlord a copy of each fully signed Sublease and all associated agreements, all certified as accurate by both Tenant and Subtenant; within fifteen (15) days following Tenant entering into the particular Sublease.

27.7 Non-Disturbance of Subtenants. Landlord shall, within thirty (30) days after the Receipt Date of Notice from Tenant at any time or from time to time, enter into (and cause each Fee Lender to enter into) a recordable NDA with any Subtenant or proposed Subtenant, provided that: (a) such Subtenant's Sublease is (or once signed by Tenant and Subtenant, will be) an Eligible Sublease upon Landlord, Tenant, and Subtenant entering into the associated NDA; (b) Tenant gives Landlord a certified copy of such Sublease (or proposed Sublease, as the case may be), which Sublease contains all provisions required by this Lease and otherwise complies with this Lease; and (c) no Event of Default exists.

27.8 Tenant's Obligations Regarding Subleases.

27.8.1 **Sublease Lists and Enforcement**. Tenant shall, upon request (no more frequently than once every six (6) months), give Landlord a current list of all Subleases. Tenant shall perform its obligations under all Subleases and Tenant shall enforce all its rights under Subleases in a commercially reasonable manner.

27.8.2 **Sublease Update Packages**. Tenant shall give Landlord copies of all Subleases and amendments to Subleases, to the extent that such copies have not previously been delivered to Landlord, or a certificate that no such new Subleases or new Sublease amendments have been entered into (such copies or certificates, a "**Sublease Update Package**"), at least, once each Lease Year, within thirty (30) calendar days following the first day of each Lease Year, together with a current rent roll for the Premises, listing all Subleases and Subtenants and their respective current Sub-Rent and security deposits.

27.9 Future Subleasing. The provisions of this Section 27 shall also apply to any future subleasing or assignment by any Subtenant previously approved by Landlord under this Section 27.

27.10 Amendments to Eligible Subleases. Tenant shall give Landlord Notice (which Notice includes a certified copy of the subject amendments(s)) of any and all amendments of each Eligible Sublease within fifteen (15) calendar days following Tenant's entry into such amendment. Any Modification to an Eligible Sublease, including those resulting from Tenant's consent under the

Eligible Sublease, that would make the Sublease not an Eligible Sublease may only be made with Landlord's prior written consent, in Landlord's sole and absolute discretion.

27.11 Collection of Sub-Rent. Landlord shall not send any Sub-Rent Payment Notice unless an Event of Default has occurred. If Landlord collects any Sub-Rent prior to termination of this Lease, then Landlord shall apply it first to pay all of Landlord's costs in collecting such Sub-Rent, including Legal Costs, then to pay all Rent then due, and then to cure all Defaults and Events of Default of Tenant and then to pay all costs of the Premises. Landlord shall then remit to Tenant, any such remaining Sub-Rent. All Sub-Rent collected by Landlord after termination of this Lease is the sole property of Landlord. Tenant directs Landlord accordingly. If Landlord sends a Sub-Rent Payment Notice, Tenant cures all Events of Default, and this Lease has not been terminated, then Landlord shall, at Tenant's expense (including Landlord's Legal Costs), give each Subtenant or Sub-User a Notice rescinding Landlord's Sub-Rent Payment Notice.

28. PERMITTED LEASEHOLD SECURITY INSTRUMENTS.

28.1 Tenant's Rights. Subject to the terms of this Lease and the Statement of Priorities, Tenant will have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instrument(s) encumbering this Lease and the Leasehold Estate, provided that all Defaults and Events of Default are cured before or on the effective date of the Permitted Leasehold Security Instruments; and (b) assign (absolutely or collaterally) Tenant's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

28.2 Limitations on Permitted Leasehold Security Instruments. Landlord will not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances will the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Tenant or any Person other than Landlord. Prior to the Project Completion Date, Permitted Leasehold Security Instruments may only secure repayment of financing being applied solely to pay the cost of the original Construction of the Project. Notwithstanding anything to the contrary contained in this Lease, at no time prior to the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the costs of the original Construction of the Project. At no time following the Project Completion Date may the total outstanding principal balance of obligations secured by Permitted Leasehold Security Instruments against the Leasehold Estate exceed seventy-five percent (75%) of the then current appraised Market Value of the Leasehold Estate (including any Improvements and business operations of Tenant on the Premises). Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Tenant is outstanding under this Lease will not encumber the Leasehold Estate and will be a Default by Tenant, subject to applicable Notice and cure periods, unless all Defaults of Tenant under this Lease are cured concurrent with the grant of such Security Instrument.

28.3 Effect on Landlord. No Permitted Leasehold Security Instrument will affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. Any Lender Protections applicable to Permitted Leasehold Lenders may be exercised only by, and will

only benefit, Permitted Leasehold Lenders, New Tenants, and Post-Foreclosure Tenants. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then such Permitted Leasehold Security Instrument will be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. If this Lease terminates and the New Lease Option Period expires, without any Permitted Leasehold Lender timely requesting and entering into a New Lease, then Permitted Leasehold Lender(s) will no longer be entitled to any Permitted Leasehold Lender's Cure Rights or other Lender Protections. The priority of the Leasehold Estate and the consequences of a Foreclosure Event under a Permitted Leasehold Security Instrument are as described in the Statement of Priorities. Nothing in any Permitted Leasehold Security Instrument binds Landlord or imposes any obligation or liability on Landlord.

28.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a Foreclosure Event and exercise any other rights or remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any other provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it will, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Tenant under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) will have any personal liability under this Lease unless and until (and then only so long as) it is Tenant under this Lease. Any such personal liability will be limited to the Person's interest in this Lease.

28.5 Transfer of Escrows, Reserves, Security, and Other Deposits Held by Landlord. Upon any Foreclosure Event or New Lease Delivery Date, the Tenant's right, title, and interest in any security deposit, letter of credit (subject to the issuer's consent), reserve account, escrow account (for Real Estate Taxes, insurance premiums, Rent, or any other purpose), security, prepaid Rent, or other amount of money the former Tenant previously paid Landlord under this Lease, any Restoration Funds, and any Construction Surety (subject to the surety's consent) will automatically be assigned to the New Tenant or Post-Foreclosure Tenant, as applicable. In such event, such former Tenant will no longer have any right, title, or interest in or to the foregoing. Instead, New Tenant or Post-Foreclosure Tenant will hold all such rights, free of any claim of the former Tenant. To the extent that on any New Lease Delivery Date, the New Lease requires Tenant to restore the amount of any security deposit, bond, or account, New Tenant's failure to do so will constitute a Monetary Default, subject to all applicable Notices and opportunity to cure, including Permitted Leasehold Lender's Cure Rights.

28.6 Termination of Permitted Leasehold Lender's Rights. If a Permitted Leasehold Lender is entitled to Lender Protections, then such entitlement will not terminate, unless and until such time, if any, as either: (a) its Permitted Leasehold Security Instrument is satisfied, except through a Foreclosure Event (in which event the Permitted Leasehold Lender will proceed under Section 28.9); (b) such Permitted Leasehold Lender consents in writing to termination of its Lender Protections; or (c) after Landlord complies with all Lender Protections, Landlord validly terminates this Lease, no Permitted Leasehold Lender validly requests (and is entitled to) and enters into a New Lease, and the New Lease Option Period expires. Upon the occurrence of the circumstances described in clause "(c)" in the immediately preceding sentence, the obligations

formerly secured by Permitted Leasehold Security Instrument(s) will no longer be secured by Permitted Leasehold Security Instruments and no Permitted Leasehold Security Instrument will encumber the Leasehold Estate.

28.7 Lease Impairments. Any Lease Impairment made or entered into without Permitted Leasehold Lender's Consent will (at the option of the Senior Permitted Leasehold Lender) not be effective and not bind Permitted Leasehold Lenders or any New Tenant or Post-Foreclosure Tenant. Nothing in this Section 28.7 limits Landlord's right to terminate this Lease after an Event of Default and the expiration of all Permitted Leasehold Lender's Cure Rights, without cure of such Event of Default, subject however to: (a) provisions of this Lease limiting Landlord's right to terminate this Lease because of Tenant-Specific Default(s); and (b) the right of a Permitted Leasehold Lender to obtain a New Lease.

28.8 Permitted Leasehold Lender Notice of Default. Any Landlord right to terminate this Lease following any Tenant Default will be conditioned upon Landlord first Notifying each Permitted Leasehold Lender of which Landlord received Notice and an address for service of Notice of the Default, and no Permitted Leasehold Lender timely curing such Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 28.9.

28.9 Permitted Leasehold Lender's Cure Rights. If any Tenant Default occurs, then any Permitted Leasehold Lender will have the time provided for below in this Section 28.9 within which to take (if such Permitted Leasehold Lender so elects, and no Permitted Leasehold Lender will have any duty to undertake any Permitted Leasehold Lender's Cure of any kind) whichever of the actions set forth below as will apply to such Default:

28.9.1 *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender may, at its option, cure such Default, within fifteen (15) days following expiration of Tenant's cure period under this Lease for such Monetary Default.

28.9.2 *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender can reasonably cure without obtaining possession of the Premises (excluding any Tenant-Specific Default), provided that Permitted Leasehold Lender has cured all Monetary Defaults, Permitted Leasehold Lender may: (a) Notify Landlord of the Permitted Leasehold Lender's intent to cure the Non-Monetary Default; (b) within thirty (30) days following expiration of Tenant's cure period for such Non-Monetary Default, commence to cure such Non-Monetary Default; and (c) diligently prosecute the cure of such Non-Monetary Default to completion within a reasonable time under the circumstances.

28.9.3 *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Premises (including any Construction-related Default), Permitted Leasehold Lender will be entitled (but not required) to do the following (but only so long as, for any Defaults other than a Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without

possession of the Premises, such Permitted Leasehold Lender has exercised or is exercising, within the applicable cure periods, the applicable Permitted Leasehold Lender's Cure Rights):

(a) **Pursue Premises Control**. At any time within thirty (30) days following expiration of the cure period (if any) applicable to Tenant, or if no cure period applies to Tenant, then within thirty (30) days after the Receipt Date of Notice of the Non-Monetary Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and (subject to any applicable stay in any Bankruptcy Proceeding affecting Tenant or any applicable injunction) then diligently prosecute such proceedings to completion. If a Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control in accordance with this Section 28.9.3(a) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender or Post-Foreclosure Tenant will proceed with reasonable diligence to cure all Non-Monetary Defaults (excluding Tenant-Specific Defaults) within: (i) thirty (30) days after such Permitted Leasehold Lender or Post-Foreclosure Tenant obtains Premises Control; or (ii) if such Non-Monetary Default is not reasonably susceptible of cure within such thirty (30) day period, then within a reasonable time under the circumstances.

(b) **Performance of Lease Obligations**. Perform all the Tenant's covenants and obligations under this Lease that can be performed by such Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

28.10 Security Instrument Defaults. If a Permitted Leasehold Security Instrument is in default, the Permitted Leasehold Lender will, as provided by Law, have the right, without Landlord's prior consent, subject to the other provisions of this Lease and the other provisions of this Section 28, to:

28.10.1 *Assignment in Lieu of Foreclosure*. Accept an assignment of the Leasehold Estate in lieu of foreclosure; or

28.10.2 *Foreclosure Sale*. Cause a foreclosure sale of the Leasehold Estate to be held through either judicial proceedings or power of sale under the applicable Permitted Leasehold Security Instrument.

28.11 Landlord's Exercise of Other Rights and Remedies. Whenever a Permitted Leasehold Lender is exercising, or is entitled to exercise, Permitted Leasehold Lender's Cure Rights, Landlord may, notwithstanding anything to the contrary in this Lease, continue to deliver Notices of Default to, collect actual damages from, and seek equitable relief (including a negative or mandatory injunction) against Tenant on account of any Default, and may require Tenant to Indemnify the Landlord Parties (and other Indemnitees) in each case when, as, and to the extent this Lease requires.

28.12 Permitted Leasehold Lender Exercise of Tenant's Rights. So long as such Permitted Leasehold Lender's cure rights (and right to obtain a New Lease) under this Lease have not expired, such Permitted Leasehold Lender may, at any time, exercise (and will always have standing to exercise and assert) all rights or remedies of Tenant under this Lease, subject to all limitations on such rights. Any exercise of such rights by any Permitted Leasehold Lender will be as effective as if done by Tenant.

28.13 Indemnity Regarding Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Permitted Leasehold Lender desires to enter the Premises to cure any Default, then, as a condition to such entry, such Permitted Leasehold Lender will agree in writing to Indemnify the Landlord Parties regarding Claims arising from any negligence or willful misconduct of such Permitted Leasehold Lender in pursuing the cure of any such Default, except Claims arising solely from the active negligence or willful misconduct of the Landlord Parties.

28.14 Limited Assignment of Security Instruments. No Permitted Leasehold Lender will assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender Controlling such Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by such Permitted Leasehold Security Instrument.

29. **NEW LEASE**.

29.1 New Lease Notice. If the Expiration Date occurs before the Scheduled Expiration Date for any reason (including because of any Event of Default or rejection in a Bankruptcy Proceeding or any Permitted Leasehold Lender's failing to timely exercise its Permitted Leasehold Lender's Cure Rights), but excluding any termination with Permitted Leasehold Lender's Consent because of a Loss or otherwise, then (in addition to any other or previous Notice that this Lease requires Landlord to give to a Permitted Leasehold Lender), Landlord will, within ten (10) Business Days, Notify all Permitted Leasehold Lenders of such termination. If a Permitted Leasehold Lender requests a New Lease during the New Lease Option Period, then from the Expiration Date to the New Lease Delivery Date, Landlord will not: (a) operate the Premises in an unreasonable manner; or (b) lease the Premises to anyone other than New Tenant. Upon a Permitted Leasehold Lender's request for a New Lease made during the New Lease Option Period, Landlord will enter into a New Lease with New Tenant, provided that on the New Lease Delivery Date, New Tenant: (i) pays Landlord all monetary amounts then due under this Lease, as if this Lease had not terminated; and (ii) agrees to cure with reasonable diligence all then-uncured Non-Monetary Defaults (except Tenant-Specific Defaults), within a reasonable period after the New Lease Delivery Date. Nothing in this Lease will prevent Landlord from terminating this Lease in accordance with its terms (after compliance with all Permitted Leasehold Lender's Cure Rights), but any such termination will, thereafter, be subject to Permitted Leasehold Lenders' and New Tenant's rights to obtain a New Lease (even if any Permitted Leasehold Lender could have prevented such termination by exercising its Permitted Leasehold Lender's Cure Rights). The following additional provisions will apply to any New Lease:

29.1.1 *Priority*. Any New Lease and New Tenant's Leasehold Estate under such New Lease, and Landlord's obligation to deliver possession of the Premises under any New Lease, will all be subject to: (a) the rights of all Persons in possession of the Premises; (b) any matters that encumbered the previous Leasehold Estate and were senior and prior to the Permitted Leasehold Security Instrument held by the Permitted Leasehold Lender that requested the New Lease; and (c) Permitted Exceptions.

29.1.2 *Adjustment for Net Income*. On the New Lease Delivery Date, Landlord will pay New Tenant an amount of money equal to the Revenue Landlord received from the Premises, less (a) Rent and (b) operating expenses expended or incurred by Landlord, from the Expiration Date to the New Lease Delivery Date, provided that New Tenant simultaneously pays Landlord (or credits Landlord an amount of money equal to) all amounts of money required to be paid Landlord under this Lease upon entry into such New Lease (including any Rent due, but unpaid), and not otherwise paid by Landlord from Revenue received by Landlord.

29.1.3 *Transfer of Certain Items*. On the New Lease Delivery Date, Landlord will assign and convey, without recourse to New Tenant, Landlord's entire right, title, and interest in and to all: (a) moneys (including Loss Proceeds), if any, then held by, or payable to, Landlord that Tenant (or Permitted Leasehold Lender) would have been entitled to receive, but for Tenant's Event of Default and Landlord's termination of this Lease; and (b) Improvements, to the extent of the former Tenant's former interest in such Improvements under the terminated Lease.

29.1.4 *Landlord's Costs and Expenses*. If a Permitted Leasehold Lender requests Landlord enter into a New Lease, then on the New Lease Delivery Date (and as a condition to Landlord's delivery of the New Lease) such Permitted Leasehold Lender will pay all reasonable expenses, including documentary transfer taxes and Legal Costs, incurred or payable by Landlord in connection with any Event of Default and termination of this Lease, recovery of possession of the Premises, preparation, signature, and delivery of the New Lease, any memorandum of the New Lease requested by New Tenant and recordation of any such memorandum, and all other documents New Tenant reasonably requests to enable New Tenant to obtain title insurance for the New Lease.

29.1.5 *Survival*. All rights of any Permitted Leasehold Lender, and obligations of Landlord, regarding a New Lease will survive termination of this Lease for the duration of the New Lease Option Period.

30. **INTERACTION OF MULTIPLE ESTATES**.

30.1 Priorities of Multiple Lenders. If more than one Lender of a particular type (Fee or Leasehold) desires to exercise any Lender Protections applicable to such Lender, then the Party against whom such Lender Protections are to be exercised will be required to recognize either: (a) only the Lender desiring to exercise such Lender Protections and whose Security Instrument is most Senior (as against other Security Instruments of like type); or (b) such other Lender as all Fee Lenders or all Permitted Leasehold Lenders, as applicable, designate in writing to exercise such Lender Protections. Priority of Security Instruments will be conclusively evidenced by (in order

of precedence of application): (i) written agreement (or joint written instructions) by all Lenders of the same type (Fee or Leasehold, as applicable); or (ii) a report or certificate of a title insurance company licensed to do business in the State. Neither Tenant nor Landlord will be obligated to determine the relative priorities of any Security Instruments.

30.2 No Merger. Notwithstanding any acquisition of both the Fee Estate and the Leasehold Estate by Tenant, any Post-Foreclosure Tenant, a New Tenant, any Lender, or a Third Person, without the written consent of Landlord, Tenant, and all Permitted Leasehold Lenders (the consent of Landlord, Tenant, and Permitted Leasehold Lenders only being required until their respective rights under this Lease are terminated), the Fee Estate and the Leasehold Estate will always remain separate and distinct estates.

31. LANDLORD'S RESERVATION OF RIGHTS.

31.1 Government Action. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary any required Approval from Landlord under its Governmental Authority or constitute an Approval by Landlord under its Governmental Authority. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Premises, including re-zonings, variances, environmental clearances, any Approval required for the Permitted Uses, or otherwise. Tenant will diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord, under its Governmental Authority, and other Governments necessary for the Permitted Uses. Nothing express or implied in this Lease is intended, nor will be construed or interpreted, to limit, restrict, waive, or vary Landlord's exercise of its Governmental Authority.

31.2 Proprietary Agreement. The Parties acknowledge and agree that Landlord is entering into this Lease in its proprietary capacity as the owner of the Premises and as a market participant, not under its Governmental Authority. Therefore, the Parties intend that: (a) this Lease is separate and distinct from all agreements entered into by Landlord with Tenant under Landlord's Governmental Authority, including any statutory development agreement; (b) if there is any conflict or inconsistency between this Lease and any agreement entered into by Landlord with Tenant under Landlord's Governmental Authority, the terms, conditions, covenants, restrictions, or agreements in this Lease will control; and (c) Landlord is not subject to the limitations on the exercise of its Governmental Authority in entering into this Lease or exercising its rights under this Lease.

31.3 Natural Resources. Landlord reserves all right, title, and interest in all subsurface natural resources relating to the Premises, including natural gas, oil, minerals, and water, on or within the Premises; provided, however, Landlord will not unreasonably interfere with Tenant's use, occupancy, or development of the Premises in connection with Landlord's rights to such subsurface natural resources.

31.4 Access Rights. Landlord reserves the right to grant and use easements or establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or public or Government access to the Premises or other real property; provided, however, Landlord will

not unreasonably interfere with Tenant's use, occupancy, or development of the Premises in connection with Landlord's rights to grant, establish, or use such access rights.

32. **EVENTS OF DEFAULT; REMEDIES**.

32.1 Definition of "Event of Default". An "**Event of Default**" means the occurrence of any one or more of the following:

32.1.1 *Monetary Default*. A Monetary Default that continues for seven (7) days after the Receipt Date of Notice to Tenant of the Monetary Default.

32.1.2 *Project Construction Default*. A Project Construction Default that continues for thirty (30) days after the Receipt Date of Notice to Tenant of the Project Construction Default.

32.1.3 *Bankruptcy or Insolvency*. Tenant ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made).

32.1.4 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 32.1.2 or 32.1.3, that is not cured within thirty (30) days after the Receipt Date of Notice to Tenant describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the Receipt Date of Notice of the Non-Monetary Default to Tenant, Tenant will not be in Default if it does all the following: (a) within thirty (30) days after the Receipt Date of the Notice of the Non-Monetary Default, Notifies Landlord of Tenant's intention to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the Receipt Date of the Notice of the Non-Monetary Default, commences curing the Non-Monetary Default; and (c) completes the cure of the Non-Monetary Default within a reasonable time, but in no event more than one hundred eighty (180) days after the Receipt Date of the Notice of the Non-Monetary Default.

32.2 Remedies. If an Event of Default occurs, then Landlord will, at Landlord's option, in Landlord's sole and absolute discretion, have all the following remedies, all cumulative (so exercise of one remedy will not preclude exercise of another remedy), in addition to such other remedies as may be available at law, in equity, or under any other provision of this Lease:

32.2.1 *Termination of Tenant's Rights*; *Conditional Limitation*. Landlord may serve upon Tenant a 10-day Notice of termination of this Lease. Upon the expiration of such 10-day period, this Lease and the Term will automatically, and without further action by any Person, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 10-day period were the Expiration Date. The passage of such 10-day period constitutes the limit beyond which Tenant's tenancy no longer exists. Tenant will then quit and surrender the

Premises to Landlord in accordance with Section 33 but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term will terminate and expire as set forth in this Section 32.2.1. This Section 32.2.1 is intended to establish a conditional limitation and not a condition subsequent.

32.2.2 *Recovery of Damages Following Termination*. If Tenant's right to possession of the Premises is terminated by Landlord following the occurrence of an Event of Default, this Lease will also terminate on the date on which Tenant's right to possession of the Premises terminates. Upon any such termination of this Lease, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) 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.

(e) The "worth at the time of award" of the amounts referred to in Sections 32.2.2(a) and 32.2.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 32.2.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

32.2.3 *Taking Possession*. Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease and without: (a) being liable for damages; (b) being guilty of trespass; or (c) terminating this Lease. This Section 32.2.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, will absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, in Landlord's sole and absolute discretion, relet all or any portion of the Premises. Landlord may, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord will apply all rents from any such reletting in the manner provided in Section 32.5. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 32.2.3 in Landlord's name and will be entitled to all rents from the use, operation, or occupancy

of the Premises. Tenant will nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all amounts required to be paid by Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 32.2.3 will constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

32.2.4 *Suits Before Expiration Date*. Landlord may sue for damages or to recover Rent, from time to time, in Landlord's sole and absolute discretion.

32.2.5 *Receipt of Money*. No receipt of money by Landlord from Tenant after termination of this Lease or after giving any Notice of termination of this Lease will reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later becoming due, or Landlord's right to recover possession of the Premises by proper remedy, except as this Lease expressly states otherwise, it being agreed that after delivery of Notice of termination of this Lease or commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect all money due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit, or judgment, all such money collected being deemed payments on account of use and occupation of the Premises by Tenant or, in Landlord's sole and absolute discretion, on account of Tenant's liability to Landlord.

32.2.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default or Event of Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, will waive any such Default, Event of Default, or such covenant, agreement, term, condition, or restriction. No covenant, agreement, term, condition, or restriction of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, will be Modified, except by a written instrument signed by Landlord. No waiver of any Default or Event of Default will Modify this Lease. Each covenant, agreement, term, condition, and restriction of this Lease will continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

32.2.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Event of Default, including as set forth in Section 32.2.2 and reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Event of Default, including after the Expiration Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for Tenant's Event of Default but may bring and prosecute a single combined action for all such Rent or damages.

32.2.8 *Continue Lease*. Landlord may, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Premises. Landlord has the remedy described in California Civil

Code section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). If Landlord elects to exercise the remedy described in California Civil Code section 1951.4 and maintain Tenant's right to possession of the Premises after an Event of Default, this Lease will continue and Landlord may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease or sublease the Premises are reasonable considering that the Ticket Charge Payments under this Lease are completely dependent on Tenant's successful Construction of the Project and profitable operation of the Project for many years such that Tenant's reputation in the applicable industry, ability to obtain reasonable financing for Construction and operation of the Project as provided in the Financing Plan, ability to coordinate successfully with Landlord, creditworthiness, operational efficiency, and similar attributes are all critical to achievement of Landlord's financial expectations for this Lease.

32.3 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages do not constitute an adequate remedy for a Non-Monetary Default.

32.4 Restoration Funds. Upon any termination of this Lease after an Event of Default or otherwise, to the extent Landlord or Depository then holds any Restoration Funds, such funds will be applied as provided in this Lease, including as a payment toward any sums then payable to Landlord under this Lease.

32.5 Proceeds of Reletting. Landlord will apply all proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

32.5.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and removing all Persons and property from the Premises, including reasonable and customary brokerage commissions and Legal Costs;

32.5.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably incurred in securing any new tenants or other occupants, including all brokerage commissions, Legal Costs, and all other reasonable costs of preparing the Premises for reletting;

32.5.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord will maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

32.5.4 *Residue*. Fourth, to pay to itself the remaining balance of Tenant's liability to Landlord.

32.6 Tenant's Late Payments; Administrative Charges. If Landlord sends a Notice of Monetary Default to Tenant, then in addition to the other remedies of Landlord, and without reducing or

adversely affecting Landlord's other rights or remedies, Tenant will pay five percent (5%) of the unpaid amount to Landlord as the reasonably estimated cost of the payment delay to Landlord. If any amount of such payment remains unpaid fifteen (15) days after such payment is first due and payable, then in addition to the other remedies of Landlord, and without reducing or adversely affecting Landlord's other rights or remedies, Tenant will pay an additional five percent (5%) of the unpaid amount (a total of 10%) to Landlord as the reasonably estimated cost of the payment delay to Landlord. Notwithstanding anything to the contrary in the two immediately preceding sentences, the amount payable by Tenant to Landlord under either sentence will be no less than $25. Nothing in this Section 32.6 is intended to affect or change Landlord's rights or remedies regarding a Default or Event of Default. This Section 32.6 only establishes Landlord's right to recover reasonably estimated costs of late payments, including compensating Landlord for staff time incurred by Landlord to handle the late or missed payment. Amounts payable by Tenant to Landlord under this Section 32.6 are not a penalty or compensation for use of funds and will not be credited against any other obligation of Tenant under this Lease.

32.7 Landlord's Right to Cure. If an Event of Default occurs, then Landlord, after five (5) Business Days' Notice to Tenant (except where Landlord determines that immediate action is necessary to protect person or property, then with such notice (if any) as is reasonably practicable under the circumstances) and without waiving or releasing Tenant from any obligation, Default, or Event of Default and without waiving Landlord's right to take such action as this Lease may permit following such Default or Event of Default, may (but need not) make such payment or take such action. Within ten (10) days after the Receipt Date of Notice of such payment amount, Tenant will reimburse Landlord, as Additional Rent, for an amount equal to: (a) all reasonable monetary amounts paid (including Legal Costs) by Landlord in exercising its cure rights under this Section 32.7; plus (b) Default Interest on the monetary amounts described in clause "(a)" of this Section 32.7 from the date paid until the date of reimbursement to Landlord.

32.8 Accord and Satisfaction; Partial Payments. No payment by Tenant or receipt by Landlord of a lesser amount of money than the amount of money owed under this Lease will be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment will not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount of money due to Landlord or pursue any other remedy for a Default or Event of Default.

32.9 Survival. No termination of this Lease and no taking possession of or reletting the Premises will relieve Landlord or Tenant of their respective liabilities and obligations under this Lease that survive such expiration, termination, repossession, or reletting.

32.10 Multiple Suits. Landlord may sue to recover damages, or monetary amount(s) equal to any installment(s) of Rent payable by Tenant, from time to time, at Landlord's election in Landlord's sole and absolute discretion. Nothing in this Lease requires Landlord to await the Scheduled Expiration Date or any other Expiration Date to bring suit to remedy or recover damages after an Event of Default.

32.11 Landlord's Notice and Opportunity to Cure. Notwithstanding anything to the contrary in this Lease, before exercising any right or remedy under this Lease or applicable Law because of a Landlord Default or claiming a partial or total eviction (actual or constructive) because of a Landlord Default, Tenant will give Landlord Notice of the Landlord Default and thirty (30) days following the Receipt Date of such Notice to cure the Landlord Default. If Landlord cannot with due diligence cure a Landlord Default within thirty (30) days following the Receipt Date of the Notice of such Landlord Default, the cure period for the Landlord Default will be extended for such further period as Landlord will reasonably require to cure the Landlord Default, provided that Landlord will: (a) within thirty (30) days following the Receipt Date of Notice to Landlord of the Landlord Default, advise Tenant of Landlord's intention to take all reasonable steps to cure such Landlord Default; and (b) within a reasonable time under the circumstances, commence such cure and diligently prosecute such cure to completion. Tenant acknowledges the independence of the covenants in this Lease and waives all right to terminate this Lease because of any Landlord Default. If Landlord does not cure a Landlord Default after receiving the Notice and opportunity to cure required under this Lease for the Landlord Default, except as otherwise prohibited under this Lease, Tenant may pursue any remedy available at Law or in equity for such Landlord Default.

33. **END OF TERM**.

33.1 Surrender. Upon any Expiration Date: (a) all Building(s), Building Equipment, and other Improvements will become Landlord's property; (b) Tenant will deliver possession of the Premises to Landlord, in the condition this Lease requires, subject to any Loss this Lease does not require Tenant to Restore; (c) Tenant will deliver the Premises free and clear of all: (i) Use Agreements and Subleases, unless otherwise requested in writing by Landlord, and (ii) liens except: (1) Permitted Exceptions, exclusive of Permitted Leasehold Security Instruments; and (2) liens that Landlord caused; (d) Tenant will assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises; (e) the Parties will cooperate to achieve an orderly transition of operation of the Premises from Tenant to Landlord (to the extent reasonably possible), without interruption, including delivery of such books and records (or copies thereof), as Landlord reasonably requires; (f) the Parties will adjust for all expenses and income of the Premises and will make such payments as will be appropriate on account of such adjustment, in the same manner as for a sale of the Premises (but any amount of money otherwise payable to Tenant will first be applied to cure any Default), provided, however, that Tenant will be responsible for applying to applicable taxing entities for a refund of any Real Estate Taxes paid by Tenant for periods after the end of the Term (if any) and Landlord will not be required to pay or credit Tenant for any Real Estate Taxes paid by, or on behalf of, Tenant; and (g) the Parties will terminate the Lease Memorandum by signing and recording the Quitclaim Deed in accordance with Section 33.2. Notwithstanding anything to the contrary in this Lease, after the Expiration Date, Landlord may, in its sole discretion, by Notice to Tenant, require Tenant to demolish the Entertainment Center in its entirety, all or any specified portion of the Parks, or all or any specified portion of the other Improvements on the Premises and remove all associated debris from the Premises, all at Tenant's sole expense. Notwithstanding anything to the contrary in this Section 33, Tenant may remove from the Premises at any time and from time-to-time any FF&E, but Tenant must do so, if at all, prior to the Expiration Date. Tenant

will immediately repair all material damage to the Premises from removal of FF&E. All FF&E not removed before the Expiration Date will be deemed abandoned.

