SECOND AMENDMENT
TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Interim Sports Arena Lease)

This Second Amendment to City of San Diego Percentage Lease ("**Second Amendment**"), is dated as of October 12 , 2026, for reference purposes only, and is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**CITY**"), and MIDWAY RISING VENUE MANAGEMENT, LLC, a Delaware limited liability company ("**LESSEE**"). CITY and LESSEE are sometimes referred to in this Second Amendment, each individually, as a "**Party**" or, collectively, as the "**Parties**." This Second Amendment is entered into by CITY and LESSEE with reference to the following recited facts ("**Recitals**"):

RECITALS

A. CITY and LESSEE entered into that certain City of San Diego Percentage Lease, effective July 27, 2023, corrected by that certain letter agreement between CITY and LESSEE dated September 1, 2023, and that certain First Amendment to City of San Diego Percentage Lease, effective April 21, 2025 (collectively, "**Lease**");

B. CITY and LESSEE enter into this Second Amendment to extend the Term of the Lease;

C. Further, CITY and Midway Rising, LLC, a Delaware limited liability company ("**Midway Rising**"), the sole member of LESSEE, are in the process of negotiating towards a Disposition and Development Agreement ("**DDA**") for redevelopment of the Premises, along with certain other adjacent City-owned real property.

NOW, THEREFORE, CITY AND LESSEE AGREE, AS FOLLOWS:

1. **Section 1.4 Amendment**. Section 1.4 in the Lease is amended to read in its entirety as follows:

1.4 No Modification or Creation of Additional Rights Under ENA. Nothing in this Lease is intended, nor shall be interpreted or construed, to: (a) be evidence of intent by either CITY or Midway Rising to be bound by any terms, conditions, covenants, restrictions or agreements of, or relating to, a future "Definitive Agreement," as defined in that certain Exclusive Negotiation Agreement ("**ENA**") entered into between Midway Rising, LLC, a Delaware limited liability company ("**Midway Rising**"), and CITY on December 5, 2022; (b) be a representation or agreement by either party that a mutually acceptable Definitive Agreement will be agreed upon between CITY and Midway Rising; (c) impose any obligation on either CITY or Midway Rising to agree to a Definitive Agreement in the future; or (d) modify, terminate, or create any additional rights of either CITY or Midway Rising under the ENA. LESSEE acknowledges and agrees that

CITY's potential approval of any Definitive Agreement is subject to the retained and reserved sole and absolute discretion of CITY's City Council and all legally required public hearings, public meetings, notices, factual findings and other determinations and procedures required by law.

2. **Term Extension**. Sections 2.1 and 2.2 in the Lease are amended to read in their entirety as follows:

2.1 Term. Subject to the terms and conditions of this Lease, LESSEE's occupancy of the Premises shall commence (if at all) at 12:00 am on the later of ("**Effective Date**"): (a) August 1, 2024; and (b) the day after the date CITY recovers actual and lawful possession of the Premises from the Existing Tenant and all persons claiming through the Existing Tenant. Following the occurrence of the Effective Date, this Lease shall expire at the earlier of ("**Term**"): (y) 11:59 pm on December 4, 2031; and (z) the "Horizontal Ground Lease Closing" under the DDA, if the DDA is entered into by CITY and Midway Rising. After expiration or termination of this Lease, LESSEE shall cooperate with CITY and any new lessee or operator of the Premises for the orderly transition of all operations on the Premises to CITY or a new lessee or operator, in CITY's sole discretion.

2.2 Lease Year. "Lease Year" means and refers to: (a) the time period starting on the Effective Date and ending on December 4, 2024 ("**First Lease Year**"); and (b) each subsequent twelve (12) month period beginning on December 5 and ending on the immediately following December 4 during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order starting with the First Lease Year and continuing with each subsequent Lease Year being the "Second Lease Year," "Third Lease Year," "Fourth Lease Year," and so on.

3. **Section 4.3 Amendment**. Section 4.3 in the Lease is amended to read in its entirety as follows:

4.3 Minimum Monthly Rent. The "Minimum Monthly Rent" shall be as follows:

First Lease Year:	$64,653.00/ month
Second Lease Year:	$66,592.29/ month
Third Lease Year:	$68,590.36/ month
Fourth Lease Year:	$70,648.07/month
Fifth Lease Year:	$72,767.51/month
Sixth Lease Year:	$74,950.54/month
Seventh Lease Year:	$77,199.05/month
Eighth Lease Year:	$79,515.03/month

4. **Section 4.4 Amendment**. Section 4.4 in the Lease is amended to read in its entirety as

follows:

4.4 Sports Arena Events Revenue. LESSEE will pay a fee to CITY for each paid ticket sold to all non-Tenant Team events (unless such non-Tenant Team event is held by CITY) at the Sports Arena. The "Tenant Teams" as of the Effective Date are: (a) San Diego Gulls (hockey); (b) San Diego Seals (indoor lacrosse); (c) San Diego Sockers (indoor soccer); and (d) San Diego Strike Force (arena football). Ticket fee payments are payable to CITY by LESSEE annually, contemporaneously with delivery of the financial statements for each Lease Year under Section 4.9. The fee payable to CITY for each paid ticket sold to all non-Tenant Team events is:

(a) $2.50 during the First Lease Year; and

(b) $3.00 during the Second Lease Year through the Eighth Lease Year.

5. **Section 9.7 Amendment**. Section 9.7 in the Lease is amended to read in its entirety as follows:

9.7 Improvements/Alterations. No improvements, structures, or installations shall be constructed or installed on the Premises, and the Premises may not be altered by LESSEE without CITY's prior written approval, not to be unreasonably withheld, delayed, or conditioned. CITY approves the repaving of the parking lots on the Premises (subject to LESSEE obtaining all required licenses or permits in connection therewith). LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises other than any expense in connection with any express obligation of CITY to alter or improve the Premises set forth in this Lease (if any). Notwithstanding the foregoing, CITY's prior consent, as lessor, shall not be required with respect to any interior alterations or modifications to the Premises, which cost less than Two Hundred Thousand Dollars ($200,000.00) and are non-structural in nature, as long as LESSEE delivers to CITY advance written notice of the planned work and a copy of all final plans, specifications, and working drawings for such alterations or modifications, to the extent applicable. LESSEE shall construct all improvements in accordance with all federal, state, and local laws, rules, and regulations, including, but not limited to, the California Environmental Quality Act ("**CEQA**") and the Americans with Disabilities Act ("**ADA**").

6. **Section 10.1 Amendment**. Section 10.1 in the Lease is amended to read in its entirety as follows:

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

If to LESSEE:

MIDWAY RISING VENUE MANAGEMENT, LLC

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

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Economic Development/Real Estate
1200 Third Avenue, Suite 1400 (MS 56D)
San Diego, California 92101
(619) 236-670

7. **Exhibit B Deletion**. Exhibit B attached to the Lease is deleted in its entirety.

8. **Confirmation of Agreement**. The Lease, as amended by this Second Amendment, is in all respects confirmed and all the terms, provisions, and conditions of the Lease, as amended by this Second Amendment, shall be and remain in full force and effect.

9. **Incorporation of Recitals.** The Recitals are true and correct and are incorporated into this Second Amendment by this reference, as though fully set forth in this Second Amendment.

10. **Entire Agreement**. The Lease, as amended by this Second Amendment, represents the entire understanding between the Parties as to the subject matter of the Lease, as so amended.

11. **Counterparts**. This Second Amendment may be signed by the respective authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

12. **Interpretation Principles**. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Second Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this Second Amendment, with advice

from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in this Second Amendment may be used in the singular, plural, past tense, or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Second Amendment. The words "include" and "including" in this Second Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this Second Amendment shall 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 Second Amendment, refers to such document, as modified from time to time (excepting any modification that violates the Lease), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Second Amendment 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 in this Second Amendment refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

13. **Governing Law**. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Second Amendment, without application of conflicts of laws principles or statutes.

14. **Binding on Successors and Assigns**. This Second Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

15. **No Other Representations or Warranties**. Except as expressly set forth in this Second Amendment, no Party makes any representation or warranty material to this Second Amendment to any other Party.

16. **Incorporation of Defined Terms.** All terms, phrases, or words indicated to be defined terms by initial capitalization in this Second Amendment that are not specifically defined in this Second Amendment (if any) shall have the meaning ascribed to the same term, phrase, or word in the Lease or the DDA, as applicable.

17. **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 Second Amendment 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.

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

SIGNATURE PAGE
TO
SECOND AMENDMENT TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Interim Sports Arena Lease)

CITY and LESSEE sign and enter into this Second Amendment, by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego, a California municipal corporation

By: _____
Christina Bibler, Director
Economic Development

LESSEE:

Midway Rising Venue Management, LLC, a Delaware limited liability company

By: Austin Richter
Name: Austin Richter
Title: Authorized Signor

APPROVED AS TO FORM
on October 12, 2026 :

HEATHER FERBERT
City Attorney

By: _____
Delmar G. Williams
Deputy City Attorney

FIRST AMENDMENT
TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Interim Sports Arena Lease)

This First Amendment to City of San Diego Percentage Lease ("**First Amendment**"), is dated as of August 26th, 2024 for reference purposes only, and is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and MIDWAY RISING VENUE MANAGEMENT, LLC, a Delaware limited liability company ("**Lessee**"), formerly known as Legends Venue Management SD, LLC, a Delaware limited liability company. City and Lessee are sometimes referred to in this First Amendment, each individually, as a "**Party**" or, collectively, as the "**Parties**." This First Amendment is entered into by City and Lessee with reference to the following recited facts ("**Recitals**"):

RECITALS

A. City and Lessee entered into that certain City of San Diego Percentage Lease, effective July 27, 2023, and corrected by that certain letter agreement between City and Lessee dated September 1, 2023 (collectively, "**Lease**"); and

B. Lessee provided City with a copy of a Certificate of Amendment of Lessee's Formation Certificate filed with the State of Delaware, Secretary of State, stating that effective on August 1, 2023, Lessee changed its name to "Midway Rising Venue Management, LLC."

C. City and Lessee enter into this First Amendment to amend the Lease to reflect the Lessee's new name.

NOW, THEREFORE, CITY AND LESSEE AGREE, AS FOLLOWS:

1. **Lessee Name Change**. City acknowledges Lessee provided City with a copy of a Certificate of Amendment of Lessee's Formation Certificate filed with the State of Delaware, Secretary of State, stating that effective on August 1, 2023, Lessee changed its name to "Midway Rising Venue Management, LLC." The Lease is amended by deleting the name "Legends Venue Management SD, LLC, a Delaware limited liability company" and replacing it with the name "Midway Rising Venue Management, LLC, a Delaware limited liability company" in all instances where the former name appears in the Lease. Lessee's change in entity name did not result in a change in equitable or beneficial ownership or management control of Lessee, and Midway Rising Venue Management, LLC, a Delaware limited liability company, is responsible for the full performance of Lessee's obligations under the Lease and Lessee's compliance with all terms, covenants, conditions, restrictions, and agreements in the Lease from the Agreement Date through the date of expiration or earlier termination of the Lease. If there was a change in ownership of Lessee or there is not a complete transfer of 100% of the assets and liabilities of Legends Venue Management SD, LLC, a Delaware limited liability company, to Midway Rising Venue Management, LLC, a Delaware limited liability company, both companies agree to be jointly and

severally liable for performance of all Lessee's obligations under the Lease and Lessee's compliance with all terms, covenants, conditions, restrictions, and agreements in the Lease.

2. **Confirmation of Agreement**. The Lease, as amended by this First Amendment, is in all respects confirmed and all the terms, provisions, and conditions of the Lease, as amended by this First Amendment, shall be and remain in full force and effect.

3. **Incorporation of Recitals.** The Recitals are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.

4. **Entire Agreement**. The Lease, as amended by this First Amendment, represents the entire understanding between the Parties as to the subject matter of the Lease, as so amended.

5. **Counterparts**. This First Amendment may be signed by the respective authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

6. **Principles of Interpretation**. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in this First Amendment may be used in the singular, plural, past tense, or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First Amendment shall 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 First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the Lease), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

7. **Governing Law**. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this First Amendment, without application of conflicts of laws principles or statutes.

8. **Binding on Successors and Assigns**. This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

9. **No Other Representations or Warranties**. Except as expressly set forth in this First Amendment, no Party makes any representation or warranty material to this First Amendment to any other Party.

10. **Incorporation of Defined Terms.** All terms, phrases, or words indicated to be defined terms by initial capitalization in this First Amendment that are not specifically defined in this First

Amendment (if any) shall have the meaning ascribed to the same term, phrase, or word in the Lease.

11. **Electronic Signatures**. The Parties agree: (a) to deliver and accept signatures on this First Amendment by e-mail, or electronic means (including digital signatures); and (b) that signatures delivered by e-mail, or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

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

SIGNATURE PAGE
TO
FIRST AMENDMENT TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Interim Sports Arena Lease)

City and Lessee sign and enter into this First Amendment, by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego, a California municipal corporation

By: Christina Bibler (Apr 9, 2025 14:17 PDT)
Christina Bibler, Director
Economic Development

LESSEE:

Midway Rising Venue Management, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM
on _____:

Heather Ferbert
City Attorney

By: _____
Delmar G. Williams
Deputy City Attorney

SAN DIEGO CITY ATTORNEY APPROVAL
OF
FIRST AMENDMENT
TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Interim Sports Arena Lease)

Approved as to form on
April 21, 2025 :

HEATHER FERBERT
City Attorney

By: _____
Delmar G. Williams
Senior Deputy City Attorney

The City of SAN DIEGO

Department of Real Estate and Airport Management

September 1, 2023

Mr. Brad Termini
Legends Venue Management SD, LLC
c/o Midway Rising GP, LLC
700 Second Street
Encinitas, CA 92024

Re: Percentage Lease between the City of San Diego and Legends Venue Management, SD, LLC for 3500 Sports Arena Boulevard, San Diego, CA 92110

Dear Brad:

The City of San Diego (City) and Legends Venue Management SD, LLC (Legends) signed a Percentage Lease on July 27, 2023. This letter confirms that following execution of the Lease, an error was noted in Section 4.3 Minimum Monthly Rent of the Lease. This letter shall serve as confirmation that both the City and Legends agree to the modifications shown in strikeout/underline and initialed in Section 4.3 of the Lease and the attached page 9 of the Lease shall prevail.

All other provisions of the Lease remain unchanged.

Acknowledged and agreed:

LEGENDS VENUE MANAGEMENT SD, LLC, a Delaware limited liability company

Date: 9/6/23

By: Brad Termini
Brad Termini (Sep 6, 2023 11:25 PDT)

Name: Brad TErmini
Title: Authorized SIgner

CITY OF SAN DIEGO, a California municipal corporation

Date: September 1, 2023

By: Penny maus
Penny maus (Sep 1, 2023 12:27 PDT)

Name: Penny Maus
Title: Director, Department of Real Estate and Airport Management

1200 Third Avenue, MS 51-A
San Diego, CA 92101
realestate@sandiego.gov

T (619) 236-6020
sandiego.gov

4.3 Minimum Monthly Rent. The "Minimum Monthly Rent" shall be as follows:

First Lease Year:	~~$5,387.75/ month~~	**$64,653.00/month** pm bt
Second Lease Year (if any):	~~$5,549.38/ month~~	**$66,592.29/month** pm bt
Third Lease Year (if any):	~~$5,715.86/ month~~	**$68,590.36/month** pm bt

4.4 Sports Arena Events Revenue. LESSEE will pay a fee to CITY for each paid ticket sold to all non-Tenant Team events (unless such non-Tenant Team event is held by CITY) at the Sports Arena. The "Tenant Teams" as of the Effective Date are: (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 CITY by LESSEE annually, contemporaneously with delivery of the financial statements for each Lease Year under Section 4.9. The fee payable to CITY for each paid ticket sold to all non-Tenant Team events is:

(a) $2.50 during the First Lease Year;

(b) $3.00 during the Second Lease Year (if Term extended); and

(c) $3.00 during the Third Lease Year (if Term extended).