33.2 Quitclaim of Tenant's Interests. Following any Expiration Date, Tenant will sign, acknowledge, and deliver to Landlord a Quitclaim Deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Premises to Landlord, within thirty (30) days following Notice requesting such Quitclaim Deed (which Notice may be given thirty (30) days before any Expiration Date or later). If Tenant fails or refuses to sign, deliver, and record such Quitclaim Deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a Quitclaim Deed, which appointment is irrevocable and coupled with an interest.

34. **NOTICES**. All Notices submitted by one Party to the other Party under or as required by this Lease must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email). All Notices must be sent to the Party representative and address designated in **EXHIBIT C** attached to this Lease. Either Party may designate a different representative or address for delivery of Notice under this Lease by Notice given in accordance with this Section 34. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A Notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the Notice is sent by messenger for immediate personal delivery and delivered to the Notice address before 5:30 p.m. Pacific Time, on the Business Day the Notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the Notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is delivered to the United States Postal Service in accordance with this Section 34 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any Notices delivered via email.

34.1 Replacement of Statutory Notice Requirements. When this Lease requires service of a Notice, that Notice will replace, rather than supplement, any equivalent or similar Notice required by Law, including any notices required by California Code of Civil Procedure section 1161 or any similar or successor Law. When a Law requires service of a Notice in a particular manner, service of that Notice (or a similar Notice required by this Lease) in the manner required by this Section 34 will replace and satisfy the service-of-notice procedures of such Law, including those required by California Code of Civil Procedure section 1162 or any similar or successor Law.

34.2 Refused, Unclaimed, or Undeliverable Notices. The Receipt Date for any correctly addressed Notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be Notified will be the first date the Notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

35. **NO BROKER**. Each Party: (a) represents and warrants to the other Party that it did not engage or deal with any broker or finder regarding this Lease and no Person is entitled to any commission or finder's fee regarding this Lease under any agreement or arrangement made by such Party; and (b) will Indemnify the other Party against any breach of the representations or warranties in clause "(a)" of this Section 35.

36. **NON-RECOURSE**. Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and the other Landlord Parties, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Leasehold Estate (including the proceeds of the Leasehold Estate). No property or assets of Landlord whatsoever, except Landlord's interest in the Leasehold Estate (including the proceeds of the Leasehold Estate, but excluding Landlord's ownership of the Fee Estate and reversionary interest), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Tenant arising under or in connection with this Lease. The limitation of liability and remedies in this Section 36 applies not only to Claims under the express terms of this Lease, but also to Claims of any kind whatsoever arising from the relationship between the Parties or any rights or obligations the Parties may have relating to the Premises, this Lease, or anything related to either this Lease or the Premises.

37. **LIMITATIONS ON DAMAGES**. Subject to Section 36, whenever either Party may seek or claim damages against the other Party (whether by reason of a Default, Event of Default, or Landlord Default, as the case may be, under this Lease by such Party, in enforcement of any Indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, collateral, special, punitive or indirect damages, whether such Default, Event of Default, or Landlord Default, as the case may be, shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded to either Party arising from this Lease (whether or not this Lease has been terminated) shall be limited to: (a) actual, direct damages sustained by the aggrieved Party, including all damages recoverable under California Civil Code section 1951.2; and (b) consequential damages sustained by the aggrieved Party (but not actual, direct damages) not exceeding One Million Dollars ($1,000,000) times the CPI Adjustment Factor (on an occurrence basis). Notwithstanding anything to the contrary in this Section 37, nothing in this Section 37 limits recovery of Legal Costs as provided in this Lease.

38. **ESTOPPEL CERTIFICATES**. Up to twice each Lease Year, each Party to this Lease ("**Requesting Party**") may require the other Party ("**Certifying Party**") to sign and deliver to the Requesting Party (or directly to a Third Person designated by the Requesting Party) up to four (4) original counterparts of an Estoppel Certificate. The Certifying Party will sign and deliver such Estoppel Certificate, within fifteen (15) days after request, even if the Requesting Party is in Default or Landlord Default. If a Certifying Party fails to sign and deliver an Estoppel Certificate

within the required fifteen (15) day period, then the Certifying Party will pay the Requesting Party liquidated damages of two hundred fifty dollars ($250) times the CPI Adjustment Factor per day for each day after the expiration of the fifteen (15) day period for delivery of an Estoppel Certificate until the date the Certifying Party delivers the Estoppel Certificate. A Requesting Party will pay all the expenses (including Legal Costs) of the Certifying Party incurred in providing an Estoppel Certificate. Any such Estoppel Certificate may be relied upon by the Requesting Party and its designated Third Person, if any.

39. **HOLDOVER**. If Tenant continues to occupy the Premises after the Expiration Date, such occupancy will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise, nor give Tenant any right in or to the Premises after the Expiration Date. Tenant may not occupy the Premises after the Expiration Date without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion. Tenant's occupancy of the Premises after the Expiration Date with Landlord's consent will be a month-to-month tenancy and all other terms of this Lease will continue in full force and effect, except that Landlord may then demand and receive rental payments from Tenant equal to the then fair market rental value of the Premises, as determined by Landlord. Additionally, Tenant will be liable for all damages incurred by Landlord as a result of Tenant remaining in the Premises after the Expiration Date. Landlord's acceptance of any Rent from Tenant after the Expiration Date will not constitute a renewal or extension of this Lease under California Civil Code section 1945 or otherwise.

40. **MISCELLANEOUS**.

40.1 Compliance with Landlord Standard Contract Provisions. Tenant will comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

40.2 Third-Party Beneficiaries. There are no third-party beneficiaries of this Lease. Nothing in this Lease is intended nor will be deemed to confer upon any Person, other than Landlord and Tenant, any right to enforce this Lease.

40.3 Mayoral Implementation. Landlord will implement this Lease through its Mayor. The Mayor is authorized by Landlord to issue approvals, interpretations, waivers and enter into amendments to this Lease on behalf of Landlord, to the extent that any such action(s) does/do not materially or substantially change the Project, the Permitted Uses, the Premises, the Development Conditions, the Performance Schedule, any amount of money payable to Landlord, or other material terms of this Lease. Nothing in this Section 40.3 will restrict the submission to the City Council of any matter within the Mayor's authority under this Section 40.3, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 40.3 is to authorize certain actions by the Mayor on behalf of Landlord, but not to require that such actions be taken by the Mayor, without consideration by the City Council.

40.4 Modification. Each Modification of this Lease must be in a writing signed by both Parties.

40.5 Successors and Assigns. This Lease will bind and benefit Landlord and Tenant and their respective permitted successors and assigns, but this Section 40.5 will not limit, supersede, or Modify any Transfer restrictions in this Lease.

40.6 Costs and Expenses; Legal Costs. In the event of any litigation (including court required mediation or arbitration) between the Parties arising from this Lease (including to enforce or interpret this Lease, seek declaratory or injunctive relief in connection with this Lease, exercise any right or remedy under or arising from this Lease, or terminate this Lease) or in any Bankruptcy Proceeding affecting the other Party to this Lease, the prevailing Party or the Party that is not the subject of the Bankruptcy Proceeding will be entitled to reimbursement from the other Party of its Legal Costs, with Default Interest. The Legal Costs recoverable by one Party from the other Party in each litigation (consolidated matters or matters arising from the same facts and circumstances are a single litigation) arising from this Lease or a Bankruptcy Proceeding affecting the other Party will not exceed Two Hundred Fifty Thousand Dollars ($250,000) multiplied by 1 plus the result of multiplying .03 times the Lease Year number in which the earliest Claim included in the litigation arises (i.e., if the earliest Claim included in the litigation arises in Lease Year 10 the maximum recoverable Legal Costs amount would be $250,000 x (1+(.03x10)) = $325,000).

40.7 No Waiver by Silence. All waivers of the provisions of this Lease must be in writing and signed by the Party making the waiver. Failure of either Party to complain of any act or omission of the other Party will not be deemed a waiver by the non-complaining Party of any of its rights under this Lease. No waiver by either Party, at any time, express or implied, of any Default, Event of Default, or Landlord Default will waive such Default, Event of Default, or Landlord Default at any other time or any other Default, Event of Default, or Landlord Default.

40.8 Performance Under Protest. If a dispute arises about performance of any obligation under this Lease, the Party against which such obligation is asserted will have the right to perform the obligation under protest, which will not be regarded as voluntary performance. If a Party performs an obligation under protest and the performance of that obligation is later determined by the Parties or final judgment of a court of competent jurisdiction not to be required, the performing Party may institute appropriate proceedings to recover the reasonable cost of performing the obligation, with Default Interest from the date of performance.

40.9 Survival. All rights and obligations that by their nature are to be performed after any Expiration Date will survive any such Expiration Date.

40.10 Accessibility Assessment. Landlord discloses to Tenant that the Premises have not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> 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 will 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.

40.11 Unavoidable Delay. Neither Party shall be in Default or Landlord Default where any such Default or Landlord Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay will Notify the other Party of the Unavoidable Delay within a reasonable time after the claiming Party knows of the Unavoidable Delay and within a reasonable time after such Unavoidable Delay ceases to exist. To be effective, Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay when Notice of the Unavoidable Delay is timely given under this Section 40.11 commences on the date the condition causing the Unavoidable Delay begins, but not earlier than twenty (20) days preceding the Receipt Date of the Notice of the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay will exercise reasonable efforts to cure the condition causing the Unavoidable Delay within a reasonable time.

40.12 ASSUMPTION OF ECONOMIC RISKS. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS LEASE WILL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS LEASE. ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, WILL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, AND REQUIREMENTS OF THIS LEASE. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE COMMENCEMENT DATE.

INITIALS OF AUTHORIZED LANDLORD REPRESENTATIVE(S)	INITIALS OF AUTHORIZED TENANT REPRESENTATIVE(S)

40.13 Captions. The captions of this Lease are for convenience of reference only and, in no way, affect this Lease.

40.14 Counterparts. This Lease may be signed in multiple counterpart originals, each of which will be deemed to be an original, but all of which together will constitute one and the same document.

40.15 Warranty Against Payment of Consideration for Lease. Tenant represents and warrants that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of its agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms for this Lease. Breach of the representations or warranties of this Section 40.15 will entitle Landlord to terminate this Lease, in Landlord's sole and absolute discretion, by Notice to Tenant. Upon any such termination of this Lease, Tenant will immediately refund all payments made to or on behalf of Tenant by Landlord under this Lease or otherwise related to this Lease, the Premises, the Project, or any other Improvements Constructed by Tenant on the Premises, prior to the date of any such termination.

40.16 Relationship of Parties. The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

40.17 Survival of Lease. All the provisions of this Lease will be applicable to any dispute between the Parties arising from this Lease, whether prior to or following any Expiration Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms of this Lease relating to dispute resolution or remedies will survive any Expiration Date.

40.18 Non-liability of Officials, Employees and Agents. No Landlord Party (other than Landlord itself) will be personally liable to Tenant in the event of any Landlord Default under this Lease or for any amount that may become due to Tenant on any obligation under this Lease. No Tenant Party (other than Tenant itself) will be personally liable to Landlord in the event of any Event of Default on Tenant's part or for any amount of money that may be or become due to Landlord on any obligation under this Lease.

40.19 No Other Representations or Warranties. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to any other Party.

40.20 Tax Consequences. Tenant will bear all responsibilities, liabilities, costs, and expenses connected in any way with any tax consequences experienced by Tenant related to this Lease, including all Transfers.

40.21 Time of the Essence. As to the performance of each obligation under this Lease of which time is a component, performance of such obligation within the time specified is of the essence.

40.22 Time Period Calculation. Unless otherwise specified, all references to time periods in this Lease measured in days will be to consecutive calendar days, all references to time periods in this Lease measured in months will be to consecutive calendar months and all references to time periods in this Lease measured in Lease Years will be to consecutive Lease Years. All references to time periods in this Lease measured in Business Days will be to consecutive Business Days.

40.23 Entire Agreement. This Lease (including the exhibits attached to this Lease) and the documents referenced in this Lease contain all the terms, covenants, conditions, restrictions, and agreements between the Parties regarding the use and occupancy of the Premises during the Term. Except as set forth in the DDA, the Parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises. If any conflict or inconsistency exists between the DDA and this Lease regarding the use and occupancy of the Premises during the Term, the provisions of this Lease will control.

40.24 Governing Law. This Lease, its interpretation and performance, the relationship between the Parties, and all disputes arising from or relating to any of the foregoing, will be governed, construed, interpreted, and regulated under the laws of the State, without regard to conflict of laws statutes or principles. The Parties acknowledge and agree that this Lease is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Lease will be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

40.25 Partial Invalidity. If any term or provision of this Lease or its application to any Person or circumstance will to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected by such invalidity. All remaining provisions of this Lease will be valid and be enforced to the fullest extent Law allows.

40.26 Interpretation Principles. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Lease. The Parties both participated substantially in negotiation, drafting, and revision of this Lease, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" will be construed to be followed by the words: "without limitation." Each collective noun used in this Lease will be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. The words "will" and "shall" have the same meaning as the word "must" and denote a mandatory action. The word "may" denotes a permissive action. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord's option, any Modification violating this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar

governmental requirement refers to each as amended, modified, renumbered, superseded, or succeeded, from time to time. Where this Lease provides for a Party to approve or disapprove a specified matter in its sole discretion or take some other action in its sole discretion, that Party may approve, disapprove, or condition approval of the matter for any reason or no reason or take, not take, or condition the taking of the action for any reason or no reason. A Party's decision to either disapprove or condition approval of a matter over which it has sole discretion or not take or condition the taking of other action over which it has sole discretion will not be a Default or Landlord Default by that Party.

40.27 Survival of Conditions to Approval. Whenever this Lease requires certain conditions to be satisfied prior to or concurrent with the issuance of any consent or approval by Landlord or Landlord reasonably imposes any conditions to any Landlord consent or approval under this Lease, or where this Lease allows Tenant to take any action without Landlord's prior consent or approval, subject to the satisfaction of certain conditions, the intent and requirement of this Lease is that Tenant will cause all such conditions to remain satisfied at all times following the granting of such consent or approval by Landlord or the taking of an action by Tenant without Landlord's consent or approval, for the duration of the matter or activity that is subject to such conditions.

40.28 Reasonableness. Wherever this Lease states that a Party will not unreasonably withhold any consent or approval or a matter is reasonably acceptable to a Party or some other similar phrase, then: (a) such consent or approval will not be unreasonably withheld, delayed or conditioned; (b) no withholding of consent or approval will be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and (if reasonably possible) indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent or approval (or fails to object) to any matter, this will not waive its right to require such consent or approval for any further or similar matter.

40.29 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

40.30 Exhibits. All the exhibits attached to this Lease are incorporated into this Lease by reference and described as follows:

EXHIBIT A Premises Legal Description.

EXHIBIT B Premises Site Plan.

EXHIBIT C Notice Addresses.

EXHIBIT D Ticket Charge Payments.

EXHIBIT E Tenant Insurance Requirements.

EXHIBIT F	Development Conditions.
EXHIBIT G	Landlord Standard Contract Provisions.
EXHIBIT H	Prevailing Wage Requirements.
EXHIBIT I	Performance Schedule.
EXHIBIT J	Project.
EXHIBIT K	Preliminary Report.
EXHIBIT L	Parks Management and Maintenance Requirements.
EXHIBIT M	Non-Disturbance and Attornment Agreement Form.
EXHIBIT N	Financing Plan.
EXHIBIT O	Contractor Prequalification Application Form.
EXHIBIT P	Project Labor Agreement Certification Form.
EXHIBIT Q	Master Development Area Legal Description.
EXHIBIT R	Subtenant/Sub-User Insurance Requirements.

[***Remainder of page intentionally blank. Signatures appear on the immediately following page.***]

SIGNATURE PAGE
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

Landlord and Tenant sign and enter into this Lease by and through the signatures of their respective authorized representative(s) set forth below, as of the Commencement Date.

LANDLORD:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
[**TO BE DETERMINED**]

Approved as to form on
_____.

HEATHER FERBERT,
City Attorney

By: _____
[**TO BE DETERMINED**]

TENANT:

[**NOTE TO DRAFT: INSERT TENANT'S NAME IN ALL CAPS**], [**NOTE TO DRAFT: INSERT TENANT'S STATE OF FORMATION AND TYPE OF BUSINESS ENTITY**]

By: _____
[**TO BE DETERMINED**]

EXHIBIT A
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PREMISES LEGAL DESCRIPTION

[**TO BE INSERTED**]

EXHIBIT B
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PREMISES SITE PLAN

[**TO BE INSERTED**]

EXHIBIT C
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

NOTICE ADDRESSES

Tenant:

[**INSERT TENANT'S NOTICE ADDRESS(ES), INCLUDING NAME & EMAIL**]

Landlord:

[**INSERT LANDLORD'S NOTICE ADDRESS(ES), INCLUDING NAME & EMAIL**]

EXHIBIT D
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

TICKET CHARGE PAYMENTS

1. **DEFINITIONS**. All words, terms, or phrases indicated to be defined words, terms, or phrases by initial capitalization in this **EXHIBIT D** that are not specifically defined in this exhibit will have the meaning given to the same word, term, or phrase, respectively, in the main body of this Lease. As used in this exhibit, the following words, terms, or phrases will have the following meanings:

1.1. Adjustments. To the extent not paid or payable by one or more Subtenants or Sub-Users of the Premises, all the following: (a) all Federal, State, County, or local governmental or municipal taxes, fees, assessments, levies, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Premises) because of or in connection with the ownership, leasing and operation of the Premises; (b) capital reserves for the performance of capital work or capital improvements solely at the Premises; (c) the amortized cost with interest (determined using sound real estate management and accounting practices, consistently applied) of any capital improvements or capital expenditures performed or funded by Tenant at the Premises; (d) insurance costs; and (e) the expenses incurred by Tenant in the operation, management, repair, ownership, and maintenance of the Premises. "Adjustments" do not include debt service or financing costs.

1.2. Appraiser. An independent appraiser that is a State Certified General Real Estate Appraiser in good standing, is a member in good standing of the Appraisal Institute, an Illinois not-for-profit corporation, or an equivalent nationally recognized professional real estate appraisal organization, and has, at least, ten (10) years of experience appraising properties similar to the Premises.

1.3. Capital Investment. Tenant's equity (defined as cash contributions) used to pay for the initial Construction of the Project.

1.4. First Capital Sales Event Payment. Defined in Section 6.1.4.

1.5. Gross Revenue. All revenue of any type generated by the Permitted Uses, including all revenue from the installation or operation of Signs, all advertising revenue, all sponsorship revenue, all naming rights revenue, all intellectual property rights revenue, all revenue from merchandise sales, all revenue from event ticket sales, all payments made to Tenant by Subtenants or Sub-Users, and all parking revenue. For the purposes of this Section 1.5, "revenue" means

payment of money to or for the benefit of Tenant, transfer of real or personal property to or for the benefit of Tenant, provision of services to or for the benefit of Tenant, or transfer of anything else of value to or for the benefit of Tenant. The only exclusions from "Gross Revenue" are: (i) interest or service fees paid to Tenant by Subtenants or Sub-Users; or (ii) costs and expenses due from Subtenants or Sub-Users as a reimbursement to Tenant for costs incurred by Tenant for maintenance or operation of the Premises.

1.6. IRR. The annualized percentage return on Tenant's Capital Investment calculated using the XIRR Function in Microsoft Excel software or comparable function of software with calculation functions, compounded monthly, measuring the rate at which the present value of the distributions of Net Cash Flow from the Premises equals the present value of Tenant's Capital Investment calculated on the date such Capital Investment occurred. The IRR represents the annual percentage rate at which Tenant recoups its Capital Investment plus a specified return through cash distributions from the Premises. As an illustration, Tenant achieves an IRR of X percent on an initial Capital Investment of Y dollars when the net present value of all distributions to Tenant with respect to its initial Capital Investment, discounted at an interest rate of X percent, is equal to Y.

1.7. IRR Hurdle. The first date that Tenant achieves an IRR of sixteen and one-half percent (16.5%) on the Capital Investment from Gross Revenue, a Capital Sales Event, or a loan or other financing secured by a Permitted Leasehold Security Instrument, or a combination of any of the preceding sources.

1.8. Modified Gross Revenue. Gross Revenue minus Adjustments.

1.9. Net Cash Flow. Annual Modified Gross Revenue.

1.10. Revaluation Date. Defined in Section 5.

1.11. Subsequent Capital Sales Event Payment. Defined in Section 6.2.4.

1.12. Ticket Charge. For the partial Lease Year in which the Ticket Charge Payment Start Date occurs and the immediately following full Lease Year, $1.50 for each admission ticket sold, and for each subsequent Lease Year during the Term, the amount payable for each admission ticket sold will increase by 3% of the amount payable for each admission ticket sold applicable during the immediately preceding Lease Year (i.e., the amount payable for each admission ticket sold during the immediately preceding Lease Year multiplied by 1.03), all subject to the provisions of Section 5.

1.13. Ticket Charge Payment. The amount equal to the Ticket Charge for the applicable Lease Year multiplied by the number of admission tickets sold for any of the Permitted Uses on the Premises during the same Lease Year.

1.14. Ticket Charge Payment Start Date. The tenth anniversary of the date of issuance of the final Certificate of Occupancy for the entire Entertainment Center.

2. **TICKET CHARGE ADJUSTMENT**. Any reduction in the total number of seats in the Entertainment Center below 16,000 seats expressly allowed under this Lease shall be accompanied by a corresponding increase in the amounts of the Ticket Charges to result in the same amount of potential revenue to the Landlord under this Lease from Ticket Charge Payments throughout the Term as if the Entertainment Center had 16,000 total seats.

3. **TICKET CHARGE PAYMENT**. No Ticket Charge Payment will be due or accrue until the Ticket Charge Payment Start Date. Starting on the Ticket Charge Payment Start Date, Tenant will pay to Landlord twenty-five percent (25%) of the Ticket Charge Payment for each Lease Year (including for the partial Lease Year in which the Ticket Charge Payment Start Date occurs) and the remaining seventy-five percent (75%) of the Ticket Charge Payment for each Lease Year (including for the partial Lease Year in which the Ticket Charge Payment Start Date occurs) will accrue but will not be payable to Landlord until the IRR Hurdle is achieved. Once the IRR Hurdle is achieved, before the ninetieth (90^{th}) day after the end of each Lease Year (including the Lease Year in which the IRR Hurdle is achieved), Tenant will pay one hundred percent (100%) of every dollar of Net Cash Flow from the Premises during the just ended Lease Year (in the Lease Year in which the IRR Hurdle is achieved, only Net Cash Flow exceeding the Net Cash Flow applied to achieve the IRR Hurdle) to Landlord towards the accrued Ticket Charge Payments until all accrued Ticket Charge Payments from previous Lease Years are paid in full. Once all accrued Ticket Charge Payments from previous Lease Years are paid in full to Landlord, Tenant will pay to Landlord the Ticket Charge Payment accruing during each Lease Year before the ninetieth (90^{th}) day after the end of the Lease Year. Tenant shall Notify Landlord of the date of achievement of the IRR Hurdle, including all supporting information and calculations, within ten (10) Business Days after the date of achievement of the IRR Hurdle.

4. **ANNUAL TICKET CHARGE PAYMENT STATEMENTS**. As part of its Annual Revenue Statement, Tenant will deliver to Landlord a statement of the Ticket Charge Payment accrued for each Lease Year, including the Lease Year in which the IRR Hurdle is achieved showing the date on which the IRR Hurdle is achieved, prepared using industry standard accounting practices and GAAP consistently applied.

5. **TICKET CHARGE REVALUATION**. The Ticket Charge amounts specified in Section 1.12 of this **EXHIBIT D** are in dollar values as of the Commencement Date. Because of the extended duration of this Lease, the Parties intend to revalue the Ticket Charge on the first days of Lease Years 56 and 71 (each such date, a "**Revaluation Date**"). As of the first Revaluation Date, the Ticket Charges applicable to Lease Years 56 through 85 will be revalued to be the greater of: (a) the Ticket Charges under Section 1.12 of this **EXHIBIT D** applicable to Lease Years 56 through 85; and (b) the fair market value Ticket Charges determined under Section 5.1 for Lease Years 56 through 85 with reference to similar charges paid by operators of facilities similar (in terms of age, seating capacity, use, and other relevant factors) to the Entertainment Center in large cities in the United States as of the day that is twenty-four (24) months before the first Revaluation Date. If the Ticket Charges are revalued under clause "(b)" above as of the first Revaluation Date, then the Ticket Charges for Lease Years 56 through 85 shall be determined as part of the fair market value Ticket Charges determination process under Section 5.1. As of the second Revaluation Date, the Ticket Charges applicable to Lease Years 71 through 85 will be revalued to be the greater of: (y) the Ticket Charges determined under this Section 5 for Lease Years 71 through 85 as of the first

Revaluation Date; and (z) the fair market value Ticket Charges determined under Section 5.1 for Lease Years 71 through 85 with reference to similar charges paid by operators of facilities similar (in terms of age, seating capacity, use, and other relevant factors) to the Entertainment Center in large cities in the United States as of the day that is twenty-four (24) months before the second Revaluation Date. If the Ticket Charges are revalued under clause "(z)" above as of the second Revaluation Date, then the Ticket Charges for Lease Years 71 through 85 shall be determined as part of the fair market value Ticket Charges determination process under Section 5.1. Notwithstanding anything to the contrary in this Lease, if the Ticket Charges are revalued as of one or both Revaluation Dates through a fair market value determination under this Section 5, then for Lease Years 56 through 70, the revalued Ticket Charge cannot be more than seventeen percent (17%) higher than the Ticket Charge under Section 1.12 of this **EXHIBIT D** for the same Lease Year, and for Lease Years 71 through 85, the revalued Ticket Charge cannot be more than thirty-five percent (35%) higher than the Ticket Charge specified in Section 1.12 of this **EXHIBIT D** for the same Lease Year.

5.1. Determination of Revaluation Date Ticket Charges. Before each Revaluation Date, the Parties will endeavor to agree upon the revalued Ticket Charges for that Revaluation Date. If six (6) months before a Revaluation Date, the Parties have not agreed on the revalued Ticket Charges for that Revaluation Date, then either Party will Notify the other Party of the impasse. Each Party will within ten (10) Business Days after the Receipt Date of such Notice of impasse designate an Appraiser. The two Appraisers so designated will within ten (10) Business Days designate an independent third Appraiser that has not been retained by either Party within the previous three (3) years. If either Party fails to timely designate an Appraiser and does not cure such failure within ten (10) Business Days after the Receipt Date of Notice of such failure, then the one Appraiser the other Party designated will resolve the dispute. Within ten (10) Business Days after designation of the Appraiser(s), each Party will simultaneously submit to the Appraiser(s), with a copy to the other Party, such Party's proposed revalued Ticket Charges, with such information and supporting materials as each submitter determines appropriate. Within ten (10) Business Days after the Parties submit their proposed revalued Ticket Charges to the Appraiser(s), the Appraiser(s), by majority vote (or by the determination of the one Appraiser, if only one Appraiser is designated), will select as the revalued Ticket Charges either Landlord's proposal or Tenant's proposal. The Appraiser(s) will have no authority to designate any revalued Ticket Charges other than Landlord's proposal or Tenant's proposal. If a Party fails to timely submit a revalued Ticket Charges proposal to the Appraiser(s) and does not cure such failure within ten (10) Business Days after the Receipt Date of Notice of such failure, then the revalued Ticket Charges proposal submitted by the other Party (if the Party timely submitted such proposal) will automatically be the revalued Ticket Charges for that Revaluation Date, provided only that the Appraiser(s) determine(s) that such proposal is not commercially unreasonable, arbitrary, or capricious. The revalued Ticket Charges the Appraiser(s) select(s) or that become the revalued Ticket Charges because a Party did not submit a revalued Ticket Charges proposal will be the Ticket Charges for all purposes of this Lease as of the applicable Revaluation Date until the next Revaluation Date, if any. The Parties will promptly confirm all revalued Ticket Charges in writing.

6. **CAPITAL SALES EVENT PAYMENTS**. Tenant shall Notify Landlord of each anticipated Capital Sales Event a minimum of sixty (60) days before the anticipated Capital Sales Event

occurs. Upon the occurrence of each Capital Sales Event, the proceeds of the Capital Sales Event will be distributed as follows:

6.1. First Capital Sales Event. For the first Capital Sales Event under this Lease:

6.1.1. The costs of the Capital Sales Event will be paid (such costs would include, without limitation, finder's fees, closing costs, and Legal Costs).

6.1.2. Tenant will receive the amount necessary for Tenant to receive a nineteen percent (19%) levered IRR on the greater of: (i) the Capital Investment; and (ii) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.1.3. Tenant will receive the amount equal to the costs of Capital Improvements made to the Premises by Tenant prior to the Capital Sales Event, except to the extent included in the Capital Investment, deducted from Modified Gross Revenues, or paid for by insurance proceeds.

6.1.4. Except as otherwise provided in Section 6.1.5, Landlord will receive five percent (5%) of the proceeds after deducting the amounts in Sections 6.1.1 through 6.1.3 ("**First Capital Sales Event Payment**").

6.1.5. Tenant will receive all remaining proceeds after deducting the amounts in Sections 6.1.1 through 6.1.4. Notwithstanding any provision of this Section 6.1 to the contrary, the First Capital Sales Event Payment will increase to ten percent (10%) of the proceeds after deducting the amounts in Sections 6.1.1 through 6.1.3 if the total amount received by Tenant under this Section 6.1 results in a thirty percent (30%) or higher levered IRR on the greater of: (a) the Capital Investment; and (b) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.2. Subsequent Capital Sales Events. For the second and each subsequent Capital Sales Event under this Lease:

6.2.1. The costs of the Capital Sales Event will be paid.

6.2.2. Tenant will receive the amount necessary for Tenant to receive a nineteen percent (19%) levered IRR on the greater of: (i) the Tenant's purchase price for this Lease; and (ii) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

6.2.3. Tenant will receive the amount equal to the costs of Capital Improvements made to the Premises during its period of ownership of this Lease, except to the extent deducted from Modified Gross Revenues or paid for by insurance proceeds.

6.2.4. Except as otherwise provided in Section 6.2.5, Landlord will receive five percent (5%) of the proceeds after deducting the amounts in Sections 6.2.1 through 6.2.3 ("**Subsequent Capital Sales Event Payment**").

6.2.5. Tenant will receive all remaining proceeds after deducting the amounts in Sections 6.2.1 through 6.2.4. Notwithstanding any provision of this Section 6.2 to the contrary, the Subsequent Capital Sales Event Payment will increase to ten percent (10%) of the proceeds after deducting the amounts in Sections 6.2.1 through 6.2.3 if the total amount received by Tenant under this Section 6.2 results in a thirty percent (30%) or higher levered IRR on the greater of: (a) the Tenant's purchase price for this Lease; and (b) the then current amount of outstanding indebtedness of Tenant secured by Permitted Leasehold Security Instruments.

EXHIBIT E
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

TENANT INSURANCE REQUIREMENTS

1. **Required Insurance Coverage**. Tenant will maintain all the following insurance policies:

1.1. *Automobile Liability Insurance*. Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Tenant written on the then current version of ISO form CA 00 01 12 90 or equivalent form providing coverage at least as broad, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000) combined single limit per accident. Such insurance will be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which will be subject to pre-approval by Landlord, which pre-approval will not be unreasonably withheld. All costs of defense covered by Automobile Liability Insurance must be outside the policy limits.

1.2. *Liability Insurance*. Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Premises or adjoining streets or passageways, written on the then current version of ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad, with a minimum annual aggregate liability limit of not less than the following: (a) other than products/completed operations $10,000,000; (b) products/completed operations $10,000,000; (c) personal injury limit $5,000,000; and (d) each occurrence $5,000,000. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit will apply separately to the Premises. The policy shall not include an endorsement or modification limiting the scope of coverage for either insured vs. insured claims or contractual liability. All costs of defense covered by Liability Insurance must be outside the policy limits.

1.3. *Property Insurance*. Insurance providing coverage for the Premises and all Improvements on or to the Premises against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all Improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance will include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Premises, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

1.4. *Workers Compensation Insurance*. Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Tenant.

1.5. *Contractors Pollution Liability Insurance*. Contractors Pollution Liability Insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Tenant or on Tenant's behalf, Tenant's products, Tenant's work (including Tenant's completed operations performed by Tenant or on Tenant's behalf), or premises owned, leased, controlled, or used by Tenant, with minimum liability limits of Two Million Dollars ($2,000,000) for any one claim or occurrence and Four Million Dollars ($4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance must be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars ($25,000) per claim unless and until Tenant obtains Landlord's separate written approval of a higher deductible amount. With Landlord's separate prior written approval, Tenant may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its contractor or subcontractor maintaining Contractors Pollution Liability Insurance as required under these Tenant Insurance Requirements (defined below). When Tenant requests Landlord's approval to use its contractor's or subcontractor's Contractors Pollution Liability Insurance, Tenant will certify to Landlord that all activities requiring Contractors Pollution Liability Insurance under these Tenant Insurance Requirements will be performed exclusively by the contractor or subcontractor that will maintain the Contractors Pollution Liability Insurance and provide Landlord with a copy of its contractor's or subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on an occurrence basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences. Policies issued on a claims made basis must be issued before any activity covered by the Contractors Pollution Liability Insurance commences, be maintained for the duration of all activity covered by the Contractors Pollution Liability Insurance and include a 12-month extended claims discovery period applicable to all activity covered by the Contractors Pollution Liability Insurance or the policy or policies must be maintained for at least 12 months after completion of all activities covered by the Contractors Pollution Liability Insurance without advancing the retroactive date.

1.6. *Contractors Hazardous Transporters Pollution Liability Insurance*. Contractors Hazardous Transporters Pollution Liability Insurance, including contractual liability coverage to cover liability arising out of transportation of Hazardous Substances or any other pollutants by Tenant or any contractor or subcontractor in an amount no less than $2,000,000 limit per occurrence and $4,000,000 aggregate per policy period of one year. All costs of defense covered by Contractors Hazardous Transporters Pollution Liability Insurance must be outside the limits of the policy. Landlord's prior written approval is required for a contractor or subcontractor to provide Contractors Hazardous Transporters Pollution Liability Insurance. To obtain Landlord approval of a contractor's or subcontractor's Contractors Hazardous Transporters Pollution Liability Insurance coverage, Tenant shall certify that all activities under the Contractors Hazardous Transporters Pollution Liability Insurance will be performed exclusively by the contractor or subcontractor providing the insurance. The deductible under Contractors Hazardous Transporters Pollution Liability Insurance shall not exceed $25,000 per claim without prior approval of the Landlord. Occurrence based policies shall be procured before any activity covered

by the Contractors Hazardous Transporters Pollution Liability Insurance commences. Claims made policies shall be procured before any activity covered by the Contractors Hazardous Transporters Pollution Liability Insurance commences, shall be maintained for the duration of the activities, and shall include a 12-month extended claims discovery period applicable to the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance or the existing policy or policies shall continue to be maintained for 12 months after completion of the activities covered by the Contractors Hazardous Transporters Pollution Liability Insurance, without advancing the retroactive date.

1.7. *Builder's Risk Insurance*. Special form builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the replacement value of the subject Construction, including cost of debris removal (including demolition), excavations, grading, and filling, plus fifteen percent (15%) to cover administrative costs, design costs, and the costs of inspections and Construction management. Such insurance will also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location or in transit intended for use in, or in connection with, the Premises. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the Premises.

1.8. *Professional Liability Insurance*. All architects and engineers providing services to Tenant or the Project must provide Landlord with written evidence of Professional Liability Insurance coverage with a limit of no less than $1,000,000 per claim and $2,000,000 aggregate per policy period of one year. The policy retroactive date must be on or before the date of commencement of the services. The policy must be maintained in force for a period of three (3) years after completion of the Project and there will be no changes or endorsements to the policy that affect the specified coverage. If professional engineering services are to be provided solely by a subcontractor, Tenant must certify this fact to Landlord in writing and require the subcontractor to procure Professional Liability Insurance coverage in accordance with this Section 1.8.

2. **Nature of Insurance**. The contents of this **EXHIBIT E** are sometimes referred to as the "**Tenant Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, Builder's Risk Insurance, Contractors Pollution Liability Insurance, Contractors Hazardous Transporters Pollution Liability Insurance, and Professional Liability Insurance policies required by these Tenant Insurance Requirements will be issued by carriers that: (a) have a minimum financial strength rating of "A-" and a minimum financial size category of "VI" (exception may be made for the State Compensation Insurance Fund when not specifically rated) from A.M. Best Company, Inc. (or equivalent rating service, as determined by Landlord); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy specifies the amount(s) of the total insurance allocated to the Premises, which amount(s) will equal or exceed the amount(s) required by these Tenant Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Tenant Insurance Requirements. Landlord will accept insurance provided by a non-admitted, "surplus lines" carrier only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list) maintained by the State Department of Insurance. All policies of

insurance carried by non-admitted carriers shall be subject to all of these Tenant Insurance Requirements for policies of insurance provided by admitted carriers described in this Lease.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Tenant Insurance Requirements will contain (by endorsement or otherwise) the following provisions:

3.1. *Insured*. To the extent allowed by Law: (a) Liability Insurance, Contractors Pollution Liability Insurance, and Contractors Hazardous Transporters Pollution Liability Insurance policies will name the Landlord Parties as "additional insured"; (b) Builder's Risk Insurance policies will name Landlord as a "loss payee"; and (c) The coverage afforded to the Landlord Parties will be at least as broad as that afforded to Tenant regarding the Premises or the Project and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2. *Primary Coverage*. All insurance coverage required by these Tenant Insurance Requirements will be primary to all insurance or self-insurance maintained by the Landlord Parties and all insurance or self-insurance maintained by the Landlord Parties will be excess of all insurance maintained by Tenant and will not contribute with any insurance maintained by Tenant.

3.3. *Commencement of Property Related Coverage*. Before contractor mobilization for any Construction, including the Project, Tenant shall have Builder's Risk Insurance covering the Construction in place. Effective as of the earliest possible date and no later than the date of issuance of a temporary Certificate of Occupancy (or equivalent approval) from Landlord, under its Governmental Authority, for the Project, Tenant shall have Property Insurance covering the Premises in place.

3.4. *Contractual Liability*. Liability Insurance and Contractors Pollution Liability Insurance policies will contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's maintaining or failing to maintain such contractual liability coverage will not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.5. *Deliveries to Landlord*. Original certificates of all insurance policies required by these Tenant Insurance Requirements, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by these Tenant Insurance Requirements), will be delivered by Tenant to Landlord before the Commencement Date. Landlord has the right to require Tenant to deliver to Landlord complete, certified copies of all insurance policies required by these Tenant Insurance Requirements, including all required endorsements. No later than ten (10) days before any insurance required by these Tenant Insurance Requirements expires, is cancelled, or its liability limits are reduced or exhausted, Tenant will deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Tenant Insurance Requirements. Each insurance policy required by these Tenant Insurance Requirements will be endorsed to state that coverage will not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to Landlord. Phrases such as "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company" will not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties under these Tenant Insurance Requirements.

3.6. *Waiver of Certain Claims*. Tenant will cause each insurance carrier providing any Liability Insurance, Builder's Risk Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Tenant Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the Landlord Parties for any loss such insurance policy covers.

3.7. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Tenant Insurance Requirements are adequate or sufficient.

3.8. *No Claims Made Coverage*. None of the insurance coverage required by these Tenant Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.

3.9. *Fully Paid and Non-Assessable*. All insurance maintained by Tenant in satisfaction of these Tenant Insurance Requirements will be fully paid for and non-assessable.

3.10. *Separation of Insured*. All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance will provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Tenant Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but will not exclude suits between named insured Persons and additional insured Persons.

3.11. *Severability of Interest*. All insurance coverage required by these Tenant Insurance Requirements will apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3.12. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Tenant Insurance Requirements will be declared to and approved by Landlord. Landlord may require the purchase of coverage with a lower retention or proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Tenant will pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Tenant Insurance Requirements will provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties under these Tenant Insurance Requirements will be reimbursed to Landlord by Tenant in the same manner that insurance costs are reimbursable to Landlord from Tenant under Section 5 of these Tenant Insurance Requirements.

3.13. *No Separate Insurance*. Tenant will not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Tenant Insurance Requirements unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Tenant Insurance Requirements are independent of the Parties' Indemnification and other obligations under this Lease and will not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor will the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to maintain any insurance coverage required by these Tenant Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase such required insurance coverage. Landlord will be entitled to immediate payment from Tenant of all premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Each amount becoming due and payable to Landlord under this Section 5 that is not paid within fifteen (15) days after the Receipt Date of Notice from Landlord with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by Landlord to purchase or not to purchase insurance coverage otherwise required by these Tenant Insurance Requirements to be carried by Tenant will not relieve Tenant of any Default or Event of Default or Tenant's obligation to maintain all insurance coverage required by these Tenant Insurance Requirements.

EXHIBIT F
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

DEVELOPMENT CONDITIONS

	Development Condition	**Specifications**
1.	Parking Structures	The facades of all parking structures shall be wrapped with a building or architectural screening capable of blocking 80 percent of the parking structure facade.
2.	Structure Height	To the extent permitted by Law, the maximum structure height on the Premises will be 105 feet, with the following exceptions: (a) The maximum structure height of the Entertainment Center will be 165 feet; and (b) Up to 10 percent of the surface area of the Master Development Area (approximately 214,446 square feet) may include structures (other than the Entertainment Center) with a maximum height of 250 feet. Building footprint area will be used for calculating the percentage of the surface area of the Master Development Area used by a building.
3.	Park Frontage Setback	As shown on Specific Plan Figure 39, Buildings with ground floor uses fronting a Park shall have an open setback area with a minimum width of 7 feet measured from the nearest building facade to the edge of the Park to create a separation between the building and the Park, unless a greater distance is required by the California Building Code.
4.	Public Streets	All as shown on Figures 7 through 19 in the Specific Plan and all to the satisfaction of the City Engineer of the City of San Diego, California, based on City of San Diego, California, standards for these improvements, Tenant shall Construct: (a) Kemper Street and Frontier Drive as public streets to connect Sports Arena Boulevard and Kurtz Street; (b) frontage improvements along Sports Arena Boulevard and Kurtz Street; (c) the roundabout at Kurtz Street; and (d) the offsite street improvements.

5.	Public Access	All private drives, Promenades, Paseo Greens, Paseo Greenways, The Plaza, The Green and The Square (each as described in the Specific Plan) shall be publicly accessible from at least 8:00 a.m. to 8:00 p.m. seven days a week, 365 days a year. Wayfinding signs shall be provided and include the hours these areas are open to the public in conformance with a Detailed Sign Concept Plan as described in Appendix B of the Specific Plan.
6.	Street Trees	Two rows of street trees shall be provided on Sports Arena Boulevard, Kurtz Street, and Kemper Street, respectively, to provide shade on each multi-use path, and to provide a buffer from vehicular traffic.
7.	Landscaping	All streets, whether public or private, and all parking structures located on the Premises shall contain a minimum of 4.75 percent (4.75%) landscaping, consisting of street trees and groundcovers located within bulb-outs. For vehicular use areas located on the rooftops of parking structures, photovoltaic solar canopies or other shade structures may be provided in lieu of shade trees. Shade structures or photovoltaic solar canopies used in lieu of the shade tree requirement shall meet the following criteria: (1) shade structures or photovoltaic solar canopies shall either (a) cover a minimum of fifty percent (50%) of each individual parking stall, or (b) cover a minimum of fifty percent (50%) of each vehicular use area with no photovoltaic solar canopy or shade structure located more than fifteen (15) feet from any parking stall; and (2) on the rooftops of parking structures or on structural podiums, shade structures with a maximum of fifty percent (50%) transparency or photovoltaic solar canopies may be provided. A minimum 14-foot-wide landscape buffer shall be provided between all residential buildings and the western boundary of the Master Development Area.
8.	Roof Top Mounted Solar Photovoltaic	All building rooftops will install roof-top mounted solar photovoltaic cells, except the Entertainment Center.

9.	Park Amenities	Each Park shall include one or more of the following amenities: • Play Area • Nature Exploration Playground • Multi-Purpose Turf Area • Active Recreation Fields • Hardcourt Areas • Specialty Recreation Areas • Lighting • Multi-use Pathways • Bike Path or Cycle Track • Fitness Circuit • Off-Leash Dog Area • Community Garden • Food Area/Concessions/ Café/ Restaurants • Performance/Event Space • All-weather Shade Cover/Pavilion with tables/seating • Seating Area with movable seats • Restroom Building • Amphitheater • Wayfinding Signage System • Interactive/Technology Element • Public Art/Placemaking Elements • Native Planting Restoration Area

10.	The Green	"The Green" identified in Specific Plan Figure 38 shall: (1) Have a minimum average width of at least 67 feet measured from the outer edge of all adjacent residential entry/dining patio zones; (2) Have a minimum area of 2.32 acres (101,059 square feet); and (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (4) Include one or more of the following amenities: (a) Recreational Amenity; (b) Seating Area; (c) Shade Structure/Pavilion with seating; (d) Performance or Event Space; or (e) Multi-modal Shared Use Path.
11.	The Square	"The Square" identified in Specific Plan Figure 40 shall: (1) Have a minimum width of 90 feet (measured from the face of the Entertainment Center to an opposing building's residential entry/dining patio zone); (2) Have a minimum area of 2.93 acres (127,630 square feet); (3) Include frontage on Sports Arena Boulevard; (4) Include a fire access lane; (5) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater

		distance is required by the California Building Standards Code; and (6) Include one or more of the following amenities: (a) Seating Areas with fixed and moveable seating; (b) Shade Structure/Pavilion with seating; (c) Interactive Water Feature; or (d) Multi-modal Shared Use Path.
12.	The Plaza	"The Plaza" identified in Specific Plan Figure 41 shall: (1) Have a minimum width of 27 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 0.54 acres (23,520 square feet); (3) Include a fire access lane; (4) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (5) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
13.	Paseo Greens	The "Paseo Greens" identified in Specific Plan Figure 42 shall: (1) Have a minimum width of 36 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 1.06 acres (46,174 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater

		amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
14.	Paseo Greenways	The "Paseo Greenways" identified in Specific Plan Figure 43 shall: (1) Have a minimum width of 45 feet (measured from the frontage of all adjacent residential entry/dining patio zones); and (2) Have a minimum area of 1.27 acres (55,321 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by the original Landlord under Section 24.2 of the DDA for all the Parks equals or exceeds 610.
15.	Wood and Gas Fireplaces	Wood and gas fireplaces shall not be permitted within any residential unit located on the Premises.
16.	Building Base	The building base of each building shall have a minimum of 1 story and shall not exceed 3 stories. A minimum of 50 percent of the building base facade shall incorporate a change in at least one of the following: material, color, or transparency that is different from the building facade material, color, or transparency above the building base. Building base facades without windows shall incorporate changes in wall texture, material and color, artistic features, or murals to provide varied and articulated facades.

17.	Restrictions on Visitor Accommodations and Other Uses	Neither the Premises, nor any residential unit on the Premises will, at any time, be Constructed as, or converted to, accessory dwelling units, visitor accommodation units, or units rented for short-term residential occupancy or be used as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, other transient use, or any other use not expressly allowed under the Specific Plan or this Lease.
18.	Agreements Regarding Certain Programs	No Construction on the Premises, nor the Premises, nor any residential unit on the Premises will, at any time, be eligible to participate in any residential development bonus incentive program adopted by the original Landlord under its Governmental Authority that is not required by State law, such as Complete Communities Housing Solutions, the Accessory Dwelling Unit Bonus Program, or Micro-Unit Density Bonus, unless otherwise authorized by City Council ordinance specifically applicable to the Premises.

EXHIBIT G
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following requirements in performance of this Lease at Tenant's sole cost and expense. Tenant's failure to comply with, or ensure the compliance of its licensees, contractors, subcontractors, operators, or concessionaires with, any such requirements will be a Default under this Lease. All Council Policies and other Landlord requirements referenced in this **EXHIBIT G** are incorporated by reference into this Lease.

1.1 Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the ADA requirements of the City of San Diego, California, under Council Policy 100-04, which is incorporated into this Lease by this reference. Tenant agrees that all contracts and subcontracts relating to this Lease or the Premises will contain the contractor's agreement to abide by the provisions of Council Policy 100-04.

1.2 Equal Benefits Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.3 Equal Pay Ordinance. Unless an exception applies, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Tenant will certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to each contractor and subcontractor who performs work on behalf of Tenant, a Subtenant, or a Sub-User to the same extent as it would apply to Tenant. Tenant will require all its contractors, subcontractors, Subtenants, and Sub-Users to certify compliance with the Equal Pay Ordinance in written contracts.

1.4 No Discrimination or Segregation. Neither Tenant, nor any Subtenant, nor any Sub-User, nor any other Person claiming under or through Tenant will establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, and occupancy of the Premises or in the selection, location, number, use, or occupancy of Subtenants or Sub-Users on or about the Premises.

1.5 Equal Employment Opportunity Outreach Program. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with SDMC sections 22.2701 through 22.2707. Tenant and all Subtenants and Sub-Users will not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant and all Subtenants and Sub-Users will provide equal opportunity in all employment practices. Tenant and all Subtenants and Sub-Users will

ensure that their contractors and subcontractors comply with this program. Nothing in this Section 1.5 will be interpreted to hold Tenant or any Subtenant or Sub-User liable for any discriminatory practice of its contractors or subcontractors.

1.6 Product Endorsement. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to the City of San Diego, California, as a user of a good or service must have the prior written approval of the Mayor.

1.7 Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant or the applicable Subtenant or Sub-User is exempt from the payment of business tax, Tenant and each Subtenant and Sub-User is required to obtain a business tax certificate from the City Treasurer and provide a copy of such certificate to Landlord before commencing the Permitted Uses on the Premises.

1.8 Employment of Landlord Staff. Under Council Policy 300-11, if Tenant employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a Landlord officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the entry into this Lease, Landlord, in its sole and absolute discretion, will have the right to unilaterally and immediately terminate this Lease by Notice to Tenant. This provision is not intended to apply to members of the City Council.

1.9 Zero Emissions Municipal Buildings and Operation Policy. Tenant will comply, and cause all Subtenants and Sub-Users to comply, with all requirements of Council Policy 900-03.

1.10 Living Wage. In performing its obligations under this Lease, Tenant will comply, and cause all Subtenants and Sub-Users to comply, with the provisions of the City of San Diego, California, Living Wage Ordinance, codified in SDMC sections 22.4201, et seq.

EXHIBIT H
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PREVAILING WAGE REQUIREMENTS

[**NOTE TO DRAFT: APPLICABILITY OF THIS EXHIBIT WILL BE DETERMINED UNDER SECTION 25 OF THE DDA**]

1. **PREVAILING WAGE REQUIREMENTS**. In performing all Construction, Interior Improvement, or maintenance work under this Lease, Tenant, its contractors and subcontractors will cause all workers who perform Construction, Interior Improvement, or maintenance work on or for the Premises (including work performed during the design and preconstruction phases of Construction or Interior Improvement, such as inspection and land surveying work) to be paid not less than Prevailing Wages and will comply with Prevailing Wage Law and the provisions of this **EXHIBIT H**.

1.1 Prevailing Wage Rates. Copies of the DIR prevailing wage rates are on file with Landlord and are available for inspection to any interested Person on request. Copies of the prevailing rate of wages also may be found at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Tenant, its contractors and subcontractors will all post a copy of the prevailing wage rate determination at each job site and will make this information available to all interested Persons upon request. Tenant, its contractors and subcontractors will all deliver evidence of the required job site posting to Landlord, within five (5) days after such posting.

1.1.1 *Wage Duration.* The prevailing wage rates determined by DIR refer to expiration dates. If the published prevailing wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published wage rate will be in effect for the duration of this Lease or until changed by DIR. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate will become effective on the date following the expiration date of the previous wage rate and will apply to this Lease in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate will apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate will apply to the balance of the Term, unless otherwise increased under applicable law.

1.2 Penalties for Violations. Tenant, its contractors and subcontractors will be subject to and proceed in accordance with California Labor Code section 1775 in the event a worker is paid less

than Prevailing Wages for the work or craft in which the worker is employed, in addition to all other applicable penalties allowed under Prevailing Wage Law.

1.3 Payroll Records. Tenant, its contractors and subcontractors will all maintain all the records, make all the verifications and certifications, and submit or make available, as applicable, all such records, verifications, and certifications as described in California Labor Code section 1776. Tenant, its contractors and subcontractors will include provisions requiring performance of all actions described in California Labor Code section 1776 in all contracts with all contractors or subcontractors, including submitting certified payroll records to DIR through its online system for submission of certified payroll records, and furnishing the records specified in California Labor Code section 1776 directly to the California Labor Commissioner in the manner required in California Labor Code section 1771.4. Tenant shall contractually require that each of Tenant's contractors and subcontractors submit certified payroll records to Landlord, the California Labor Commissioner, and DIR.

1.4 Apprentices. Tenant, its contractors and subcontractors will all employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6 and 1777.7. Tenant will be held responsible for Tenant's own failure and the failure of Tenant's contractors and subcontractors to employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant, its contractors and subcontractors will all comply with the working hours requirements described in California Labor Code sections 1810 through 1815, including: (i) restricting working hours to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day a worker works more than 8 hours per day and 40 hours per week.

1.6 Required Provisions for Subcontracts. Tenant, its contractors and subcontractors will all include, at a minimum, a copy of and compliance with the following provisions of the Prevailing Wage Law in each contract any of them enters into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. As described in California Labor Code section 3700, Tenant, its contractors and subcontractors will all secure the payment of compensation of their respective employees and, by signing this Lease or any contract or subcontract, respectively, Tenant, its contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant, its contractors and subcontractors will include this certification in all contracts with each of their contractors or subcontractors.

1.8 Registration Requirements. All Construction, Interior Improvement, or maintenance work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal subject to the requirements of California

Public Contract Code section 4104 or engage in the performance of any such contract unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the California Business and Professions Code or by section 10164 or 2103.5 of the California Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation will not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under California Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor that does not comply with California Labor Code section 1771.1(a) will be subject to cancellation, provided that a contract will not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it is registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and has verified or will verify that all of Tenant's contractors and subcontractors performing Construction, Interior Improvement, or maintenance work under this Lease are registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and will provide proof of such registration to Landlord.

1.9 Filing of Form PWC-100. Tenant will timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of each filed form to Landlord.

1.10 Filing of Notice of Completion. Tenant will record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of each recorded notice of completion to Landlord.

1.11 Awarding Body for Subleases and Use Agreements. Tenant acknowledges and agrees that, for any Sublease or Use Agreement requiring the payment of Prevailing Wages, (a) Tenant (not Landlord) is the awarding body as that term is used in Prevailing Wage Law, (b) Tenant will comply with all obligations of Prevailing Wage Law applicable to awarding bodies, and (c) Tenant will be responsible for all penalties, fines, damages or other liabilities that may be imposed on an awarding body for failing to comply with Prevailing Wage Law.

1.12 Subtenants and Sub-Users. If one or more Subtenants or Sub-Users perform any work on any portion of the Premises that requires the payment of Prevailing Wages under Sections 14, 26.1, or 27.3 of this Lease, then all requirements of this **EXHIBIT H** shall apply to those Subtenants or Sub-Users and their respective contractors and subcontractors, and all references in this **EXHIBIT**

H to "contractors and subcontractors" shall include those Subtenants and Sub-Users and their respective contractors and subcontractors.

EXHIBIT I
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PERFORMANCE SCHEDULE

[**PARTIES TO INSERT THE PERFORMANCE SCHEDULE AFTER IT IS AGREED UPON UNDER SECTION 34.8 OF THE DDA**]

EXHIBIT J
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PROJECT

[**PARTIES TO INSERT THE PROJECT DESCRIPTION AFTER IT IS AGREED UPON UNDER SECTION 34.7 OF THE DDA**]

EXHIBIT K
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PRELIMINARY REPORT

[**TO BE INSERTED**]

EXHIBIT L
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PARKS MANAGEMENT AND MAINTENANCE REQUIREMENTS

1. **LEGAL COMPLIANCE**. Tenant shall ensure that all Parks comply with this Lease, all Laws, and all Approvals. Tenant shall also ensure compliance with all Approvals, all Government license, permit, or certificate requirements, all required financial disclosures, all California State Seller's Permit requirements, and all County Health Department requirements by all contractors, licensees, concessionaires, or vendors using, entering onto, or operating within the Parks. Tenant shall ensure that all contractors, licensees, concessionaires, or vendors using, entering onto, or operating within the Parks obtain and maintain all insurance required by the Subtenant/Sub-User Insurance Requirements, and all Approvals required under this Lease or under Law.

2. **SPECIFIC PLAN COMPLIANCE**. Tenant shall ensure that all Parks comply with the Specific Plan. Tenant shall also maintain and provide Parks worth a total of 610 Recreational Value Points as determined under the DDA. Once all Parks are Constructed, the Parks must be, collectively, worth a total of 610 Recreational Value Points at all times.

3. **PARKS MAINTENANCE**. Tenant shall furnish and pay for all utilities (water, electricity, etc.), materials, tools, equipment, labor, and supplies needed to maintain and operate the Parks, all at Tenant's expense. All utilities serving the Parks shall be separately metered. Tenant shall perform, or cause to be performed, all maintenance of the Parks in accordance with Section 10 of the main body of this Lease and this **EXHIBIT L** at Tenant's expense. In addition to the Maintenance Standard and the maintenance obligations described in Section 10 of the main body of this Lease, all the following maintenance requirements apply to Tenant's maintenance of the Parks:

3.1. General Maintenance. Tenant shall maintain, or cause to be maintained, all the following generally described elements of the Parks in good and safe condition:

3.1.1. All paved surfaces, including curbs, gutters, sidewalks and roadways, sports court surfacing, decomposed granite (D.G.) paths, parking lots, and platforms;

3.1.2. All objects Constructed above the ground;

3.1.3. All furniture, furnishings, structures (moveable or stationary, i.e. permanent seating, coffee carts, retail carts), and objects, including benches, trash receptacles, picnic or shade structures, bike racks, signs, trellises, kiosks, fountains, lighting standards and fixtures, exercise, play or recreational equipment, AV equipment, and interpretive, educational, placemaking, and interactive technology elements;

3.1.4. All buildings, including comfort stations and concessions;

3.1.5. All security systems installed in or for the Parks;

3.1.6. All components of the Parks installed during initial Construction of the Parks under this Lease not described in this Section 3;

3.1.7. The enhanced paving, irrigation, and planting in the public rights-of-way associated with the Parks;

3.1.8. All other amenities in the Parks, including off-leash dog areas, hardcourt areas, active recreation fields, multi-purpose turf areas, specialty restaurant areas, food areas/concessions/cafes, restaurants, performance/event spaces, and amphitheaters.

3.2. Watering, Irrigation, and Power Washing/Spraying. All watering, irrigation, and power washing/spraying shall comply with Landlord's "Emergency Water Regulations" (SDMC 67.3801, et seq.) enacted under its Governmental Authority. All compliance activities or fines related to violations of the "Emergency Water Regulations" or other Laws by Tenant shall be the responsibility of Tenant, at Tenant's expense. Tenant shall not be in Default of this Lease if it reduces or eliminates irrigation of the Parks to comply with water conservation measures required by Landlord, under its Governmental Authority, or another Government. Tenant shall comply with all Laws (including requirements of the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management, including requirements of the applicable National Pollutant Discharge Elimination System permit. Tenant acknowledges and agrees that such legal requirements may change at any time and from time to time. At all times, Tenant and its contractors or subcontractors shall exercise care with regard to the use of equipment and machinery in and around the Parks to prevent injury or damage to patrons, trees, building surfaces, walls, header board, light fixtures, signage, etc.

3.3. Landscaping. Tenant shall maintain all landscaping within the Parks in a good and attractive condition, including trimming, watering, and fertilizing all turf, ground cover, shrubs, vines, trees, and other plantings, removal of dead or waste material, and replacement of all dead or diseased grass, ground cover, shrubs, vines, trees, or other plantings; maintenance of planted areas free of weeds; and trimming and pruning of all shrubs, vines, and trees so they do not impede pedestrian or other traffic. Plant replacements shall be substantially equal in size, quality, and character to the plant or plants being replaced; provided, however, that while Tenant is required to replace mature trees, Tenant is not required to replace mature trees with trees of equal size, but shall replace mature trees with trees of the same type that are at least the size of a thirty-six (36) inch box tree and that upon reaching the same age of maturity as the tree being replaced, are reasonably expected to be of similar size.

3.4. Synthetic Turf. Tenant shall maintain synthetic turf, if any, in good and safe condition consistent with the manufacturer's recommendations and shall fix or replace synthetic turf as reasonably necessary.

3.5. Irrigation. Tenant shall maintain all irrigation systems, including water lines, valves, backflow valves, vacuum breakers, heads, electrical wires, controllers, clocks, and other elements, within the Parks in good condition. All irrigation systems for landscaping shall be maintained to

provide an appropriate amount of water to the landscape for plant growth without causing soil erosion and runoff.

3.6. Pathways. Tenant shall maintain all sidewalks, trails, pathways, multi-use pathways, bike paths, cycle tracks, fitness circuits, and the like within the Parks in a safe condition that does not impede the uses for which they are designed. Tenant shall also be responsible for the removal of weeds and debris from all sidewalks, trails, pathways, multi-use pathways, bike paths, cycle tracks, fitness circuits, and the like within the Parks.

3.7. Play Equipment and Play Area Surfacing. Tenant shall maintain all play equipment and play area surfacing in a clean and safe condition and in good working order. Tenant shall temporarily secure broken or damaged equipment so it cannot be used, place appropriate signage to notify the public that the equipment is out of service, and repair broken or damaged equipment within a reasonable time. Play area safety surfacing shall be regularly inspected for signs of cracking, granulating, or flaking at intervals recommended by the manufacturer to ensure that the surface meets the fall zone specifications required for safety and, as necessary, repaired in accordance with the manufacturer's instructions within a reasonable time.

3.8. Art Objects. Tenant shall be responsible for the maintenance of all artwork installed in the Parks, including cleaning of artwork, artwork-related plaques, and surrounding paving. Bird droppings shall be removed from all artwork within a reasonable time.

3.9. Light Fixtures. Tenant shall be responsible for maintaining all light fixtures in the Parks in good condition, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. Tenant shall be responsible for ensuring the correct aiming of these light fixtures and replacement of defective/burned-out lamps when reasonably necessary.