4.5 Percentage Rent. "Percentage Rent" means and refers to the sum of the monetary amounts determined by multiplying the percentages shown in the table below by the amount of Gross Revenue received by LESSEE from the Premises 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

LESSEE shall not permit Parking Lot Usage, Parking Lot Rental, Swap Meet Usage, Naming Rights, or Telecom Usage by third parties, without charging a fair market value rental or usage charge or naming rights fee, as applicable.

If LESSEE requests any use of the Premises in addition to the Allowed Use, CITY and LESSEE shall mutually agree upon the Percentage Rent calculation applicable to such use prior to CITY's approval of such use, subject to City's reserved sole discretion to approve or refuse to approve the requested use.

CITY OF SAN DIEGO
PERCENTAGE LEASE

BY AND BETWEEN

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION

AND

LEGENDS VENUE MANAGEMENT SD, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

CITY OF SAN DIEGO
PERCENTAGE LEASE
(Legends Venue Management SD, LLC)

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and LEGENDS VENUE MANAGEMENT SD, LLC, a Delaware limited liability company ("LESSEE"), as of the date of approval of this Lease by the San Diego City Attorney as shown on the signature page of this Lease ("Agreement Date").

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, CITY and LESSEE agree as follows:

1. PREMISES; USES

1.1 Existing Tenant. LESSEE acknowledges that the Premises are occupied by AEG Management SD, LLC, a Delaware limited liability company ("Existing Tenant"), under an existing lease ("Existing Lease") that is scheduled to expire by its own terms on July 31, 2024. LESSEE further acknowledges that CITY will not be able to deliver possession of the Premises to LESSEE until the Existing Lease expires or terminates and the Existing Tenant (and everyone claiming through the Existing Tenant) vacates the Premises. If the Existing Tenant (or anyone claiming through the Existing Tenant) holds over in the Premises beyond July 31, 2024, CITY shall use reasonable efforts (including commencement and prosecution of summary proceedings) to terminate such holdover tenancy. Notwithstanding anything to contrary contained in this Lease, LESSEE agrees that LESSEE shall have no claim against CITY, and CITY shall have no liability to LESSEE, for any failure or delay to deliver possession of the Premises under the terms of this Lease on any specific date and, except as otherwise provided in this Lease, the validity of this Lease shall not be impaired under such circumstances, nor shall any delay in CITY delivering possession of the Premises to LESSEE extend the Term. If the Existing Tenant does not vacate and surrender possession of the Premises to CITY on or before July 31, 2024, upon CITY's recovery of actual and lawful possession of the Premises, CITY shall provide LESSEE written notice of CITY's recovery of actual and lawful possession of the Premises. Notwithstanding anything in this Lease to the contrary, if CITY is unable to deliver possession of the Premises to LESSEE on or before September 1, 2024, LESSEE shall have the right to terminate this Lease by written notice of termination delivered to CITY on or before September 30, 2024, in which event this Lease shall terminate as of October 1, 2024 and be of no further force or effect, except for the provisions of this Lease that survive termination of this Lease by its terms.

1.2 Leasing. As of the Effective Date (defined in Section 2.1), CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property improved with an indoor sports arena facility commonly known as the "Sports Arena" and currently named "Pechanga Arena San Diego," located at 3500 Sports Arena Boulevard, San Diego, California 92110, generally consisting of an indoor sports

arena, parking lot, and related facilities, all as more particularly described in **Exhibit A: Depiction of the Premises** attached to this Lease ("Premises"). The Premises excludes the marquee sign located at the southerly portion of the real property located at 3500 Sports Arena Boulevard.

1.3 Allowed Uses. LESSEE may use the Premises solely and exclusively to operate, lease, and maintain the Premises to furnish educational, recreational, commercial, and cultural benefits to the community and for related or incidental purposes ("Allowed Use"). Any use other than the Allowed Use requires the prior written approval of CITY in its sole discretion in each instance.

CITY acknowledges the current use of the Premises for, among other things, athletic contests, music concerts and performances, family shows, charity events, exhibitions, conventions, swap meets, and parking related to such events, is an Allowed Use.

1.4 No Modification or Creation of Additional Rights Under ENA. Nothing in this Lease is intended, nor shall be interpreted or construed, to: (a) be evidence of intent by either CITY or Midway Rising to be bound by any terms, conditions, covenants, restrictions or agreements of, or relating to, a future "Definitive Agreement" (as defined in the ENA); (b) be a representation or agreement by either party that a mutually acceptable Definitive Agreement will be agreed upon between CITY and Midway Rising; (c) impose any obligation on either CITY or Midway Rising to agree to a Definitive Agreement in the future; or (d) modify, terminate, or create any additional rights of either CITY or Midway Rising under the ENA. LESSEE acknowledges and agrees that CITY's potential approval of any Definitive Agreement is subject to the retained and reserved sole and absolute discretion of CITY's City Council and all legally required public hearings, public meetings, notices, factual findings and other determinations and procedures required by law.

1.5 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, permits, licenses, easements, and rights-of-way pertaining to the Premises made, entered into, or recorded before the Effective Date. LESSEE shall obtain all consents and approvals from third parties with respect to such superior interests as are required to allow LESSEE's use of the Premises in accordance with this Lease.

1.6 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any person regarding any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals. Failure of the CITY or its City Council to approve any plans or grant any required permits for development or redevelopment of the Premises shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. LESSEE shall obtain and maintain throughout the Term all legally required permits and licenses for the construction of improvements and the operation of its business

on the Premises including, but not limited to, California Coastal Commission permits, building permits, and San Diego County food operator license.

1.7 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of CITY'S Mayor, or his or her designee (collectively, "Mayor"), unless otherwise expressly provided. CITY's discretionary acts under this Lease shall be made in the Mayor's sole discretion, unless otherwise expressly provided.

1.8 Quiet Possession. LESSEE, so long as it is not in default beyond any applicable notice and cure periods under this Lease, shall at all times during the Term of this Lease peaceably and quietly have, hold, and enjoy the Premises.

1.9 Reservation of Rights.

(a) Mineral Rights. CITY reserves all right, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

(b) Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY; provided that CITY shall provide written notice to LESSEE of each such grant, establishment, and use that CITY enters into on or after the Effective Date.

(c) Repairs. CITY may at all reasonable times, upon reasonable advance notice to LESSEE (other than in the event of an emergency, in which case CITY shall notify LESSEE within two (2) business days following such emergency arising), enter the Premises for the purpose of making repairs to or developing municipal water, electrical, sewer, or other utility facilities on or about the Premises.

(d) Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises for the Allowed Use and such non-interference covenant is an express condition to the CITY's exercise of its rights under this Lease, including Sections 1.8, 1.11, 9.5, and 10.21. CITY shall pay all costs in connection with the exercise of these reserved rights.

1.10 Competent Management. LESSEE shall provide competent management of the Premises to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of facilities similar to the Premises and in compliance with all applicable local, state, and federal laws, rules, and regulations, in accordance with generally accepted accounting principles consistently applied and absent fraud.

1.11 Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan or for the adoption or defeat of any ballot measure; however, LESSEE may allow the temporary use of the Premises by third parties for such purposes if such third party is paying fair market rent for such use.

1.12 CITY Use. CITY may, upon reasonable advance notice to LESSEE and subject to availability in LESSEE's sole discretion, use the portions of the Premises that are open to the public during normal hours of operation for civic events and special programs, free of charge. After each such use, CITY shall leave the Premises in the same condition found. Such use by CITY shall be at CITY's sole cost and expense.

1.13 Public Use. The general public shall have access to the portions of the Premises that LESSEE opens to the general public during LESSEE's normal hours of operation. LESSEE shall not wholly or permanently exclude the general public from the portions of the Premises that LESSEE customarily opens to the general public during LESSEE's normal hours of operation. LESSEE may develop reasonable restrictions for the general public's use of such portions of the Premises.

2. TERM

2.1 Term. Subject to the terms and conditions of this Lease, LESSEE's occupancy of the Premises shall commence (if at all) at 12:00 am on the later of ("Effective Date"): (a) August 1, 2024; or (b) the day after the date CITY recovers actual and lawful possession of the Premises from the Existing Tenant and all persons claiming through the Existing Tenant. Following the occurrence of the Effective Date, this Lease shall expire at 11:59 pm on December 4, 2026 ("Term"). The sole member of LESSEE is Midway Rising. The ENA relates to negotiations between CITY and Midway Rising for the long-term ground lease and redevelopment of several City-owned properties, including the Premises. The Parties agree and acknowledge that the Exclusive Negotiation Agreement ("ENA") entered into between Midway Rising, LLC, a Delaware limited liability company ("Midway Rising"), and CITY on December 5, 2022, a copy of which is attached to this Lease as **Exhibit B: Exclusive Negotiation Agreement**, contains obligations and "Milestones" (as defined in the ENA) to be performed or completed by Midway Rising. If Midway Rising fails to perform or complete its obligations or Milestones or an "Event of Default" (as defined in the ENA) by Midway Rising occurs under the ENA, CITY shall have the right to terminate this Lease by providing LESSEE with written notice of termination of this Lease ("Performance Termination"). In the case of a Performance Termination, this Lease shall terminate on a date identified in writing by City, which shall be no sooner than twelve (12) months after such notice of termination is sent to LESSEE. CITY is only entering into this Lease with LESSEE because of its relationship to Midway Rising and the pendency of negotiations between CITY and Midway Rising for the long-term ground lease and redevelopment of several City-owned properties, including the Premises. Therefore, if the Negotiation Period under the ENA is extended by the Mayor beyond the Term, then the Term of this Lease shall automatically be extended to

expire on the date the extended Negotiation Period under the ENA expires or is terminated. After expiration or termination of this Lease, LESSEE shall cooperate with CITY and any new lessee or operator of the Premises for the orderly transition of all operations on the Premises to CITY or a new lessee or operator, in CITY's sole discretion. Also, if the Effective Date occurs on or after expiration or termination of the Negotiation Period under the ENA, this Lease shall be void and of no force or effect without any action by or notice to either CITY or LESSEE. Further, notwithstanding anything to the contrary in this Lease, under no circumstances shall the Term expire later than the third (3rd) anniversary of the Effective Date.

2.2 Lease Year. "First Lease Year" means and refers to the time period starting on the Effective Date and ending on December 4, 2024. If the Term is extended beyond December 4, 2024, under Section 2.1, "Second Lease Year" means and refers to the time period starting on December 5, 2024, and continuing until December 4, 2025. If the Term is extended beyond December 4, 2025, under Section 2.1, "Third Lease Year" means and refers to the time period starting on December 5, 2025, and continuing until December 4, 2026. "Lease Year" means and refers to, individually, the First Lease Year, the Second Lease Year, or the Third Lease Year, as applicable, to the extent such time period is commenced under the terms of this Lease.

2.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect.

2.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances caused by or at the direction of LESSEE unless approved in writing by CITY at the time the lien or encumbrance was created, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall prepare, execute, and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable termination of memorandum of lease with respect to this Lease and the Premises. If LESSEE fails or refuses to prepare, execute, or deliver such termination, CITY may prepare and record a notice reciting LESSEE's failure to prepare, execute, or deliver such termination, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

3. OPERATIONS ON THE PREMISES

3.1 Operation of Facilities. Subject to force majeure events (as defined in Section 3.1 (a) below) and reasonable closure for repair or restoration, LESSEE shall conduct its business and operate the Premises diligently and continuously and without interruption during normal hours of operation during the Term with the intent of reasonably maximizing Gross Revenue (defined in Section 4.2). LESSEE shall

notify CITY in advance if any closure of all or any part of the Premises will continue for more than one week (other than in the event of an emergency, in which case LESSEE shall notify CITY within two (2) business days following such emergency arising). LESSEE shall conduct its business and operate the Premises in conformity with all applicable laws, rules, and regulations. LESSEE shall ensure that the type and quality of all food-handling services furnished by LESSEE, 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.

(a) Force Majeure. For purposes of Section 3.1 of this Lease, "*force majeure event*" shall mean an event beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, and material adverse weather conditions and acts of God, but not including delays attributable to LESSEE obtaining necessary governmental permits and approvals (including building permits or certificates of occupancy). In no event does any force majeure event excuse LESSEE from the obligation to pay any amount of money becoming due under this Lease at any time.

3.2 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. LESSEE shall ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. LESSEE shall 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.

3.3 Restriction on Food Containers. LESSEE and its licensees, contractors, subcontractors, operators, or concessionaires shall not provide to guests, invitees, and/or customers any prepared, takeout or supplied/resale food in polystyrene foam, nor shall LESSEE or LESSEE's licensees, contractors, subcontractors, operators, or concessionaires obtain or keep any such customer food packaging at or on the Premises. LESSEE's and its licensees', contractors', subcontractors', operators', or concessionaires' food packaging for all food shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packaging related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by the LESSEE or LESSEE's licensees, contractors, subcontractors, operators, or concessionaires in lieu of recyclable plastic or recyclable paper, except with the prior written approval of CITY's Environmental Services Department. "Prepared food" means all food or beverages prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverages to be

consumed off the Premises. "Supplied/Resale food" means food or beverages supplied by a third party to the LESSEE or LESSEE's licensees, contractors, subcontractors, operators, or concessionaires for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE and its licensees, contractors, subcontractors, operators or concessionaires shall also limit their distribution of plastic bags to their customers.

3.4 Alcohol. No alcohol or alcoholic beverages may be served on the Premises unless LESSEE or its licensees, contractors, subcontractors, operators, and concessionaires have first obtained all permits and licenses required to serve alcohol at the respective location(s). LESSEE shall provide to CITY a complete copy of all required permits and licenses allowing alcohol to be served on the Premises prior to serving alcohol or alcoholic beverages. LESSEE and its licensees, contractors, subcontractors, operators, and concessionaires shall comply with all terms, conditions and restrictions of serving alcohol on the Premises contained within the required permits and licenses at all times.

(a) LESSEE'S Responsibility. LESSEE shall bear full responsibility for compliance with all alcohol laws and permit conditions whenever LESSEE or its licensees, contractors, subcontractors, operators, or concessionaires obtain permission to serve alcohol on the Premises. All state and local regulations regarding the consumption of alcohol must be followed at all times on the Premises, at LESSEE's sole risk and cost.

3.5 Music. LESSSEE and its licensees, contractors, subcontractors, operators, and concessionaires shall only perform music for which LESSEE (or its licensees, contractors, subcontractors, operators, and concessionaires) 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, LESSEE may contact each Music Licensing Entity. It shall be LESSEE's sole responsibility to ensure it only performs music for which LESSEE (or its licensees, contractors, subcontractors, operators, and concessionaires) has obtained a valid music performance license from each appropriate Music Licensing Entity. LESSEE shall ensure that (1) CITY is named in each license; (2) the Premises is identified in each license; and (3) LESSEE has provided CITY with a fully executed copy of the license before the performance of the subject music.