3.10. Utility and Drainage Facilities. Tenant shall be responsible for periodic inspection and maintenance of all: (a) surface and subsurface drains located within the Parks and for assuring proper flow and functioning, including removing debris or vegetation that might accumulate at drain inlets as reasonably required; (b) infrastructure located within the Parks for treatment of the Parks' stormwater; and (c) utility service lines and facilities directly serving the Parks (excluding distribution lines and facilities serving other properties as well), such as electrical connections, and similar elements.

3.11. Trash Removal. All trash, litter, or other debris, and the residue of urination and defecation shall be removed from the Parks at least one (1) time per day.

3.12. Graffiti Removal. Tenant shall address graffiti in the Parks as provided in Section 10 of the main body of this Lease.

3.13. Dog Waste Disposal Bag Dispensers. Tenant shall replenish dog waste disposal bags in the Parks at reasonable intervals, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.14. Walls and Fencing. Tenant shall maintain all walls, fencing, gates, and trellis elements in the Parks in good and safe working condition, making repairs as reasonably necessary,

consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.15. Signage. Tenant shall maintain all Park signage in good condition, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. The sign requirements in Section 9.13 of the main body of this Lease apply to all signs in the Parks.

3.16. Public Restrooms. Tenant shall clean and maintain all grounds, structures, and fixtures of public restrooms within the Parks in good, safe, and sanitary condition, in accordance with all Laws. Tenant will clean and disinfect all plumbing fixtures, mirrors, washroom sanitary and waste receptacles, floors, wall bases, and dispensers of supplies located in restrooms regularly, and adequately maintain and stock all toiletry receptacles and dispensers with supplies, all consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California. The entrance doors to public restrooms in the Parks shall be open seven (7) days a week from the hours of 6:00 a.m. to 9:00 p.m., at a minimum, and shall be inspected from time-to-time throughout the day by Tenant, private security personnel hired by Tenant for the Parks, or by other Persons engaged by Tenant for such purposes. The public restrooms within the Parks will have appropriate lighting and security measures intended to deter crime.

3.17. Security. In addition to the requirements of Section 9.6 of the main body of this Lease and the Security Plan, the Parks shall be patrolled by a security guard 24-hours-a-day. To the extent permitted under Law, the Parks may also be monitored by a 24-hour-a-day recordable video security camera system with internet website accessibility setup by Tenant. If Tenant elects to monitor the Parks with video security cameras, Tenant shall consider participating in any then available San Diego Police Department program allowing San Diego Police Department access to live video transmissions. If a Park is monitored by a video security camera system Tenant shall provide adequate signage at various areas in the Park indicating that the Park is monitored by security cameras.

3.18. Security Fence. Upon the request of either Party, Tenant and Landlord, including a representative of the San Diego Police Department, shall meet and confer about whether any of them believes that the number of security-related incidents in or about the Parks and in the immediately surrounding community, as evidenced by the maintenance records for the Parks related to repairs and associated misuse, inappropriate use, or vandalism, or private security or police records, reports, or security tapes, is at a level that proper control or security in the Parks cannot be adequately maintained without installing a security fence around the perimeter(s) of the Parks with appropriate height and openings to the surrounding sidewalk that may be needed to adequately secure the Parks (a "**Security Fence**"). If, after meeting and conferring, Landlord and Tenant reasonably agree that a Security Fence should be installed due to security concerns, Tenant shall cause the Security Fence to be installed and maintained, at Tenant's expense, within a reasonable time. If, after meeting and conferring, Landlord and Tenant reasonably agree that a Security Fence is not required to be installed at the time of the initial meet and confer, Tenant and Landlord, including a representative of the San Diego Police Department, shall continue to meet and confer periodically to determine whether adequate security in the Parks can be maintained without installing a Security Fence. If, after meeting and conferring, Tenant does not agree that a Security Fence is necessary to address security concerns, but Landlord does believe a Security

Fence is necessary, Tenant shall provide an additional Security Plan specific to the Park or Parks for which Landlord has identified security concerns. The additional Security Plan shall detail additional security measures that will be taken to mitigate the security concerns identified. Further, the additional Security Plan will require that Tenant document all incidents relating to the specific Park or Parks for an agreed upon time, but no less than one (1) calendar year, after which Landlord and Tenant will meet and confer to discuss whether the additional security measures are effectively addressing the identified security concerns, or if a Security Fence is necessary. If Tenant cannot demonstrate to Landlord's reasonable satisfaction that the additional security measures were effective during the agreed upon period of time in addressing the identified security concerns, Tenant shall cause a Security Fence to be installed and maintained at Tenant's expense, within a reasonable amount of time. If a Security Fence is installed, the continuing necessity of the Security Fence will be reviewed by Landlord and Tenant annually during the month containing the first day of each Lease Year after installation of the Security Fence.

3.19. Daily Inspection Standards.

3.19.1. **General Inspection**. Tenant shall cause all Park areas to be inspected at least once a day. Any major problems in the Parks shall be repaired by Tenant within a commercially reasonable time, but no longer than 72 hours if such repair is a day-to-day non-capital repair.

3.19.2. **Irrigation Inspection**. Tenant shall cause all Park irrigation systems to be visually inspected regularly, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California, to ensure complete electronic operation and proper distribution of water, including the water meter, backflow preventer, master valve, quick couplers, irrigation heads, valves, wires, mainlines, lateral lines, controllers, flow sensors, rain sensors, pressure regulators, etc. Maintenance and repair of irrigation systems shall be as needed, to ensure proper operation of irrigation systems using only irrigation equipment approved under the Park Design Manual that can be located online at https://www.sandiego.gov/parks-and-recreation/design-development.

3.19.3. **Inspection**. Upon discovery, Tenant shall barricade or tape off, as appropriate, all potential hazards in Parks immediately for non-use until the hazard can be evaluated and repaired. Repairs and cleaning shall be completed as needed on all Park furnishings, including trash cans, consistent with generally accepted park maintenance standards for parks of similar type and use in the City of San Diego, California.

3.19.4. **Drainage Inspection**. Visual inspections of area and landscape drains in the Parks will be performed during the morning litter removal sweep. Repairs shall be completed by Tenant as needed. Site drainage shall comply with local and Federal Best Management Practices (BMPs).

3.19.5. **Security Lighting Inspection**. Visual inspections of security lighting in the Parks will be performed during the evening litter removal sweep. Repairs shall be completed by Tenant as needed.

4. **RESTORATION**. Tenant shall Restore all Improvements, elements, or amenities comprising or relating to the Parks in accordance with Section 18 or 19 of the main body of this Lease, as applicable. During any period prior to or during any Restoration work, Tenant shall remove, clean up, or otherwise protect the damaged or destroyed Improvements, elements, or amenities comprising or relating to the Parks as necessary or appropriate to protect public health and safety. During Restoration work, Tenant shall control pedestrian and other access and shall conduct its Restoration work in a safe and orderly fashion. All ordinary maintenance, repair, and replacement work, and all Restoration work required under this **EXHIBIT L**, shall be performed in a manner to keep the Parks of the same type and quality as initially Constructed.

5. **ALLOWED USES OF THE PARKS**. Subject to applicable Law, the Parks may be used only as follows:

5.1. All Parks shall be publicly accessible for passive recreation activities from at least 6:00 a.m. to 9:00 p.m., 365 days per year, subject to temporary closures for routine or special maintenance, closures required by Law or for public health or safety reasons, and temporary closures or access restrictions in connection with events, programming, installations, or other uses conducted or authorized by Tenant under this Lease;

5.2. Programmed active recreational uses, including athletic fields; and

5.3. Temporary pre-scheduled park, recreational, cultural, educational, entertainment, and promotional events facilitated or permitted by Tenant that take place over the course of no more than five (5) calendar days, inclusive of no more than two (2) days of set-up and dismantling time ("**Limited Duration Events**"), for the following categories of activities:

5.3.1. Arts and entertainment programs and events;

5.3.2. Promotional programs and events;

5.3.3. Concert and performance programs and events;

5.3.4. Educational programs and events;

5.3.5. Fairs, festivals, and market programs and events;

5.3.6. Awareness and fundraising programs and events;

5.3.7. Athletics, recreation, and health programs and events;

5.3.8. Holiday special programs and events; and

5.3.9. Exhibits and shows.

6. **PARK PROGRAMMING AND PERMITTING**. With respect to Limited Duration Events, Tenant or its contractors will: (1) plan, develop, market, manage, support, schedule, and coordinate Limited Duration Events held on the Parks by Tenant; and (2) issue permits for Limited Duration Events for the use of the Parks by Third Persons, subject to the same park use provisions in the

SDMC governing all City of San Diego, California, parks that are not subject to the Special Events Ordinance (SDMC section 22.4001-22.4038); or (3) issue reservations of space under SDMC section 63.0103(d)(1). For all Limited Duration Events subject to the Special Events Ordinance, Tenant or its contractors will contact, or direct the Third Person holding the Limited Duration Event to contact, Landlord's department overseeing special events and filming. Tenant and all Third Persons holding a Limited Duration Event on a Park shall secure all Approvals required from all applicable Governments, including Landlord acting under its Governmental Authority, prior to commencing the Limited Duration Event. The requirements of SDMC Chapter 5, Article 9, Division 6 shall prevail over the provisions of Sections 5 through 8 of this **EXHIBIT L** only to the extent there is any conflict between SDMC Chapter 5, Article 9, Division 6 and the provisions of Sections 5 through 8 of this **EXHIBIT L**. [**NOTE TO DRAFT: THE REFERENCE TO SDMC CHAPTER 5, ARTICLE 9, DIVISION 6 (ENTERTAINMENT DISTRICT ORDINANCE) IN SECTION 7 ABOVE IS SUBJECT TO BOTH CITY COUNCIL ADOPTION OF THE ORDINANCE AND CONFIRMATION OF THE MUNICIPAL CODE CITATION FOR THE ORDINANCE**.]

7. **PARK ELEMENT NAMING RIGHTS**. Subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, and subject to the other terms of this Lease, Tenant shall have the exclusive right during the Term to market, authorize, and display (subject to Section 9.13 of the main body of this Lease) naming rights and sponsored identification for individual elements, areas, and components within the Parks, including plazas, trails, lawns, performance areas, activity zones, and similar identifiable portions of the Parks.

8. **PARK RULES**. Tenant shall develop and publish rules and regulations applicable to the operation of the Parks, including penalties for violations of such rules and regulations, and submit them to Landlord for approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Only Tenant's rules and regulations applicable to the operation of the Parks that are approved by Landlord will be applied to the Parks.

EXHIBIT M
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

NON-DISTURBANCE AND ATTORNMENT AGREEMENT FORM

RECORDING REQUESTED BY: Chicago Title Company Commercial Division **AND WHEN RECORDED MAIL TO:** City of San Diego 1200 Third Avenue, Suite 1400 San Diego, CA 92101 Attn: Director, Economic Development Dept.	

APNs: [**TO BE DETERMINED**]

Exempt from Recording Fees – Cal. Govt. Code § 27383

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made by and among THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), [**TO BE DETERMINED**] ("**Tenant**"), and [**TO BE DETERMINED**] ("**Subtenant**"), effective on the date this Agreement is approved as to form by the San Diego City Attorney, as shown on the signature page to this Agreement. Landlord, Tenant, and Subtenant are sometimes referred to in this Agreement, individually, as a "**Party**" or, collectively, as the "**Parties**."

1. **Background**. Landlord is the owner of certain real property in the City of San Diego, County of San Diego, State of California described on **Exhibit 1** attached to this Agreement and incorporated into this Agreement by this reference ("**Property**"). Landlord and Tenant entered into that certain Entertainment Center Ground Lease, dated [**TO BE DETERMINED**] ("**Ground Lease**") regarding the Property. Tenant and Subtenant have entered into that certain Sublease Agreement dated [**TO BE DETERMINED**] ("**Sublease**"), in which Tenant subleased a portion of the Property, as further described in **Exhibit 2** attached to this Agreement ("**Sublease Premises**"), to Subtenant under the Ground Lease. Tenant and Subtenant represent and warrant to

Landlord that a true and correct copy of the Sublease was delivered to Landlord on [**TO BE DETERMINED**]. Landlord, Tenant, and Subtenant desire to enter into this Agreement for the purpose, among other things, of providing various rights and protections to Landlord and Subtenant in the event of an early termination of the Ground Lease by Landlord as a result of an Event of Default under the Ground Lease by Tenant.

2. **Non-Disturbance and Attornment**. If the Ground Lease is terminated before its Scheduled Expiration Date (as defined in the Ground Lease) ("**Triggering Event**") and subject to all the terms of the Ground Lease regarding Subleases (as defined in the Ground Lease), including the provisions of the Ground Lease regarding a New Lease (as defined in the Ground Lease), Landlord agrees to recognize the Sublease as a direct lease between Landlord and Subtenant, and Subtenant agrees to recognize and attorn to Landlord as Subtenant's direct landlord under the Sublease, subject to all the following:

2.1 The Sublease is in full force and effect and has not been terminated, and no state of facts then exist that would permit Tenant to terminate the Sublease by virtue of the default of Subtenant under the Sublease.

2.2 Landlord shall retain all rights under the Sublease in the event of any default by Subtenant.

2.3 Landlord shall not be liable to Subtenant for any default under the Sublease by Tenant, as sublandlord, any amount owed by Tenant to Subtenant, any offset right, claim for damages, refund, rebate, payment or other performance that Subtenant may have against Tenant relating to any event or occurrence before the date of the Triggering Event, including any claim for damages of any kind whatsoever as the result of any breach of the Sublease by Tenant that occurred before the date of the Triggering Event.

2.4 Landlord shall not be required to return to Subtenant any security deposit not received by Landlord.

2.5 Landlord shall not be obligated to credit Subtenant with any rent paid under the Sublease more than one (1) month in advance.

2.6 Landlord shall not be bound by any modification or amendment of the Sublease or any waiver of any term of the Sublease, unless made with Landlord's written consent.

2.7 Landlord shall not be liable for any construction work, including tenant improvement work (as opposed to typical landlord structural maintenance obligations), made by or obligated to be made by Tenant under the Sublease.

3. **Notices**. All notices from one Party to another Party under or as required by this Agreement must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email (followed by a hard copy delivered in accordance with one of the preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing

the recipient Party in response to a notice email). All notices must be sent to the Party representative and address designated below in this Section 3. A Party may designate a different representative or address for delivery of notice under this Agreement by notice given in accordance with this Section 3. To conserve resources and reduce administrative burden, the Parties intend to deliver notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the notice is sent by messenger for immediate personal delivery and delivered to the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the notice is delivered to the United States Postal Service in accordance with this Section 3 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices delivered via email. The notice addresses for the Parties on the effective date of this Agreement are as follows:

Landlord:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Tenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

Subtenant:

[**TO BE DETERMINED**]

With a copy to:

[**TO BE DETERMINED**]

4. **Miscellaneous Provisions**.

4.1 No Merger. The Parties agree that the respective ownerships or estates of Landlord and Tenant in and to the Property shall not merge, and shall remain separate and distinct, notwithstanding the union of such ownerships or estates in either Tenant, Landlord, or any third party by purchase, assignment, or otherwise.

4.2 Further Assurances. From time to time as required to more effectively carry out the terms of this Agreement, each of the Parties shall, at the reasonable request of another Party (a)

sign and deliver to the requesting Party other ancillary instruments and documents, and (b) take other ancillary actions.

4.3 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original of this Agreement and all of which together shall constitute one and the same instrument.

4.4 Further Documentation. The provisions of this Agreement shall be effective and self-operative, without any need for Landlord, Tenant, or Subtenant to sign any further document; provided, however, upon request after a Triggering Event, the Parties shall sign and deliver a writing documenting the effects of the provisions of this Agreement on the Sublease.

4.5 Entire Agreement. This Agreement and the documents specifically referenced and incorporated into this Agreement set forth the entire agreement between the Parties regarding the subject matter of this Agreement. Except as specifically set forth in this Agreement, there are no agreements, representations, or warranties whatsoever as to any matter. Any prior conversations or writings are merged into this Agreement, superseded by this Agreement, and extinguished.

4.6 Modifications, Successors and Assigns. This Agreement may only be modified in a writing signed by all the Parties or their respective successors in interest. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

4.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Sole and proper venue for any action to enforce or interpret any of the terms and provisions of this Agreement shall be in the County of San Diego, California.

[***Remainder of page intentionally blank. Signatures appear on the following page.***]

SIGNATURE PAGE
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

([INSERT NAME OF SUBTENANT])

Landlord, Tenant, and Subtenant make and enter into this Agreement by and through the signatures of their respective authorized representatives below.

LANDLORD:

The City of San Diego, a California municipal corporation

By:_____
Name:_____
Its:_____

Approved as to form on: _____.

[**TO BE DETERMINED**],

City Attorney

By: _____

TENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

SUBTENANT:

[**TO BE DETERMINED**]

By:_____
Name:_____
Its:_____

EXHIBIT 1
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property Legal Description

[**TO BE INSERTED**]

EXHIBIT 2
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Sublease Premises Legal Description

[**TO BE INSERTED**]

EXHIBIT N
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

FINANCING PLAN

[**PARTIES TO INSERT THE FINANCING PLAN AFTER IT IS AGREED UPON UNDER SECTION 34.8 OF THE DDA**]

EXHIBIT O
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

CONTRACTOR PREQUALIFICATION APPLICATION FORM

[**Attached behind this cover page**]

CONTRACTOR PREQUALIFICATION APPLICATION

1. Applicant Information

Name of Company ("Applicant"): _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Address(es), phone and fax number(s) of Applicant facilities located in San Diego County (if different from above):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Type of Business: _____

Type of License: _____

Company Representative for this Application (Name and Title): _____

2. Applicant Exceptions – Pass / Fail

2.1 If the Applicant takes exception to any portion of the contract terms, the Applicant must identify and explain to the Landlord in writing the basis for the exception. The Applicant must submit any claimed exception within 10 calendar days of the date of Applicant submittal.

3. Project Team and General Qualifications (5 Points Max)

3.1 Describe the proposed management plan for this Applicant's submittal and include all relevant evidence of State licenses. Describe the qualifications of key proposed construction and technical personnel, and subcontractors, from applicable fields including the following:

3.1.1 Civil; and

3.1.2 Environmental.

4. Technical Approach and Design Concept (15 Points Max)

4.1 Describe in detail the proposed design concept for this Project. Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow Landlord and Tenant to make an informed evaluation of the Applicant's technical approach. The completeness and technical merit of the design concept will be evaluated. The following elements shall be included in this Applicant submittal:

4.1.1 Proposed Design Schedule: Outline the proposed design schedule, including sequencing of each major design component (30%, 60%, 100%, and Final Design) and proposed durations.

4.2 Scope of improvement description and locations.

4.3 Storm Water Pollution Control Best Management Practices.

4.4 Quality Assurance/Quality Control Plan (QA/QC Plan): The Applicant shall submit a QA/QC Plan specifically developed for this project. The Applicant's QA/QC Plan shall comply with Landlord's Quality Assurance/Quality Control Plan Guidelines. The QA/QC Plan shall describe the tools, process, and resources the Applicant will use to ensure that it provides facilities that meet the Landlord's requirements.

4.5 Curb Ramp Design and Installation plan pursuant to the Access Law Compliance Section's Preliminary Engineering Assessment Report and clarification amendment memo regarding changes to the 2020 California Building Code requirements and highlight any modification, if any.

4.6 Permits: the Applicant shall identify what permits are required and what is the proposed plan/timeline to obtain the required permit(s).

5. Construction Plan (20 Points Max)

5.1 Describe the proposed construction plan for this Project, including the following, at a minimum:

5.1.1 Description of relevant phase(s) and lease(s) in which the construction will take place;

5.1.2 Construction approach and methods;

5.1.3 Plan for operation of facility during construction; and

5.1.4 Plan for phasing of construction activities.

5.2 General plan for functional testing and start-up.

5.3 Proposed safety program

5.4 Proposed emergency response plan

5.5 Proposed construction schedule

5.6 Traffic Control Management

5.7 Community Impact

6. Equal Opportunity Contracting Program (20 Points Max)

6.1 Failure to submit the required EOCP information will result in Applicant's submittal being deemed incomplete and Applicant's submittal will be rejected.

6.2 Subcontractor Documentation of EOCP information, if applicable.

7. Financial Viability (30 Points Max)

7.1 Provide financial statements for the past three (3) years of operations.

8. Reference Checks (5 Points Max)

8.1 Three references are required

Reference #1 name:

Reference #1 Company

Reference #1 Phone:

Reference # email:

8.2 Reference #2 name:

Reference #2 Company

Reference #2 Phone:

Reference #2 email:

8.3 Reference #3 name:

Reference #3 Company

Reference #3 Phone:

Reference #3 email:

EXHIBIT P
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

PROJECT LABOR AGREEMENT CERTIFICATION FORM

[DATE]

City of San Diego
[ADDRESS]
Attention: Economic Development Director

RE: Midway Rising Disposition and Development Agreement:
Project Labor Agreement Certification

Dear [**TO BE DETERMINED**],

The letter constitutes our certification of compliance with the project labor agreement requirements of Section 11.2 of that certain Entertainment Center Ground Lease by and between the City of San Diego, a municipal corporation ("**City**"), and [**TO BE DETERMINED**], dated [**TO BE DETERMINED**] ("**Lease**").

The undersigned represents and warrants to the City that: (1) [**INSERT NAME OF GENERAL CONTRACTOR AND ITS CSLB GENERAL CONTRACTOR LICENSE NUMBER**] entered into that certain Project Labor Agreement, dated [**TO BE DETERMINED**] ("**PLA**"), with the San Diego County Building & Construction Trades Council regarding construction work to be performed on Development Parcel [**TO BE DETERMINED**], as defined in the DDA; (2) The duration of the PLA is [**TO BE DETERMINED COMMENCEMENT AND TERMINATIONS DATES OF PLA**]; and (3) the PLA complies with all the terms of that certain Memorandum of Understanding between Master Developer, as defined in the DDA, and San Diego County Building & Construction Trades Council, dated March 28, 2022, and Section 11.2 of the Lease.

SAN DIEGO COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL

By:_____
Name:_____
Title:_____
Date:_____

EXHIBIT Q
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

MASTER DEVELOPMENT AREA LEGAL DESCRIPTION

[**LEGAL DESCRIPTION OF THE FULL PROPERTY DEFINED IN THE DDA TO BE INSERTED**]

EXHIBIT R
TO
ENTERTAINMENT CENTER GROUND LEASE
(Midway Rising)

SUBTENANT/SUB-USER INSURANCE REQUIREMENTS

[**NOTE TO DRAFT: THE SUBTENANT/SUB-USER INSURANCE REQUIREMENTS WILL BE INSERTED AFTER BEING AGREED UPON BY THE PARTIES PRIOR TO THE VERTICAL GROUND LEASE CLOSING FOR THIS LEASE AND WILL BE BASED ON THE CITY'S THEN STANDARD INSURANCE REQUIREMENTS FOR LEASES AND LICENSE AGREEMENTS WITH SIMILAR USES.**]

ATTACHMENT 17
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

AFFORDABLE HOUSING LEASE FORM REQUIRED PROVISIONS

1. **AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS**.

1.1 **DEFINITIONS**. [**NOTE TO DRAFT: THERE ARE DEFINED TERMS USED IN THESE AFFORDABLE RENTAL HOUSING COVENANTS AND RESTRICTIONS THAT ARE FROM THE CITY'S DRAFT AFFORDABLE HOUSING LEASE FORM AND THE DEFINITIONS OF THESE TERMS WILL NEED TO BE INCLUDED IN THE AGREED UPON AFFORDABLE HOUSING LEASE FORM.**] In addition to words, terms, or phrases defined elsewhere in this Lease (referring to the Affordable Housing Lease Form), the following words, terms, or phrases indicated to be defined terms in this Lease by initial capitalization are used in this Lease with the following meanings:

1.1.1 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person. "**Affiliated**" and "**Affiliation**" will have the correlative meanings.

1.1.2 Affordable Rent. HCD Rent, unless the Project is financed with Tax Credits, then CTCAC Rent.

1.1.3 Affordable Unit. Any one of the [**TO BE DETERMINED**] residential rental units within the Project (exclusive of the [**TO BE DETERMINED**] Manager Unit(s)).

1.1.4 Affordable Unit Sublease. A Sublease for an Affordable Unit that Tenant (or any Person claiming by or through Tenant) enters into in good faith and at arm's length with a Qualifying Household, in compliance with the provisions of this Lease.

1.1.5 Annual Affordable Housing Report. A report in substantially the form of **EXHIBIT A** to this **ATTACHMENT 17** or in such other substantially similar form as subsequently reasonably required by Landlord and containing all the data points identified in **EXHIBIT A** to this **ATTACHMENT 17**, together with a current rent roll for the Premises and all Income Certification Forms completed and signed by all Qualifying Households occupying Affordable Units during the period covered by the report.

1.1.6 Available. When an Affordable Unit is held available for occupancy by a Qualifying Household. An Affordable Unit will be considered held available for occupancy by a Qualifying Household if Tenant is exercising bona fide good faith efforts to let or relet the Affordable Unit to an appropriate Qualifying Household and the Affordable Unit remains unoccupied until the Affordable Unit is occupied or reoccupied by a Qualifying Household appropriate to the income category of the Affordable Unit.

1.1.7 Capital Improvements. Any Restoration or addition of any Building, Building Equipment, or exterior finish on any Building.

1.1.8 Capital Replacement Account. An interest-bearing account established by Tenant with an Institutional Lender to be held, administered, and disbursed by the Institutional Lender solely for making Capital Improvements to the Premises, as described in Section 1.18.

1.1.9 City Attorney. City Attorney of the City of San Diego, California, a municipal corporation.

1.1.10 CNA. Defined in Section 1.18.5.

1.1.11 Crime Free Lease Addendum. An addendum to each Affordable Unit Sublease in substantially the form of the attached **EXHIBIT J**.

1.1.12 CTCAC. The California Tax Credit Allocation Committee or successor in function.

1.1.13 CTCAC Area Median Income. The median gross income for the County as determined by the Secretary of the Treasury of the United States for purposes of Section 42 of the Internal Revenue Code of 1986 and associated regulations, as published from time to time by CTCAC.

1.1.14 CTCAC Rent. As applicable:

(1) For each Affordable Unit occupied by a Low Income 80% Household, maximum monthly rent for an individual or household with a household income equal to or less than eighty percent (80%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published from time to time by CTCAC.

(2) For each Affordable Unit occupied by a Low Income 60% Household, maximum monthly rent for an individual or household with a household income equal to or less than sixty percent (60%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published from time to time by CTCAC.

(3) For each Affordable Unit occupied by a Very Low Income Household, maximum monthly rent for an individual or household with a household income equal to or less than fifty percent (50%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published from time to time by CTCAC.

(4) For each Affordable Unit occupied by an Extremely Low Income Household, maximum monthly rent for an individual or household with a household income equal to or less than thirty percent (30%) of the then current CTCAC Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit, as published from time to time by CTCAC.

1.1.15 Default. Each Monetary Default, Project Construction Default, or Non-Monetary Default.

1.1.16 Extremely Low Income Household. An individual or household with a household income equal to or less than thirty percent (30%) of the then current HCD Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then thirty percent (30%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

1.1.17 HCD. The California Department of Housing and Community Development.

1.1.18 HCD Area Median Income. The then current area median income for the County, as determined and published by HCD in the California Code of Regulations or if no longer determined by HCD, then as established and amended from time to time under Section 8 of the United States Housing Act of 1937.

1.1.19 HCD Rent. As applicable:

(a) For each Affordable Unit occupied by a Low Income 80% Household, gross monthly rent that does not exceed thirty percent (30%) of the gross income of the household, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(b) For each Affordable Unit occupied by a Low Income 60% Household, gross monthly rent that does not exceed thirty percent (30%) times sixty percent (60%) of HCD Area Median Income, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(c) For each Affordable Unit occupied by a Very Low Income Household, gross monthly rent that does not exceed "affordable rent," as defined in California Health and Safety Code section 50053(b)(1)(C), for "very low income households," as defined in California Health and Safety Code section 50105, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

(d) For each Affordable Unit occupied by an Extremely Low Income Household, gross monthly rent that does not exceed "affordable rent," as defined in California Health and Safety Code section 50053(b)(1)(B), for "extremely low income households," as defined in California Health and Safety Code section 50106, including Utilities Allowance, adjusted for family size appropriate for the Affordable Unit.

1.1.20 Income Certification Form. A written certification of a household's annual and adjusted income under Title 24 Code of Federal Regulations sections 5.609-5.617 consistent with HUD Handbook 4350.3 REV-1, Chapter 5, Sections 1-3, in a form reasonably acceptable to Landlord.

1.1.21 Low Income 60% Household. An individual or household with a household income equal to or less than sixty percent (60%) of the then current HCD Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax

Credits, then sixty percent (60%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

1.1.22 Low Income 80% Household. An individual or household with a household income equal to or less than eighty percent (80%) of the then current HCD Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then eighty percent (80%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

1.1.23 Management Agent. As designated by Tenant from time to time, either Tenant or another Person with substantial experience managing multi-family affordable rental projects substantially similar to the Premises and that is, at the time, managing other financially self-supporting multi-family affordable rental projects substantially similar to the Premises.

1.1.24 Manager Unit. The [**TO BE DETERMINED**] residential rental unit(s) within the Project reserved exclusively for use by an on-site manager employed by Tenant or the Management Agent, as applicable, and that is not required to be income or rent restricted.

1.1.25 Minimum Balance. Defined in Section 1.19.

1.1.26 Occupancy Date. The date of issuance by City of a final Certificate of Occupancy for the entire Project.

1.1.27 Operating Expenses. Actual, reasonable and customary (for comparable affordable rental housing developments in the County of San Diego, California) costs, fees and expenses directly incurred, paid, and attributable to the operation, maintenance, or management of the Premises in a calendar quarter, including: (1) the cost of utilities supplied to and used for the Premises and not paid by Premises subtenants, including trash removal, electricity, water, sewer and gas; (2) the cost of all insurance required for the Premises to satisfy the insurance requirements imposed by the Senior Permitted Leasehold Lender or this Lease; (3) Real Estate Taxes applicable to the Premises; (4) maintenance and repair expenses for services, material and labor, including painting, cleaning, pest control, gardening, rubbish removal and graffiti removal; (5) charges for public services such as sewer charges, license and permit fees; (6) advertising, marketing and promotion costs; (7) leasing commissions; (8) accounting, audit and legal expenses incurred in operation of the Premises; (9) the allocable share of expenses of the Premises for maintenance of roads and use of shared facilities; (10) salaries, wages, rent payments or allocation, and other compensation due and payable to the employees or agents of Tenant employed on-site in connection with the maintenance, administration or operation of the Premises, along with all withholding taxes, insurance premiums, social security payments and other payroll taxes or payments required in connection with such employees; (11) the fee paid to the Management Agent (if any) for Premises management in an amount not to exceed six percent (6%) of monthly Revenue; (12) costs of security services supplied to the Premises; (13) the cost of social support services and programs offered and available to occupants of Affordable Units provided by service providers approved by Landlord at costs approved by Landlord; and (14) all other fees and expenses authorized in the annual budget for the Premises approved by Landlord (exclusive of Debt Service and Reserve Deposits). Operating Expenses shall not include the following: (i) repairs or replacements paid out of insurance proceeds received by Tenant; (ii) fees, costs, or

expenses of refinancing of any loan; (iii) depreciation of buildings or other similar non-cash items of expense; or (iv) any legal fees or other expenses, fees or costs incurred by Tenant in connection with obtaining this Lease or in obtaining any loan. To the extent that any expense is paid out of reserves maintained by the Senior Permitted Leasehold Lender, the Capital Replacement Account, or the Operating Reserve, such expense shall not be part of "Operating Expenses." To the extent that all or any portion of the Premises is subleased by Tenant and the subtenant, sublessee, or occupant pays any items described as Operating Expenses in this Section 1.1.27, then such items that are paid by such subtenant, sublessee, or occupant shall not be Operating Expenses. No expense item shall be counted twice in determining Operating Expenses, regardless of whether or not such expense item is applicable to two or more categories of expenses described in this Section 1.1.27. Tenant is required to pay Operating Expenses for materials or services upon receipt of such materials or services and, to the extent services are not billed on a monthly basis, the bill for such services shall be prorated over the period during which such services were received. Real Estate Taxes and insurance premiums shall be prorated on a monthly basis based on the latest information available. If the actual cost of Real Estate Taxes or insurance premiums is different from the information used to make such prorations, then an adjustment in the next month's Operating Expenses shall be made based upon the correct information. Under no circumstances will Operating Expenses include expenses not directly related to the Premises' operations, including depreciation, amortization or accrued principal or interest expense on deferred payment debt. Operating Expenses will be determined on a cash basis.