3.6 Equipment. LESSEE shall furnish all equipment necessary for the operation of the Premises in conformity with this Lease at LESSEE's sole cost and expense.

3.7 Security and Safety of Premises. As between CITY and LESSEE, LESSEE shall bear sole responsibility for the security and safety of the Premises affected by or relating to the Allowed Use during the Term, including for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and

safety. LESSEE shall comply with all applicable laws, rules, regulations, and directives of governmental authorities with jurisdiction over the Premises with respect to the security and safety of the Premises, at LESSEE's sole cost and expense. CITY has no obligation to provide oversight of the Allowed Use or staffing or resources for the Allowed Use at the Premises during the Term.

4. RENT

4.1 Rent. LESSEE shall pay annual rent ("Rent") to CITY in the amount of the greater of: (a) the Percentage Rent (defined in Section 4.5); or (b) the total Minimum Monthly Rent (defined in Section 4.3) for the Lease Year (defined in Section 2.2). Minimum Monthly Rent shall be paid monthly on or before the 30th day of each calendar month during the Term. Any Percentage Rent due for a particular Lease Year in excess of the total Minimum Monthly Rent for that Lease Year will be paid as set forth in Section 4.9.

4.2 Gross Revenue. "Gross Revenue" shall mean all revenue derived by LESSEE from the following sources: (i) subtenants, operators, licensees, or concessionaires on the Premises: (ii) usage of the parking lots on the Premises during Sports 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 Sports Arena events ("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 parties ("Telecom Usage"), and (vi) naming rights of the Sports Arena ("Naming Rights"). Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (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 Revenues; (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 LESSEE's employees; (h) sales of fixtures, equipment, or property which are not stock in trade; (i) gift certificate or like vouchers until such time as the same shall have been converted into a sale by redemption; (j) advertising revenue received for advertising, signage and other marketing materials inside the Premises, excluding trade signage; (k) security deposits; (l) condemnation awards; and (m) insurance proceeds. LESSEE shall clearly indicate the amount attributable each Lease Year to each Gross Revenue exclusion category in its financial statements delivered to CITY under Section 4.9.

4.3 Minimum Monthly Rent. The "Minimum Monthly Rent" shall be as follows:

First Lease Year:	$5,387.75/ month
Second Lease Year (if any):	$5,549.38/ month
Third Lease Year (if any):	$5,715.86/ month

4.4 Sports Arena Events Revenue. LESSEE will pay a fee to CITY for each paid ticket sold to all non-Tenant Team events (unless such non-Tenant Team event is held by CITY) at the Sports Arena. The "Tenant Teams" as of the Effective Date are: (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 CITY by LESSEE annually, contemporaneously with delivery of the financial statements for each Lease Year under Section 4.9. The fee payable to CITY for each paid ticket sold to all non-Tenant Team events is:

(a) $2.50 during the First Lease Year;

(b) $3.00 during the Second Lease Year (if Term extended); and

(c) $3.00 during the Third Lease Year (if Term extended).

4.5 Percentage Rent. "Percentage Rent" means and refers to the sum of the monetary amounts determined by multiplying the percentages shown in the table below by the amount of Gross Revenue received by LESSEE from the Premises 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

LESSEE shall not permit Parking Lot Usage, Parking Lot Rental, Swap Meet Usage, Naming Rights, or Telecom Usage by third parties, without charging a fair market value rental or usage charge or naming rights fee, as applicable.

If LESSEE requests any use of the Premises in addition to the Allowed Use, CITY and LESSEE shall mutually agree upon the Percentage Rent calculation applicable to such use prior to CITY's approval of such use, subject to City's reserved sole discretion to approve or refuse to approve the requested use.

4.6 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not an Allowed Use. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered part of "Rent" under this Lease, and shall be subject to all costs and penalties for delinquent Rent payments under this Lease. The existence of such unauthorized use charge and CITY's acceptance of any gross receipts amounts from an unauthorized use shall not constitute CITY's authorization for the use and shall not waive any of CITY's rights under this Lease.

4.7 Time and Place of Payment. All Rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

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

4.8 Records. LESSEE shall keep or cause to be kept, in all material respects, true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE's business conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine Gross Revenue. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to verify Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a paper or electronic receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

4.9 Financial Statements. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue and the corresponding amount of Rent paid to CITY for the Lease Year. Such statements shall be prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner, managing member, or principal of LESSEE attesting to the fact that such statements present fairly, in all material respects, results of LESSEE's operations at the Premises, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises to the extent relevant to the determination or verification of Gross Revenue. If the total Minimum Monthly Rent paid to CITY by LESSEE during the Lease Year covered by such financial statement is less than the Percentage Rent due to CITY from LESSEE for such Lease Year under this Lease, LESSEE shall pay to CITY the amount by which the Percentage Rent due for the Lease Year exceeds the total Minimum Monthly Rent paid to CITY for the Lease Year contemporaneously with delivery of such financial statement to CITY.

4.10 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation regarding the operation of LESSEE's business conducted on the Premises, throughout the Term and for, at least, five (5) years after the expiration or termination of this Lease ("Audit Term"). LESSEE shall make such books, records, and documentation available for inspection and audit by CITY upon reasonable prior notice in one location within the County of San Diego, California. CITY may, at any time during the Audit Term and without the need for cause, upon reasonable prior notice, conduct an audit of LESSEE's books, statements, documents, records, and financial data to the extent relevant to the determination or verification of Gross Revenue. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease. If required by competent legal authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

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

(a) If an audit reveals an underpayment of Rent of more than five percent (5%) on an annual basis, calculated as the difference between the Rent reported as payable by LESSEE and the Rent payable as determined by the audit absent manifest error; or

(b) LESSEE failed to maintain in all material respects true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

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

4.12 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due and such failure continues for five (5) business days after CITY provides written notice to LESSEE of such failure, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional Rent. If any amount of such payment remains unpaid fifteen (15) days after being due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional Rent. Notwithstanding the foregoing, in no event shall the charge for late payment of Rent be less than Twenty-Five Dollars ($25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY under this Lease are not paid when due after the expiration of all applicable notice and cure periods.

5. ENCUMBRANCES; ASSIGNMENT & SUBLETTING

5.1 Leasehold Encumbrances. LESSEE shall not encumber the Lease, its interest in the Lease, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without the CITY's prior written consent which may be given, withheld, or conditioned in CITY's sole discretion.

5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises without CITY's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned. Any such consent shall not be deemed consent to any subsequent assignment or subletting. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" for the purposes of this section shall include, without limitation, the transfer of any interest in this Lease and a change in control of LESSEE. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract, or otherwise.

5.3 Consent Conditions. Without limiting CITY's discretion to consent or refuse consent to any sublease, as a condition to CITY consenting to any sublease, the sublease must expressly state that it is subject and subordinate to each and every provision of this Lease. CITY approval of any assignment shall be conditioned upon the assignee agreeing in writing that it will assume all the obligations of LESSEE under this Lease arising on or after the date of assignment.

5.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees shall disclose to CITY the names and identities of all natural persons who own more than 10% of LESSEE, each assignee, sublessee, and licensee.

5.5 Additional Consideration to CITY. If this Lease is assigned, or a majority of the Premises are subleased, or this Lease is security for any financing obtained by LESSEE or a subtenant (if allowed), LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; and (b) for majority subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease in excess of Rent due from LESSEE to CITY for the applicable portion of the Premises; and (c) in the case of a loan refinancing, two percent (2%) of the amount of any new loan exceeding the payoff balance of the old loan plus, if applicable, the cost of new permanent improvements constructed on the Premises required or allowed under this Lease. The amount upon which such two percent (2%) payments shall be based shall be the total consideration resulting from the transaction, including, without limitation, all cash payments and the market value of non-cash consideration, including, without limitation, stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE under the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or the refinancing source of the amount due CITY. The additional consideration payable to CITY for each assignment and/or refinancing shall be paid concurrently with the closing of the proposed transaction. For majority subleases, such additional consideration shall be payable to CITY when accrued regardless of

actual receipt by LESSEE. The applicable two percent (2%) payment required by this section shall not apply to:

(a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants of the individual who Controls LESSEE; or

(b) an assignment that is part of a corporate transaction, such as a merger or asset sale, involving LESSEE or any entity that Controls LESSEE.

6. DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following events occurs:

(a) LESSEE fails to make any payment required under this Lease when due and such failure continues for five (5) business days after receipt of written notice from CITY of such failure;

(b) LESSEE does not perform any of its obligations under this Lease when due, other than payment of money, and fails to perform the obligation(s) within thirty (30) days following written notice of the performance failure from CITY, or if not curable within thirty (30) days, fails to commence to perform the obligation(s) within thirty (30) days and diligently perform the obligation(s) to completion;

(c) LESSEE voluntarily files, or involuntarily has filed against it and does not cause such involuntary petition to be dismissed within ninety (90) days after such involuntary petition is filed, any petition under any bankruptcy or insolvency act or law;

(d) LESSEE is adjudicated a bankrupt; or

(e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. If LESSEE defaults under this Lease and does not cure the default within the applicable cure period ("Event of Default"), then CITY shall, at CITY's option, in CITY's sole discretion, have all the following remedies, all cumulative (so exercise of one remedy shall 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:

(a) *Termination of LESSEE's Rights; Conditional Limitation.* CITY may serve upon LESSEE a 15-day Notice of termination of this Lease. Upon the expiration of such 15-day period, this Lease and the Term shall 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 15-day period were the expiration date of the Term. The passage of such 15-day period constitutes the limit beyond which LESSEE's tenancy no longer exists. LESSEE shall then quit and surrender the Premises to CITY in accordance with this Lease but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this Section 6.2(a). This Section 6.2(a) is intended to establish a conditional limitation and not a condition subsequent.

(b) *Recovery of Damages Following Termination.* If LESSEE's right to possession of the Premises is terminated by CITY following the occurrence of an Event of Default, this Lease shall also terminate on the date on which LESSEE's right to possession of the Premises terminates. Upon any such termination of this Lease, CITY may recover from LESSEE:

(i) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(ii) 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 LESSEE proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that LESSEE proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(v) The "worth at the time of award" of the amounts referred to in Sections 6.2(b) and 6.2(b)(i) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 6.2(b)(ii) 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%).

(c) *Taking Possession.* CITY may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove LESSEE, 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 6.2(c) is intended to constitute an express right of re-entry in favor of CITY. No re-entry by CITY, whether had or taken under summary proceedings or otherwise, shall absolve or discharge LESSEE 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 CITY, CITY may, at any time and from time to time, in CITY's sole discretion, relet all or any portion of the Premises. CITY may, in CITY's sole discretion, eject all persons or eject some and not others or eject none. Any reletting of the Premises by CITY may be for the remainder of the Term or for a longer or shorter period. CITY may enter into any leases made under this Section 6.2(c) in CITY's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. LESSEE shall nevertheless pay to CITY on the due dates specified in this Lease the equivalent of all sums required of LESSEE under this Lease, plus CITY's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of CITY under this Section 6.2(c) shall constitute a termination of this Lease unless CITY gives LESSEE written notice of termination of this Lease.

(d) *Suits Before Expiration Date.* CITY may sue for damages or to recover Rent, from time to time, in CITY's sole discretion.

(e) *Damages.* CITY may recover from LESSEE all damages CITY incurs because of LESSEE's default, including reasonable costs of recovering possession, reletting the Premises, all other damages legally recoverable by CITY, and reimbursement of CITY's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. CITY may recover such damages at any time after LESSEE's default, including after the expiration or termination of this Lease. Notwithstanding any law to the contrary, CITY need not commence separate actions to enforce LESSEE's obligations for each Lease Year's Rent not paid or each Lease Year's accrual of damages for LESSEE's default but may bring and prosecute a single combined action for all such Rent or damages.

(f) *Continue Lease.* CITY may, in CITY's sole discretion, maintain LESSEE's right to possession of the Premises. CITY has the remedy described in California Civil Code section 1951.4 (CITY may continue this Lease in effect after LESSEE's breach and abandonment and recover Rent as it becomes due, if LESSEE has the right to sublet or assign, subject only to reasonable limitations). If CITY elects to maintain LESSEE's right to possession of the Premises after an Event of Default, this Lease shall continue and CITY may continue to enforce it, including the right to collect Rent when due and all remedies for non-payment of Rent. LESSEE acknowledges and agrees that the standards and conditions of this Lease regarding LESSEE's right to assign this Lease or sublease the Premises are reasonable.

(g) *Injunction of Breaches.* Whether or not a default or Event of Default has occurred, CITY may obtain a court order enjoining LESSEE from continuing any default or from committing any threatened default. LESSEE specifically and expressly acknowledges that damages do not constitute an adequate remedy for a non-monetary default.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease contemporaneously with written notice of LESSEE's default under this Lease being provided to LESSEE, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options following the expiration of all applicable notice and cure periods:

(a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the Rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;

(b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

(c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or premiums required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

Any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself as LESSEE under this Lease by written notice to CITY within thirty (30) days after receiving CITY's written notice of default and concurrently curing the default.

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises for a period of 10 consecutive days (provided that inability to operate the Premises due to a force majeure event or repair or restoration is not abandonment), this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover Rent as it becomes due, plus damages recoverable at law.

6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless

in writing and signed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any Rent shall not be a waiver of any default. LESSEE acknowledges that the Premises are a part of publicly owned property held in trust for the benefit of the citizens of CITY, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall, at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of Rent shall not constitute a waiver of the balance of the Rent payment due.

6.6 Default by CITY. If CITY shall fail to perform any obligation under this Lease and such failure shall continue for thirty (30) days after written notice from LESSEE (or if such failure cannot be reasonably expected to be cured within such thirty (30) day period, CITY shall within such thirty (30) day period fail to promptly commence to cure such default and thereafter prosecute the curing of such default to completion within a reasonable time), then LESSEE will have the right to immediately terminate this Lease by written notice to CITY, in addition to pursuing any other remedies available at law or in equity.

7. EMINENT DOMAIN

7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any person with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:

(a) Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

(b) Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is unsuitable for the Allowed Use, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

(c) Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises are suitable for the Allowed Use, this Lease shall terminate in regard to the portion of the Premises taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion of the Premises not taken. The Rent shall be equitably reduced to reflect reduction in the size of the Premises by the size

of the portion of the Premises taken, but only to the extent that LESSEE's operations are reduced or impaired.

(d) Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided that, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's interest in improvements to the Premises made by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

(e) Transfer. CITY has the right to transfer CITY's interest in the Premises in lieu of condemnation to any person entitled to exercise the power of eminent domain to acquire the Premises. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements made by LESSEE to the Premises in accordance with this Lease.

(f) No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

8. INDEMNITY; HOLD HARMLESS; INSURANCE

8.1 LESSEE Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Lease or out of the presence of asbestos in the Premises, and all expenses of investigating and defending against same, including, without limitation, reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability to the extent arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives, and agents. CITY may, at its election, participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification because CITY reasonably concludes that there are legal defenses available to it that are different or in addition to those available to LESSEE or there is otherwise a conflict of interest, LESSEE shall pay all costs related thereto, including, without limitation, reasonable attorney fees and costs.