1.1.28 Operating Reserve. An interest-bearing account established by Tenant with an Institutional Lender and maintained by Tenant to fund any shortfalls between Revenue and the actual operating costs of the Premises.

1.1.29 Permanent Supportive Housing. Long-term, community-based housing occupied by Qualifying Households that is linked to onsite or offsite supportive services addressing the special needs of Qualifying Households. This type of supportive housing enables special needs populations to live as independently as possible in a permanent setting. The supportive services may be provided by the Management Agent or coordinated by the Management Agent and provided by other public or private service agencies. Permanent supportive housing can be provided in one structure or several structures at one site. There is no definite length of stay. [**NOTE TO DRAFT: INCLUDE THIS DEFINITION ONLY FOR AFFORDABLE HOUSING DEVELOPMENTS WITH PERMANENT SUPPORTIVE HOUSING UNITS**]

1.1.30 Project. Tenant's Construction of the entirety of the Vertical Improvements, including all hardscape, landscaping, and on-site and off-site public and private improvements, all in accordance with Plans approved by Landlord, consisting of [**TO BE DETERMINED**] Affordable Units and [**TO BE DETERMINED**] Manager Unit(s). [**NOTE TO DRAFT: FOR PROJECTS WITH COMMERCIAL/RETAIL SPACE, ADD TO THE END OF THE LAST SENTENCE "AND [TO BE DETERMINED] SQUARE FEET OF COMMERCIAL/RETAIL SPACE.**]

1.1.31 Qualified Permanent Resident. A Person described in California Civil Code section 51.3(b), subsections (2) and (3), as such code section may be amended, replaced, or renumbered from time to time. [**NOTE TO DRAFT: INCLUDE THIS DEFINITION ONLY FOR**

AFFORDABLE HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR OCCUPANCY BY SENIOR CITIZENS]

1.1.32 Qualifying Household. An Extremely Low Income Household, a Very Low Income Household, a Low Income 60% Household, or a Low Income 80% Household, as applicable, based on the affordability level assigned to the particular Affordable Unit under Section 1.6. [**NOTE TO DRAFT: FOR EACH AFFORDABLE HOUSING DEVELOPMENT WITH AFFORDABLE UNITS RESERVED FOR PERMANENT SUPPORTIVE HOUSING OR OCCUPANCY BY SENIOR CITIZENS OR VETERANS THE FOLLOWING TEXT WILL BE ADDED TO THE END OF THIS SECTION**: and: (1) containing one (1) or more Persons who is a Qualifying Resident who intends to reside in an Affordable Unit as his or her primary residence on a permanent basis; and (2) whose members that are not Qualifying Residents, if any, are each a child of the Qualifying Resident or a Qualified Permanent Resident.]

1.1.33 Qualifying Resident. [**NOTE TO DRAFT: FOR AFFORDABLE HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR PERMANENT SUPPORTIVE HOUSING**: An individual who is either "Chronically homeless" or "At risk of homelessness," each as defined in Title 24 Code of Federal Regulations section 91.5.] [**NOTE TO DRAFT: FOR AFFORDABLE HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR OCCUPANCY BY SENIOR CITIZENS**: A household that contains one (1) or more Persons who is a Senior Citizen who intends to reside in an Affordable Unit as his or her primary residence on a permanent basis;] [**NOTE TO DRAFT: FOR AFFORDABLE HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR OCCUPANCY BY VETERANS**: A household that contains one (1) or more Persons who is a Veteran who intends to reside in an Affordable Unit as his or her primary residence on a permanent basis.]

1.1.34 Records. All books, records, statements, contracts and other records of Tenant, any Affiliate of Tenant, or any Management Agent relating in any way to the Construction of the Project, or use, occupancy, or operation of the Premises, including Income Certification Forms completed by all applicants for, or subtenants under, Affordable Unit Subleases, and accounting of Revenues and expenses. All Records shall be prepared in accordance with industry standards and otherwise in accordance with GAAP consistently applied.

1.1.35 Residential Unit. Any of the Affordable Units or Manager Units.

1.1.36 Revenue. All money, and the monetary value of property or services, received by Tenant from the use or occupancy of or the right to use or occupy all or any portion of the Premises, including all revenue from or relating to rent paid or payable by subtenants, any Federal or State agency, such as the United States Department of Housing and Urban Development through a "Housing Assistance Payments" contract under Section 8 of the Housing Act of 1937 or otherwise, vending machines, laundry facilities or other amenities of the Premises (if any), and all other revenue, income or receipts of every kind that accrue or are accounted for on an accrual or other basis in conformity with GAAP, exclusive of: (a) any security deposits (unless and until such deposits are payable to Tenant); (b) interest on security deposits (unless and until such interest is payable to Tenant); (c) interest on the Capital Replacement Account or the Operating Reserve when such interest is deposited into the account on which it is earned and reserved exclusively for use

in accordance with the purposes of such account; (d) insurance or condemnation proceeds (except as paid to Tenant for loss of rents); or (e) any Net Refinancing Proceeds. Revenue will be determined on a cash basis.

1.1.37 SDHC. The San Diego Housing Commission, a public agency.

1.1.38 Senior Citizen. A person described in California Civil Code section 51.3(b). [**NOTE TO DRAFT: INCLUDE THIS DEFINITION ONLY FOR AFFORDABLE HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR OCCUPANCY BY SENIOR CITIZENS**]

1.1.39 Stabilization. Defined in Section 1.19.

1.1.40 Stabilized Occupancy Date. The first date that ninety-five percent (95%) of the Affordable Units are occupied by Qualifying Households.

1.1.41 Subrent. All money due and payable by a subtenant under a sublease of any portion of the Premises or the Improvements, including the Affordable Unit Subleases and Manager Unit subleases.

1.1.42 Subrent Payment Notice. A Notice from Landlord to any subtenant, directing such subtenant to pay its Subrent to Landlord and not to Tenant.

1.1.43 Tax Credits. Federal low income housing tax credits under section 42 of the Internal Revenue Code of 1986.

1.1.44 Tax Credit Investor. The Person who owns or has the right to acquire substantially all the limited partnership Equity Interests in Tenant or such Person's successors or assigns permitted by this Lease. The Tax Credit Investor will be subject to the reasonable approval of Landlord. In no event will the Tax Credit Investor be an Affiliate of Tenant or a Prohibited Transferee. [**NOTE TO DRAFT: INCLUDE THIS DEFINITION ONLY FOR A PROJECT FINANCED WITH FEDERAL LOW INCOME HOUSING TAX CREDITS**]

1.1.45 Utilities Allowance. An allowance for utilities services costs as established from time to time by SDHC or its successor.

1.1.46 Very Low Income Household. An individual or household with a household income equal to or less than fifty percent (50%) of the then current HCD Area Median Income adjusted for family size as published from time to time by HCD, unless the Project is financed with Tax Credits, then fifty percent (50%) of the then current CTCAC Area Median Income adjusted for family size as published from time to time by CTCAC.

1.1.47 Veteran. A person who served in the active military, naval, or air service of the United States, or as a member of the National Guard who was called to and released from active duty or active service, for a period of not less than 90 consecutive days, and who was discharged or released from such service under conditions other than a dishonorable discharge or release. [**NOTE TO DRAFT: INCLUDE THIS DEFINITION ONLY FOR AFFORDABLE**

HOUSING DEVELOPMENTS WITH AFFORDABLE UNITS RESERVED FOR OCCUPANCY BY VETERANS]

1.1 Tenant Acknowledgment of Impact of Affordable Rental Housing Covenants and Restrictions. Tenant acknowledges and agrees that this Lease imposes certain covenants, conditions, restrictions, and agreements for the use and occupancy of the Premises during the Term that may result in less than all the Affordable Units being leased or rented and that may not constitute the highest and best use of the Premises.

_____
Initials of Authorized
Tenant Representative(s)

1.2 Multi-Family Residential Rental Property Restrictive Covenant. Tenant covenants to and for the benefit of Landlord that after the Occupancy Date, that all the Affordable Units on the Premises will be occupied or Available for occupancy by a Qualifying Household at Affordable Rent on a continuous basis for the entire Term.

1.3 Monitoring. City and SDHC, and their respective successors and assigns, will have the right, but not the obligation, to monitor and enforce the covenants or agreements of Tenant contained in this attachment. Tenant covenants and agrees that it will comply with each reasonable monitoring program set up by City or SDHC to enforce the covenants or agreements of Tenant contained in this attachment.

1.4 Duration of Tenancies. Neither the Premises nor any Affordable Unit will, at any time, be leased or rented for a period less than twelve (12) months or for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or other transient use.

1.5 Notice of Occupancy Date. Within thirty (30) days following the occurrence of the Occupancy Date, Tenant must deliver Notice of the occurrence of the Occupancy Date to Landlord.

1.6 Affordability Mix. Tenant covenants to and for the benefit of Landlord that all the Affordable Units will be occupied or Available for occupancy by a Qualifying Household at an Affordable Rent on a continuous basis until the later of: (i) the Expiration Date of this Lease; (ii) fifty-five (55) years from the issuance of the final Certificate of Occupancy for the Affordable Units. Each Affordable Unit will be occupied by a Qualifying Household earning a household income ranging from 30% of HUD Area Median Income up to 80% of HUD Area Median Income. The Affordable Units will have a cumulative average affordability not exceeding 60% of HUD Area Median Income. As further described in Section 15.3.1 of the DDA, the calculation of the cumulative average affordability of the occupied Affordable Units will be based on a weighted average calculation as follows: (i) each Affordable Unit will be assigned a household income designation (e.g., 30%, 50%, 60%, or 80% of HUD Area Median Income); and (ii) the weighted average will equal the average affordability level of the total number of occupied Affordable Units. Subject to Tenant's continuous compliance with the cumulative average affordability requirement, Tenant will ensure that the Affordable Units are occupied or Available for occupancy by Qualified Households at varying household income designations and at a mix of sizes ranging from studio

units, one-bedroom units, two-bedroom units, and three-bedroom units. Tenant's initial plan for the mix of household incomes and sizes of Affordable Units includes: [**TO BE DETERMINED UNDER SECTIONS 15.3, 34.6, AND 34.7 OF THIS AGREEMENT, INCLUDING THE WEIGHTED AVERAGE AFFORDABILITY REQUIREMENT FOR EACH PROJECT IN SECTION 15.3.1**].

[**NOTE TO DRAFT: THE SUBSECTIONS OF THIS SECTION 1.6 IMMEDIATELY BELOW PROVIDE AN EXAMPLE OF HOW THIS SECTION WILL GENERALLY BE COMPLETED WHEN THE SPECIFIC TENANT INCOME LEVEL MIX IS DETERMINED FOR AN AFFORDABLE HOUSING DEVELOPMENT**].

1.6.1 [**TO BE DETERMINED NUMBER**] of the studio Affordable Units will be occupied or Available for occupancy by Qualifying Households that are [**TO BE DETERMINED – EXTREMELY LOW INCOME HOUSEHOLDS, VERY LOW INCOME HOUSEHOLDS, LOW INCOME 60% HOUSEHOLDS, OR LOW INCOME 80% HOUSEHOLDS**];

1.6.2 [**TO BE DETERMINED NUMBER**] of the one-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that are [**TO BE DETERMINED – EXTREMELY LOW INCOME HOUSEHOLDS, VERY LOW INCOME HOUSEHOLDS, LOW INCOME 60% HOUSEHOLDS, OR LOW INCOME 80% HOUSEHOLDS**];

1.6.3 [**TO BE DETERMINED NUMBER**] of the two-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that are [**TO BE DETERMINED – EXTREMELY LOW INCOME HOUSEHOLDS, VERY LOW INCOME HOUSEHOLDS, LOW INCOME 60% HOUSEHOLDS, OR LOW INCOME 80% HOUSEHOLDS**];

1.6.4 [**TO BE DETERMINED NUMBER**] of the three-bedroom Affordable Units will be occupied or Available for occupancy by Qualifying Households that are [**TO BE DETERMINED – EXTREMELY LOW INCOME HOUSEHOLDS, VERY LOW INCOME HOUSEHOLDS, LOW INCOME 60% HOUSEHOLDS, OR LOW INCOME 80% HOUSEHOLDS**];

1.6.5 [**TO BE DETERMINED NUMBER**] of the two-bedroom Affordable Units may be used as Manager Units that may be leased at a rent that is not an Affordable Rent.

1.7 Affordable Rent. Tenant covenants to and for the benefit of Landlord that the monthly rent charged to a Qualifying Household for the occupancy of an Affordable Unit will never exceed an Affordable Rent for such Qualifying Household. For purposes of this Lease, monthly rent charged to a Qualifying Household for the occupancy of an Affordable Unit does not include any payment under Section 8 of the United States Housing Act of 1937.

1.7.1 *Rent Increases*. Rent for Affordable Units may be increased only once in any twelve (12) month period, based on changes in HCD Area Median Income or CTCAC Area Median Income, as applicable, or changes in the income level of the Qualifying Household occupying the Affordable Unit, consistent with Sections 1.7.2 and 1.7.3; provided that the rent for each

Affordable Unit must never exceed an Affordable Rent for the Qualifying Household occupying the Affordable Unit and the Affordable Unit subtenant income mix specified in Section 1.6 must be maintained at all times.

1.7.2 *Determination of Household Income*. Determination of Qualifying Household income must be made by Tenant at the time of initial application by an individual or family for occupancy of an Affordable Unit. At the time of initial application, Tenant must require each applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. Also, at least once every twelve (12) months during the Term and within sixty (60) days following the Expiration Date, Tenant will require each Qualifying Household occupying an Affordable Unit to recertify the Qualifying Household's income on the Income Certification Form. Additionally, on the renewal of an Affordable Unit Sublease, Tenant will require the Qualifying Household occupying the Affordable Unit to recertify the Qualifying Household's income on the Income Certification Form. Tenant will make a good faith effort to verify the accuracy of income information provided in each Income Certification Form by an applicant for occupancy of an Affordable Unit or by a recertifying Qualifying Household occupying an Affordable Unit, by conducting a credit reporting agency or similar search and taking at least one of the following steps: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for each emancipated or adult member of the household for the most recently concluded income tax year; (2) obtain an income verification form from the current employer(s) of each emancipated or adult member of the household; (3) obtain an income verification form from the United States Social Security Administration or the California Department of Social Services, if any emancipated or adult member of the household receives assistance from either of such agencies; or (4) if an emancipated or adult member of the household is unemployed and has no income tax return, obtain another form of independent income verification. For purposes of this Section 1.7.2, Tenant may conclusively rely upon the evidence of the age of a Person as presented in a valid California Driver's License or other form of identification issued by the State or the Federal Government that includes a date of birth and a photograph of the subject Person. All verification information will only be obtained by Tenant after obtaining the written consent of the applicable emancipated or adult member of the household for the release of such information to Tenant. Failure to consent in writing to the release of such income verification information to Tenant or Landlord will disqualify an applicant for occupancy of an Affordable Unit and be grounds for termination of a previously Qualifying Household's Affordable Unit Sublease.

1.7.3 *No Assignment of Specific Affordable Units; Increase in Household Income.* Except as otherwise required for Tenant to comply with (a) the regulations or requirements of SDHC applicable to any United States Department of Housing and Urban Development Section 8 project-based voucher-assisted Affordable Units (if any) in the Project or (b) the regulations or requirements of any CTCAC or HCD program providing financing for the Construction of the Project (if any), specific Affordable Units are not assigned to any particular qualifying income category (i.e., Extremely Low Income Household, Very Low Income Household, Low Income 80% Household, or Low Income 60% Household). The restricted income level of each Affordable Unit may change as Affordable Units become vacant, a Qualifying Household subtenant's income changes, or other Affordable Units are occupied by Qualifying Households. In all circumstances, though, the rent for each Affordable Unit will be an Affordable Rent for the Qualifying Household occupying the Affordable Unit and the Affordable Unit income level mix required by Section 1.6 will be maintained within the Premises. Subject to applicable CTCAC regulations or other Law, if

on any recertification, the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of the qualifying income for a Low Income 60% Household, then Tenant or Management Agent will notify the household that its Affordable Unit Sublease will not be renewed on expiration, unless the household again becomes a Qualifying Household on recertification prior to the expiration of its Affordable Unit Sublease. In any event, if the income category of a Qualifying Household on recertification is different from the previous income category of the Qualifying Household, Tenant or Management Agent will rent the next available Affordable Unit to a Qualifying Household with an income level that will maintain the Affordable Unit income level mix required under Section 1.6. Also, Affordable Rent for an Affordable Unit may increase or decrease in accordance with increases or decreases in the income category of the Qualifying Household occupying the Affordable Unit (i.e., Extremely Low Income Household, Very Low Income Household, Low Income 80% Household, or Low Income 60% Household), but not more than once every twelve (12) months based on an annual recertification under Section 1.7.2 and subject to Tenant's obligation to maintain the Affordable Unit income level mix required under Section 1.6 at all times.

1.7.4 *Maintenance of Income Records*. Tenant will maintain on file all Income Certification Forms completed by applicants for occupancy of Affordable Units and by Qualifying Households that occupied or are occupying Affordable Units under Section 1.7.2 for at least five (5) years after the Expiration Date and provide copies of the Premises rent roll and Income Certification Forms to Landlord within fifteen (15) days after Notice to Tenant requesting delivery of such information.

1.7.5 *Inspections*. Tenant and each Qualifying Household occupying an Affordable Unit will permit Landlord or its authorized agent to conduct inspections of the Premises and each Affordable Unit, from time to time, for purposes of verifying compliance with this Lease, at reasonable hours and upon fifteen (15) days advance Notice to Tenant, subject to the limitations under State law applicable to Landlord or Tenant inspections of Affordable Units.

1.7.6 *Annual Reporting*. Tenant will submit its first Annual Report to Landlord on or before the April 30 immediately following the Occupancy Date. Thereafter, on or before each April 30 during the Term and within sixty (60) days following the Expiration Date, Tenant will submit an Annual Report to Landlord. The required reporting dates may be changed at the reasonable discretion of Landlord, with six (6) months advance Notice to Tenant; provided, however, Landlord will never require such reporting more often than twice in any twelve (12) calendar month period. Landlord will maintain the confidentiality of all information specifically relating to any particular applicant for occupancy of an Affordable Unit or Qualifying Household occupying an Affordable Unit, to the extent allowed by Law, as determined by the City Attorney.

1.8 Tenant's Right to Sublease Affordable Units. Subject to the other terms and conditions of this Lease, at any time when no Notice of Default to Tenant is outstanding, Tenant may enter into Affordable Unit Subleases, Modify any Affordable Unit Sublease, terminate any Affordable Unit Sublease, evict any subtenant, or grant any consent under any Affordable Unit Sublease, all without Landlord's consent. Notwithstanding any provision of this Lease to the contrary, Tenant has no right to enter into any sublease for the entire Premises or any part of the Premises that is not (a) an Affordable Unit; (b) a Manager Unit; or (c) identified as commercial/retail space within a Building as of the Project Completion Date. No Affordable Unit Sublease will affect any

obligation of Tenant or right of Landlord under this Lease, all of which will continue in full force and effect, notwithstanding any Affordable Unit Sublease. Each Affordable Unit Sublease will be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that any subtenant causes any Default will not relieve Tenant of Tenant's obligation to cure the Default. Tenant will take all steps reasonably necessary to prevent Defaults caused by subtenants. Tenant will not sublease all or any portion of an Affordable Unit to any Person that is not a Qualifying Household.

1.9 Affordable Unit Sublease Form. Before entering into any Affordable Unit Sublease, Tenant shall obtain Landlord's written approval, not to be unreasonably withheld, of an Affordable Unit Sublease form, consistent with the terms of this Lease, that Tenant will exclusively use for all Affordable Unit Subleases on the Premises. Landlord shall have, at least, sixty (60) days to review and approve, disapprove, or conditionally approve the Affordable Unit Sublease form submitted by Tenant. The process for approval of the Affordable Unit Sublease form shall also be used by Tenant to obtain Landlord's written approval, not to be unreasonably withheld, of updates to the Affordable Unit Sublease form. Tenant shall not submit more than one Affordable Unit Sublease form update to Landlord for review and approval, disapproval, or conditional approval each Lease Year. The Affordable Housing Sublease form as modified by a Landlord approved update shall then be exclusively used for all Affordable Unit Subleases on the Premises.

1.10 Tenant Covenant Regarding Subleasing of Affordable Units. Tenant, for itself, its successors and assigns, covenants and agrees that, if any Affordable Unit is subleased during the Term, the subtenant's right to occupy the Affordable Unit will be memorialized in a written Affordable Unit Sublease in accordance with all the following restrictions:

1.10.1 Tenant will provide a legible copy of this Lease to each prospective subtenant of any Affordable Unit, prior to entering into an Affordable Unit Sublease with such subtenant for any Affordable Unit.

1.10.2 Each Affordable Unit Sublease will be for a period of not less than twelve (12) months and will end no later than the day before the Scheduled Expiration Date.

1.10.3 Each Affordable Unit Sublease will expressly state that it is subject and subordinate to this Lease and will incorporate every provision of this Lease, either expressly or by reference.

1.10.4 No Affordable Unit Sublease will contain any of the following provisions:

(a) An agreement by the Qualifying Household to be sued, to admit guilt, or to the entry of a judgment in favor of Tenant or Management Agent in a lawsuit brought relating to the Affordable Unit Sublease;

(b) An agreement by the Qualifying Household that Tenant or Management Agent may take, hold, or sell personal property of any member(s) of the Qualifying Household, without notice to the Qualifying Household and a court decision on the respective rights of Tenant or Management Agent and the member(s) of the Qualifying Household, other than an agreement by the Qualifying Household concerning disposition of personal property remaining in the Affordable Unit, after the Qualifying Household moves out of the Affordable Unit;

(c) An agreement by the Qualifying Household not to hold Tenant or Management Agent or their respective agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) An agreement by the Qualifying Household that Tenant or Management Agent may institute a lawsuit involving or affecting the Qualifying Household or any of the Qualifying Household's members, without notice to the Qualifying Household or any affected member;

(e) An agreement by the Qualifying Household that Tenant or Management Agent may evict the Qualifying Household or any of the Qualifying Household's members without instituting a civil court proceeding in which the Qualifying Household or any affected member of the Qualifying Household has an opportunity to present a defense, or before a court decision on the respective rights of Tenant or Management Agent and the Qualifying Household or any affected member of the Qualifying Household;

(f) An agreement by the Qualifying Household to waive any right to a trial by jury;

(g) An agreement by the Qualifying Household to waive the Qualifying Household's right to appeal or to otherwise challenge a court decision relating to the Affordable Unit Sublease;

(h) An agreement by the Qualifying Household to pay attorneys' fees or other legal costs, even if the Qualifying Household wins in a court proceeding by Tenant or Management Agent against the Qualifying Household; provided, however, the Qualifying Household may be obligated to pay reasonable attorneys' fees and other legal costs, if the Qualifying Household loses such a legal action;

(i) An agreement by the Qualifying Household to pay one (1) or more security deposits (or the equivalent) totaling more than the amount of one month's rent payable by the Qualifying Household for such Affordable Unit, exclusive of a reasonable deposit for one or more pets.

1.10.5 Each Affordable Unit Sublease will contain all the following provisions:

(a) An agreement authorizing Tenant or Management Agent to immediately terminate the tenancy of a Qualifying Household occupying an Affordable Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of the household as a Qualifying Household;

(b) An agreement providing that each Qualifying Household occupying an Affordable Unit will be subject to annual certification or recertification of income (including release of supporting documents to Tenant and Landlord) as a condition of continued occupancy of the Affordable Unit;

(c) An agreement providing that each Qualifying Household occupying an Affordable Unit may be subject to rental increases in accordance with this Lease; and

(d) An agreement providing that Tenant or Management Agent will not discriminate on the basis of race, creed, color, gender, sexual orientation, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance (including

holders of certificates or vouchers under Title 24 Code of Federal Regulations Part 982-Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or comparable participation in a HOME tenant-based rental assistance program) in connection with rental of an Affordable Unit, or in connection with the employment or application for employment of Persons for operation or management of the Premises, and all contracts, applications and leases entered into for such purposes will contain similar non-discrimination clauses to such effect;

(e) One or more Crime Free Lease Addendums signed by each of the residents of the Affordable Unit.

(f) Tenant or Management Agent will not terminate the tenancy or refuse to renew the Affordable Unit Sublease of a Qualifying Household, except where: (a) the Qualifying Household commits serious or repeated violations of the terms and conditions of the Affordable Unit Sublease; (b) except as otherwise provided in this Lease, the previously Qualifying Household is no longer a Qualifying Household; (c) the Qualifying Household is in violation of applicable Federal, State or local law; or (d) there is other good cause supported by verifiable facts. Tenant will, in terminating the tenancy of a Qualifying Household or refusing to renew the Affordable Unit Sublease of a Qualifying Household, serve written notice upon the Qualifying Household specifying the grounds for the action in accordance with all applicable Laws and at least sixty (60) days before the effective date of the termination of the tenancy; and

(g) A provision in form and substance substantially as set forth below modified, as appropriate, to reflect the definitions in the Affordable Unit Sublease:

> **All terms, covenants, and provisions of this Affordable Unit Sublease and all rights, remedies, and options of subtenant under this Affordable Unit Sublease are and will at all times remain fully subject and subordinate in all respects to that certain Affordable Housing Ground Lease dated [TO BE DETERMINED] between The City of San Diego, a California municipal corporation ("Landlord"), and [TO BE DETERMINED] ("Lease"). If the Lease terminates, then this Affordable Unit Sublease will automatically and concurrently terminate, unless Landlord elects, in Landlord's sole and absolute discretion, in writing to continue this Affordable Unit Sublease. In that event, subtenant, at the option and request of Landlord, will attorn to Landlord and recognize Landlord as subtenant's direct landlord under this Affordable Unit Sublease. Subtenant will sign and deliver, at any time and from time to time, upon the request of Landlord, any instrument necessary or appropriate to evidence such attornment.**

1.11 Tenant Selection Policies. Tenant will adopt written subtenant selection policies and criteria for sublease of Affordable Units that:

1.11.1 are consistent with the purpose of providing affordable rental housing for Qualifying Households with the income level mix required under Section 1.6 at an Affordable Rent;

1.11.2 are reasonably related to eligibility for Affordable Unit occupancy and ability to perform the obligations of the Affordable Unit Sublease for an Affordable Unit;

1.11.3 subject to applicable fair housing laws, give reasonable preference and consideration to the housing needs of individuals that are City residents or involuntarily displaced by activities of Landlord;

1.11.4 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

1.11.5 provide for prompt written notice to each rejected applicant of the grounds for rejection;

1.11.6 provide for all the Affordable Units to be occupied by or Available for occupancy on a continuous basis by Qualifying Households in accordance with the income level mix required under Section 1.6 at an Affordable Rent;

1.11.7 except (a) as otherwise required to comply with the regulations or requirements of any CTCAC or HCD program providing financing for the initial Construction of the Project (if any), (b) as provided in Section 1.11.3, or (c) to the extent a subtenant must be a Qualifying Household, do not give preference to any particular class or group of Persons in subleasing the Affordable Units;

1.11.8 provide that there will be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises, nor will Tenant or any Person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises. Notwithstanding the immediately preceding sentence, with respect to familial status, this Section 1.11.8 will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in this Section 1.11.8 will be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the Government Code will apply to the first sentence of this Section 1.11.8; and

1.11.9 provide a statement in all advertisements, notices, and signs regarding the availability of Affordable Units for sublease to the effect that Tenant is an equal housing opportunity provider.

1.12 Covenant of the Tenant Regarding Resident Association. Tenant, for itself, its successors and assigns, covenants and agrees that the interest in the Premises or any Affordable Unit of any resident association or other association related to the Premises will be subject and subordinate to this Lease and each member of such association will be either Tenant or a Qualifying Household occupying an Affordable Unit.

1.13 Assignment of Subleases and Subrent. To secure Tenant's performance under this Lease, Tenant assigns, transfers, and sets over to Landlord, subject to the conditions in this Section 1.13 (and the rights of Permitted Leasehold Lenders), Tenant's right, title, and interest in and to all Subrent and all subleases of any portion of the Premises or the Improvements, including the Affordable Unit Subleases and Manager Unit subleases. Tenant grants to Landlord, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure Landlord's collection of Subrent. Landlord's exercise of such rights shall not constitute an eviction of Tenant. Unless and until an Event of Default by Tenant or termination of this Lease, Tenant shall have a license to exercise its right, title, and interest in and to all operative subleases and Subrent. Landlord may revoke such license, at Landlord's option, only during the pendency of an Event of Default by Tenant or on a termination of this Lease. Upon any such revocation, Landlord may collect Subrent directly from subtenants and apply the net amount of money collected to amounts of money owed to Landlord by Tenant, subject to the rights of Permitted Leasehold Lenders and Fee Lenders under this Lease. No such revocation shall be, or be deemed to be, Landlord's waiver of any term or condition of this Lease, acceptance of any subtenant as Tenant, or release of Tenant from any obligations under this Lease. Landlord will not revoke Tenant's license to exercise its right, title, and interest in and to all operative subleases and Subrent under this Section 1.13 during the time between the Receipt Date of Notice to Landlord that a Permitted Leasehold Lender is pursuing a Permitted Leasehold Lender Cure under [Section 28.9] for all then outstanding Events of Default by Tenant and the earliest expiration date for the Permitted Leasehold Lender to cure any of the Events of Default under [Section 28.9]. [**NOTE TO DRAFT: SECTION REFERENCES IN THE IMMEDIATELY PRECEDING SENTENCE WILL BE TO THE AFFORDABLE HOUSING LEASE FORM, AND ACCORDINGLY THOSE SECTION REFERENCES REMAIN SUBJECT TO FURTHER REVIEW AND APPROVAL OF CITY AND MASTER DEVELOPER PENDING FINALIZATION OF THE CORRESPONDING AFFORDABLE HOUSING LEASE FORM PROVISION.**]

1.14 Collection of Subrent. Landlord shall not send any Subrent Payment Notice unless an Event of Default by Tenant has occurred or this Lease has been terminated, or during the time between the Receipt Date of Notice to Landlord that a Permitted Leasehold Lender is pursuing a Permitted Leasehold Lender Cure under [Section 28.9] for all then outstanding Events of Default by Tenant and the earliest expiration date for the Permitted Leasehold Lender to cure any of the Events of Default under [Section 28.9]. [**NOTE TO DRAFT: SECTION REFERENCES IN THE IMMEDIATELY PRECEDING SENTENCE WILL BE TO THE AFFORDABLE HOUSING LEASE FORM, AND ACCORDINGLY THOSE SECTION REFERENCES REMAIN SUBJECT TO FURTHER REVIEW AND APPROVAL OF CITY AND MASTER DEVELOPER PENDING FINALIZATION OF THE CORRESPONDING AFFORDABLE HOUSING LEASE FORM PROVISION.**] If Landlord collects any Subrent, then Landlord shall apply it first to pay all of Landlord's costs in collecting such Subrent, including Legal Costs, then to pay all Rent then due, and then to cure all Defaults of Tenant and then to pay all costs of the Premises. Landlord shall then remit to Tenant, any remaining Subrent. Tenant directs Landlord accordingly. If Landlord sends a Subrent Payment Notice, Tenant cures all Defaults, and this Lease has not been terminated, then Landlord shall, at Tenant's expense

(including Landlord's Legal Costs), give each subtenant a Notice rescinding Landlord's Subrent Payment Notice.

1.15 Tenant's Obligations Regarding Affordable Unit Subleases.

1.15.1 *Affordable Unit Sublease Lists, Performance, and Enforcement*. Tenant will, upon request (no more frequently than once every six (6) months) give Landlord a current list of all Affordable Unit Subleases. Tenant will perform its obligations under all Affordable Unit Subleases, and Tenant will enforce all its rights under Affordable Unit Subleases in a commercially reasonable manner.

1.15.2 *Affordable Unit Sublease Update Packages*. Tenant will give Landlord a rent roll for the Premises (including all Affordable Units, Manager Units, and commercial/retail space), at least, once each Lease Year, within thirty (30) days following the first day of each Lease Year, listing all Affordable Unit Subleases and subtenants, Manager Unit Subleases and subtenants, and commercial/retail space subleases and subtenants (and their current Subrent and security deposits). Additionally, Tenant will give Landlord copies of all Affordable Unit Subleases, Manager Unit Subleases, and commercial/retail space subleases (in all cases, including all amendments) within thirty (30) days following Landlord's Notice to Tenant requesting such copies.

1.16 Records Retention; Audit and Examination Rights.

1.16.1 *Records Preparation and Retention*. Tenant will prepare and maintain and will cause Tenant's Affiliates and Management Agent to prepare and maintain complete and accurate Records for all periods during the Term. Tenant will, during the Term and for a period of six (6) years following the Expiration Date, maintain and cause Tenant's Affiliates and Management Agent to maintain, safe and intact, all the Records. From time to time, upon five (5) days advance Notice from Landlord requesting Records, Tenant will make all Records, whether in the custody or control of Tenant, Tenant's Affiliates, or Management Agent, available to Landlord or Landlord's auditor, representative, or agent for examination and copying at the Premises at a reasonable time. Tenant will also provide Landlord all additional information concerning the Affordable Units or the Premises reasonably requested by Landlord.

1.16.2 *Audit Procedures*.

(a) Landlord may cause an audit of Records by an independent auditor of Landlord's selection and at Landlord's expense. Landlord will preserve the confidentiality of information contained in the Records, to the extent permitted by Law, as determined by the City Attorney.

(b) Notwithstanding any provision of this Lease to the contrary, if Tenant fails to submit or make available to Landlord, as applicable, all information required under Section 1.15 or 1.16.1, Landlord will have the right, in addition to all other rights or remedies Landlord may have under this Lease regarding such Default, to conduct an audit of Records to attempt to identify the information that should have been provided by Tenant to Landlord. Tenant will reimburse Landlord for the cost of any audit conducted under this Section 1.16.2(b) on Notice of such cost from Landlord. Tenant will pay Default Interest to Landlord on the amount of any audit cost becoming due to Landlord from Tenant under this Section 1.16.2(b) that is not paid within fifteen (15) days after Notice requesting such payment, from the date of such Notice until paid in full.

1.17 Management. Tenant and Management Agent will operate the Premises in a manner that provides decent, safe, and sanitary residential facilities to the occupants of the Premises and complies with all provisions of this Lease and Law. Tenant is responsible for management of the Premises, including the selection of Qualifying Households, certification and recertification of household size and income for Qualifying Households occupying Affordable Units, evictions, collection of Subrents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. Landlord has no responsibility for the management or operation of the Premises. The Premises will always be managed by an experienced Management Agent reasonably acceptable to Landlord, with demonstrated ability to operate affordable residential rental developments like the Premises in a manner providing decent, safe, and sanitary housing in a self-sufficient manner. For the purposes of this Lease, if Tenant directly performs the functions of the Management Agent with Tenant's employees or by means of a service contract with an Affiliate of Tenant, Tenant's role as the Management Agent is approved by Landlord. If the Management Agent is a Person other than Tenant or an Affiliate of Tenant, Tenant will submit to Landlord, for Landlord's approval, the identity of each proposed Management Agent, together with additional information relevant to the background, experience, and financial condition of the proposed Management Agent, as reasonably requested by Landlord. Landlord will approve or disapprove the proposed Management Agent by Notice to Tenant within thirty (30) days following Landlord's receipt of all requested information regarding such Management Agent, as provided for in the immediately preceding sentence. Unless the proposed Management Agent is approved by Landlord within such thirty (30) day period, the Management Agent is disapproved by Landlord.

1.17.1 *Performance Review*. Upon Notice from Landlord, Tenant will, with the participation of Landlord, periodically review the management practices and financial status of the Premises and the Management Agent. Landlord will not request such periodic review more frequently than once each calendar year. The purpose of each periodic review will be to enable Landlord to determine if the Premises are being operated, maintained, and managed in accordance with the requirements and standards of this Lease and Law.

1.17.2 *Replacement of Management Agent*. Each contract entered into by Tenant with a Management Agent must have a duration of no more than twelve (12) months and be subject to the provisions of this Lease. If the Premises are not being operated, maintained, and managed in accordance with the requirements and standards of this Lease and Law, Tenant will remove the Management Agent and replace the Management Agent with a different Management Agent approved by both Landlord, under Section 1.17, and the Senior Permitted Leasehold Lender.

1.18 Capital Replacement Account. Tenant will establish and maintain the Capital Replacement Account by depositing into an interest-bearing account held by an Institutional Lender, on the first day of the calendar month following the seventh (7th) anniversary of the Occupancy Date and on the first day of each calendar month after that date, an amount of money reasonably determined by Landlord and reasonably agreed to by Tenant based on the most recent CNA and industry standard practices at the time. Landlord or Tenant each reserve the right, in the exercise of their respective reasonable discretion and upon Notice given to each other from time to time, to increase the annual Capital Replacement Account deposit requirement (and the corresponding monthly deposits) based upon: (a) the joint inspection of the Premises by Landlord and Tenant; (b) any CNA; or (c) an analysis of historical "capital needs" expenditures at the

Premises. To the extent that an Institutional Lender holding a Permitted Leasehold Security Instrument or the Tax Credit Investor requires Tenant to maintain a separate reserve fund or account for the same purposes as the Capital Replacement Account, Landlord will not require Tenant to establish or maintain a Capital Replacement Account, provided that Tenant deposits the amounts of money required by such Institutional Lender or the Tax Credit Investor into such reserve fund or account and provides all information and performs all acts required under this Section 1.18 for the benefit of Landlord regarding such separate reserve fund or account maintained under the requirements of such Institutional Lender or the Tax Credit Investor, as though such account is the Capital Replacement Account. To the extent that a Permitted Leasehold Lender requires Tenant to maintain a separate reserve fund or account for all of the same purposes as the Capital Replacement Account with less money than required for the Capital Replacement Account under this Section 1.18, Tenant will establish and maintain a Capital Replacement Account and deposit the difference between what Tenant is required to deposit into the Permitted Leasehold Lender required reserve account and the amount Tenant is required to deposit into the Capital Replacement Account under this Section 1.18.

1.18.1 *Use of Account*. Tenant may only withdraw funds from the Capital Replacement Account to pay for the reasonable costs of Capital Improvements that Tenant reasonably determines are necessary for maintenance or repair of the Premises consistent with this Lease.

1.18.2 *Documentation*. Within thirty (30) days before the end of each Lease Year after establishment of the Capital Replacement Account, Tenant will document the Capital Improvements made and associated costs paid from the Capital Replacement Account during the preceding Lease Year. Tenant will maintain and provide, as requested, documentation showing the quantity and price of items purchased, price of materials and the cost of contracted labor or other services incurred relating to the Capital Improvements, and such other items as Landlord may reasonably request. Unless the cost is approved by Landlord under Section 1.18.3, if the cost of a Capital Improvement is anticipated to exceed Ten Thousand Dollars ($10,000) in a single twelve (12) month period, Tenant must inform Landlord and provide Landlord with reasonable documentation justifying the need for and cost of the anticipated Capital Improvement.

1.18.3 *Withdrawals from Capital Replacement Account*. At least thirty (30) days before the first day of each Lease Year after establishment of the Capital Replacement Account, Tenant will Notify Landlord of the amount of money budgeted to be withdrawn from the Capital Replacement Account during the upcoming Lease Year. Landlord will have thirty (30) days after receiving such Notice to approve or disapprove proposed expenditures from the Capital Replacement Account. Capital Improvements costs reasonably approved by Landlord may be withdrawn by Tenant from the Capital Replacement Account without further Landlord approval. Other withdrawals for unbudgeted, unanticipated, or emergency expenditures or repairs required by a Permitted Leasehold Lender (if any) or the Tax Credit Investor may be withdrawn by Tenant without prior Landlord approval, but Tenant will Notify Landlord within ten (10) days after each such withdrawal. All money withdrawn by Tenant for unbudgeted, unanticipated, or emergency repairs required by a Permitted Leasehold Lender (if any) or the Tax Credit Investor will be expended for Capital Improvements to the Premises in accordance with this Lease. Any lack of funds in the Capital Replacement Account will not in any way relieve Tenant from the obligation to undertake all necessary or advisable Capital Improvements to the Premises.

1.18.4 *Interest Earned on Funds in the Capital Replacement Account*. All interest or other earnings on money deposited into the Capital Replacement Account will be retained in and added to the balance of the Capital Replacement Account.

1.18.5 *Capital Needs Assessment*. Tenant will deliver to Landlord a capital needs assessment ("**CNA**") for Landlord's approval during Lease Year 6. Thereafter, Tenant will deliver a CNA to Landlord for Landlord's approval every fifth Lease Year. Each CNA will include an analysis of Tenant's actual expenditures for Capital Improvements compared to the most recently approved CNA, Tenant's original operating budget for the Premises and Tenant's then-current operating budget for the Premises. Each CNA will include a ten (10) year assessment or analysis of replacement reserve requirements for Capital Improvements for the Premises prepared by a qualified Person in accordance with reasonable and customary standards for similar residential rental projects.

1.19 Operating Reserve. On or before the first anniversary of the Occupancy Date, Tenant will (or will cause the Management Agent to) establish the Operating Reserve by depositing an amount of money equal to (or greater than) the projected amount of the first three (3) months of Operating Expenses after the Stabilized Occupancy Date into the Operating Reserve. Interest earned on funds in the Operating Reserve will be deposited into the Operating Reserve. Tenant will maintain the balance of the Operating Reserve at an amount of money equal to or greater than the three times the average monthly Operating Expenses for the immediately preceding Lease Year ("**Minimum Balance**"). An equal, verified operating reserve requirement of a Permitted Leasehold Lender or the Tax Credit Investor may be used as a substitute for the Operating Reserve. Tenant will provide to Landlord, at the same times and in the same manner as required for the submittal of the Annual Report, evidence reasonably satisfactory to Landlord of compliance with this Section 1.19. The Operating Reserve will be used solely to cover shortfalls between Revenue and actual Operating Expenses. After making each withdrawal from the Operating Reserve, Tenant will replenish the Operating Reserve to the Minimum Balance before the first day of the next Lease Year. If the Operating Reserve cannot be replenished to the Minimum Balance through a single deposit, Tenant will develop a plan for restoring the required Minimum Balance, subject to approval of such plan by Landlord. The balance of the Operating Reserve will be transferred to the Capital Replacement Account on or after the later of ("**Stabilization**"): (i) the date Revenue achieves a minimum annual debt coverage ratio of 1.15 to 1.00 for three (3) consecutive years after the Stabilized Occupancy Date; or (ii) such later date as required by either a Permitted Leasehold Lender or the Tax Credit Investor. Notwithstanding the immediately preceding sentence, if Construction of the Project is financed with Tax Credits and CTCAC allows the release of the balance of the Operating Reserve after Stabilization to pay the outstanding balance of the deferred portion of a developer fee complying with Title 4 California Code of Regulations section 10327(c)(2)(A) or (B), then the balance of the Operating Reserve may be first applied to pay the outstanding balance of such deferred developer fee and the remaining amount of the Operating Reserve balance after Stabilization shall be transferred to the Capital Replacement Account. Upon transfer of the balance of the Operating Reserve to the Capital Replacement Account, the requirement to maintain the Operating Reserve under this Section 1.19 will terminate.

EXHIBIT A
TO
AFFORDABLE HOUSING GROUND LEASE
(Midway Rising)

ANNUAL AFFORDABLE HOUSING REPORT FORM

Annual Affordable Housing Report

The undersigned, _____, as the authorized representative of [**TO BE DETERMINED**] ("**Tenant**"), has read and is thoroughly familiar with the provisions of the affordable housing covenants and restrictions under that certain Vertical Ground Lease between Tenant and The City of San Diego, a California municipal corporation ("**City**"), dated as of [**TO BE DETERMINED**] ("**Lease**"). All terms indicated to be defined terms by initial capitalization in this report that are not specifically defined in this report will have the meanings given to the same terms, respectively, in the Lease.

As of the date of this Annual Report, the following percentage of completed Affordable Units in the Project (which exclude the Manager Units) are (i) occupied by Qualifying Households or (ii) are currently vacant and are Available for such occupancy and have been held continuously Available for such occupancy since the later of: (y) the date a Certificate of Occupancy was issued for the Affordable Unit or (z) a Qualifying Household vacated such Affordable Unit, as indicated:

Number of Affordable Units occupied by Extremely Low Income Households: _____

Number of Affordable Units occupied by Very Low Income Households: _____

Number of Affordable Units occupied by Low Income 60% Households: _____

Number of Affordable Units occupied by Low Income 80% Households: _____

Number of Vacant Affordable Units: _____

Number of Qualifying Households who commenced occupancy of Affordable Units during the preceding reporting period: _____

Attached is a separate sheet ("**Occupancy Summary**") listing, among other items, the identities of all occupants of each Affordable Unit, the rent paid for each Affordable Unit, and the income level of the household occupying each Affordable Unit. The information contained in the Occupancy Summary is true and accurate based on information submitted to Tenant and is certified in writing as true and accurate under penalty of perjury under the laws of the United States of America and the laws of the State of California by each member of the particular household.

The undersigned certifies that (1) a review of the activities of Tenant during such reporting period and of Tenant's performance under the Lease has been made under the supervision of the

undersigned; and (2) to the best knowledge of the undersigned, based on the review described in clause (1), Tenant is not in default under any of the terms or provisions of the Lease.

TENANT:

Dated: _____ [**TO BE DETERMINED**]

[see attached page for Occupancy Summary]

OCCUPANCY SUMMARY

Total Number of Affordable Units in the Project: _____

Total Number of Affordable Units occupied by Qualifying Households: _____

Total Number of Affordable Units Available for rent to Qualifying Households: _____

ATTACHED IS THE FOLLOWING INFORMATION:

A. Resident and rental information for each occupied Affordable Unit in the Project.

B. An Income Certification Form for all new Qualifying Households that moved into an Affordable Unit in the Project since the filing of the last Occupancy Summary.

EXHIBIT B
TO
AFFORDABLE HOUSING GROUND LEASE
(Midway Rising)

CRIME FREE LEASE ADDENDUM

In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease, Landlord and Resident agree as follows:

1. Resident, any members of the resident's household or a guest or other person under the resident's control must not engage in criminal activity, including drug-related criminal activity, on or near the dwelling unit premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]).

2. Resident, any member of the resident's household or a guest or other person under the resident's control must not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the dwelling unit premises.

3. Resident or members of the household will not permit the dwelling unit to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

4. Resident, any member of the resident's household or a guest, or another person under the resident's control must not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of a controlled substance as defined in Health & Safety Code § 11350, et seq., at any locations, whether on or near the dwelling unit premises or otherwise.

5. Resident, any member of the resident's household, or a guest or another person under the resident's control must not engage in any illegal activity, including: prostitution, as defined in Penal Code §647(b); criminal street gang activity, as defined in Penal Code § 186.20 et seq.; assault and battery, as prohibited in Penal Code §240; burglary, as prohibited in Penal Code §459; the unlawful use and discharge of firearms, as prohibited in Penal Code §245; sexual offenses, as prohibited in Penal Code §269 and 288, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of Landlord, Landlord's agent or other tenant or involving imminent or actual serious property damage.

6. VIOLATION OF THE ABOVE PROVISIONS WILL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions of this addendum will be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation will be good cause for termination of the lease. Unless otherwise provided

by law, proof of violation will not require criminal conviction, but will be by a preponderance of the evidence.

7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum will govern.

This CRIME FREE LEASE ADDENDUM is incorporated into the lease executed or renewed this day between Landlord and Resident.

Date: _____ Resident

Signature:_____

Date: _____ Resident

Signature:_____

Date: _____ Resident

Signature:_____

Date: _____ Resident

Signature:_____

Date: _____ Landlord: _____

Property Manager's Signature:

_____

ATTACHMENT 18
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

PREVAILING WAGE LAWS AND REQUIREMENTS

1. **PREVAILING WAGES**. In performing all Construction or maintenance work under this Agreement, Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will cause all workers who perform Construction and or maintenance work on or for the Premises (including work performed during the design and preconstruction phases of Construction, such as inspection and land surveying work) to be paid not less than Prevailing Wages and will comply with Prevailing Wage Law and the provisions of this **ATTACHMENT 18**.

1.1 Prevailing Wage Rates. Copies of the DIR prevailing wage rates are on file with City and are available for inspection to any interested Person on request. Copies of the prevailing rates of wages also may be found at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all post a copy of the prevailing wage rate determination at each job site and will make this information available to all interested Persons upon request. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all deliver evidence of the required job site posting to City within five (5) days after such posting.

1.1.2 *Wage Duration*. The prevailing wage rates determined by DIR refer to expiration dates. If the published prevailing wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published wage rate will be in effect for the duration of this Agreement or until changed by DIR. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate will become effective on the date following the expiration date of the previous wage rate and will apply to this Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate will apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate will apply to the balance of the Term, unless otherwise increased under applicable law.

1.2 Penalties for Violations. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will be subject to and proceed in accordance with California Labor Code section 1775, in the event a worker is paid less than Prevailing Wages for the work or craft in which the worker is employed, in addition to all other applicable penalties allowed under Prevailing Wage Law.

1.3 Payroll Records. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all maintain all the records, make all the verifications and certifications, and submit or make available, as applicable, all such records, verifications, and certifications as described in California Labor Code section 1776. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all include provisions requiring performance of all actions described in California Labor Code section 1776 in all contracts with all contractors or subcontractors, including submitting certified payroll records to DIR through its online system for submission of certified payroll records and furnishing the records specified in California Labor Code section 1776 directly to the California Labor Commissioner in the manner required in California Labor Code section 1771.4. Master Developer shall contractually require that its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors submit certified payroll records to City, the California Labor Commissioner, and DIR.

1.4 Apprentices. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6 and 1777.7. Master Developer will be held responsible for its own failure and the failure of Master Developer's contractors, subcontractors, and all prospective Vertical Developers and their contractors and subcontractors to employ and pay apprentices as described in California Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all comply with the working hours requirements described in California Labor Code sections 1810 through 1815, including: (i) restricting working hours to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day a worker works more than 8 hours per day and 40 hours per week.

1.6 Required Provisions for Subcontracts. Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all include, at a minimum, a copy of and compliance with the following provisions of Prevailing Wage Law in each contract it enters into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. As described in California Labor Code section 3700, Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will all secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the

performance of the work of this contract." Master Developer, its contractors and subcontractors, and all prospective Vertical Developers and their contractors and subcontractors will include this certification in all contracts with each of their contractors or subcontractors.

1.8 Registration Requirements. All Construction or maintenance work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104 or engage in the performance of any such contract unless currently registered and qualified to perform the work under California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the California Business and Professions Code or by section 10164 or 2103.5 of the California Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under California Labor Code section 1725.5 in a response to a solicitation will not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under California Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor that does not comply with California Labor Code section 1771.1(a) will be subject to cancellation, provided that a contract will not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.8.3 By entering into this Agreement, Master Developer is certifying that it is registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and has verified or will verify that all contractors and subcontractors performing Construction or maintenance work under this Agreement are registered with DIR in compliance with California Labor Code sections 1771.1 and 1725.5 and will provide proof of such registration to City.

1.9 Filing of Form PWC-100. Master Developer will timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of each filed form to City.

1.10 Filing of Notice of Completion. Master Developer will record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of each recorded notice of completion to City.

ATTACHMENT 19
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

FORM OF CERTIFICATION OF ENTRY INTO A PROJECT LABOR AGREEMENT UNDER THE MEMORANDUM OF UNDERSTANDING BETWEEN MASTER DEVELOPER AND SAN DIEGO COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL, DATED MARCH 28, 2022

[DATE]

City of San Diego
[ADDRESS]
Attention: Economic Development Director

RE: Midway Rising Disposition and Development Agreement:
Project Labor Agreement Certification

Dear [**TO BE DETERMINED**],

The letter constitutes our certification of compliance with the project labor agreement requirements of Section 26 that certain Disposition and Development Agreement by and between the City of San Diego, a municipal corporation ("**City**"), and Midway Rising, LLC, a Delaware limited liability company, dated [**TO BE DETERMINED**] ("**DDA**").

The undersigned represents and warrants to the City that: (1) [**INSERT NAME OF GENERAL CONTRACTOR AND ITS CSLB GENERAL CONTRACTOR LICENSE NUMBER**] entered into that certain Project Labor Agreement, dated [**TO BE DETERMINED**] ("**PLA**"), with the San Diego County Building & Construction Trades Council regarding construction work to be performed on Development Parcel [**TO BE DETERMINED**], as defined in the DDA; (2) The duration of the PLA is [**TO BE DETERMINED COMMENCEMENT AND TERMINATIONS DATES OF PLA**]; and (3) the PLA complies with all the terms of that certain Memorandum of Understanding between Master Developer and San Diego County Building & Construction Trades Council, dated March 28, 2022, and Section 26 of the DDA.

SAN DIEGO COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL

By:_____
Name:_____
Title:_____
Date:_____

ATTACHMENT 20
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

EXISTING AGREEMENTS

1. San Diego Sports Arena Retail Pads Ground Lease, effective May 1, 2002, between The City of San Diego, a municipal corporation, and Arena Group 2000, a California limited partnership.

2. City of San Diego Flat Rate Lease, effective December 1, 2016, between The City of San Diego, a California municipal corporation, and Probuild Company LLC, a Delaware limited liability company.

3. City of San Diego Use and Occupancy Permit, effective June 18, 2020, between The City of San Diego, a California municipal corporation, and Clear Channel Outdoor, LLC, a Delaware limited liability company.

4. City of San Diego Flat Rate Lease, effective July 8, 2016, between The City of San Diego, a California municipal corporation, and Mr. Len Paul, and individual, DBA Soma San Diego.

5. City of San Diego Use and Occupancy Permit, effective June 25, 2020, between The City of San Diego, a California municipal corporation, and Kenton Properties LLC, a California limited liability company.

6. City of San Diego Flat Rate Lease, effective December 1, 2016, between The City of San Diego, a California municipal corporation, and Victor J. Schulman Trust dated December 8, 1989, by First American Trust, FSB, as Trustee.

ATTACHMENT 21
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

MASTER RENT ADMINISTRATION AGREEMENT

[**Attached behind this cover page**]

MASTER RENT ADMINISTRATION AGREEMENT

(Midway Rising Project)

THIS MASTER RENT ADMINISTRATION AGREEMENT (this "**Agreement**"), dated as of [**TO BE DETERMINED**], is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and MIDWAY RISING, LLC, a Delaware limited liability company ("**Master Developer**").

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND AGREEMENTS OF CITY AND MASTER DEVELOPER IN THIS AGREEMENT, CITY AND MASTER DEVELOPER AGREE, AS FOLLOWS:

1. **PURPOSES**. On the date of this Agreement, City owns that certain real property generally described by the street addresses 3500, 3250, 3220, and 3240 Sports Arena Boulevard in the Midway-Pacific Highway Community, collectively consisting of an estimated 48.5 acres of land, in the City ("**Property**"). City and Master Developer entered into that certain Disposition and Development Agreement, dated [**TO BE DETERMINED**] ("**DDA**"), regarding Master Developer's redevelopment of the Property as the "Development" described in the DDA. As described in the DDA, when Master Developer completes certain specified improvements on the Property necessary for construction of "Market Rate Housing" or "Retail Development" (each as defined in the DDA) on parts of the Property, City will enter into individual "Vertical Ground Leases" (as defined in the DDA) for such Market Rate Housing or Retail Development on parts of the Property. Each of these Vertical Ground Leases for the development of Market Rate Housing or Retail Development on part of the Property is referred to in this Agreement as a "**Market Rate/Retail Lease**" and each "Tenant" (defined in each Market Rate/Retail Lease) under a Market Rate/Retail Lease is referred to in this Agreement as an "**MRR Tenant**." Each Market Rate/Retail Lease requires its MRR Tenant to pay "Lease Minimum Rent" (defined in each Market Rate/Retail Lease), which is the Market Rate/Retail Lease's share of Minimum Annual Rent, in addition to all other "Rent" (defined in each Market Rate/Retail Lease) becoming due under the particular Market Rate/Retail Lease. The purposes of this Agreement are to provide for Master Developer to calculate Minimum Annual Rent each Lease Year, allocate shares of Minimum Annual Rent each Lease Year among the Market Rate/Retail Leases according to the formula specified in Section 5 of this Agreement, and in certain circumstances, be responsible for underpayments or overpayments of aggregate Minimum Annual Rent or individual Market Rate/Retail Lease shares of Minimum Annual Rent and failure of one or more MRR Tenants to pay the share of Minimum Annual Rent allocated to its Market Rate/Retail Lease.

2. **TERM**. The duration of this Agreement ("**Term**") will start on the "Commencement Date" of the first Market Rate/Retail Lease (as defined in that Market Rate/Retail Lease) and will continue through the "Expiration Date" of the last existing Market Rate/Retail Lease (as defined in that Market Rate/Retail Lease).

3. **DEFINITIONS**. As used in this Agreement, the following words, terms, or phrases will have the following meanings:

3.1 Adjustments. To the extent not paid or payable by one or more sublessees or licensees of the premises under the applicable Market Rate/Retail Lease, all the following: (a) all Federal, State, County, or local governmental or municipal taxes, fees, assessments, levies, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the premises under the applicable Market Rate/Retail Lease) because of or in connection with the ownership, leasing and operation of the premises under the applicable Market Rate/Retail Lease; (b) capital reserves for the performance of capital work or capital improvements solely at the premises under the applicable Market Rate/Retail Lease; (c) the amortized cost with interest (determined using sound real estate management and accounting practices, consistently applied) of any capital improvements or capital expenditures performed or funded by the MRR Tenant at the premises under the applicable Market Rate/Retail Lease; (d) insurance costs; and (e) the expenses incurred by the MRR Tenant in the operation, management, repair, ownership, and maintenance of the premises under the applicable Market Rate/Retail Lease.

3.2 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with a specified Person. "Affiliated" will have the correlative meaning.

3.3 Annual Revenue Statement. An annual statement disclosing all of an MRR Tenant's income from and expenses of operation of the premises under the applicable Market Rate/Retail Lease during the immediately preceding Lease Year, setting forth in reasonable detail such MRR Tenant's Gross Revenues and Modified Gross Revenues from the applicable premises during the immediately preceding Lease Year, all using industry standard accounting practices and GAAP consistently applied.

3.4 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 United States Code or any other or successor state or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

3.5 Business Day. Monday through Friday, except City holidays when City offices are closed.

3.6 City. Defined in the first paragraph of this Agreement.

3.7 City Council. The City Council of the City.

3.8 City Parties. Collectively, City, its City Council, elected officials, officers, employees, and agents.

3.9 City Party. Individually, City, its City Council, elected officials, officers, employees, or agents.

3.10 Claim. Each claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), or any judgment.

3.11 Control. Regarding a specified Person, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person, bind such Person to an obligation, and direct or cause the direction of the day-to-day management of such Person, in all cases whether by ownership of Equity Interests, by contract, or otherwise.

3.12 County. The County of San Diego, California.

3.13 County Recorder. The Recorder of or for the County.

3.14 DDA. Defined in Section 1.

3.15 Default. Each Monetary Default or Non-Monetary Default.

3.16 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per year; or (b) the highest rate of interest allowed by Law under the circumstances.

3.17 Equity Interest. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

3.18 Equity Interest Transfer. Each of the following actions or events, whether occurring by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of any Equity Interest in Master Developer (even though Master Developer itself is not the transferor), excluding sales of Equity Interests listed on a public stock exchange in the United States by a Person holding ten percent (10%) or less of the Equity Interests in the Person whose Equity Interests are being sold; or (b) each merger, consolidation, sale, lease, or the like with respect to Master Developer, or a series of such mergers, consolidations, sales, leases, or the like occurring over a three (3) year period that, in the aggregate, result in a disposition of more than a twenty-five percent (25%) interest in the assets of Master Developer.

3.19 **Event of Default**. The occurrence of any one or more of the following:

3.19.1 *Monetary Default*. Each Monetary Default continuing for seven (7) days after Notice to the defaulting Party describing the Monetary Default in reasonable detail;

3.19.2 *Bankruptcy or Insolvency*. A Party ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets or interest in this Agreement (unless such appointment,

attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within one hundred twenty (120) days after being made);

3.19.3 *Master Developer Transfer*. Solely with respect to Master Developer, each occurrence of a Transfer by or affecting Master Developer in violation of this Agreement;

3.19.4 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 3.19.2 or 3.19.3, that is not cured within thirty (30) days after Notice to the defaulting Party describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the defaulting Party, the defaulting Party will not be in Default if it does all the following: (a) within thirty (30) days after the date of the Notice of the Non-Monetary Default, Notify the other Party of the intention of the defaulting Party to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the date of the Notice of the Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time, but in no event later than one hundred eighty (180) days after the date of the Notice of the Non-Monetary Default.

3.20 Federal. Relating or under the authority of the federal government of the United States of America.

3.21 GAAP. Generally accepted accounting principles.

3.22 Gross Revenue. All fees and payments made to an MRR Tenant by sublessees and licensees of the premises under the applicable Market Rate/Retail Lease, including rent and parking charges. The only exclusions from "Gross Revenue" are: (i) interest or service fees; or (ii) costs and expenses due from sublessees and licensees as a reimbursement to the MRR Tenant for costs incurred by the MRR Tenant.

3.23 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all Legal Costs, interest, and penalties incurred in enforcing the indemnity obligation under this Agreement regarding the Claim. "Indemnified," "Indemnification," or similar terms will have the correlative meanings.