8.2 Insurance. LESSEE shall not begin any work under this Lease until it has: (a) obtained, and upon the CITY's request provided to the CITY, insurance certificates reflecting evidence of all insurance required in Section 8.3; and (b) obtained CITY approval of each insurance company or companies in

accordance with Section 8.5. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease, and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by the CITY. LESSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Lease.

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

(a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 04 13 or an equivalent form providing coverage at least as broad which shall cover liability, including Liquor Liability, arising from any and all personal injury or property damage in the amount of Five Million Dollars ($5,000,000) per occurrence and subject to an annual aggregate of Fifteen Million Dollars ($15,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. The required limits may be satisfied through a combination of CGL and umbrella excess liability policies.

(b) Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired, and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars ($1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

(c) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Use of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Department of Real Estate and Airport Management.

(d) Workers' Compensation. To the extent required by applicable state or federal law, LESSEE shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars ($1,000,000) of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.

(e) Cyber Liability Insurance. LESSEE shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than $1,000,000 for each occurrence and an annual aggregate of $2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to LESSEE and for claims involving any professional services for which LESSEE's contractor is engaged with LESSEE for such length of time as necessary to cover any and all claims.

(f) Crime Insurance. LESSEE shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars ($25,000.00) per employee or one hundred thousand dollars ($100,000.00) blanket limit. This coverage shall protect against loss by the theft or mysterious disappearance of property by any of LESSEE's employees or third parties while the Premises are in the care, custody, or control of LESSEE resulting directly or indirectly from the performance or execution of the Lease, and a contract or subcontract thereunder.

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

8.5 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

8.6 Accident Reports. LESSEE shall report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses within a reasonable time following such accident. Such report shall contain, to the extent available to LESSEE, the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photographs or video, if any, and other pertinent information.

8.7 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.

8.8 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

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

Commercial General Liability Insurance Endorsements:

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

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

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

Automobile Liability Insurance Endorsements:

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

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

Worker's Compensation Insurance Endorsements:

(vi) WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by LESSEE for CITY.

9. IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

9.1 Waste. LESSEE shall not commit, and shall use commercially reasonable efforts to not allow any third party to commit, any voluntary physical waste or any public or private nuisance on the Premises. If the Premises are damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises, at LESSEE's sole cost and expense, to its prior condition within a reasonable time and to CITY's reasonable satisfaction; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the proceeds from the insurance required by this Lease. LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage.

9.2 Acceptance of Premises. CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and has no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition of the Premises. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises as of the Agreement Date, including the presence of any Hazardous Substances, as defined in this Lease, on the Premises. LESSEE acknowledges and agrees that unless expressly set forth in this Lease, CITY has no obligation to improve, modify, repair, replace, alter, remediate, or otherwise develop the Premises at any time either prior to, on, or after the Agreement Date.

9.3 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915.

9.4 Asbestos. If LESSEE makes improvements, alterations, or repairs to the Premises, LESSEE shall be responsible for all asbestos removal, management, or containment that is required by applicable law in connection with such improvement, alteration, or repair, and shall pay all costs associated with such work. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled.

9.5 Entry and Inspection. Upon reasonable prior notice to LESSEE (except in the event of an emergency, in which case no prior notice shall be required), CITY reserves and shall always have the right, but not the obligation, to enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's Allowed Use of the Premises.

(a) Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a decent, safe, and sanitary condition, CITY shall have the right, but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is deemed by CITY in its reasonable discretion to be necessary, and all at LESSEE's sole cost and expense, to keep the Premises in a decent, safe, and sanitary condition. LESSEE shall promptly pay CITY for all costs incurred for such work following receipt of an invoice for the costs of such work (together with reasonable backup documentation).

9.6 Maintenance. Except for maintenance or repairs of the Premises required due to the negligence or willful misconduct of CITY or any of its employees, contractors, or agents occurring after the Effective Date, all maintenance and repairs of the Premises shall be the responsibility of LESSEE throughout the entire Term of this Lease without expense to CITY. Maintenance and repairs shall include, but not be limited to, the roof, heating and air conditioning, plumbing, electrical, and the parking lot. LESSEE shall maintain the Premises and all improvements, fixtures, equipment, and installations thereon in a clean, safe, and well-maintained condition throughout the Term of this Lease, and in compliance with all applicable laws. All maintenance and repairs of the Premises required due to the negligence or willful misconduct of CITY or any of its employees, contractors, or agents occurring after the Effective Date, shall be the responsibility of CITY without expense to LESSEE.

(a) Parking Lot Repair. LESSEE agrees to repair and/or replace portions of and repave the entire parking lot of the Premises by the end of the Second Lease Year.

9.7 Improvements/Alterations. LESSEE shall spend, at least, One Million Dollars ($1,000,000) on capital improvements to the Premises during the first thirty (30) months after the Effective Date. If the Term is less than thirty (30) months, the required expenditure amount will be prorated. No improvements, structures, or installations shall be constructed or installed on the Premises, and the Premises may

not be altered by LESSEE without CITY's prior written approval, not to be unreasonably withheld, delayed, or conditioned. CITY approves the repaving of the parking lots on the Premises (subject to LESSEE obtaining all required licenses or permits in connection therewith). LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises other than any expense in connection with any express obligation to alter or improve the Premises set forth in this Lease. Notwithstanding the foregoing, CITY's prior consent, as lessor, shall not be required with respect to any interior alterations or modifications to the Premises, which cost less than Two Hundred Thousand Dollars ($200,000.00) and are non-structural in nature, as long as LESSEE delivers to CITY advance written notice of the planned work and a copy of any final plans, specifications, and working drawings for any such alterations or modifications, to the extent applicable. LESSEE shall construct all improvements in accordance with all federal, state, and local laws, rules, and regulations, including, but not limited to, the California Environmental Quality Act ("CEQA") and the Americans with Disabilities Act ("ADA").

9.8 Utilities. LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground. Sub-metering shall be used for proper billing of utilities.

9.9 Construction Bond. If LESSEE develops or constructs improvements on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed, and the Premises restored to a condition satisfactory to CITY.

9.10 Payment Bond. Prior to the commencement of any work on the Premises, to the extent required by applicable law, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550 - 9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure sections 995.610 - 995.675, that is authorized by the State of California Department of Insurance to transact surety insurance in the State of California. LESSEE shall maintain the bond in full force and effect until CITY authorizes release of the bond, after receiving satisfactory

documentary evidence that all claims for materials, services, and labor related to the improvements are paid, including, without limitation, appropriate lien releases. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.

9.11 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises by or at the direction of LESSEE and the costs of defending against such claims, including, without limitation, reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the filing within five (5) days after LESSEE first becomes aware of the existence of the filing, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

9.12 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Lease is subject to State prevailing wage laws. For any construction project performed by or at the direction of LESSEE under this Lease cumulatively exceeding $25,000 and for alteration, demolition, repair, and maintenance work performed by or at the direction of LESSEE under this Lease cumulatively exceeding $15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

(a) Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(i) Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages may also be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. LESSEE, its contractors, and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

(ii) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be

in effect for the Term of this Lease. 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 the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. 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 of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the Term of this Lease, such wage rate shall apply to the balance of the Lease.

(b) Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

(c) Payroll Records. LESSEE, its contractors, and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE, its contractors, and its subcontractors shall comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with contractors or subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, LESSEE, its contractors, and its subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. LESSEE is responsible for ensuring that each of its contractors and subcontractors submits certified payroll records to CITY, the Labor Commissioner and DIR.

(d) Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6, and 1777.7.

(e) Working Hours. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts 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) specify penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

(f) Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

(g) Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies 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 Lease."

(h) Contractor and Subcontractor Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in California prevailing wage law, unless currently registered and qualified to perform the work pursuant to 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 Business and Professions Code or by section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded."

(i) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a the Request for Proposals related to this Lease shall not be grounds for filing a protest or grounds for considering the proposal non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to the proposal due date identified in the Request for Proposals related to this Lease; (2) within twenty-four hours after the proposal due date, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

(ii) A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to

cancellation, provided that a contract for public work shall 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 section 1725.5 of this section.

(iii) By entering into this Lease, LESSEE is certifying that it has verified or will verify that its subcontractors used on work subject to California prevailing wage law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such registration to CITY.

(i) Filing of Form PWC-100. LESSEE shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by California prevailing wage law, and concurrently deliver a copy of such filed form to CITY.

(j) Filing of Notice of Completion. LESSEE shall 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 such recorded notice of completion to CITY.

(k) Stop Order. For LESSEE, its contractors or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

(l) List of all Subcontractors. CITY may ask LESSEE for the most current list of contractors and subcontractors (regardless of tier), along with their DIR registration numbers, utilized pursuant to this Lease at any time during the Term, and LESSEE shall provide the list within ten (10) working days of CITY's written request in accordance with Labor Code section 1776.

(m) Indemnification for Nonpayment of Prevailing Wages. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages by any person, including without limitation any damages, fees, and penalties claimed or assessed by the State of California - Director of Industrial Relations, which arise out of or are in any manner directly or indirectly connected with LESSEE's, its contractors', subcontractors', or other applicable parties' decision(s) to not pay prevailing wages for activities performed under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

(n) Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of $25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et seq. The only recognized exemptions are listed below:

(i) Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1.)

(ii) List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required above. (Labor Code section 1773.3.)

9.13 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices, or advertising without CITY's prior written consent, which will not be unreasonably withheld, delayed, or conditioned; provided that signs on the interior of the Premises that are not visible from the exterior of the Premises shall not require CITY's consent. CITY consents to all existing signs visible from the exterior of the Premises as of the Agreement Date, which are as follows: signage displaying the name of the Sports Arena and a large banner for each Tenant Team. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within five (5) business days after receipt of written notice from CITY, or CITY may thereafter remove the item at LESSEE's cost.

9.14 Ownership of Improvements and Personal Property.

(a) Improvements. During the Term, LESSEE shall own all improvements, fixtures, structures, installations, and additions constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, installations, and additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at the time CITY's consent to such improvement, fixture, structure, installation, or addition was requested, elect to have part or all of such improvement, fixture, structure, installation or addition removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice before the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage (ordinary wear and tear excepted) resulting from the removal of such items. If LESSEE fails to remove the items as required by this Lease, CITY may, at its option, remove them at LESSEE's sole cost and expense.

(b) Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property from the Premises prior to the expiration or termination of the Term. Any

such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens of LESSEE, or CITY may, at its option, remove and dispose of such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage (ordinary wear and tear excepted) resulting from the removal of its personal property from the Premises.

(c) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration of this Lease, LESSEE shall notify CITY at least one hundred twenty (120) days before the expiration of this Lease of its desire to dispose of such personal property. CITY shall have the right, exercisable within thirty (30) days after receipt of notice from LESSEE, to notify LESSEE in writing of its intent to acquire some or all of such personal property (if such personal property is less than all of such personal property, specifically identify such personal property) for the applicable then-unamortized value and, upon the expiration of this Lease, CITY shall purchase all such personal property for such value pursuant to a customary bill of sale. If CITY purchases any such personal property in accordance with this Section 9.15(c), LESSEE may leave all such personal property in place on the Premises upon the expiration of this Lease.

9.15 Permits and Approvals. Prior to commencing any construction or improvements on the Premises, LESSEE shall (1) submit development plans and all documents required by all required governmental authorities and (2) secure all required permits and approvals from all required governmental authorities for all planned construction and improvements, including, without limitation, final review pursuant to CEQA.

9.16 Contractor Requirements. All construction work performed by or at the direction of LESSEE shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to written contracts with such contractors. LESSEE shall require all contractors and subcontractors to maintain their license in an active status and in good standing for the term of any contract related to work subject to this Lease. CITY shall have the right to demand production of and to inspect each contractor's or subcontractor's license, and LESSEE agrees to produce said documentation within two (2) business days of such a request. LESSEE shall notify CITY within two (2) business days after it becomes aware that a contractor or subcontractor is unlicensed, or that said license has been suspended or revoked, and LESSEE will not allow said contactor or subcontractor to enter onto the Premises or perform work subject to the Lease until LESSEE has demonstrated to CITY's satisfaction that the license is active and in good standing.

10. GENERAL PROVISIONS

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

If to LESSEE:

LEGENDS VENUE MANAGEMENT SD, LLC
Attention: General Counsel
61 Broadway, Suite 2400
New York, NY 10006
Email: LegalNotices@legends.net

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Department of Real Estate & Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration, and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of governmental authorities at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise reasonably available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises) following CITY's written request. In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation. CITY shall comply with all applicable laws, rules, regulations, and requirements of other applicable governmental authorities (if any) at CITY's sole cost and expense in connection with exercising its rights and performing its obligations under this Lease.

10.3 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal or State of California and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender identity, gender expression, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all

subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

10.4 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

10.5 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use, and occupancy thereof, comply with the California Government Code Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); California Building Code (CBC) Title 24; and any other applicable State of California or federal laws and regulations hereafter enacted protecting the rights of people with disabilities. When a conflict exists between any federal or State of California accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance shall include but not necessarily be limited to the following:

(a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

(b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

(c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the Premises.

(d) Where required by law, any improvements, fixtures, structures, or installations on the Premises shall comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

(i) LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

(ii) LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

10.6 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp). Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

10.7 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

(a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace;

(ii) LESSEE's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

10.8 CITY Employee Participation Policy. CITY may terminate this Lease if LESSEE knowingly employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on the selection of LESSEE for this Lease, and LESSEE does not terminate such individual promptly following written notice from CITY. It is not the intent of this policy that these provisions apply to members of the City Council.

10.9 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use commercially reasonable efforts to hire qualified local residents and firms whenever practicable.

10.10 Water Quality Assurances. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312). Therefore, LESSEE shall implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a).

10.11 Stormwater Best Management Practices. LESSEE shall, at its own cost and expense, comply with Part 2 of the current City of San Diego Storm Water Standards Manual, Section 1000 and 1001 of the City Supplement to Standard Specifications for Public Works Construction (The Whitebook), and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing or delivering services at the Premises.

(a) LESSEE shall comply with the current CITY's Jurisdictional Runoff Management Plan encompassing city-wide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries.

(b) LESSEE shall comply with the Storm Water Pollution Prevention Plan for the Premises, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment. It is important that any dry-weather controls put in place are removed prior to a rain event to eliminate the chance for clogging the storm drain system. After a rain event, all controls must be reinstalled, refreshed, and maintained by LESSEE, if necessary.

The current City's Storm Water Standards Manual and other reference material can be found at: https://www.sandiego.gov/planning/programs/landdevcode/landdevmanual#SWstandards2018 .

10.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, that LESSEE or any person claiming under or through LESSEE shall not establish or cause 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 tenants, subtenants, or vendees in the Premises.

10.13 Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.

10.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.

10.15 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, fiduciary, or other affiliation between CITY and LESSEE or between CITY or LESSEE and any third party, or cause CITY or LESSEE to be responsible in any way for the debts or obligations of the other or any third party.

10.16 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to LESSEE's occupancy, use, maintenance, or improvement of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties to this Lease. Each party has relied solely on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants expressly stated in this Lease. Each of the parties to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever material to this Lease that is not expressly stated in this Lease.