3.24 Indemnitee. Each Person entitled to be Indemnified under this Agreement.

3.25 Indemnitor. Each Person agreeing to Indemnify any other Person under this Agreement.

3.26 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any government applicable in any manner to any Party, this Agreement, or any Party's rights, obligations, or remedies under this Agreement, whether in force on the date of this Agreement or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

3.27 Lease Year. Each "Lease Year" under the Market Rate/Retail Leases.

3.28 Leasehold Estate. The leasehold estate in each Development Parcel (as defined in the DDA) on the Property created by the Vertical Ground Lease applicable to the Development Parcel at the applicable Vertical Ground Lease Closing (as defined in the DDA) and all the tenant's rights and privileges under each Vertical Ground Lease, upon and subject to all the terms and conditions of the particular Vertical Ground Lease.

3.29 Legal Costs. For any Person, means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed or Indemnified for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, including in or as a result of any: (a) Bankruptcy Proceeding involving this Agreement or the other Party; (b) litigation between the Parties; (c) negotiating or documenting any agreement, certificate or other matter with a Third Person requested of a Party by Notice from the other Party; (d) requirement or request by Notice from a Party that such Person or its employees act as a witness in any proceeding regarding this Agreement or the requesting Party; or (e) review or approval requested of a Party by Notice from the other Party.

3.30 Market Rate/Retail Leases. Defined in Section 1.

3.31 Master CC&Rs. Master conditions, covenants and restrictions approved by City and Master Developer each in their sole discretion under Section 34.14 of the DDA that are recorded against one or more Leasehold Estates.

3.32 Master Declarant. If applicable, the declarant under the Master CC&Rs.

3.33 Master Developer. Defined in the first paragraph of this Agreement, and its permitted successors or assigns under this Agreement.

3.34 Master Developer Parties. Collectively, Master Developer, its directors, officers, members, managers, partners, employees, agents, and attorneys.

3.35 Master Developer Party. Individually, Master Developer, its directors, officers, members, managers, partners, employees, agents, or attorneys.

3.36 Master Developer Records. Defined in Section 6.1.

3.37 Mayor. The Mayor, from time to time, of City or such Person's designee or successor in function and authority.

3.38 Minimum Annual Rent. Defined in Section 4.

3.39 Minimum Annual Rent Statement. Defined in Section 6.

3.40 Modified Gross Revenue. Gross Revenue minus Adjustments.

3.41 Monetary Default. Any failure by a Party, when and as this Agreement requires, to pay, deposit, or provide any amount of money to the other Party or a Third Person, and solely with

respect to Master Developer, any failure to make any calculation or allocation of Minimum Annual Rent as and when required under this Agreement.

3.42 MRR Tenant. Defined in Section 1.

3.43 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of a Party to perform any one of its obligations under this Agreement; (b) the failure of a Party to comply with any covenant, condition, restriction, or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

3.44 Notice. Each approval, consent, demand, designation, election, notice, or request relating to this Agreement, including any notice of a Default under or termination of this Agreement. Notices must be in writing and delivered in accordance with Section 10.4.

3.45 Parties. Collectively, City and Master Developer.

3.46 Party. Individually, City or Master Developer, as applicable.

3.47 Percentage Rent. The rent defined as "Percentage Rent" in the Market Rate/Retail Leases, collectively.

3.48 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

3.49 Property. Defined in Section 1.

3.50 Recalculation Date. Defined in Section 4.

3.51 Rent Calculation Agreement. An agreement entered into by Master Developer and a MRR Tenant providing for: (a) such MRR Tenant to provide Master Developer with an Annual Revenue Statement concurrently with delivery of such Annual Revenue Statement to the City as required by the applicable Market Rate/Retail Lease; (b) if such MRR Tenant fails to timely provide the Annual Revenue Statement to Master Developer, remedies and enforcement mechanisms for Master Developer to utilize against the MRR Tenant, including the imposition of a late charge and interest; and (c) Master Developer's obligation to calculate the Minimum Annual Rent within the time period provided for in Section 5 in a form approved by City in its reasonable discretion. **[NOTE TO DRAFT: FORM OF RENT CALCULATION AGREEMENT MUST BE PREPARED BY MASTER DEVELOPER AND APPROVED BY CITY IN ITS SOLE DISCRETION PRIOR TO THE FIRST VERTICAL GROUND LEASE CLOSING FOR A MARKET RATE HOUSING/RETAIL LEASE UNDER SECTION 35.4.9 OF THE DDA.]**

3.52 State. The State of California.

3.53 Term. Defined in Section 2.

3.54 Third Person. Any Person that is not a Party, an Affiliate of a Party, a City Party, or a Master Developer Party.

3.55 Transfer. Each of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Master Developer's legal, beneficial, or equitable interest in this Agreement; (b) any Equity Interest Transfer relating to Equity Interest(s) in Master Developer; or (c) any transaction that is in substance equivalent to any of the transactions described in clause "(a)" or "(b)" of this Section 3.55. An Equity Interest Transfer described in clause "(b)" or "(c)" of this Section 3.55 or otherwise, is considered a Transfer by Master Developer even though Master Developer is not technically the transferor. A "Transfer" will not, however, include any of the following Equity Interest Transfers (provided that the other Party to this Agreement receives Notice of the Equity Interest Transfer at least fifteen (15) days before the Transfer is effective): (i) a mere change in form of ownership, with no material change in beneficial ownership, that constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) issuance of previously unissued or new Equity Interests in Master Developer that increases the amount of outstanding Equity Interests in Master Developer by less than ten percent (10%).

3.56 Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes described above in this Section 3.56 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

4. **MINIMUM ANNUAL RENT DETERMINATION**. Commencing in the Lease Year immediately following the particular Lease Year in which City first receives a total of $500,000.00 in aggregated annual Percentage Rent under all Market Rate/Retail Leases, City will be entitled to receive the greater of: (i) the aggregate total annual Percentage Rent under all Market Rate/Retail Leases for the Lease Year; and (ii) Minimum Annual Rent. "**Minimum Annual Rent**" means: (a) $500,000.00 commencing in the Lease Year immediately following the particular Lease Year in which City first receives a total of $500,000.00 in aggregated annual Percentage Rent under all Market Rate/Retail Leases; (b) then, commencing in the Lease Year immediately following the Lease Year in which City first receives a total of $1,000,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under all Market Rate/Retail Leases, Minimum Annual Rent will increase to $1,000,000.00; (c) then, commencing in the Lease Year immediately following the Lease Year in which City first receives a total of $1,500,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under all Market Rate/Retail Leases, the Minimum Annual Rent will increase to $1,500,000.00; (d) then, commencing in the Lease Year immediately following the Lease Year in which City first receives a total of $2,000,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under all Market Rate/Retail Leases, the Minimum Annual Rent

will increase to $2,000,000.00; and (e) then, on the first day of the tenth (10^{th}) Lease Year after the Lease Year in which City first receives a total of $2,000,000.00 in aggregated annual Minimum Annual Rent and Percentage Rent under Market Rate/Retail Leases and on the first day of every tenth (10th) Lease Year thereafter in which any Market Rate/Retail Lease is in effect (each such date, a "**Recalculation Date**"), the Minimum Annual Rent will be recalculated to be the greater of: (y) the Minimum Annual Rent in effect on the day before the Recalculation Date; and (z) seventy-five percent (75%) of the aggregate total annual Percentage Rent payable under all Market Rate/Retail Leases in effect during the Lease Year ended on the day before the Recalculation Date. On the first day of each Lease Year following a Lease Year in which a Market Rate/Retail Lease "Scheduled Expiration Date" (as defined in the Market Rate/Retail Lease) occurs, the Minimum Annual Rent will be reduced by the amount of the Minimum Annual Rent allocated for the preceding Lease Year to the Market Rate/Retail Lease(s) that expired during the preceding Lease Year.

5. **MINIMUM ANNUAL RENT CALCULATION AND ALLOCATION**. Concurrently with the close of escrow for each Market Rate/Retail Lease, Master Developer and the MRR Tenant under the Market Rate/Retail Lease will enter into a Rent Calculation Agreement. Thereafter, Master Developer will calculate Minimum Annual Rent each Lease Year and allocate Minimum Annual Rent among the Market Rate/Retail Leases each Lease Year within one hundred twenty (120) days after the end of the immediately preceding Lease Year. Master Developer will allocate Minimum Annual Rent among the Market Rate/Retail Leases each Lease Year using the following formula: (1) if the Minimum Annual Rent is fully funded by the aggregate Percentage Rent payable under all Market Rate/Retail Leases for the particular Lease Year, then the amount of Minimum Annual Rent allocated to each Market Rate/Retail Lease for the particular Lease Year will be the amount of Percentage Rent payable under the Market Rate/Retail Lease for the particular Lease Year divided by the aggregate amount of Percentage Rent payable under all Market Rate/Retail Leases for the particular Lease Year and (2) if the Minimum Annual Rent is not fully funded by the aggregate Percentage Rent payable under all Market Rate/Retail Leases for the particular Lease Year, then the Minimum Annual Rent allocated to each Market Rate/Retail Lease for the particular Lease Year will be the percentage share of Minimum Annual Rent allocated to the particular Market Rate/Retail Lease for the immediately preceding Lease Year. If any new Market Rate/Retail Lease becomes effective after Minimum Annual Rent is payable for any particular Lease Year, then the Minimum Annual Rent for that Lease Year will not change, and no Minimum Annual Rent for the Lease Year will be allocated to any new Market Rate/Retail Lease becoming effective after Minimum Annual Rent is payable for the particular Lease Year, but Minimum Annual Rent will start to be allocated to the new Market Rate/Retail Lease(s) the next Lease Year. A sample calculation of Minimum Annual Rent and allocation of Minimum Annual Rent among Market Rate/Retail Leases for a hypothetical Lease Year is provided in **Schedule 1** attached to this Agreement.

6. **MINIMUM ANNUAL RENT STATEMENTS; PREPARATION; ERRORS**. Master Developer will deliver to City a written statement of its calculation of Minimum Annual Rent and its allocation of Minimum Annual Rent among Market Rate/Retail Leases under Section 3.55 for each Lease Year ("**Minimum Annual Rent Statement**") within one hundred twenty (120) days after the end of the immediately preceding Lease Year ("**Minimum Annual Rent Statement Deadline**"), for each Lease Year during which a Market Rate/Retail Lease is in effect. If any MRR Tenant fails to timely provide an Annual Revenue Statement to Master Developer as required

under the Rent Calculation Agreement: (a) Master Developer will use commercially reasonable efforts to enforce the remedies provided for under the Rent Calculation Agreement due to such failure; (b) Master Developer shall pay to City the total amount of any late charges and interest payable by any MRR Tenant due to such failure; and (c) the Minimum Annual Rent Statement Deadline shall not be extended, but the Minimum Annual Rent Statement shall reflect Master Developer's reasonable estimate of Percentage Rent payable under the missing Annual Revenue Statement, and shall thereafter be subject to reissuance of a corrected Minimum Annual Rent Statement under Section 6.2. The Minimum Annual Rent Statement shall be substantially in the form of **Schedule 2** attached to this Agreement.

6.1 Preparation and Content of Minimum Annual Rent Statements. Each Minimum Annual Rent Statement will be prepared by a disinterested, reputable firm of certified public accountants that is actively engaged in the practice of the accounting profession. Additionally, each Minimum Annual Rent Statement will be certified by an executive level officer of Master Developer with substantial knowledge about the factual background and content of the Minimum Annual Rent Statement. Each Minimum Annual Rent Statement will be prepared using GAAP and industry standard accounting practices, consistently applied, and otherwise comply with the requirements of this Agreement. The Minimum Annual Rent will be calculated based on the Annual Revenue Statements provided to Master Developer by each MRR Tenant. Master Developer will provide all additional information reasonably requested by City regarding Master Developer's calculation of Minimum Annual Rent, but Master Developer is not required to provide to City any information that Master Developer did not generate itself or receive from an MRR Tenant (collectively, "**Master Developer's Records**").

6.2 Modifications to Minimum Annual Rent Statements. Master Developer shall re-issue a Minimum Annual Rent Statement to City and to all affected MRR Tenants within thirty (30) days of: (a) receiving a new or modified Annual Rent Statement for a particular Lease Year that was not previously factored into the Minimum Annual Rent Statement for such Lease Year; or (b) Master Developer becoming aware of an error in a previously issued Minimum Annual Rent Statement, whether pursuant to the City's exercise of its audit rights below or otherwise. Within thirty (30) days after the Receipt Date of a reissued Minimum Annual Rent Statement showing an overpayment of Minimum Annual Rent by one or more MRR Tenants, City shall review the new Minimum Annual Rent Statement and may reject the overpayment(s) shown in such statement. To the extent City does not reject an overpayment of Minimum Annual Rent in a re-issued Minimum Annual Rent Statement, City will refund the overpayment amount received by City to the MRR Tenant that made the overpayment under the terms of the applicable Market Rate/Retail Lease. If a new Minimum Annual Rent Statement shows an underpayment of Minimum Annual Rent by one or more MRR Tenants, those MRR Tenants must pay the applicable underpayment to City under the terms of their respective Market Rate/Retail Leases. Except for Master Developer's obligations under Section 6 to pay late charges and interest payable by any MRR Tenant and Master Developer's obligations under Section 6.3 to make payments or refunds related to Minimum Annual Rent, Minimum Annual Rent and Percentage Rent are the sole and several obligations of the MRR Tenants, and Master Developer has no other obligation to fund any underpayment of Minimum Annual Rent or Percentage Rent by any MRR Tenant, but without limiting Master Developer's or an Affiliate of Master Developer's direct liability under any Market Rate/Retail Lease where Master Developer or an Affiliate of Master Developer is the MRR Tenant.

6.3 Master Developer's Negligence or Willful Misconduct. Notwithstanding the foregoing, if there is an error in Master Developer's calculation of Minimum Annual Rent or allocation of Minimum Annual Rent among Market Rate/Retail Leases for a particular Lease Year due to the negligence or willful misconduct of Master Developer, then as City's sole remedies for such negligence or willful misconduct: (a) Master Developer shall pay City the amount of all underpayments to City resulting from such negligence or willful misconduct that are not paid by MRR Tenants within thirty (30) days of receiving a re-issued Minimum Annual Rent Statement under Section 6.2 for the particular Lease Year, and (b) Master Developer shall pay to City all amounts City refunded to MRR Tenants based on an incorrect Minimum Annual Rent Statement that have not otherwise been paid by one or more different MRR Tenants within thirty (30) days of the MRR Tenants receiving a re-issued Minimum Annual Rent Statement under Section 6.2 for the particular Lease Year. All amounts that become payable to City from Master Developer under this Section 6.3 due to Master Developer's negligence or willful misconduct will accrue Default Interest from the date they were originally due to City under the Market Rate/Retail Leases until the amount is paid in full to City. Master Developer's negligence and willful misconduct do not include any error made solely due to an error or omission in any Annual Revenue Statement provided by an MRR Tenant, but without limiting Master Developer's or an Affiliate of Master Developer's direct liability under any Market Rate/Retail Lease where Master Developer or an Affiliate of Master Developer is the MRR Tenant.

7. **CITY'S AUDIT RIGHT**.

7.1 In General. On ten (10) Business Days' Notice (Notice will not be required when Master Developer is in breach of this Agreement), only during normal business hours, and no more often than once each Lease Year (there is no limit when Master Developer is in breach of this Agreement), City's auditor may audit Master Developer's Records for up to five (5) preceding Lease Years. Master Developer will, without charge, assist in such audit, as City's auditor may reasonably request.

7.2 Retention. Master Developer will maintain Master Developer's Records for a period of at least five (5) years following the end of the Lease Year to which such Master Developer's Records relate.

7.3 Audit Costs. If any City audit of one or more Minimum Annual Rent Statements discloses that Master Developer incorrectly calculated or allocated Minimum Annual Rent for any Lease Year, other than as a result of errors or omissions in Annual Revenue Statements provided to Master Developer, such that Minimum Annual Rent or Percentage Rent for one or more Market Rate/Retail Leases was under-reported or over-reported to an extent of four percent (4%) or more for one or more Lease Years, Master Developer will pay to City the reasonable out of pocket cost of the audit.

7.4 Identity and Retention of Auditor. City's auditor will be either: (1) an employee of City; or (2) a certified public accountant retained by City. City's auditor will comply with such reasonable restrictions on time and access as Master Developer may require, provided that such restrictions do not have the purpose or effect of frustrating the audit. Any certified public

accountant retained by City to perform an audit under this Agreement will not work under a contract providing a contingency fee for amounts determined to have been underpaid to City.

7.5 Confidentiality. City shall not disclose information to Third Persons that is clearly identified by Master Developer at the time such information is provided to City as proprietary or confidential information of Master Developer ("**Confidential Master Developer Records**"), unless such disclosure is required by Law (including the California Public Records Act) or court order (collectively, "**Disclosure Law**"), as determined by City in its sole discretion, or the disclosure is related to the pursuit of any remedies or the assertion of any rights of City under this Agreement. Master Developer shall only mark information as Confidential Master Developer Records if the information has independent economic value as a result of generally not being known to another Person that could obtain economic value from using or disclosing it, and Master Developer takes reasonable efforts to maintain its confidentiality other than disclosing it to City as required under this Agreement. Master Developer shall provide City an explanation for the basis of identifying information as a Confidential Master Developer Record concurrently with providing any Confidential Master Developer Record, and Master Developer shall not adopt a practice of marking all information as Confidential Master Developer Records if such information does not meet the standard in the immediately preceding sentence. If City receives a request or order under Disclosure Law that requires disclosure of Confidential Master Developer Records, City will endeavor to provide Notice to Master Developer of such request or order. City has the responsibility to make determinations about disclosure of information under Disclosure Law in City's sole discretion, and to disclose information as required by Disclosure Law if City determines that particular information is disclosable. As a result of City's obligations under Disclosure Law, City's disclosure of any Confidential Master Developer Records in response to a request or order under Disclosure Law, with or without prior Notice to Master Developer, will not be a City Default under this Agreement.

8. **INDEMNIFICATION**.

8.1 Master Developer Indemnity Obligations. Master Developer will Indemnify City against all Claims to the extent arising from the negligence or willful misconduct of Master Developer related to the calculation or allocation of Minimum Annual Rent in each Lease Year for which Master Developer calculates the Minimum Annual Rent or allocates the Minimum Annual Rent among MRR Tenants under this Agreement. Notwithstanding anything to the contrary in this Agreement, Master Developer's obligation to Indemnify City excludes Claims arising solely from the established active negligence or willful misconduct of City.

8.2 Independence of Insurance and Indemnity Obligations. Master Developer's obligations to Indemnify City under this Agreement will not be construed or interpreted as in any way restricting, limiting, or modifying Master Developer's insurance or other obligations under any other agreement with City. Master Developer's obligations to Indemnify City under this Agreement are independent of Master Developer's insurance and other obligations under all other agreements with City. Master Developer's compliance with its insurance obligations and other obligations under its other agreements with City will not in any way restrict, limit, or modify Master Developer's obligations to Indemnify City under this Agreement and are independent of Master Developer's obligations to Indemnify City and other obligations under this Agreement.

8.3 Survival of Indemnification Obligations. Master Developer's obligations to Indemnify City under this Agreement will survive the expiration or earlier termination of the Term, until all actual or prospective Claims subject to Master Developer's obligations to Indemnify City under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

8.4 Indemnification Procedures. Wherever this Agreement requires Master Developer to Indemnify City:

8.4.1 *Notice*. City will Notify Master Developer of the Claim within a reasonable time.

8.4.2 *Selection of Counsel*. Master Developer will select counsel reasonably acceptable to the City Council. Even though Master Developer will defend the Claim, City may, at its option and expense (except where Master Developer provides a defense to City under a reservation of rights, a conflict of interest between Master Developer and City or another Person exists that requires City to be represented by separate legal counsel from Master Developer's legal counsel or Master Developer's legal counsel is reasonably determined by City to be incompetent regarding the representation, in each case, Master Developer will pay the Legal Costs of City's separate legal counsel), engage separate counsel to advise City regarding the Claim and its defense. City's separate legal counsel(s) may attend all proceedings and meetings. Master Developer's legal counsel will actively consult with City's separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

8.4.3 *Cooperation*. City will reasonably cooperate with Master Developer's defense of City.

8.4.4 *Settlement*. Master Developer may only settle a Claim with the prior written consent of City, in its sole and absolute discretion.

8.5 Immediate Duty to Defend. The duty to defend that is within Master Developer's obligations to Indemnify City under this Agreement includes Claims for which City may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, breach, or other obligation on the part of Master Developer or City have been determined. The duty to defend applies immediately, regardless of whether City has paid any money or incurred any detriment arising out of or relating (directly or indirectly) to any Claims.

8.6 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Master Developer's obligation to Indemnify City under this Agreement exceeds the indemnity obligation allowed by applicable Law, Master Developer's obligation to Indemnify City will be reduced to the extent required to comply with applicable Law.

9. **REMEDIES**. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or

remedies for the same Default or Event of Default or the same rights or remedies for any other Default or Event of Default by the other Party.

10. **GENERAL PROVISIONS**.

10.1 Master Developer Transfers. Master Developer will not make or allow a Transfer under this Agreement without City's prior written consent, in City's sole and absolute discretion, except that a Transfer of this Agreement by Master Developer to the Master Declarant is deemed approved by City if City has approved the Master CC&Rs and the Master Declarant under Section 34.14 of the DDA. The authority of the Mayor under Section 10.3 includes authority to approve a Transfer of all the Master Developer's rights and obligations under this Agreement to a Third Person. Master Developer acknowledges and agrees that the specific identity of Master Developer is of material importance to City in entering into this Agreement with Master Developer and that, as a result and under the circumstances regarding which this Agreement is entered into by the Parties, the restrictions in this Agreement on Transfers are reasonable.

10.2 Costs and Expenses; Legal Costs. In the event of any litigation or dispute between the Parties, or claim made by either Party against the other, arising from this Agreement, or enforcement of this Agreement following breach of this Agreement, or to enforce or interpret this Agreement or seek declaratory or injunctive relief in connection with this Agreement, or to exercise any right or remedy under or arising from this Agreement, or to terminate this Agreement, or in any Bankruptcy Proceeding affecting the other Party to this Agreement, the prevailing Party will be entitled to reimbursement of its Legal Costs, with Default Interest, and all other reasonable costs and expenses incurred in enforcing this Agreement. The Legal Costs recoverable by one Party from the other Party in each litigation, Claim, or dispute (consolidated matters or matters arising from the same facts and circumstances are a single litigation, Claim, or dispute) arising from this Agreement will not exceed Two Hundred Fifty Thousand Dollars ($250,000) multiplied by 1 plus the result of multiplying .03 times the Lease Year number in which the subject litigation, Claim, or dispute arises (i.e., in Lease Year 10 the maximum recoverable Legal Costs amount would be $250,000 x (1+(.03 x10)) = $325,000).

10.3 Mayoral Implementation. City will implement this Agreement through the Mayor. The Mayor is authorized by City to issue approvals, interpretations, waivers and enter into amendments to this Agreement on behalf of City, to the extent that any such action(s) does/do not materially or substantially change this Agreement. Nothing in this Section 10.3 will restrict the submission to the City Council of any matter within the Mayor's authority under this Section 10.3, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 10.3 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor, without consideration by the City Council.

10.4 Notices. All Notices submitted by any Party to another Party under or as required by this Agreement must be in writing and sent by either: (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight (one Business Day) delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested; or (iv) electronic transmission, including email, followed by a hard copy delivered in accordance with one of the

preceding clauses "(i)" through "(iii)," unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a Notice email. All Notices must be sent to the Party representative and address designated below in this Section 10.4. Either Party may designate a different representative or address for delivery of Notice under this Agreement by Notice given in accordance with this Section 10.4. To conserve resources and reduce administrative burden, the Parties intend to deliver Notices via email and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. A Notice will be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date on such return receipt, on the Business Day that the Notice is sent by messenger for immediate personal delivery and delivered to the Notice address before 5:30 p.m. Pacific Time, on the Business Day the Notice is transmitted electronically and received at the Notice address before 5:30 p.m. Pacific Time, one (1) Business Day after the Notice is delivered to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is delivered to the United States Postal Service in accordance with this Section 10.4 (each, as applicable, the "**Receipt Date**"). Any attorney representing a Party may give any Notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to Notice delivered via email. As of the date of this Agreement the Notice addresses for the Parties are as follows:

City:

The City of San Diego
Attention: Christina Bibler, Director,
Economic Development Department
1200 Third Avenue, Suite 1400 (MS 56D)
San Diego, California 92101
Email: cbibler@sandiego.gov

San Diego City Attorney's Office
Attention: Delmar Williams, Senior Deputy City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101
Email: dgwilliams@sandiego.gov

Master Developer:

Midway Rising
c/o Zephyr
329 S Highway 101
Suite 150
Solana Beach, CA 92075
Attention: Brad Termini and Austin Richter
Email: brad@zephyrpartners.com and
arichter@zephyrpartners.com

Allen Matkins Leck Gamble Mallory &
Natsis LLP
1901 Avenue of the Stars, Suite 1800, Los
Angeles, CA 90067-6019
Attention: Elizabeth J. Wilgenburg, Esq.
Email: ewilgenburg@allenmatkins.com

10.5 Relationship of Parties. The Parties each intend and agree that City and Master Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship, or association between them.

10.6 Warranty against Payment of Consideration for Agreement. Master Developer represents and warrants to City that: (a) Master Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Master Developer; and

(b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Master Developer or any of Master Developer's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 10.6 will entitle City to terminate this Agreement immediately, without liability, and cancel the Escrow by Notice to Master Developer and Escrow Agent. Upon any termination of this Agreement under this Section 10.6, Master Developer will immediately repay City all payments made to or on behalf of Master Developer by City under this Agreement prior to the date of such termination.

10.7 Survival of Agreement. All the provisions of this Agreement will be applicable to all disputes between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until each such dispute is finally and completely resolved between the Parties, either by written settlement agreement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods. All terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies will survive any expiration or termination of this Agreement.

10.8 Non-liability of City Officials and Employees. No City Party (other than City itself) will be personally liable to Master Developer in the event of any breach by City under this Agreement or for any amount that may become due to Master Developer on any obligation under this Agreement. No Master Developer Party (other than Master Developer itself) will be personally liable to City in the event of any breach by Master Developer under this Agreement or for any amount that may become due to City on any obligation under this Agreement.

10.9 Time Period Calculation. Unless otherwise specified, all references to time periods in this Agreement measured in days will be to consecutive calendar days, all references to time periods in this Agreement measured in months will be to consecutive calendar months and all references to time periods in this Agreement measured in years will be to consecutive calendar years. All references to Business Days in this Agreement will mean consecutive Business Days.

10.10 Interpretation Principles. No inference in favor of or against any Party will be drawn from the fact that such Party drafted any part of this Agreement. The Parties both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which will govern all language in this Agreement. The words "include" and "including" in this Agreement will be construed to be followed by the words: "without limitation." Each collective noun in this Agreement will be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

10.11 Governing Law. The procedural and substantive laws of the State will govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Agreement will be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

10.12 Binding on Successors and Assigns. Subject to the limitations set forth in Section 10.1, this Agreement will be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

10.13 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

10.14 Tax Consequences. Master Developer acknowledges and agrees that it will bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Master Developer related to this Agreement.

10.15 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any right or remedy under or because of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

10.16 No Effect on Market Rate/Retail Leases. Nothing in this Agreement modifies, limits, or terminates any obligation of any MRR Tenant under its Market Rate/Retail Lease, including the obligation to pay all "Rent" (defined in each Market Rate/Retail Lease) as and when due.

10.17 Signature in Counterparts. This Agreement may be signed in multiple counterpart originals, each of which will be considered an original, but all of which together will constitute one and the same document.

10.18 Electronic Signatures. Except for documents to be filed for recording with the County Recorder, the Parties agree: (a) that they may deliver and will accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures), provided that digital signatures will only be accepted if completed through either AdobeSign or DocuSign e-signature software; and (b) that signatures delivered by e-mail or electronic means (including digital signatures) will be binding as originals upon the Party so signing and delivering.

10.19 Entire Agreement. This Agreement, including all attachments to this Agreement, constitutes the entire understanding and agreement of the Parties about Master Developer's calculation and allocation of Minimum Annual Rent or the other subjects addressed in this Agreement. This Agreement integrates all the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all previous negotiations or agreements between the Parties about Master Developer's calculation and allocation of Minimum Annual Rent, or the other subjects addressed in this Agreement.

10.20 Time Declared to be of the Essence. As to the performance of each obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

10.21 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one or more occasions upon strict compliance with any term, covenant, condition, restriction, or agreement contained in this Agreement will not be deemed a waiver of such term, covenant, condition, restriction, or agreement, nor will any waiver or relinquishment of any right or power under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

10.22 Amendments. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Parties.

10.23 Memorandum Recording. The Parties agree to record a memorandum of this Agreement with the County Recorder and that an authorized representative of each Party will sign a reasonable memorandum of this Agreement and have its signature notarized so that the memorandum may be recorded in the official real property records of the County against each Market Rate/Retail Lease to provide constructive record notice of this Agreement. The Parties further acknowledge that the DDA provides for a memorandum of this Agreement to be recorded against each Market Rate/Retail Lease at the "Vertical Ground Lease Closing" (as defined in the DDA) for each Market Rate/Retail Lease. Within sixty (60) days after the expiration or earlier termination of each Market Rate/Retail Lease, the Parties agree that an authorized representative of each Party will sign a document terminating the memorandum of this Agreement recorded against the particular Market Rate/Retail Lease and have its signature notarized so that the termination document may be recorded in the official real property records of the County.

[***Remainder of page intentionally blank. Signatures appear on the following page.***]

SIGNATURE PAGE
TO
MASTER RENT ADMINISTRATION AGREEMENT
(Midway Rising)

City and Master Developer sign and enter into this Agreement by and through the signatures of their respective authorized representative(s) set forth below:

CITY:

The City of San Diego,
a California municipal corporation

By: _____
[**TO BE DETERMINED**]

Approved as to form on
_____.