10.17 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

10.18 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including, without limitation, taxes upon licenses and permits, and taxes upon the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest

subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE alone shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees, and assessments shall not reduce any Rent due to CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from this Lease or LESSEE's possession, use, or occupancy of the Premises.

10.19 Environmental Conditions. LESSEE shall not cause or permit any Environmental Condition (defined in Section 10.19(e)(i)). If LESSEE discovers or becomes aware of an Environmental Condition, LESSEE shall notify CITY of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the LESSEE becoming aware of such Environmental Condition.

(a) *Remediation.* If an Environmental Condition occurs, LESSEE shall 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 LESSEE's sole cost and expense. If LESSEE knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, LESSEE shall take all actions necessary to alleviate the imminent danger, at LESSEE's sole cost and expense.

(b) *Removal.* If one or more of the LESSEE Parties stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Premises in accordance with law, LESSEE shall remove all such Hazardous Substances from the Premises prior to the end of the Term and provide CITY with documentation demonstrating the legal removal and disposal of the Hazardous Substances. LESSEE shall be responsible for all costs incurred by CITY to remove or dispose of any Hazardous Substances not removed from the Premises by LESSEE in accordance with this Section 10.19(b).

(c) *Reports.* LESSEE shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to CITY within three (3) days after notifying CITY of the Environmental Condition. LESSEE shall also submit all required reports relating to the Environmental Condition to other government entities as required by law.

(d) *Environmental Assessment.* Upon reasonable cause to believe that an Environmental Condition has occurred, CITY may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at LESSEE's sole cost and expense. LESSEE shall reimburse CITY for all costs and expenses reasonably incurred by CITY in performing the environmental assessment within fifteen (15) calendar days after notice to LESSEE of the amount of such costs and expenses. Any amount reimbursable to CITY by LESSEE

under this Section 10.19(d) that is not paid within fifteen (15) calendar days after notice to LESSEE of such amount, shall accrue interest at the rate of 7% annually until paid.

(e) *Definitions.*

(i) **Environmental Condition.** Any of the following events relating to the Premises and arising from LESSEE's use of the Premises, any action by LESSEE, its employees, agents, contractors, guests, or invitees, or any failure to act by LESSEE, its employees, agents, contractors, guests, or invitees, where there was a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

(ii) **Environmental Law.** All federal, State of California, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements now in effect or enacted after the Agreement Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Premises or relating to LESSEE's use of the Premises); (c) occupational or environmental conditions on, under or about the Premises or relating to LESSEE's use of the Premises; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

(iii) **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State of California to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated under any law, any matter, waste, or substance subject to any law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

(iv) **Hazardous Substance Discharge.** Any 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, or arising at any time from activities conducted at, on, under, or from the Premises, whether or not caused by CITY or LESSEE.

10.22 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period

equal to the period of the prevention or delay. This provision shall not apply to obligations to pay Rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

10.23 Authority to Contract. Each party represents and warrants that the individual executing this Lease on its behalf is authorized to do so in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such party's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such party in accordance with its terms (subject to creditors rights and equitable principles). LESSEE represents and warrants it is a duly formed limited liability company in good standing in Delaware and qualified to do business in California.

10.24 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions of such laws. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

10.25 Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

(a) LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

(b) Notice Requirement. LESSEE must post a notice at the Premises informing its employees of their rights under the Equal Pay Ordinance.

10.26 Single Use Plastic Reduction Ordinance. Unless an exception applies, LESSEE will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term unless an exception applies.

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

10.29 Successors. Each term, covenant, and condition of this Lease shall inure to the benefit of and bind the successors and assigns of the respective parties.

10.30 Noise Disturbances: LESSEE shall not use the Premises in any manner that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).

10.31 Living Wages. This Lease is subject to the City's Living Wage Ordinance (LWO), codified in San Diego Municipal Code Chapter 2, Article 2, Division 42. LESSEE shall require all of its contractors, sublessees, operators, licensees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

(a) Payment of Living Wages. Pursuant to San Diego Municipal Code section 22.4220(a), LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires shall ensure that all workers who perform work under this Lease are paid not less than the required minimum hourly wage rates and health benefits rate unless an exemption applies.

(i) Copies of such living wage rates are available on the City website at https://www.sandiego.gov/purchasing/programs/livingwage/. LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires shall post a notice informing workers of their rights at each job site or a site frequently accessed by covered employees in a prominent and accessible place in accordance with San Diego Municipal Code section 22.4225(e).

(ii) LWO wage and health benefit rates are adjusted annually in accordance with San Diego Municipal Code section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year.

(b) Compensated Leave. Pursuant to San Diego Municipal Code section 22.4220(c), LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires shall provide a minimum of eighty (80) hours per year of compensated leave. Part-time employees must accrue compensated leave at a rate proportional to full-time employees.

(c) Uncompensated Leave. LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires must also permit workers to take a minimum of eighty (80) hours of uncompensated leave per year to be used for the illness of the worker or a member of his or her immediate family when the worker has exhausted all accrued compensated leave.

(d) Enforcement and Remedies. CITY will take any one or more of the actions listed in San Diego Municipal Code section 22.4230 should LESSEE or its contractors, subcontractors, sublessees, operators, licensees and concessionaires be found to be in violation of any of the provisions of the LWO.

(e) Payroll Records. LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors, subcontractors, sublessees, operators, licensees and concessionaires submit certified payroll records to the CITY.

(f) Certification of Compliance. San Diego Municipal Code section 22.4225 requires LESSEE to fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of the Effective Date. Each contractor, subcontractor, sublessee, operator, licensee and concessionaire must fill out and file a living wage certification with the Living Wage Program Manager within thirty (30) days of contracting for the work or services at the Premises.

(g) Annual Compliance Report. LESSEE and its contractors, subcontractors, sublessees, operators, licensees and concessionaires must file an annual report documenting compliance with the LWO pursuant to San Diego Municipal Code section 22.4225(d). Records documenting compliance must be maintained for a minimum of three (3) years after the City's final payment on the service contract or agreement.

(h) Exemption from Living Wage Ordinance. Pursuant to San Diego Municipal Code section 22.4215, this Lease may be exempt from the LWO. For a determination on this exemption, LESSEE must complete the Living Wage Ordinance Application for Exemption.

10.33 Highest Wage Rate Applies. LESSEE is required to pay the highest applicable wage rate where more than one wage rate applies.

10.34 Hours of Operation. A regular schedule of days and hours of operation shall be established by LESSEE. The schedule shall be subject to prior approval by the CITY, such approval not to be unreasonably withheld, conditioned, or delayed. Notwithstanding such schedule, LESSEE will have the right to operate outside of such schedule as necessary in connection with special events and other activities in the reasonable discretion of LESSEE and without CITY's prior approval.

10.35 Rate of Charges. All prices of merchandise, equipment, and services in LESSEE's control shall be comparable with the prices of like merchandise, equipment, and services offered in the San Diego County area. If no other similar venues are found within San Diego County, comparables from other geographic regions can be used to determine pricing.

10.36 LESSEE's Risk. Except as otherwise set forth in this Lease and except for such risks and liability arising from the gross negligence or willful misconduct of CITY or any of its employees, contractors, or agents, as between CITY and LESSEE,

LESSEE shall bear all risks and liability arising out of LESSEE's use or occupancy of the Premises.

10.37 Liability for Contractors, Etc. Wherever in this Lease LESSEE has an obligation to cause, or otherwise is responsible for, any act or failure to act by any of LESSEE's contractors, subcontractors, licensees, operators, concessionaires, or any other third parties (each, a "Third Party"), LESSEE shall have satisfied such obligation if LESSEE (i) shall have required such Third Party to take or refrain from such action in the applicable contract between LESSEE and such Third Party (each, a "Required Provision") and (ii) is reasonably enforcing or shall have reasonably enforced such contract if LESSEE becomes aware of any default under any Required Provision by any Third Party.

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

SIGNATURE PAGE
TO
CITY OF SAN DIEGO PERCENTAGE LEASE
(Legends Venue Management SD, LLC)

IN WITNESS WHEREOF, this Lease is signed and entered into as of the Agreement Date.

Date: 7/27/23

LEGENDS VENUE MANAGEMENT SD, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 7-27-23 By: _____
Penny Maus, Director
Department of Real Estate and Airport Management

Approved as to form on July 27, *2023:*

MARA W. ELLIOTT, CITY ATTORNEY

By: Kevin Reisch /for
Delmar G. Williams
Deputy City Attorney

Exhibit A: <u>Depiction of the Premises</u>



Exhibit B : Exclusive Negotiation Agreement

EXCLUSIVE NEGOTIATION AGREEMENT ORIGINAL

Midway Redevelopment

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into by and between The City of San Diego, a municipal corporation ("City") and Midway Rising, LLC, a Delaware limited liability company ("Developer"), as of the date this Agreement is approved as to form by the San Diego City Attorney as shown on the signature page to this Agreement ("Effective Date"). City and Developer (each, individually, a "Party" and, collectively, the "Parties") enter into this Agreement with reference to the following recited facts:

RECITALS

A. City owns several parcels of real property located at 3500, 3250, 3220 and 3240 Sports Arena Boulevard in the Midway-Pacific Highway Community of City, collectively consisting of approximately 48.5 acres, generally shown on the site maps in EXHIBIT A attached to this Agreement and specifically described in EXHIBIT B attached to this Agreement ("Site").

B. The San Diego City Council ("Council") adopted Resolution R-313689, effective August 9, 2021, and Resolution R-313718, effective September 23, 2021, declaring the Site surplus land under the California Surplus Land Act ("SLA"), California Government Code sections 54220-54234, and available for long-term ground lease, subject to the development condition that the future development of the Site include "renovation or replacement of City's current sports arena on the Site as a regional entertainment venue and operation of that venue for concerts, sports or other events consistent with similar arenas in large cities in the United States."

C. On October 4, 2021, City issued a Notice of Availability (NOA) of the Site for lease in compliance with the SLA. On December 3, 2021, City received seven responses to the NOA. City determined five of those responses – from Discover Midway, HomeTown SD, Midway Rising, Midway Village + and Neighborhood Next – to be responsive to the NOA.

D. On December 4, 2021, in compliance with the SLA, City began a "90-day good faith negotiating period" with the five responsive teams and issued a "Supplemental Information Request" to compare all responses in a transparent and equitable manner. On March 4, 2022, the "90-day good faith negotiating period" ended.

E. On April 12, 2022, Council narrowed the focus of its efforts to the responses from HomeTown SD, Midway Rising and Midway Village + so that City could conduct detailed due diligence and economic analysis on the three responses. On June 24, 2022, as part of the due diligence process, Jones Lang LaSalle Americas, Inc. ("JLL"), City's consultant, in coordination with City staff, issued a Request for Information ("RFI") to obtain additional information to conduct financial analysis on each of those three responses.

F. On September 13, 2022, following an extensive due diligence process, City staff recommended to the Council that the Council authorize City's Mayor ("Mayor") or designee to negotiate and enter into an exclusive negotiation agreement with Midway Rising including

certain specified "Key ENA Terms," and the Council provided such authorization in Resolution R-314340.

G. The Site is currently leased or licensed by City to third parties and will be used during the Negotiation Period (defined in Section 1.2) for current or future uses as City deems acceptable, and City intends that such uses will continue until the Parties enter into a Definitive Agreement (defined in Section 1.1) for Developer's long-term ground leasing of the Site and development of the Proposed Development (defined in Section 6.1) on the Site.

IN CONSIDERATION OF THE PARTIES' PROMISES AND UNDERSTANDINGS SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. NEGOTIATIONS.

1.1. Good Faith Negotiations. During the Negotiation Period, and subject to the terms and conditions of this Agreement, the Parties shall proceed diligently and in good faith in negotiation and documentation of potential terms, conditions, covenants, restrictions and agreements of a future agreement or agreements to be entered into between them for Developer's long-term ground leasing of the Site from City for development of the Proposed Development on the Site ("Definitive Agreement"). The Parties shall determine the exact terms and conditions of a Definitive Agreement, if any, during the course of their negotiations. Nothing in this Agreement shall be interpreted or construed: (a) to be a representation or agreement by either Party that a mutually acceptable Definitive Agreement will be produced from negotiations under this Agreement; (b) to impose any obligation on either Party to agree to a Definitive Agreement in the future; or (c) to be a guaranty, warranty or representation that any proposed Definitive Agreement that may be negotiated by City staff and Developer will be approved by the Council. Developer acknowledges and agrees that City's potential approval of any Definitive Agreement is subject to the retained and reserved sole and absolute discretion of the Council and all legally required public hearings, public meetings, notices, factual findings and other determinations and procedures required by law. Nothing in this Agreement shall prevent or prohibit City from discussing or disclosing the fact that City is a Party to this Agreement or providing any information in City's possession or control that would customarily be furnished to persons requesting information from City concerning City's activities, goals, matters of a similar nature, or as required by law to be disclosed, upon request or otherwise.

1.2. Negotiation Period. Subject to Section 1.3, the Parties agree to negotiate under this Agreement for two years starting on the Effective Date ("Negotiation Period"). The Mayor or designee, in their sole and absolute discretion, may administratively extend the Negotiation Period for two (2) extensions of one (1) year each and any such administrative extension of the Negotiation Period shall be confirmed in a signed letter delivered by City to Developer. Nothing in this Agreement shall prevent the Mayor or designee from declining to administratively extend the Negotiation Period or imposing any conditions on an administrative extension of the Negotiation Period.

1.3. Rights to Terminate. If at any time during the Negotiation Period, a Party determines, in its sole and absolute discretion, that the Proposed Development is not feasible or financeable or that it does not otherwise desire to proceed with negotiations under this Agreement for any reason or no reason, such Party shall provide written notice of such determination to the other Party. Within ten (10) days after delivery of such notice, the Parties shall meet to discuss potential termination of negotiations under this Agreement. Within two (2) days following the meeting, the notifying Party shall confirm or withdraw its intent to terminate negotiations under this Agreement in writing. The notifying Party's failure to withdraw its intent to terminate negotiations under this Agreement within two (2) days following the meeting will be confirmation of its intent to terminate negotiations under this Agreement. If the notifying Party confirms its intent to terminate negotiations under this Agreement, the Negotiation Period and this Agreement shall automatically terminate on the date of such confirmation.

1.4. Effect of Termination. Upon the expiration or earlier termination of this Agreement, neither Party shall have any further rights, remedies, or obligations under this Agreement, except such rights, remedies, or obligations that survive the expiration or earlier termination of this Agreement under the express terms of this Agreement.

1.5. City's Representatives. Developer acknowledges and agrees that City intends to rely on a core negotiating team to negotiate the Definitive Agreement on City's behalf and that City reserves the right to invite City's additional representatives, employees and consultants to participate in or attend any negotiation meetings, including representatives of the Office of the Independent Budget Analyst who will be invited to attend solely as observers at the Council's specific request. Developer further acknowledges and agrees that City intends to provide its representatives, employees and consultants, including JLL, with full access to documents and other related materials provided by Developer to City under this Agreement.

2. **GOOD FAITH DEPOSIT**. To provide assurance to City that Developer will proceed diligently and in good faith to perform all of Developer's obligations under this Agreement, concurrent with Developer signing and delivering this Agreement to City, Developer shall deposit with City One Hundred Thousand Dollars ($100,000) in the form of cash, a cashier's check, or a certified check, naming City as beneficiary or payee, as applicable ("Good Faith Deposit"). All interest accrued on the Good Faith Deposit (if any) shall be the property of City and shall be retained by City. If Developer has negotiated diligently and in good faith and performed all its obligations under this Agreement, including performing all the Milestones, attending all necessary meetings, responding to information requests by City, and willingly providing all appropriate materials and information requested by City in furtherance of negotiations towards a Definitive Agreement, the Good Faith Deposit will be, at Developer's option, either (a) returned to Developer upon expiration or termination of this Agreement, or (b) applied towards any deposit or earnest money required to be paid by Developer under a future Definitive Agreement between the Parties. If an Event of Default by Developer occurs, the Good Faith Deposit will be retained by City as liquidated damages under Section 21.

3. **NON-REFUNDABLE NEGOTIATION PAYMENT**. In partial consideration of City entering into this Agreement, concurrent with Developer signing and delivering this Agreement to City, Developer shall also pay to City the amount of Seventy Thousand Dollars ($70,000) in the form of cash, a cashier's check, or a certified check ("Negotiation Payment"), naming City as

beneficiary or payee, as applicable. The Negotiation Payment shall be fully earned by City on the Effective Date and shall be non-refundable to Developer. Developer waives all claim or right to any refund of the Negotiation Payment or any interest accrued on the Negotiation Payment.

4. **LICENSE FEE.** In consideration of City authorizing Developer to enter upon the Site under one or more separate license agreements to perform certain due diligence activities under this Agreement relating to development of the Proposed Development of the Site, concurrent with Developer signing and delivering this Agreement to City, Developer shall also pay to City the amount of Five Thousand Dollars ($5,000) in the form of a cashier's check or certified check ("License Payment"), naming City as beneficiary or payee, as applicable. The License Payment shall be fully earned by City on the Effective Date and shall be non-refundable to Developer. Developer waives all claim or right to any refund of the License Payment or any interest accrued on the License Payment.

5. **ENTITLEMENT AND ENVIRONMENTAL REVIEW EXPENSES.** In addition to all other payments to be made by Developer under this Agreement, pursuant to City's Development Services Department cost recovery program, Developer shall be responsible for the costs of City review, processing, and preparation of all required environmental review documents under the California Environmental Quality Act ("CEQA") or the National Environmental Policy Act ("NEPA"), as applicable.

6. **REPRESENTATIONS AND WARRANTIES.** Developer represents and warrants all the following to City for the purpose of inducing City to enter into this Agreement, as of the Effective Date:

6.1.1. Developer is a Delaware limited liability company, duly formed, validly existing and certified in good standing under the laws of the State of California by the California Secretary of State.

6.1.2. Developer has the legal power, right and authority to enter into this Agreement and to perform its obligations under this Agreement.

6.1.3. Developer's undertakings under this Agreement are for the purpose of negotiating diligently and in good faith to prepare a Definitive Agreement to be entered into between the Parties for the Site and not for speculation in land holding.

6.1.4. The persons signing this Agreement, the instruments referenced in this Agreement, and any other documents signed and delivered on behalf of Developer have the full right, power and authority to do so and have been duly authorized to do so by Developer, and no other persons are required to approve or sign this Agreement or any other instruments or documents on behalf of Developer.

6.1.5. The representations and warranties of Developer set forth in this Agreement shall survive the termination of this Agreement.

7. DEVELOPER.

7.1. Nature of Developer. City acknowledges that Developer may intend to form a new entity controlled by Developer or the entities comprising Developer that will be the party to the Definitive Agreement. City shall have the right to review and approve the organizational documents of such entity and the entities comprising such entity. Prior to Developer's delivery of the signed Definitive Agreement to City, Developer shall submit a copy of all joint venture formation documents (e.g., limited liability company operating agreement, partnership agreement, etc.) and all organizational documents of each entity participating in the joint venture, for approval by City, which approval shall not be unreasonably withheld. Each such document may be redacted to remove financial terms or other confidential information contained in the document, provided that such redactions do not limit City's ability (as determined by City, in its sole and absolute discretion) to complete a comprehensive evaluation of the organizational structure of the joint venture and all entities participating in the joint venture.

7.2. Principals and Employees of Developer Developer's employees or representatives who are to be directly involved in the Proposed Development and who have been designated to negotiate the Definitive Agreement with City, and to engage in the activities necessary to determine the feasibility of the Proposed Development are as follows:

Zephyr Investors, LLC
Brad Termini
Ryan Herrell
Austin Richter

Legends Venue Management, LLC
Bill Rhoda
Shelby Jordan

Chelsea Investment Corporation
James J. Schmid
Jim Andersen

7.3. Developer's Consultants and Professionals. Developer shall disclose to City its principals, shareholders, partners, members, joint venturers and officers. Developer shall disclose to City the names of its primary architect, planning consultant, CEQA consultant, traffic consultant and civil engineer. City shall not have any right to approve or disapprove any of Developer's consultants. However, City may advise Developer that a proposed person does not have sufficient financial or operational capabilities or experience to participate in the Proposed Development, or such person is reasonably believed to not be of good character or reputation. Developer is required to make full disclosure to City of its principals, officers, employees, and other associates and, specifically with respect to its financing of the Proposed Development, its partners, joint venturers, lenders, and other financial partners participating in the financing of the Proposed Development, and all other pertinent information concerning Developer and its associates.

8. PROPOSED DEVELOPMENT.

8.1. Proposed Development Concept and Essential Terms and Conditions. For the purposes of the Parties' negotiations under this Agreement, the proposed development of the Site to be required under the Definitive Agreement shall substantially conform with the program and development concept generally set forth in Developer's responses to the NOA and subsequent RFI (each of which is attached to this Agreement in EXHIBIT C and collectively referred to as "Developer's Original Proposal") for the development and operation of a mixed-use development on the Site that will include, at a minimum, all the following elements (collectively, "Proposed Development"): (a) affordable housing in compliance with the SLA; (b) market-rate housing; (c) replacement of the existing Sports Arena located on the Site; (d) a hotel; (e) retail space; and (f) open space. Each element of the Proposed Development identified in clauses "(a)" through "(f)" in the immediately preceding sentence is referred to in this Agreement as a "Programmatic Component." The Proposed Development shall be consistent with the SLA, the Midway-Pacific Highway Community Plan (as may be amended, in the Council's discretion, to accommodate the Proposed Development), and all other applicable laws or governmental regulations. City and Developer acknowledge that the Programmatic Components may be modified as required by City acting in its governmental regulatory capacity or during City's CEQA review process for the Proposed Development.

8.2. Qualifying Affordable Housing Units. Developer acknowledges that City provided Developer with first negotiating priority under the SLA for proposing the most qualifying affordable units (i.e., units affordable to households earning 80 percent area median income or below) on the Site, at 2,000 units. Accordingly, in addition to the minimum elements of the Proposed Development described in Section 8.1, the Proposed Development in the Definitive Agreement must contain at least 2,000 qualifying affordable housing units.

8.3. Certain Definitive Agreement Terms. Among other terms and conditions, the Parties intend that the following terms and conditions will be incorporated into a future Definitive Agreement:

8.3.1. Developer's ground leasing of the Site will, at a minimum, be: (a) conditioned on Developer providing City with Developer's financing plan for the ground leasing of the Site and multiple-phased long-term development of the Proposed Development; (b) conditioned on City approval of a Specific Plan and Master Planned Development Permit as provided in the Midway-Pacific Highway Community Plan, as well as certification of any CEQA document prepared for the Proposed Development on the Site; and (c) "as is," without representation or warranty of any kind.

8.3.2. Developer will design, obtain all required government approvals for, construct, and operate the Proposed Development on the Site at its own cost and expense, under a schedule of performance to be negotiated as part of the Definitive Agreement, a scope of development to be negotiated as part of the Definitive Agreement, and plans and specifications prepared by Developer and approved by City. City acknowledges that portions of the Site may be subleased and developed by third parties that will obtain the government approvals for the applicable portions of the Proposed Development. Developer acknowledges that regardless of such subleasing or development of portions of the Proposed Development by third parties, the

Developer will be responsible for designing and obtaining all required government approvals for constructing and operating the Proposed Development on the Site under a schedule of performance in the Definitive Agreement.

8.3.3. Developer shall be responsible for design and construction of all improvements in public rights-of-way adjacent to the Site required for the Proposed Development, at Developer's own cost and expense.

8.3.4. Developer shall submit to City a good faith performance deposit in a form mutually acceptable to the Parties at the time Developer signs and delivers the Definitive Agreement to City.

9. DEVELOPER'S OBLIGATIONS AND PERFORMANCE MILESTONES.

The term "Commencement Date" means February 1, 2023.

9.1. Quarterly Council Updates. Developer shall meet with City staff regularly to provide updates on Developer's progress in completing Developer's obligations under Sections 9.2 through 9.5 (each, a "Milestone"). Developer shall attend quarterly Council updates presented by City staff and participate in such updates as City staff or the Council request, including submitting written reports, presenting on Milestone(s) progress, and answering questions from the Council.

9.2. Community Engagement Plan. No later than thirty (30) calendar days after the Commencement Date (March 3, 2023), Developer shall submit to City for its approval, a community engagement plan ("Community Engagement Plan") that includes Developer's proposed plan for conducting outreach to community groups and stakeholders to educate the public about, and seek input with respect to, the Proposed Development. Developer shall host publicly noticed meetings, no less than quarterly, to provide a forum for members of the public and stakeholders to receive updates about the Proposed Development. City encourages Developer to offer these meetings physically, virtually, and hybrid (in person and virtual), and at a variety of locations and times of day to ensure public access. Once City approves the Community Engagement Plan, Developer shall be responsible for implementing the Community Engagement Plan during the Negotiation Period and providing updates to City staff about implementation of the Community Engagement Plan. Developer also agrees to provide notice to City of all meetings it will be hosting or attending about the Proposed Development, so City staff may participate in the meetings, as appropriate. Further, Developer agrees to provide notice to City staff of Developer's intent to schedule any meetings with other government agencies relating to the Proposed Development.

9.3. Due Diligence. No later than one hundred eighty (180) calendar days after the Commencement Date (July 31, 2023), Developer shall conduct all due diligence activities on the Site or otherwise that it deems necessary to provide Developer with sufficient information to determine the feasibility of developing the Proposed Development on the Site. Upon Developer's request, from time to time, City shall reasonably endeavor to assemble and provide information to Developer about the Site that is within City's possession. City makes no representation or warranty to Developer about the completeness or accuracy of any information provided to

Developer. Developer acknowledges that, regardless of the results of Developer's investigations of the Site or the improvements on the Site, the Definitive Agreement will provide for City's leasing of the Site to Developer in the Site's "as-is" condition, with all faults and defects.

9.4. Pro Forma. No later than one hundred eighty (180) calendar days after the Commencement Date (July 31, 2023), Developer will submit to City a detailed pro forma ("Pro Forma") for the Proposed Development that separately articulates each Programmatic Component and identifies funding sources and uses, development budgets, operating cash flows, consideration to City, subsidies required, and developer/investment return targets. Developer shall refine the Pro Forma periodically to reflect changes to the Proposed Development during the Negotiation Period, information from Developer's due diligence review of the Site, the results of market demand and feasibility studies, CEQA review, the requirements of City acting in its governmental regulatory capacity, and all other relevant information. The Pro Forma shall include, at a minimum, the information described in EXHIBIT E and clearly note and explain all refinements to the Pro Forma delivered to City as part of Developer's Original Proposal. The Pro Forma shall be submitted to City in an editable Microsoft Excel format with all working formulas and assumptions. All values shall be based on Developer's assumptions provided in the Pro Forma and shall not make use of "hard-coded" values. The Pro Forma shall be presented in a manner that is reasonably acceptable to City and readily enables City to: (a) confirm the feasibility of the Proposed Development; (b) verify the cost, market, ground rent, and other economic assumptions used by Developer; and (c) sensitivity test a range of alternative inputs.

9.5. Financing Plan. Concurrent with Developer's submittal of the Pro Forma to City under Section 9.4, Developer shall submit to City its proposed financing plan ("Financing Plan") for the Proposed Development that will include, at a minimum, proposed financing for all Programmatic Components, anticipated debt and equity sources, all letters of interest from potential financing partners, bank and other financial references, financial statements, identification of all proposed sources of subsidies for the affordable housing, all proposed public financing, and an analysis of the Proposed Development's competitiveness for such subsidy sources. Developer shall make and maintain full disclosure to City of the methods of financing and the financing documents to be used in the Proposed Development. Developer shall update the Financing Plan periodically to reflect changes to the Proposed Development during the Negotiation Period or information obtained or developed from Developer's due diligence for the Proposed Development, the results of market demand and feasibility studies, CEQA review, the requirements of City acting in its governmental regulatory capacity and all other relevant information. The Parties acknowledge and agree that, while Milestone submittals will be made in accordance with this Agreement, the Proposed Development will occur on a master and long-term phased schedule that is expected to be described in the Specific Plan and Master Planned Development Permit for the Proposed Development required by the Midway-Pacific Highway Community Plan. As a result, the final formal Financing Plan for each phase may not be complete until a few months before construction of the particular phase commences.

9.6. Proposed Development Description and City Processing. No later than two hundred seventy (270) calendar days after the Commencement Date (October 29, 2023), Developer shall submit a concise written description of the Proposed Development and related supporting information with sufficient detail to understand the Proposed Development and each Programmatic Component and undertake environmental review of the Proposed Development

under CEQA; provided, however, that Developer shall provide additional information and data about the Proposed Development requested by City and necessary to complete environmental review of the Proposed Development under CEQA, in City's sole and absolute discretion. At a minimum, the Proposed Development description submitted by Developer to City under this Section 9.6 shall include the supporting information described in EXHIBIT D for each Programmatic Component. All submittals and CEQA review shall be done in accordance with the requirements of the City's Development Services Department project application and review procedures and the Land Development Code provisions of the San Diego Municipal Code. City agrees to cooperate reasonably in the processing and review of all documents submitted by Developer in connection with the Proposed Development and CEQA review. If Developer pays the customary fees charged by City's Development Services Department for expedited processing of development applications, then once Developer has submitted a complete development application for the Proposed Development and CEQA review, City will expedite its review of Developer's application in accordance with the expedited procedures used by City's Development Services Department. At Developer's request, City will endeavor to dedicate a specific City staff member or consultant to City's review of development applications for the Proposed Development as long as Developer agrees to pay processing fees to City allowing City's full cost recovery of the dedicated staff position or consultant.

9.7. Site Access Delays. In the event Developer is delayed in obtaining reasonable Site access to begin conducting Due Diligence by one or more parties, by the Commencement Date, Developer shall notify City accordingly and the Milestone deadlines shall be tolled one day for each day of delay.

9.8. Additional Submittals. In addition to the information described in this Section 9, Developer acknowledges and agrees that City reserves the right at any time to reasonably request from Developer additional information, including data and financial documents, to determine or confirm Developer's experience, its approach to financing the Proposed Development, and its capability to construct, develop and operate the Proposed Development. Without limiting any of City's rights under this Agreement, City will provide reasonable time for Developer to obtain and submit such additional information to City.

9.9. Changes to Proposed Development. The Parties acknowledge that changes may occur in the Proposed Development as additional information is obtained or developed during the Negotiation Period to achieve a plan for the Proposed Development that is acceptable to both Parties. Developer shall deliver updated written documentation to City of all changes to the Proposed Development, including changes to Programmatic Components, the Proposed Development description under Section 9.6, development plans, the Financing Plan, the Pro Forma, etc., clearly identifying changes to the scope, scale, or location of the Proposed Development for City's consideration and approval. The parties acknowledge that changes in the Proposed Development may be required by City acting in its governmental regulatory capacity or during City's CEQA review process for the Proposed Development.

10. **DEVELOPER'S FINDINGS, DETERMINATIONS, STUDIES, AND REPORTS.** From time to time, as requested by City, Developer agrees to make reasonable oral and written progress reports, and submit to City reports and analyses, advising City on all matters related to the development, including financial feasibility analyses, construction cost estimates, marketing studies, and similar due diligence matters ("DD Documents"). If this Agreement is terminated or expires before any or all DD Documents are finalized, Developer shall turn over all DD Documents to City on the date of such termination or expiration, even if some or all of the DD Documents are not in a final form. Developer may reasonably redact the content of the DD Documents for confidentiality purposes. Such redactions may include attorney work product, attorney-client communications and proprietary financial information. City shall determine, in its sole and absolute discretion, whether any DD Documents or other materials provided to City by Developer are subject to, or are exempt or partially exempt from, disclosure under the California Public Records Act ("CPRA"). If Developer notifies City in writing that it objects to the disclosure of certain information to a third party, Developer shall deliver to City, with such notice, specific and detailed written legal grounds, including any applicable case law, upon which City may rely for withholding any information requested under the CPRA. Developer agrees that City shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by Developer as a result of City's disclosure or non-disclosure of any such information in response to a third party's request under the CPRA.

11. **INDEMNITY**. Developer shall protect, defend, indemnify, and hold harmless (collectively, "Indemnify") City, the Council, and each City elected official, employee, agent, or attorney (collectively, "City Entities") against all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charges, awards, assessments, fines or penalties of any kind (including reasonable consultant and expert fees, expenses and investigation costs of whatever kind or nature, and attorney fees and costs), all judgments, and other costs incurred in enforcing Developer's obligation(s) to Indemnify the City Entities under this Agreement (collectively, "Claims") arising from: (a) personal injury (including death) or property damage (to property of Developer or any other person) occurring as a result of Developer's activities in performing this Agreement; (b) all wrongful intentional acts or negligence of one or more of Developer or Developer's officers, employees, contractors, or agents (collectively, "Developer Entities"); (c) strict liability relating to Developer's activities in performing this Agreement; (d) all applications for government approvals for the Proposed Development made by or on behalf of one or more Developer Entities; (e) all agreements that one or more Developer Entities makes with a third person regarding this Agreement, the Proposed Development, or any of Developer's activities in performing this Agreement; (f) all services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more Developer Entities; or (g) all workers' compensation claims by employees or contractors of one or more Developer Entities. Notwithstanding anything to the contrary in this Agreement, Developer's obligation to Indemnify the City Entities excludes Claims arising solely from the established active negligence or willful misconduct of a City Entity. Developer's obligation to Indemnify the City Entities shall also exclude any claim, cost, expense or liability to the extent arising out of (1) any physical condition of the Site existing before the Effective Date and discovered (but not created) by Developer during investigation of the Site; or (2) Developer's discovery of any hazardous substances (defined in any applicable federal, state or local law or statute) on or under the Site that existed on or under the Site before the Effective Date ; provided, however, that Developer's obligation to Indemnify the City Entities includes Developer's exacerbation of any Site condition, including any release of a hazardous substance, whether or not existing on or under the Site before the Effective Date. The Council must approve the selection of all legal counsel designated to represent City's interests in any indemnified Claim. City may, at its election, conduct its own defense or participate in the defense of any indemnified Claim. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any indemnified Claim, Developer shall pay all reasonable costs related to such activity, including reasonable attorneys' fees and costs. The affected City Entities shall notify Developer of any indemnified Claim within a reasonable time and shall reasonably cooperate with Developer's defense of the City Entities. Developer may only settle an indemnified Claim with the prior written consent of the affected City Entities, in their respective sole and absolute discretion. Developer's obligation to Indemnify the City Entities under this Agreement is independent of Developer's other obligations under this Agreement. If the extent of Developer's obligation to Indemnify the City Entities under this Agreement exceeds the indemnity obligation allowed by applicable law, Developer's obligation to Indemnify the City Entities shall be reduced to the extent required to comply with applicable law. Developer's obligation to Indemnify the City Entities under this Agreement shall survive the expiration or termination of this Agreement, until all actual or prospective Claims subject to Developer's obligation to Indemnify the City Entities under this Agreement are fully, finally,

absolutely, and completely barred by applicable statutes of limitations. To the extent a Claim arises from Developer's physical entry onto the Site, the indemnity provisions in Section 12 of each separate license agreement entered into between City and Developer authorizing Developer's physical entry onto the applicable portion(s) of the Site shall prevail over any conflicting indemnity provisions in this Section 11.

12. **NOTICES**. All notices submitted by either Party to the other Party under or as required by this Agreement shall be in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one business day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or by registered or certified first-class mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated below in this Section 12. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by notice under this Section 12. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the notice is sent by messenger for immediate personal delivery, the next day on which the overnight delivery service makes deliveries after the day of delivery of the notice to a nationally recognized overnight delivery service, or 3 days after the notice is deposited with the United States Postal Service in accordance with this Section 12. Any attorney representing a Party may give any notice on behalf of such Party. The notice addresses for the Parties, as of the Effective Date, are as follows:

Notices to Developer under this Agreement shall be sent to:

Midway Rising, LLC
c/o Legends Venue Management, LLC
Attn: Legal Department
61 Broadway, 24th Floor
New York, NY

Copies of any notices or materials provided to the above address also should be provided to:

Legends
Attn: Shelby Jordan II
3830 Clarington Avenue
Culver City, CA 90232

Chelsea Investment Corporation
Attn: Jim Andersen
6339 Paseo Del Lago
Carlsbad, CA 92011

Notices to City under this Agreement shall be sent to:

Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700
San Diego, CA 92101

13. **ASSIGNMENT OR TRANSFER.** The expertise, experience, and financial capability of (a) Zephyr Investors LLC, and (b) Legends Venue Management, LLC as individual members of Midway Rising, LLC, and Chelsea Investment Corporation as Midway Rising LLC's affordable housing developer, to undertake development of the Proposed Development on the Site are of significant importance to City. City would not have entered into this Agreement but for such expertise, experience, and financial capability. As a result, Developer shall not have any right to make or allow any assignment (including any 10% or greater change in ownership of Developer) of this Agreement (or any right, duty, or obligation under this Agreement) without the prior written consent of City, which may be given or withheld in the City's sole and absolute discretion. Developer acknowledges and agrees that, under the circumstances that this Agreement is entered into by the Parties and the public nature of the Site, the restrictions in this Agreement on assignments are reasonable. Any assignment of or attempt to assign this Agreement, whether by operation of law, through a pledge, hypothecation, or otherwise shall automatically terminate this Agreement. Additionally, should one of the primary entities listed above in a-c propose to assign or transfer their interest in this agreement, through a sale of its interests, City shall review sales documents and reserve the right to collect a portion of the proceeds of said assignment or transfer.

14. **REAL ESTATE COMMISSIONS.** Developer represents and warrants that Developer did not engage or deal with any broker or finder in connection with this Agreement and no person is entitled to any commission or finder's fee regarding this Agreement or Developer's potential future ground leasing of the Site on account of any agreement or arrangement made by Developer. Developer shall Indemnify the City Entities against any breach of the representation and warranty set forth in the immediately preceding sentence.

15. **FRAMEWORK OF NEGOTIATIONS.** The Parties acknowledge that this Agreement is a framework for negotiation of essential terms of a future Definitive Agreement, but that they have not agreed upon the essential terms or the material elements of a transaction, including ground lease rent, the final legal description of the portions of the Site that will be subject to the Definitive Agreement, the time or manner of and significant terms related to the Definitive Agreement, the conditions precedent to lease, if any (including the design and entitlement of the Proposed Development), and the requirements related to development of the Proposed Development, each of which are an essential component of the potential transaction, will be the subject of further negotiations, and shall be set forth, if at all, in a Definitive Agreement approved by the Council, in its sole and absolute discretion (or in the case of Developer, approved by its principal(s)), and signed by the respective authorized representatives of each Party. Further, Developer acknowledges that the design of the Proposed Development, the identity, stability and financial capacity of Developer, and the terms and conditions of a lease of the Site, if any, will be of material concern to City and comprise part of the essential terms of a future Definitive Agreement that are not yet agreed upon by the Parties.

16. **DEVELOPER ACKNOWLEDGMENTS.** Developer acknowledges and agrees that: (a) under this Agreement, City is not committing itself or agreeing to enter into a Definitive Agreement, undertake any exchange, sale, lease or other transfer of real property or real property interest to Developer, approve any land use entitlements, or undertake any other acts or activities

regarding real property; (b) no provision of this Agreement shall be deemed to be an offer by City, nor an acceptance by City of any offer or proposal from Developer, for City to convey any estate or interest in the Site to Developer or for City to provide any financial or other assistance to Developer for development of the Proposed Development or any other development of the Site; (c) Developer has not acquired, and will not acquire, by virtue of the terms of this Agreement, any legal or equitable estate or interest in real or personal property from City; and (d) further efforts by either Party to perform due diligence, arrange or obtain financing, or carry out other acts in contemplation of the possible ground leasing of the Site or development of the Proposed Development on the Site shall not be deemed evidence of intent by either Party to be bound by any terms, conditions, covenants, restrictions or agreements relating to ground leasing of the Site or development of the Proposed Development on the Site.

17. **NO CITY APPROVAL.** Nothing in this Agreement, nor any comments provided by City staff, nor any failure of City staff to provide comments to any submittal under this Agreement shall: (1) modify or replace any land use entitlement process of City applicable to the Site or the Proposed Development, (2) limit the police power land use jurisdiction of City relative to the Site or the Proposed Development, (3) constitute an approval of all or any portion of the Proposed Development by City under the police power land use jurisdiction of City, or (4) constitute any City approval of all or any portion of a future Definitive Agreement with Developer. City is the land use authority regarding the Site. City is not obligated to expedite any reviews, approvals, notices, meetings, or any other related matters, and nothing contained in this Agreement shall be construed to limit City's discretion in its activities relating to this Agreement, the Site, or the Proposed Development, or cause City to incur any liability or obligation in connection with any delay in obtaining or failure to obtain land use entitlements or approvals relative to the Proposed Development or the Site. Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by City (or any of its departments or boards) as to the issuing of any approval, permit, consent or other entitlement in the exercise of City's regulatory capacity or function.

18. **COSTS AND EXPENSES.** Developer shall be solely responsible for payment of all fees, costs and expenses of all engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning or design activities, drawings, specifications or other activity or matter relating to the Site or the Proposed Development or negotiation or documentation of a future Definitive Agreement that may be undertaken by Developer before or during the Negotiation Period in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to this Agreement, a future Definitive Agreement, the Site, or the Proposed Development. No such activity or matter shall be deemed to be undertaken for the benefit of, at the expense of, or in reliance upon City. Regardless of the outcome of negotiations under this Agreement, City shall not be obligated to pay, reimburse or refund any expenses, fees, charges or costs incurred by Developer in pursuit of any study, analysis, evaluation, report, schedule, estimate, environmental review, planning or design activities, drawings, specifications or other activity or matter relating to this Agreement, the Site, the Proposed Development, or negotiation or documentation of a future Definitive Agreement that may be undertaken by Developer before or during the Negotiation Period.

19. **EVENTS OF DEFAULT.**

19.1. Developer Events of Default. The occurrence of any of the following shall constitute an "Event of Default" by Developer under this Agreement:

19.1.1. *Misrepresentation.* Any material breach of any representation or warranty made by Developer in this Agreement that is not cured within 30 calendar days after notice from City to Developer of such breach.

19.1.2. *Failure to Make Deposit.* Developer's failure to deliver either the Good Faith Deposit, the Negotiation Payment, or the License Payment to City as and when required by this Agreement.

19.1.3. *Failure to Make Submittal.* Developer's failure to deliver any item described in Section 9 or Section 10 to City as and when required by this Agreement, unless Developer receives prior written approval from City, in City's sole and absolute discretion, approving a late submittal. If Developer anticipates a delay, it should make best efforts to notify City at the earliest possible date of such delay.

19.1.4. *Other Material Breach.* The occurrence of any other event constituting a material breach of this Agreement by Developer if such breach is not cured within 15 calendar days after City delivers notice to Developer of such breach.

20. **CITY REMEDIES.** If there is an Event of Default by Developer, City may, in City's sole and absolute discretion, terminate this Agreement by sending written notice of termination to Developer, retain the Good Faith Deposit as liquidated damages under Section 21, or exercise any other remedies available to City at law or in equity regarding such Event of Default by Developer.

21. **CITY LIQUIDATED DAMAGES.** THE PARTIES AGREE THAT IT IS EXTREMELY IMPRACTICAL AND DIFFICULT, IF NOT IMPOSSIBLE, TO FIX THE EXACT AMOUNT OF DAMAGE THAT WOULD BE SUFFERED BY CITY AS A RESULT OF AN EVENT OF DEFAULT BY DEVELOPER. THE PARTIES HAVE CONSIDERED CAREFULLY THE LOSS TO CITY OCCASIONED BY AN EVENT OF DEFAULT BY DEVELOPER, THE EXPENSES OF CITY INCURRED IN CONNECTION WITH THIS AGREEMENT, THE EXPENSES OF CITY'S PERFORMANCE UNDER THIS AGREEMENT, AND THE OTHER DAMAGES, GENERAL AND SPECIAL, THAT THE PARTIES REALIZE CITY WILL SUSTAIN, BUT THAT CITY CANNOT AT THIS TIME CALCULATE WITH REASONABLE CERTAINTY. BASED ON ALL THOSE CONSIDERATIONS, THE AMOUNT OF THE GOOD FAITH DEPOSIT IS THE REASONABLE ESTIMATE BY THE PARTIES OF THE DAMAGES CITY WOULD SUFFER ON THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER. ACCORDINGLY, ON THE OCCURRENCE OF AN EVENT OF DEFAULT BY DEVELOPER, CITY SHALL RETAIN THE GOOD FAITH DEPOSIT AS LIQUIDATED DAMAGES. DEVELOPER SEEKS TO LIMIT ITS LIABILITY UNDER THIS AGREEMENT TO THE AMOUNT OF THE GOOD FAITH DEPOSIT IF CITY TERMINATES THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY

DEVELOPER. THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF ANY APPLICABLE LAW BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY AS PERMITTED UNDER APPLICABLE LAW.

Initials of Authorized
City Representative

Initials of Authorized
Developer Representative

22. **LIMITATION ON DEVELOPER REMEDIES AND DAMAGES.**

22.1. EXCLUSIVE DEVELOPER REMEDY. DEVELOPER ACKNOWLEDGES AND AGREES THAT CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF CITY WERE TO BE LIABLE TO DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY, OR ANY REMEDY IN THE EVENT OF A BREACH OR DEFAULT UNDER THIS AGREEMENT BY CITY, OTHER THAN TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER THE NEGOTIATION PAYMENT. ACCORDINGLY, DEVELOPER AGREES THAT DEVELOPER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY DURING OR FOLLOWING BREACH OR DEFAULT UNDER THIS AGREEMENT BY CITY IS TO TERMINATE THIS AGREEMENT AND BRING AN ACTION TO RECOVER THE NEGOTIATION PAYMENT. UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE TO DEVELOPER AS A RESULT OF A BREACH OR DEFAULT BY CITY UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE AMOUNT OF THE NEGOTIATION PAYMENT OR FOR ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY DEVELOPER. DEVELOPER WAIVES ALL RIGHT TO PURSUE ANY REMEDY, OTHER THAN TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER THE NEGOTIATION PAYMENT, AS A RESULT OF ANY BREACH OR DEFAULT UNDER THIS AGREEMENT BY CITY. UNDER NO CIRCUMSTANCE SHALL DEVELOPER BE ENTITLED TO RECEIVE DAMAGES ARISING FROM AN ACTUAL OR ALLEGED BREACH OR DEFAULT UNDER THIS AGREEMENT BY CITY EXCEEDING THE AMOUNT OF THE NEGOTIATION PAYMENT.

22.2. DEVELOPER 1542 ACKNOWLEDGMENT. DEVELOPER ACKNOWLEDGES THAT IT IS AWARE OF THE MEANING AND LEGAL EFFECT OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH 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.

22.3. DEVELOPER 1542 WAIVER. CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF DEVELOPER TO BE BOUND BY THE LIMITATION ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 22 AND DEVELOPER WAIVES AND RELEASES ALL CLAIMS AGAINST CITY FOR MONETARY DAMAGES, MONETARY RECOVERY, OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY DEFAULT OR BREACH OF THIS AGREEMENT BY CITY BEYOND THE RECOVERY EXPRESSLY ALLOWED IN SECTION 22.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO DEVELOPER AS OF THE EFFECTIVE DATE OF THIS AGREEMENT. DEVELOPER SPECIFICALLY WAIVES THE BENEFITS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT WITH REGARD TO THE LIMITATIONS ON DAMAGES OR REMEDIES AND WAIVERS AND RELEASES OF ANY SUCH DAMAGES OR REMEDIES CONTAINED IN THIS SECTION 22.

Initials of Authorized
Developer Representative

23. **CERTIFICATION OF COMPLIANCE WITH CITY REQUIREMENTS.** By signing this Agreement, Developer agrees and certifies that Developer is aware of, and will comply with, all the following requirements in performance of this Agreement:

23.1. Certification for Americans with Disabilities Act ("ADA") and Related Laws. Developer shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations ("Title 24"). When a conflict exists between the ADA and Title 24, Developer shall comply with the most restrictive requirement (i.e., that which provides the most access). Developer also shall comply with the ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Developer warrants and certifies compliance with all applicable federal and state access laws and regulations and further certifies that all subcontracts relating to this Agreement, the Site, or the Proposed Development, will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable federal and California access laws and regulations.

23.2. Compliance with City's Equal Employment Opportunity Program. Developer shall comply with City's Equal Employment Opportunity Program, set forth in San Diego Municipal Code ("SDMC") sections 22.2701 – 22.2708. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that its subcontractors comply with this program. Nothing in this Section 23.2 shall be interpreted to hold Developer liable for any discriminatory practice of its subcontractors.

23.3. Equal Benefits Ordinance Certification. Unless an exception applies, Developer shall comply with the "Equal Benefits Ordinance" codified in San Diego Municipal Code ("SDMC") section 22.4308.

23.4. Equal Pay Ordinance. Unless an exception applies, Developer shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Developer shall 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 Developer to the same extent as it would apply to Developer. Developer shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

23.5. Product Endorsement. Developer shall 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.

23.6. Business Tax Certificate. Unless City's City Treasurer determines in writing that Developer is exempt from the payment of business tax, Developer is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing any activities under this Agreement.

23.7. Employment of City Staff. Under City Council Policy 300-11, if 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, shall have the right to unilaterally and immediately terminate this Agreement by notice to Developer.

24. MISCELLANEOUS.

24.1. Approvals and Consents. Unless this Agreement otherwise expressly provides or unless applicable law requires otherwise, all approvals, consents or determinations to be made by or on behalf of: (a) City under this Agreement shall be made by the Mayor or designee; or (b) Developer under this Agreement shall be made by Shelby Jordan II ("Developer Representative"). Unless otherwise provided in this Agreement, whenever approval, consent, or satisfaction is required of a Party under this Agreement, such approval, consent, or satisfaction shall not be unreasonably withheld, conditioned or delayed, and any reasons for disapproval shall be stated in reasonable detail in writing. Approval by Developer or City of any act or request by the other shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests.

24.2. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties 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 shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words "without limitation." Each collective noun in this Agreement shall 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.

24.3. Governing Law. The procedural and substantive laws of California shall 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 of San Diego, California. All legal actions arising from this Agreement shall be filed in San Diego Superior Court or in the United States District Court with jurisdiction in the County of San Diego, California.

24.4. Relationship of Parties. The Parties each intend and agree that City and 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.

24.5. Conflict of Interest. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects their personal interests or the interests of any corporation, partnership, or association in which they are, directly or indirectly, interested. Developer warrants that it has not paid or given, and will not pay or give, directly or indirectly, any City employee or official, any money or other consideration at all, whether or not connected in any way with the subject matter of this Agreement. Further, Developer warrants that it has no knowledge of any financial interest of any City employee or official in Developer, directly or indirectly, or in any person or entity affiliated with Developer, or in any transaction in which Developer has been involved.

24.6. Warranty Against Payment of Consideration for Agreement. Developer represents and warrants to City that: (a) 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 Developer; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Developer or any of 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 in this Section 24.6 shall entitle City to terminate this Agreement immediately. Upon any termination of this Agreement under this Section 24.6, Developer shall immediately repay to City all payments made to or on behalf of Developer by City (if any) under this Agreement prior to the termination date.

24.7. Unavoidable Delay. Performance by either Party under this Agreement shall not be considered to be in default, where any such default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable written detail. The Party claiming an extension of

time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Agreement, no obligation of a Party for payment of money under this Agreement may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between federal or state chartered financial institutions. "Unavoidable Delay" means and refers to 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 strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, governmental action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

24.8. 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 another Party.

24.9. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason 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 party to any Party or give any third party any right of subrogation or action over or against any Party.

24.10. Time for Performance.

24.10.1. *Expiration.* All performance, expiration, or termination dates (including cure dates) in this Agreement expire at 5:00 p.m., Pacific Time, on the specified date.

24.10.2. *Weekends and Holidays.* A date that falls on a Saturday, Sunday or City holiday is deemed extended to the next day on which City is open for performance of general City functions with regular City personnel.

24.10.3. *Days for Performance.* All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

24.10.4. *Time of the Essence.* Time is of the essence with respect to each provision of this Agreement.

24.11. Waivers and Amendments. Each waiver of a term, provision, covenant, condition, restriction, or agreement contained in this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on strict compliance with a term, provision, covenant, condition, restriction, or agreement contained in this Agreement at any time or times shall not constitute a waiver of such term, provision, covenant, condition, restriction, or agreement at any other time, nor shall any waiver or relinquishment of any right or power under this Agreement at any time or times constitute a waiver or relinquishment of such right or power at any other time. Each amendment to this Agreement must be in writing and signed by the authorized representative(s) of both City and Developer.

24.12. Survival of Agreement. All the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or after the expiration or earlier termination of this Agreement, 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 and conditions of this Agreement relating to dispute resolution and remedies shall survive the date of expiration or earlier termination of this Agreement.

24.13. Integration. This Agreement includes twenty (20) pages and five (5) exhibits (the exhibits are incorporated into this Agreement by reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Agreement.

24.14. Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs, or sections of this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Agreement.

24.15. Severability. If a term, provision, covenant, condition, restriction, or agreement contained in this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such a term, provision, covenant, condition, restriction, or agreement to persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms, provisions, covenants, conditions, restrictions, or agreements contained in this Agreement shall be valid and enforced to the fullest extent permitted by law.

24.16. Counterparts. This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

24.17. Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

24.18. Exhibits. All the exhibits attached to this Agreement are described as follows:

EXHIBIT A	Site Map
EXHIBIT B	Legal Descriptions
EXHIBIT C	Midway Rising Responses to NOA and RFI
EXHIBIT D	Proposed Development Description Requirements
EXHIBIT E	Pro Forma Requirements

24.19. Use of Information by City. If negotiations do not result in a Definitive Agreement between the Parties, City may use any information provided to City by Developer in any way deemed by City to be of benefit to the disposition and development of the Site.

24.20. Incorporation of Recitals. The recitals of fact preceding this Agreement are true and correct and are incorporated into this Agreement, in their entirety by this reference.

24.21. Legal Descriptions Control. If a conflict arises between the site map(s) in EXHIBIT A attached to this Agreement and the legal descriptions in EXHIBIT B attached to this Agreement, the legal descriptions in EXHIBIT B shall control.

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

SIGNATURE PAGE
TO
EXCLUSIVE NEGOTIATION AGREEMENT

Midway Redevelopment

Developer and City sign and enter into this Agreement by and through the signatures of their respective authorized representative(s) set forth below, as of the Effective Date.

CITY:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Penny Maus, Director
Department of Real Estate and
Airport Management

Date: 12-05-2022

DEVELOPER:

MIDWAY RISING, LLC,
a Delaware limited liability company

By: _____

Name: BRAD TERMINI

Title: Authorized Signer

Date: 12-05-22

Approved as to form on
12-05-2022.

MARA W. ELLIOTT,
City Attorney

By: _____
Name: Delmar Williams
Title: Deputy City Attorney

EXHIBIT A
TO
EXCLUSIVE NEGOTIATION AGREEMENT

Midway Redevelopment

SITE MAP

(attached behind this page)

EXHIBIT A – SITE MAP



EXHIBIT A
SITE MAP

EXHIBIT B
TO
EXCLUSIVE NEGOTIATION AGREEMENT

Midway Redevelopment

LEGAL DESCRIPTIONS

(attached behind this page)

EXHIBIT B – LEGAL DESCRIPTIONS

Note: Parcels Correspond to Site Map in Exhibit A

Parcel A – Legal Description

Portions of Pueblo Lots 241, 242, 259, 276, 311, 312, 313 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 the 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 the 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 Mc Elwee Subdivision, according to Map thereof No. 1581, filed in the Office of the 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; thence South 77° 23' 46" East, a distance of 371.52 feet to the TRUE POINT OF BEGINNING; thence North 12° 36' 14" East, a distance of 476.74 feet; thence North 36° 37' 26" East, a distance of 246.89 feet to the Northeasterly line of said Pueblo Lot 338; thence North 53° 27' 34" West, a distance of 25.00 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. 197333 of the Council of the City of San Diego, a copy of which was recorded July 30, 1969 as Document No. 137836 of Official Records; thence along the boundary of said Kurtz Street as follows:

South 16° 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, a distance of 602.50 feet; thence North 12° 36' 14" East, a distance of 150.00 feet; thence South 77° 23' 46" East, a distance of 150.00 feet; thence South 12° 36' 14" West, a distance of 150.00 feet; thence South 77° 23' 46" East, a distance of 1,097.11 feet to the TRUE POINT OF BEGINNING.

Parcel B – Legal Description

No Legal Description Available for this Parcel

Parcel C – Legal Description

Those portions of Pueblo Lots 313 and 338 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the Office of the County Recorder of said County as Miscellaneous Map No. 36," described as follows:

Beginning at a 3/4-inch iron pipe marked L.S. 2412 monumenting a point in the Northerly line of Sports Arena Boulevard, 115.00 feet wide, distant along said line North 77°55'15" West 220.45 feet from a 3/4-inch iron pipe marked L.S. 2412 monumenting the Westerly terminus in said line of a tangent curve having a radius of 1,019.93 feet and being concave Southwesterly; thence along said Northerly line North 77°55'15" West 277.95 feet; thence leaving said Northerly line at right angles North 12°04'45" East 476.12 feet; thence North 36°05'50" East 239.90 feet to the Southwesterly line of Kurtz Street, 57.00 feet wide, said line being also a line parallel with and distant Southwesterly 7.00 feet measured at right angles from the Northeasterly line of said Pueblo Lot No. 338; thence along said Southwesterly line South 53°59'00" East 375.32 feet to a 3/4-inch iron pipe marked L.S. 2412 monumenting a point in said line; thence leaving said Southwesterly line South 35°56'45" West 222.00 feet to a 3/4-inch iron pipe marked L.S. 2412; thence South 24°11'14" West 347.69 feet to the point of beginning; containing 4.994 acres, more or less.

Parcel D Legal Description

Those portions of Pueblo Lots 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 the map thereof made by James Pascoe recorded in the office of the County Recorder of said County as Miscellaneous Map No. 36, described as follows:

Beginning at a ¾-inch iron pipe marked L.S. 2412 monumenting a point in the Northerly line of Sports Arena Boulevard, 115.00 feet wide, distant along said line North 77°55'15" West 46.42 feet from a ¾-inch iron pipe marked L.S. 2412 monumenting the Westerly terminus in said line of a tangent curve having a radius of 1,019.93 feet and being concave Southwesterly; thence along said Northerly line North 77°55'15" West 174.03 feet; thence leaving said line North 24°11'14" East 347.69 feet; thence North 35°56'45" East 222.00 feet to the Southwesterly line of Kurtz Street, 57.00 feet wide, said line being also a line parallel with and distant Southwesterly 7.00 feet measured at right angles from the Northeasterly line of said Pueblo Lots 337 and 338; thence along said Southwesterly line South 53°59'00" East 66.32 feet and South 53°58'40" East 383.68 feet; thence leaving said line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 182.12 feet; thence South 35°56'45" West 185.00 feet to the Point of Beginning; containing 3.801 acres, more or less.

EXHIBIT B
LEGAL DESCRIPTIONS

Parcel E – Legal Description

That portion of Pueblo Lots 314 and 337 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the office of the county recorder of said county as Miscellaneous Map No. 36, described as follows:

Beginning for reference at a point in the southeasterly line of said lot distant South 35°56'45" West along said line 7.00 feet from the northeast corner of said lot, said point being also a point in the southwesterly line of Kurtz Street as said Street was widened to 57.00 feet by Ordinance No. 7527 passed and adopted by said City of San Diego July 25, 1957; thence along said southwesterly line North 53°58'40" West 80.00 feet; thence leaving said southwesterly line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 30.00 feet to the TRUE POINT OF BEGINNING; thence

South 35°56'45" West 182.83 feet to a point in that certain curve in the northerly line of Frontier Street, 115.00 feet wide, having a radius of 1019.93 feet and being concave northeasterly, a radial line of said curve through said point bears North 18°04'01" East; thence westerly along said curve through a central angle of 5°59'16" an arc distance of 106.59 feet; thence tangent to said curve along said northerly line North 77°55'15" West 46.42 feet; thence leaving said northerly line North 35°56'45" East 185.00 feet; thence South 75°04'35" East 152.12 feet to the TRUE POINT OF BEGINNING; containing 0.594 acres, more or less.