HEATHER FERBERT
City Attorney

By: _____
[**TO BE DETERMINED**]

MASTER DEVELOPER:

Midway Rising, LLC, a Delaware limited liability company

By: _____
[**TO BE DETERMINED**]

SCHEDULE 1
TO
MASTER RENT ADMINISTRATION AGREEMENT
(Midway Rising)

Midway Rising - Example Vertical Ground Lease Rent [1]

	Total	Pad 1	Pad 2	Pad 3
Year 1				
Year 1 Percentage Rent	550,000	300,000	250,000	NA
Year 1 Percentage Rent % of Total	100.0%	54.5%	45.5%	
Year 1 Minimum Annual Rent % Share	NA	NA	NA	NA
Year 1 Minimum Annual Rent Hurdle	NA	NA	NA	NA
Year 1 Minimum Annual Rent Owed	NA	NA	NA	NA
Year 1 Total Rent Paid	**550,000**	**300,000**	**250,000**	**NA**
Year 2				
Year 2 Percentage Rent	450,000	250,000	200,000	NA
Year 2 Percentage Rent % of Total	100.0%	55.6%	44.4%	
Year 2 Minimum Annual Rent % Share [2]	100.0%	54.5%	45.5%	NA
Year 2 Minimum Annual Rent Hurdle	500,000	272,727	227,273	NA
Year 2 Minimum Annual Rent Owed	50,000	22,727	27,273	NA
Year 2 Total Rent Paid	**500,000**	**272,727**	**227,273**	**NA**
Year 3				
Year 3 Percentage Rent	650,000	300,000	250,000	100,000
Year 3 Percentage Rent % of Total	100.0%	46.2%	38.5%	15.4%
Year 3 Minimum Annual Rent % Share [2]	100.0%	55.6%	44.4%	NA
Year 3 Minimum Annual Rent Hurdle	500,000	277,778	222,222	NA
Year 3 Minimum Annual Rent Owed	NA	NA	NA	NA
Year 3 Total Rent Paid	**650,000**	**300,000**	**250,000**	**100,000**
Year 4				
Year 4 Percentage Rent	450,000	225,000	175,000	50,000
Year 4 Percentage Rent % of Total	100.0%	50.0%	38.9%	11.1%
Year 4 Minimum Annual Rent % Share [2]	100.0%	46.2%	38.5%	15.4%
Year 4 Minimum Annual Rent Hurdle	500,000	230,769	192,308	76,923
Year 4 Minimum Annual Rent Owed	50,000	5,769	17,308	26,923
Year 4 Total Rent Paid	**500,000**	**230,769**	**192,308**	**76,923**

[1] For illustrative purposes only

[2] Minimum Annual Rent share based on previous year percentage of total Percentage Rent paid

Schedule 1
Sample Minimum Annual Rent Calculation and Allocation

SCHEDULE 2
TO
MINIMUM ANNUAL RENT STATEMENT FORM
(Midway Rising)

ATTACHMENT 22
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

DEVELOPMENT CONDITIONS

	Development Condition	Specifications
A.	Parking Structures	The facades of all Parking Structures shall be wrapped with a building or architectural screening capable of blocking 80 percent of the Parking Structure facade.
B.	Structure Height	To the extent permitted by Law, the maximum structure height on the Property will be 105 feet with the following exceptions: (a) The maximum structure height of the Entertainment Center will be 165 feet. (b) Up to 10 percent of the surface area of the Property (approximately 214,446 square feet) may include structures with a maximum height of 250 feet. Building footprint area will be used for calculating the percentage of the surface area of the Property used by a building.
C.	Development Parcel Sizes	The minimum Development Parcel size shall be 2,850 square feet.
D.	Park Frontage Setback	As shown on Figure 39 in the Midway Rising Specific Plan adopted by the City Council concurrent with its approval of this Agreement ("**Specific Plan**"), buildings with ground floor uses fronting a Park shall have an open setback area with a minimum width of 7 feet measured from the nearest building facade to the edge of the Park to create a separation between the building and the Park, unless a greater distance is required by the California Building Code.
E.	Public Streets	All as shown on Figures 7 through 19 in the Specific Plan and all to the satisfaction of the City Engineer based on City standards for these improvements, Master Developer shall Construct: (a) Kemper Street and Frontier Drive as public streets to connect Sports Arena Boulevard and Kurtz Street; (b) frontage improvements along Sports Arena Boulevard and Kurtz Street; (c) the roundabout at Kurtz Street; and (d) the offsite street improvements.

	Development Condition	Specifications
F.	Public Access	All private drives, Promenades, Paseo Greens, Paseo Greenways, The Plaza, The Green and The Square (each as described in the Specific Plan) shall be publicly accessible from at least 8:00 a.m. to 8:00 p.m. seven days a week, 365 days a year. Wayfinding signs shall be provided and include the hours these areas are open to the public in conformance with a Detailed Sign Concept Plan as described in Appendix B of the Specific Plan.
G.	Street Trees	Two rows of street trees shall be provided on Sports Arena Boulevard, Kurtz Street, and Kemper Street, respectively, to provide shade on each multi-use path, and to provide a buffer from vehicular traffic.
H.	Landscaping	All streets, whether public or private, and all Parking Structures located on the Property shall contain a minimum of 4.75 percent (4.75%) landscaping, consisting of street trees and groundcovers located within bulb-outs. For vehicular use areas located on the rooftops of Parking Structures, photovoltaic solar canopies or other shade structures may be provided in lieu of shade trees. Shade structures or photovoltaic solar canopies used in lieu of the shade tree requirement shall meet the following criteria: (1) shade structures or photovoltaic solar canopies shall either (a) cover a minimum of fifty percent (50%) of each individual parking stall, or (b) cover a minimum of fifty percent (50%) of each vehicular use area with no photovoltaic solar canopy or shade structure located more than fifteen (15) feet from any parking stall; and (2) on the rooftops of Parking Structures or on structural podiums, shade structures with a maximum of fifty percent (50%) transparency or photovoltaic solar canopies may be provided. A minimum 14-foot-wide landscape buffer shall be provided between all residential buildings and the western boundary of the Property.
I.	Roof Top Mounted Solar Photovoltaic	All building rooftops will install roof-top mounted solar photovoltaic cells, except the Entertainment Center.
J.	Park Amenities	Each Park shall include one or more of the following amenities: • Play Area • Nature Exploration Playground • Multi-Purpose Turf Area • Active Recreation Fields

	Development Condition	Specifications
		• Hardcourt Areas • Specialty Recreation Areas • Lighting • Multi-use Pathways • Bike Path or Cycle Track • Fitness Circuit • Off-Leash Dog Area • Community Garden • Food Area/Concessions/ Café/ Restaurants • Performance/Event Space • All-weather Shade Cover/Pavilion with tables/seating • Seating Area with movable seats • Restroom Building • Amphitheater • Wayfinding Signage System • Interactive/Technology Element • Public Art/Placemaking Elements • Native Planting Restoration Area
K.	The Green	"The Green" identified in Specific Plan Figure 38 shall: (1) Have a minimum average width of at least 67 feet measured from the outer edge of all adjacent residential entry/dining patio zones; (2) Have a minimum area of 2.32 acres (101,059 square feet); and (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (4) Include one or more of the following amenities: (a) Recreational Amenity; (b) Seating Area; (c) Shade Structure/Pavilion with seating; (d) Performance or Event Space; or (e) Multi-modal Shared Use Path.
L.	The Square	"The Square" identified in Specific Plan Figure 40 shall: (1) Have a minimum width of 90 feet (measured from the face of the Entertainment Center to an opposing building's residential entry/dining patio zone); (2) Have a minimum area of 2.93 acres (127,630 square feet); (3) Include frontage on Sports Arena Boulevard; (4) Include a fire access lane;

	Development Condition	Specifications
		(5) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (6) Include one or more of the following amenities: (a) Seating Areas with fixed and moveable seating; (b) Shade Structure/Pavilion with seating; (c) Interactive Water Feature; or (d) Multi-modal Shared Use Path.
M.	The Plaza	"The Plaza" identified in Specific Plan Figure 41 shall: (1) Have a minimum width of 27 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 0.54 acres (23,520 square feet); (3) Include a fire access lane; (4) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater distance is required by the California Building Standards Code; and (5) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by City under Section 24.2 of this Agreement for all the Parks equals or exceeds 610.
N.	Paseo Greens	The "Paseo Greens" identified in Specific Plan Figure 42 shall: (1) Have a minimum width of 36 feet (measured from the frontage of all adjacent residential entry/dining patio zones); (2) Have a minimum area of 1.06 acres (46,174 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by City under Section 24.2 of this Agreement for all the Parks equals or exceeds 610.
O.	Paseo Greenways	The "Paseo Greenways" identified in Specific Plan Figure 43 shall:

	Development Condition	Specifications
		(1) Have a minimum width of 45 feet (measured from the frontage of all adjacent residential entry/dining patio zones); and (2) Have a minimum area of 1.27 acres (55,321 square feet); (3) Include a landscaped buffer with a minimum of 2.7 feet that will front all adjacent residential entry/dining patio zones, providing a separation between Park and residential use as identified in Specific Plan Figure 39, unless a greater amount is required by the California Building Standards Code; and (4) Include one or more general amenities worth Recreational Value Points such that when all the Parks are Constructed the total combined Recreational Value Points approved by City under Section 24.2 of this Agreement for all the Parks equals or exceeds 610.
P.	Wood and Gas Fireplaces	Wood and gas fireplaces shall not be permitted within any Residential Unit located on the Property.
Q.	Building Base	The building base of each building shall have a minimum of 1 story and shall not exceed 3 stories. A minimum of 50 percent of the building base facade shall incorporate a change in at least one of the following: material, color, or transparency that is different from the building facade material, color, or transparency above the building base. Building base facades without windows shall incorporate changes in wall texture, material and color, artistic features, or murals to provide varied and articulated facades.
R.	Restrictions on Visitor Accommodations and Other Uses	Neither the Property, nor any Residential Unit on the Property will, at any time, be Constructed as, or converted to, accessory dwelling units, visitor accommodation units, or units rented for short-term residential occupancy or be used as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, other transient use, or any other use not expressly allowed under the Specific Plan or this Agreement.
S.	Agreements Regarding Certain Programs	No Construction on the Property, nor the Property, nor any Residential Unit on the Property will, at any time, be eligible to participate in any City residential development bonus incentive program adopted under the City's Governmental Authority that is not required by State law, such as Complete Communities Housing Solutions, the Accessory Dwelling Unit Bonus Program, or Micro-Unit Density Bonus, unless otherwise authorized by City Council ordinance specifically applicable to the Property.

ATTACHMENT 23
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

DEVELOPMENT STATUS REPORT FORM

[**NOTE TO DRAFT: CITY STAFF REVIEWING AND MAY MAKE FURTHER EDITS TO THIS ATTACHMENT**]

Annual Reporting Period: _____ MM/DD/YYYY Through _____ MM/DD/YYYY

Provide Midway Rising's Completion Data Progress:

	Project Development Itemized Scope	Previously Completed	Phase Number; Date Initiated	Percentage of Phase Completion	Total Units; Sq. ft. or Acreage Completed to Date	Estimated Date of Total Project Development Category's Completion	Notes, Comments, Concerns or Risks
1	Affordable Housing: At least 2,000 Affordable Units						
2	Market Rate Housing: At least 2,250 Market Rate Housing residential rental units						
3	Retail: 130,000 square feet of Retail Development, subject to reduction or increase by 6,500 square feet under Section 17						
4	Parks/Public Space: At least 8.2 acres of Parks and 6.42 acres of Public Space						
5	Parking Structures: At least 6,688 parking spaces; and as further detailed in Section 19						
6	Entertainment Center: 380,000 sq.						

	ft. and 16,000 seats, subject to reduction by 800 seats under Section 18						

Provide a concise narrative summary of progress, efforts, and any reductions or changes versus the baseline. Include validation and explanations for reductions. Attach backup documentation as applicable.

Attachments Checklist:

☐ Permits / Approvals (copies)
☐ Updated schedules (Gantt, milestone maps)
☐ Financing documentation (closing, commitments)
☐ Construction photos / inspection reports
☐ Change orders / amendments
☐ Other (specify): _____

Note: Please ensure all data reflects cumulative totals and clearly mark any adjustments or reductions from prior annual reports.

Completed by (Print Name, Title, and Affiliation): _____

Contact Information (Email/Phone): _____

Signature: _____ Date: MM/DD/YYYY

ATTACHMENT 24
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

AFFORDABLE HOUSING STATUS REPORT FORM

Midway Rising Annual Affordable Housing Status Report

The undersigned, _____, as the authorized representative of Midway Rising, LLC, a Delaware limited liability company ("**Master Developer**"), under that certain Disposition and Development Agreement between Master Developer and The City of San Diego, a California municipal corporation ("**City**"), dated as of [**TO BE DETERMINED**] ("**DDA**"), provides all the information in this Annual Affordable Housing Status Report ("**Report**") to City under Section 15.5 of the DDA. All terms indicated to be defined terms by initial capitalization in this Report that are not specifically defined in this Report will have the meanings given to the same terms, respectively, in the DDA. The period covered by this Report is January 1, [**INSERT YEAR**], to December 31, [**INSERT YEAR**] ("**Reporting Period**").

During the Reporting Period:

Number of building permits issued for Construction of Affordable Units: _____

Number of Certificates of Occupancy issued for Affordable Units: _____

Number of Affordable Units occupied by Extremely Low Income Households, as defined in California Health and Safety Code section 50106: _____

- Studios: _____
- One Bedroom: _____
- Two Bedroom: _____
- Three Bedroom: _____

Number of Affordable Units occupied by Very Low Income Households, as defined in California Health and Safety Code section 50105: _____

- Studios: _____
- One Bedroom: _____
- Two Bedroom: _____
- Three Bedroom: _____

Number of Affordable Units occupied by Lower Income Households, as defined in California Health and Safety Code section 50079.5, exceeding the income limit for Very Low Income Households, as defined in California Health and Safety Code section 50105 but not exceeding 60% of AMI: _____

Studios: _____

One Bedroom: _____

Two Bedroom: _____

Three Bedroom: _____

Number of Affordable Units occupied by Lower Income Households, as defined in California Health and Safety Code section 50079.5, with income between 60% and 80% of AMI: _____

Number of Affordable Units reserved for permanent (no limit on length of stay) "supportive housing," as defined in California Health and Safety Code section 50675.2(h), serving the "target population," as defined in California Health and Safety Code section 50675.14(b)(2): _____

Number of vacant Affordable Units: _____

Number of Low Income Households, as defined in California Health and Safety Code section 50079.5, that commenced occupancy of Affordable Units: _____

Average affordability of all Affordable Units in the Development for which a Certificate of Occupancy has been issued: _____

In relation to the planned Construction of Affordable Units during the calendar year immediately following the last day of the Reporting Period:

Number of Studio units forecast to be Constructed: _____

Number of One Bedroom units forecast to be Constructed: _____

Number of Two Bedroom units forecast to be Constructed: _____

Number of Three Bedroom units forecast to be Constructed: _____

Also, attached is a separate document ("**Occupancy Summary**") listing, among other items, the identities of all occupants of each Affordable Unit, the rent paid for each Affordable Unit, the income level of the household occupying each Affordable Unit, income certification forms for each household that moved into an Affordable Unit during the Reporting Period, and the lease terms (a copy of each lease form) for all Affordable Units placed in service during the Reporting Period. The information contained in this Report, including the Occupancy Summary, is certified by the undersigned to be true and accurate under penalty of perjury under the laws of the United States of America and the laws of the State of California.

MASTER DEVELOPER:

Dated: _____

Midway Rising, LLC, a Delaware limited liability company

By: _____
[**TO BE DETERMINED**]

ATTACHMENT 25
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

MONITORING AGREEMENT

[**Attached behind this cover page**]

REPORTING AND MONITORING AGREEMENT

This Reporting and Monitoring Agreement ("Monitoring Agreement") is entered into as of _____, _____, by and among The City of San Diego, a municipal corporation ("City"), the San Diego Housing Commission, a public agency ("Administrator"), and [**TO BE DETERMINED**] ("Participant"), which shall, collectively, be referred to as the "Parties."

RECITALS

A. Participant and City entered into that certain _____ Lease Agreement, dated [**TO BE DETERMINED**] ("Lease"), relating to that certain real property generally located at [**TO BE DETERMINED**], in the City of San Diego, California ("Property"), owned by City. The Lease is incorporated into this Monitoring Agreement by this reference. The term "Lease" as used in this Monitoring Agreement shall mean, refer to and include the Lease, as well as any riders, exhibits, addenda, implementation agreements, amendments, and attachments thereto (which are incorporated by reference into this Monitoring Agreement). Any capitalized term not defined in this Monitoring Agreement shall have the meaning ascribed to such term in the Lease.

B. Pursuant to the terms of the Lease, Participant will undertake the construction of ___ multi-family residential apartments with appropriate landscaping, site improvements, and parking on the Property ("Project"). Upon completion of the Project, ___ of the units will be income restricted rental units at affordable rents ("Affordable Units") and __ units will be unrestricted manager's units.

C. The Lease requires the construction of the Affordable Units and that the Affordable Units be made available to [Low-Income, Very Low-Income, Extremely Low-Income] Households, as specified in the Lease, for the full term of the Lease.

D. City desires to use the staff, skills, and facilities of Administrator to provide monitoring and reporting services for the Project, as regulated by the Lease.

E. The Parties have the capability and the legal right to enter into this Monitoring Agreement.

F. The Parties desire to enter into this Monitoring Agreement to, among other things, provide that (i) Participant shall pay a fee to Administrator in consideration for monitoring the Affordable Units for the period of affordability; and (ii) Administrator will administer and perform all monitoring and reporting requirements on the Project as regulated by the Lease, and provide the reports set forth in Section 7 of this Monitoring Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. Purpose of Agreement

The purpose of this Monitoring Agreement is to provide for the administration of Participant's affordable housing obligations arising under the Lease.

2. Scope of Work

A. Services. In addition to the reporting requirements set forth in Section 7 below, Administrator shall monitor Participant's compliance with the affordable housing requirements of the Project as set forth in the Lease, including, without limitation: (i) compliance with the eligibility criteria for renters of the Affordable Units in accordance with the requirements of the Lease; and (ii) monitoring ongoing compliance with the terms of the Lease as applicable, including an annual certification that the Affordable Units remain occupied, or Available (defined in the Lease) for occupancy, by Qualifying Households (defined in the Lease). City will notify Administrator of any amendments to the governing law or regulations that would affect the affordable housing requirements of the Project as set forth in the Lease.

B. City Rights and Obligations. All rights, obligations, and duties of City under the Lease, not otherwise the subject of this Agreement, shall remain the rights, obligations, and duties of City.

3. Parties to Monitoring Agreement

The Parties to this Monitoring Agreement are City, Administrator, and Participant. In addition to the provision of Section 4.A below, a copy of all formal notices, demands, and communications directed to City shall be given as follows.

City of San Diego
1200 Third Avenue, 14th floor
San Diego, CA 92101
Attention: [**TO BE DETERMINED**]

4. Representatives of the Parties

The representatives of the respective Parties who are authorized to administer this Monitoring Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the City shall be:

City of San Diego
1200 Third Avenue, 14th floor
San Diego, CA 92101
Attention: [**TO BE DETERMINED**]

B. The representative of Administrator shall be:

San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, California 92101
Attention: Monitoring

C. The representative of Participant shall be:

[**TO BE DETERMINED**]

Any Party may designate another representative by providing written notice to the other Parties.

5. Time of Performance

Services under this Monitoring Agreement shall commence as of the date of signature of this Monitoring Agreement by all of the Parties and shall terminate upon the earlier of: (i) expiration or termination of the Lease; or (ii) termination of this Agreement under Sections 12 or 15 below.

6. Monitoring of Administrator by City

City may monitor Administrator's performance of its duties under this Monitoring Agreement. Administrator shall reasonably cooperate with City in connection with such monitoring.

7. Monitoring and Reporting Requirements

A. Administrator Requirements.

(1) Administrator shall determine whether proposed applicants are income eligible to qualify as tenants for the Affordable Units.

(2) Administrator shall monitor the following:

(a) Each Affordable Unit's occupancy by eligible residents;

(b) Each Affordable Unit's Availability for occupancy by eligible residents; and

(b) The period of each Affordable Unit's affordability (the full term of the Lease).

(3) Administrator shall submit to City annual reports of its monitoring activities under this Monitoring Agreement no later than July 31 for the prior fiscal year (July 1 - June 30).

(4) Administrator shall re-certify the household income of tenants annually. Notwithstanding anything to the contrary contained in this Monitoring Agreement, Participant shall not be required to terminate tenancies to the extent it would violate Section 42 of the Internal Revenue Code of 1986, as amended, while such section is applicable to the Project, if such section

is applicable to the Project at all. Participant shall be solely responsible for any eviction of tenants; Administrator shall have no obligation to evict any persons.

B. City Requirements. Annually, upon request from Administrator, provide an updated rent chart based upon the Area Median Income for San Diego County, and applicable laws.

C. Participant Requirements.

(1) Provide complete and accurate information required by Administrator with regard to the affordable housing obligations of Participant contained in the Lease, immediately upon request.

(2) Provide the tenants with a written notice from Participant, one (1) year before the expiration of an affordability restriction.

(3) Participant shall timely pay all fees to Administrator as required by this Monitoring Agreement.

8. Books and Records

A. Complete Books. Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Monitoring Agreement and the Lease. Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Monitoring Agreement and the Lease.

B. Availability. All records prepared in accordance with this Monitoring Agreement shall be made available to City for copying and inspection at any time without notice during normal business hours.

9. Access to Records

A. City shall have full and free access to all books, papers, documents, and records of Administrator and Participant that are pertinent to the obligations of all Parties under this Monitoring Agreement.

B. Administrator shall have full and free access to all books, papers, documents and records of the City and Participant that are pertinent to Administrator's obligations under this Monitoring Agreement.

10. Ownership, Use and Distribution of Documents

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by Administrator or Participant on behalf of City in connection with

services rendered under this Monitoring Agreement, are and shall remain the exclusive property of City.

B. City and Administrator may use and distribute, in each of their sole discretions, any records, reports, books, papers, documents, computer discs or other information prepared by Administrator and/or Participant under this Monitoring Agreement. Such purposes include, but are not limited to, annual reports, reports required by applicable law, and responses to public information requests. City shall identify Administrator as the author of any such reports prepared by Administrator that are distributed by City. Neither City nor Administrator shall be required to secure any prior authorization, written or otherwise, from one another before any such distribution.

C. Upon expiration of this Monitoring Agreement or in the event of termination of this Monitoring Agreement by the City or Administrator as provided in Sections 12 or 15 below, Administrator agrees to provide to City and Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Monitoring Agreement not previously provided to City or Participant.

11. Payment of Compensation

A. Amount. In consideration for the services provided by Administrator with respect to the Affordable Units as referenced in this Monitoring Agreement, Administrator may establish and collect an annual fee ("Annual Monitoring Fee") from Participant for services rendered pursuant to this Monitoring Agreement to monitor and enforce the affordability covenants of the Project contained in the Lease. The Annual Monitoring Fee shall be charged pursuant to the current Monitoring Fee Schedule attached hereto as Exhibit A, which Exhibit is subject to revision annually.

B. Time of Payment. Administrator's right to the Annual Monitoring Fee referenced in Exhibit A shall commence concurrently with the activities referenced in Section 8 above. Participant shall pay to Administrator the Annual Monitoring Fee in accordance with Exhibit A, and as calculated by, Section 11.A above. Participant shall pay such other fees set forth in Exhibit A as required hereunder. Participant's failure to timely pay the initial set up fee, Annual Monitoring Fee or any other fees required hereunder shall constitute a material default under this Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section 12 below or Section 15 below.

C. Administrator Entitled to All Fees. Participant agrees to pay additional fees as necessary to reasonably compensate Administrator in the event Administrator's monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the Lease (see the underlined text only in Exhibit A attached hereto). Participant further agrees that failure to pay all such fees within fifteen (15) business days after receipt of a billing statement for such fees shall constitute a material breach of the covenants and conditions of this Monitoring Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Monitoring Agreement, to terminate this Agreement in accordance with Section 12 below or Section 15 below. In the event that City directs Administrator to take legal steps, including the initiation of litigation, to enforce any provisions of the Lease, then

Administrator shall be entitled to the legal costs and fees and other court costs associated with such enforcement actions, in addition to the fees set forth in this Monitoring Agreement. City shall compensate Administrator for such fees and costs as incurred, and Administrator shall seek reimbursement of such fees and costs in any litigation against the Participant. City may, in lieu of requesting Administrator to enforce any applicable provisions of the Lease, enforce the obligations itself.

12. Default

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel or terminate this Monitoring Agreement upon written notice to all other Parties and maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

13. No Partnership

The Parties are entering into this Monitoring Agreement independently from one another and shall not be deemed officers, officials, agents, partners, or employees of one another.

14. Amendment or Assignment of Agreement

All amendments to this Monitoring Agreement must be in writing and signed with mutual consent of Administrator, City and Participant. This Monitoring Agreement may not be assigned by any Party without the written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

15. Termination

This Monitoring Agreement may be terminated with or without cause by City or Administrator upon thirty (30) calendar days' written prior notice to all other Parties.

16. Complete Agreement

This Monitoring Agreement contains the full and complete agreement between the parties concerning the matters contained in this Monitoring Agreement. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall affect or modify any of the terms and conditions of this Monitoring Agreement.

17. Limitations on Agreement

Notwithstanding anything in this Monitoring Agreement to the contrary, in no event shall the obligations of Participant under this Monitoring Agreement be any greater than the obligations of Participant as the "Tenant" under the Lease. The Parties agree that this Monitoring Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the Lease, nor the enforcement thereof, except as specifically set forth in this Monitoring Agreement. The Parties agree that, except as expressly provided in this

Monitoring Agreement, the provisions of the Lease shall be and remain unmodified and in full force and effect.

18. Counterparts

This Monitoring Agreement may be signed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Monitoring Agreement, which, with all attached signature pages, shall be deemed to be an original Monitoring Agreement.

19. Time of Essence

Time is expressly declared to be of the essence in this Monitoring Agreement, and of each and every provision in which time is an element.

20. Captions

Section or paragraph titles and captions contained in this Monitoring Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Monitoring Agreement.

21. Additional Documents

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Monitoring Agreement or to accomplish its intent.

22. Benefit and Burden

This Monitoring Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Monitoring Agreement is not intended to benefit any person other than the Parties.

23. Governing Law

This Monitoring Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

24. Venue

Any action that may be filed to enforce or interpret the terms of this Monitoring Agreement shall be filed in a court located within the City of San Diego, California.

25. Attorneys' Fees

The prevailing party in any action including, but not limited to, arbitration, a petition for writ of mandate, or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Monitoring Agreement shall be entitled to reasonable attorneys' fees and costs

(including, but not limited to, experts' fees and costs, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

26. Waiver

No breach of any provision of this Monitoring Agreement may be waived unless in writing by all Parties. Waiver of any one breach of any provision of this Monitoring Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Monitoring Agreement.

27. Signing Authority

The representative signing on behalf of each Party to this Monitoring Agreement represents that authority has been obtained to sign on behalf of such Party.

28. Exhibits and Recitals Incorporated

All exhibits referred to in this Monitoring Agreement are incorporated by reference into this Monitoring Agreement, regardless of whether or not the exhibits are actually attached to this Monitoring Agreement. The recitals to this Monitoring Agreement are incorporated by reference into this Monitoring Agreement.

29. Severability of Provisions

If any term or provision of this Monitoring Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party under this Monitoring Agreement, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Monitoring Agreement shall not be affected thereby, and each other term and provision of this Monitoring Agreement shall be valid and enforceable to the fullest extent permitted by law.

30. Successors and Assigns

This Monitoring Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties have signed this Monitoring Agreement as of the dates set opposite their signatures.

CITY:

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Dated: _____

Approved as to form on:

_____.

HEATHER FERBERT
City Attorney

By: _____
[**TO BE DETERMINED**]

ADMINISTRATOR:

SAN DIEGO HOUSING COMMISSION,
a public agency

By: _____
[**TO BE DETERMINED**]

Dated: _____

Approved as to form:

Christensen & Spath LLP

By: _____
Walter F. Spath, III
General Counsel
San Diego Housing Commission

PARTICIPANT:

[**TO BE DETERMINED**], L.P.,
a California limited partnership

By: _____
[**TO BE DETERMINED**]

EXHIBIT A
TO MONITORING AGREEMENT

MONITORING FEE SCHEDULE

The Annual Monitoring Fee is an annual charge to cover costs of monitoring compliance with the Lease. Compliance monitoring includes developing a compliance monitoring plan, computer database program and reporting system for the Project, 1-2 trainings per year and technical assistance provided by Administrator to property Owner/manager and/or representatives.

Annual Monitoring Fee

The Annual Monitoring Fee is [**TO BE DETERMINED**] per monitored unit. The number of monitored units is equal to the total number of units being monitored under the Lease. If the Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports), then Administrator, in its sole discretion, may elect to charge an additional fee based on an hourly rate of [**TO BE DETERMINED**].

Adjustment of Annual Fee

Administrator reserves the right to revise the Annual Monitoring Fee annually based on the Administrator's costs for monitoring functions. In no event shall the monitoring fee decrease.

ATTACHMENT 26
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Midway Rising)

CONTRACTOR PREQUALIFICATION APPLICATION

[**Attached behind this cover page**]

CONTRACTOR PREQUALIFICATION APPLICATION

1. Applicant Information

Name of Company ("Applicant"): _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Address(es), phone and fax number(s) of Applicant facilities located in San Diego County (if different from above):

Street Address: _____

City: _____

County: _____

State: _____

Zip Code: _____

Telephone Number: _____

Fax Number: _____

Type of Business: _____

Type of License: _____

Company Representative for this Application (Name and Title):

_____

2. Applicant Exceptions – Pass / Fail

2.1 If the Applicant takes exception to any portion of the contract terms, the Applicant must identify and explain to the City in writing the basis for the exception. The Applicant must submit any claimed exception within 10 calendar days of the date of Applicant submittal.

3. Project Team and General Qualifications (5 Points Max)

3.1 Describe the proposed management plan for this Applicant's submittal and include all relevant evidence of State licenses. Describe the qualifications of key proposed construction and technical personnel, and subcontractors, from applicable fields including the following:

3.1.1 Civil; and

3.1.2 Environmental.

4. Technical Approach and Design Concept (15 Points Max)

4.1 Describe in detail the proposed design concept for this Project. Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow City and Master Developer to make an informed evaluation of the Applicant's technical approach. The completeness and technical merit of the design concept will be evaluated. The following elements shall be included in this Applicant submittal:

4.1.1 Proposed Design Schedule: Outline the proposed design schedule, including sequencing of each major design component (30%, 60%, 100%, and Final Design) and proposed durations.

4.2 Scope of improvement description and locations.

4.3 Storm Water Pollution Control Best Management Practices.

4.4 Quality Assurance/Quality Control Plan (QA/QC Plan): The Applicant shall submit a QA/QC Plan specifically developed for this project. The Applicant's QA/QC Plan shall comply with City's Quality Assurance/Quality Control Plan Guidelines. The QA/QC Plan shall describe the tools, process, and resources the Applicant will use to ensure that it provides facilities that meet the City's requirements.

4.5 Curb Ramp Design and Installation plan pursuant to the Access Law Compliance Section's Preliminary Engineering Assessment Report and clarification amendment memo regarding changes to the 2020 California Building Code requirements and highlight any modification, if any.

4.6 Permits: the Applicant shall identify what permits are required and what is the proposed plan/timeline to obtain the required permit(s).

5. Construction Plan (20 Points Max)

5.1 Describe the proposed construction plan for this Project, including the following, at a minimum:

5.1.1 Description of relevant phase(s) and lease(s) in which the construction will take place;

5.1.2 Construction approach and methods;

5.1.3 Plan for operation of facility during construction; and

5.1.4 Plan for phasing of construction activities.

5.2 General plan for functional testing and start-up.

5.3 Proposed safety program

5.4 Proposed emergency response plan

5.5 Proposed construction schedule

5.6 Traffic Control Management

5.7 Community Impact

6. Equal Opportunity Contracting Program (20 Points Max)

6.1 Failure to submit the required EOCP information will result in Applicant's submittal being deemed incomplete and Applicant's submittal will be rejected.

6.2 Subcontractor Documentation of EOCP information, if applicable.

7. Financial Viability (30 Points Max)

7.1 Provide financial statements for the past three (3) years of operations.

8. Reference Checks (5 Points Max)

8.1 Three references are required

Reference #1 name:

Reference #1 Company

Reference #1 Phone:

Reference # email:

8.2 Reference #2 name:

Reference #2 Company

Reference #2 Phone:

Reference #2 email:

8.3 Reference #3 name:

Reference #3 Company

Reference #3 Phone:

Reference #3 email: