

**SAN DIEGO CONVENTION CENTER CORPORATION
BOARD OF DIRECTORS MEETING**

**WEDNESDAY, AUGUST 28, 2024, NOON
111 W. Harbor Drive, 2nd Floor, Executive Boardroom
San Diego, California 92101**

AGENDA

**Telephone number for members of the public
to observe, listen, and address the meeting telephonically:
1(888) 251-2909 – Access code is 6724115#**

1. Call to Order – Jeff Gattas, Chair

2. Non-Agenda Public Comments

This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board that are not on the posted agenda. Pursuant to the Brown Act, no discussion or action shall be taken by the Board on items not posted on the agenda.

3. Board Committee Reports and Board Action Items

Consent Agenda:

**A. Approval of Minutes of Board Meetings of June 26, 2024, July 9, 2024 and
“Special” Board Meeting of August 14, 2024**

4. Action Item(s):

A. Budget Committee (Will Rodriguez-Kennedy)

(1) Chief Financial Officer Update

**(2) Authorization to Enter into A Lease Agreement for 825 Energy Way, Chula
Vista, CA 91911**

B. Executive Committee (Jeff Gattas)

**(1) Approval of a Resolution of the San Diego Convention Center Corporation,
Inc. Approving the Fifth Amendment to the Amended and Restated
Employment Agreement with the President & CEO**

**(2) Approval of a Resolution of the San Diego Convention Center Corporation,
Inc. Creating a Deputy Chief Executive Officer & Chief Financial Officer
Position for the Corporation, and Authorizing the President & CEO to create
a Job Description for the Position**

5. President’s Report (Rip Rippetoe)

6. **Chair's Report (Jeff Gattas)**
7. **Board Comment [Govt. Code § 54954.2(a)(2)]**
8. **Urgent non-agenda items** (must meet the requirements of Government Code, Section 54954.2)

Adjournment

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In compliance with Government Code section 54957.5, non-exempt written material that is distributed to the Board prior to the meeting will be available at the meeting or it may be viewed in advance of the meeting online at visitsandiego.com. Materials distributed to the board after the posting of this agenda also will be available. Please contact Pat Evans at (619)525-5131 or pat.evans@visitsandiego.com if you would like to receive a copy of any material related to an item on this agenda.

Agenda Item 3.A

MINUTES* SAN DIEGO CONVENTION CENTER CORPORATION THE BOARD OF DIRECTORS

BOARD MEETING OF JUNE 26, 2024

BOARD MEMBERS PRESENT: Vice-Chair Shawn VanDiver and Directors Will Rodriguez-Kennedy, Jaymie Bradford, Alyssa Turowski and Gretchen Newsom

BOARD MEMBER(S) ABSENT: Chair Jeff Gattas and Director Sam Nejabat

STAFF PRESENT: Rip Rippetoe, Corey Albright, Andy Mikschl, Maren Dougherty, Michael Milligan, Victoria Mitchell, and Pat Evans (Recorder)

ALSO PRESENT: Jennifer Lyon, General Counsel

*Meeting Minutes memorialize votes on "Action Items" and Staff Reports and are not a verbatim transcript of regular Board meetings. Audio copies of Board of Director meetings are available upon request. Please contact Pat Evans at (619) 525-5131 or pat.evans@visitsandiego.com to request a copy.

1. Call to Order

Vice-Chair Shawn VanDiver called the Board Meeting to order at 12:00 p.m. in the Executive Boardroom of the San Diego Convention Center Corporation, 111 West Harbor Drive, San Diego, CA 92101.

Vice-Chair VanDiver then called roll to determine which Directors were present:

Director Gattas – Absent
Director VanDiver - Present
Director Bradford – Present
Director Rodriguez-Kennedy – Absent
Director Turowski – Present
Director Nejabat – Absent
Director Newsom - Present

All Directors were recorded as present except Chair Jeff Gattas and Director Will Rodriguez-Kennedy and Director Sam Nejabat. Vice-Chair VanDiver noted that all votes taken during this meeting would be recorded via roll call vote.

2. **Non-Agenda Public Comment** – Vice-Chair VanDiver inquired if any member of the public wished to comment on any non-Agenda items. No members of the public responded to the request for comment.

3. **Board Committee Reports and Board Action Items:**

Consent Agenda:

- A. **Approval of Minutes of Board Meeting of April 24, 2024, and “Special” Board Meeting of May 22, 2024**
- B. **Approval to Set Additional Regular Board of Director Meetings in July and August of 2024 and Authorization for Process to Cancel Regular Board Meetings When Needed**

Vice-Chair VanDiver inquired if any Director would like to pull a Consent Agenda item for discussion. Hearing no request to pull a Consent Agenda item, Vice-Chair VanDiver then inquired if any member of the public wished to comment on Agenda Item (3.A). No members of the public responded to the request for comment.

After request for public comment and for Director discussion, Directors Newsom and Bradford moved and seconded, respectively, to approve the Consent Agenda as set forth hereinabove.

**Director Gattas – Absent
Director VanDiver – Aye
Director Bradford – Aye
Director Rodriguez-Kennedy – Absent
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye**

Vote: Unanimous

AYES: 4

NAYS: 0

ABSTENTIONS: 0

4. **Closed Session:** The Board entered into closed session at 12:03 p.m. to discuss the items set forth below.

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

**Property: 825 Energy Way, Chula Vista, CA 91911
Agency negotiator: (President & CEO/CFO/COO/General Counsel)
Negotiating parties: Ecology Auto Parts, Inc.
Under negotiation: Price and Terms of Payment**

The Board returned to open session at 12:36 p.m.

Reporting out of closed session, General Counsel Lyon reported that the Board discussed item “4.A,” and no reportable action was taken. General Counsel Lyon also reported the following:

- Director Will Rodriguez-Kennedy arrived at the meeting at 12:05 p.m. and participated in the Closed Session.
- The Board approved the business purpose for the negotiations on a lease with the property as listed on the Board Agenda and the parties as listed on the Board Agenda for a marshaling yard for Convention Center purposes.
- Direction was given to negotiators.

5. Action Item(s):

A. Budget Committee (Will Rodriguez-Kennedy)

(1) Chief Financial Officer Update

CFO Mardeen Mattix reported:

- Financial statements were not submitted to the Board this month because they had not been finalized by staff; however, Ms. Mattix does have a draft of the financial statements and would like to report on the following items:
- Through May, the Corporation’s revenues are continuing to surpass budgetary expectations.
- There was a slight set-back from a Food & Beverage commissions standpoint. One of the events that was contracted a few years ago ended up being purchased by a different company which subsequently changed their business model. The event was a corporate event which should have yielded great revenues to the bottom-line and although it still yielded good revenues to the bottom line, the event was not as lucrative as it could have been or what the team planned on compared to the type of event it was in the past.
- The culinary Food & Beverage team continued to negotiate along with SDTA and the Corporations Sales team to see what the team could do in the future to try to win back some of that potential business; however, you will notice that when we produce these financials next month at the next Board meeting, that there was a loss for the month for Food & Beverage compared to what was budgeted.
- The Corporation is still \$2.5 million better than budget year-to date.
- The Corporation is on target with expenses with the exception of utilities. We believe that our utilities will end up being \$400,000 over budget. We have already accounted for this overage in the projections, but that figure is still better than where we thought we were going to be at the beginning of the year when the expenses looked wildly out of sync. We believe we have also budgeted appropriately for next year as well.
- Regarding capital, since we took an approach to start scaling back and addressing only critical items, we have delayed or slowed down some of the items that we were working on into next year, so you might see a variance with four days left in the fiscal year – some items are pending delivery and we don’t know if they are going to be received in early July versus arriving within the next four days (prior to the end of the fiscal year). The arrival times of the items will impact what gets booked this year. Overall, we still

have a commitment for these items to come in as a reserve and we are now targeting ending fiscal year 2024 with a reserve balance of \$23.3 million which is \$2.2 million better than the Corporation had budgeted.

Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (5.A.1). No members of the public responded to the request for comment. There was no Board discussion on this item and Vice-Chair VanDiver noted that no vote was required on this item since it is an informational item only.

(2) Authorization to Approve Revised FY 2025 Budget

Vice-Chair VanDiver called for a staff report regarding this item. After staff submitted its report, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (5.A.2). No members of the public responded to the request for comment.

Director Bradford left the meeting at 12:40 p.m.

After presentations by Staff, request for public comment, and for Director discussion, Directors Newsom and Rodriguez-Kennedy moved and seconded, respectively, to Approve the Revised FY 2025 Budget.

**Director Gattas – Absent
Director VanDiver – Aye
Director Bradford – Absent
Director Rodriguez-Kennedy – Aye
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye**

Vote: Unanimous

AYES: 4

NAYS: 0

ABSTENTIONS: 0

(3) Authorization to Approve Contract for Temporary Labor

Vice-Chair VanDiver called for a staff report regarding this item. After staff submitted its report, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (5.A.3). No members of the public responded to the request for comment.

After presentations by Staff, request for public comment, and for Director discussion, Directors Rodriguez-Kennedy and Turowski moved and seconded, respectively, to Approve the Contract for Temporary Labor staffing with People Ready for a not-to-exceed value of \$180,000 as included in the Revised FY2025 Budget.

**Director Gattas – Absent
Director VanDiver – Aye
Director Bradford – Absent**

Director Rodriguez-Kennedy – Aye
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye

Vote: Unanimous

AYES: 4

NAYS: 0

ABSTENTIONS: 0

B. Audit Committee (Alyssa Turowski)

(1) Authorization to Accept Pension Audit

Vice-Chair VanDiver called for a staff report regarding this item. After staff submitted its report, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (5.B.1). No members of the public responded to the request for comment.

After presentations by Staff, request for public comment, and for Director discussion, Directors Newsom and Turowski moved and seconded, respectively, to Authorize Acceptance of the Pension Audit.

Director Gattas – Absent
Director VanDiver – Aye
Director Bradford – Absent
Director Rodriguez-Kennedy – Aye
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye

Vote: Unanimous

AYES: 4

NAYS: 0

ABSTENTIONS: 0

C. Sales & Marketing Committee (Shawn VanDiver)

(1) Authorization to Approve the San Diego Tourism Authority Program of Work

Vice-Chair VanDiver called for a staff report regarding this item. After staff submitted its report, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (5.C.1). No members of the public responded to the request for comment.

After presentations by Staff, request for public comment, and for Director discussion, Vice-Chair VanDiver and Director Newsom moved and seconded, respectively, to Approve the San Diego Tourism Authority Program of Work.

Director Gattas – Absent
Director VanDiver – Aye

Director Bradford – Absent
Director Rodriguez-Kennedy – Aye
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye

Vote: Unanimous

AYES: 4

NAYS: 0

ABSTENTIONS: 0

D. Executive Committee (Shawn VanDiver)

(1) Strategic Plan Update: Vice-Chair VanDiver invited Mr. Rippetoe to introduce this item.

Mr. Rippetoe reported that staff continues to provide the Board with quarterly updates regarding progress on the Strategic Plan. Since the last update, staff has added milestones and KPIs through the next fiscal year (2025) which will be further refined at the November Board Retreat. The traditional dashboard, which the Board is familiar with, is included in the Board packet. In addition to providing the dashboard, staff will present key highlights of the Plan.

Mr. Rippetoe reminded the Board that the Convention Center's purpose is to serve as the region's premiere gathering place, hosting conventions that create economic benefit and jobs for the San Diego region paid for by outside visitors to the destination. The imperatives of the Strategic Plan are to Grow and Nurture Culture, Develop a Facility Maintenance and Improvement Program, Refine our Business Model to Ensure Viability, and to Engage the Community.

- **Grow and Nurture Culture – Michael Milligan**

Michael Milligan, Executive Director of Human Resources, reported:

- Our mission is to provide high quality jobs in the community, and we ultimately want to be worthy of a top workplace award nomination. We are striving towards that, and I believe we have made good progress.
- In terms of how we will accomplish this goal, we want to provide a great employee experience by way of offering competitive compensation as well as promotional opportunities, a safe work environment and living our values.
- Starting in fiscal year 2023, we needed to rebuild the H.R. Department, and, from a staffing standpoint, we were operating at 50% capacity. We have progressed from a department of four employees to a fully staffed department of eight employees.
- We also reorganized the functions of staff members in the department. We developed a SWOT analysis, a multi-year strategic roadmap and we worked with communications to

create the new H.R. tagline (“People Focused, Purpose Driven”) and we also relocated the department to a more accessible yet more private area of the building.

- In the current fiscal year, we developed programs on how to hire better staff, how to onboard employees, and how to manage employee relations issues that arise from time to time. We also clarified our “leave of absence” policies so that employees are aware of all leave related options available to them.
- In fiscal year 2025, we plan to complete the performance appraisal program (annual and onboarding reviews for employees). We also plan to develop an employee engagement and DEI program. We are also developing a robust leadership program for all supervisors and above, executive coaching for the C-Suite and succession planning.
- For fiscal year 2026, we will build out our benefits, compensation, and wellness programs.
- Our overall goal is to achieve continuous improvement with all of the initiatives that are enacted over the years.
- KPIs:
 - We currently have 27 vacancies which we hope to reduce to 10 vacancies by July 8.
 - Our time to fill vacancies has been reduced from 63 days in 2022 to 39 days in 2024. We are outperforming benchmark, which is 51 days.
 - Our turnover rate has been reduced by 11% from 36% to 25%.

- **Develop a Facility Maintenance and Improvement Program – Corey Albright**

Corey Albright, Chief Operating Officer, reported:

- Our goals were to (1) reduce reactive repairs and maintenance, (2) increase our engineering and planning efforts and oversee the significant amount of capital renewal that is on the horizon, and (3) to develop a long-term funding strategy to support capital repairs.
- The Engineering and Capital Projects Department was formulated after discussions with the City of San Diego wherein the Corporation agreed to take on the projects and planning related to capital renewal.
- We projected it would take approximately five years to build an internal team and the slide show our successful hires and program implementations to date.
 - FY 2022 – Initial Planning & Vision
 - 12-21: Hired Victoria Mitchell as Director of Planning and Development
 - 4-22: Promoted Corey Albright to COO
 - 4-22 Hired Project Engineer (Civil)
 - 5-22: Facility Condition Assessment Completed

- 10-22: Formally created Engineering and Capital Projects Department
 - FY 2023 – Core Team Recruitment and Formation
 - 3-23: Hired 3 Maintenance Supervisors
 - 3-23: Hired Procurement Analyst (to support increase in volume/complexity of projects)
 - 6-23: Hired Mechanical Engineer
 - 6-23: Hired Procurement Analyst (to support increase in volume/complexity of projects)
 - 7-23: Hired Electrical Engineer
 - 12-23 Hired Project Administrator
 - 12-23: Contracted for Digitizing of Building Drawings (Ongoing)
 - FY 2024 – Foundational Initiatives & Procedural Development
 - 2-24: Hired Project Control Analyst
 - 3-24: Implemented New Work Order System (CMMS)
 - 6-24: Hired Engineering Manager
 - FY 2025 our next steps are to ensure that we have the right processes and internal control mechanisms in place as well as team expansion and process optimization indicated on the slide. We also plan to establish a Change Control Board to address change orders and an Emergency Project Control Board.
 - 1-25: Audit building assets and establish replacement priorities
 - 3-25: Update and enforce building regulations and procedures to reduce asset damage
 - 5-25: Establish comprehensive procedures for asset maintenance activities, including preventative and reactive measures, to strategically prepare for future asset retirements
- **Refine Business Model to Ensure Financial Viability** – Mardeen Mattix an Andy Mikschl

Andy Mikschl, Executive VP Sales, reported:

- Sales objectives are to: (1) optimize occupancy, (2) generate more revenue for in-house partners, (3) increase gross rental revenue by 20% by changing internal negotiation policies and (4) to optimize allocation of direct event labor.
- Mr. Mikschl showed a slide which compared event booking practices for previous years versus current event booking practices.
- The sales team is focusing on booking business within a five-year period (25%). Past practices only booked 5% of business within a five-year period and booked 20% of business as many as 15+ years into the future. The team is optimizing booking

business in the short-term, which is five to seven years into the future and booking no business outside of thirteen years.

- Ms. Mattix showed a comparison between two types of events (convention-trade and corporate) and how the economic impact of the two types of events ultimately impact the Corporation's bottom line in terms of profitability.

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Engage the Community – Maren Dougherty and Juan Reyes

Maren Dougherty, Executive Director of Marketing and Communications, reported:

- The final imperative focuses on strengthening relationships within the community and communicating the Center's purpose and value.
- The Corporation's Communications Department has a five-person communications and design team that advances these objectives along with supporting internal and client communications.
- For FY 2024, the team has increased its focus on video content to tell the stories of our team, our building and the events that are hosted in the Center. The Center is one of, if not the only, buildings across the country that has a commercial, unmanned pilot on our team (drone operator) to really capture the scale of the events that we host as well as the beauty of our location. Having that footage has been extremely helpful for us as well as providing the footage to clients and our partners at SDTA.
- Our social and visual outreach has seen the greatest engagement in views via platforms like LinkedIn, and Instagram, and we are doing more collaboration posts on Instagram which helped to increase our reach on that platform.
- One of our most significant initiatives over the past year was the implementation of our Digital Asset Management System which helps us to easily share photos, videos and files with our clients and partners and colleagues across the organization because sometimes the best and most meaningful way to tell your story is to position others to do so.
- Media highlights included repeatedly telling the story of Comic-Con's economic impact last year because of the interest in the subject due to the Hollywood strike at the time, the lack of celebrity presence and the potential decrease of attendees due to the strike. The event was sold out and the economic impact remained quite significant.
- When the Wall Street Journal named the Center as one of the top five convention centers in the country, that generated significant regional and national subsequent coverage knowing that the ranking was from a reputable paper versus a "pay-to-play" publication. The Center was extremely proud to be included on that list.
- Hosting the PCMA Convening Leaders event in January was another opportunity for the Center to engage industry media as

well as local outlets like the UT. We worked closely with the Tourism Authority on a number of media tours and events as well as a press conference with SDCC and SDTA leaders speaking about what was happening now at the Center and plans for the future.

- On the community relations front, we continue to participate in volunteer activities and lighting our Sails Pavilion in support of “awareness days” and local moments and to support our clients’ community relations efforts. One of the most recent events was for the American Thoracic Society’s tree planting effort in partnership with the Port of San Diego. The Port had already identified an area near Seaport Village that needed tree replenishment due to the winter storms in San Diego and the Thoracic Society’s interest in a tree planning project, with the Society donating materials and labor, aligned with the Port’s needs. It was a successful event, and you can see the results along Embarcadero’s Moreno Park North.
- For FY 2025, the communication team would like to build on what they have been doing in terms of community partnerships. The team plans to increase its targets for quantifiable communication efforts and the team will also work on fine-tuning its efforts to keep clients informed regarding various upcoming capital projects throughout the building and mitigating the impact of those capital projects on events for the clients.
- In response to client interest, the team is also looking into the possibility of incorporating arial photography and videography into a revenue generating service since we have developed the staff expertise and understand how to obtain the appropriate authorizations from the FAA and the Port.
- The department will also continue to support our internal team with their involvement in industry organizations so we can stay on top of trends and best practices and remain that premiere gathering place. Although we welcome and international audience to those events that we host, quite deliberately so in order to generate that sizeable tax revenue and regional economic impact, we truly want to continue to communicate that we are of San Diego and for San Diego in everything that we do.

After completion of the Strategic Plan Update, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item 5.D.1. No members of the public responded to the request for comment. This item requires no vote as it was in informational update.

6. President’s Report (Rip Rippetoe)

- Staff has been engaging with the Port of San Diego to get permits needed for the upcoming ESRI and Comic-Con events.
- This industry has become more complex post-pandemic. Almost 70% of people who are leaders of the exhibits that are installed during events are brand new to

their jobs and our staff is constantly reinforcing policy and retraining them to be able to function in a high-quality convention center.

- The Center for Exhibition Industry Research has noted that the amount of net square footage taken up by exhibitor booths is up 3% since the pandemic. Event attendance is 3% below average and although the number of exhibitors are smaller, they are taking up more exhibition space and real revenues for show producers are down.
- The Center appears to be bucking that trend and we continue to be unique. We are aware that we need to continue to create economic impact and we need to continue to try to be able to pay for our capital expenses as much as possible.

After staff submitted their report, Vice-Chair VanDiver inquired if any member of the public wished to comment on Agenda Item (6). No members of the public responded to the request for comment.

7. **Vice-Chair's Report (Shawn VanDiver)**

- Vice-Chair VanDiver thanked staff for the Strategic Plan update.
- The next Board meeting is tentatively scheduled for July 9, 2024, at Noon.

After Vice-Chair VanDiver submitted his report, he inquired if any member of the public wished to comment on Agenda Item (7). No members of the public responded to the request for comment.

8. **Board Comment [Govt. Code § 54954.2(a) (2)]** – Mr. Rippetoe extended an invitation for Board members to join staff at the upcoming Pride Parade.

9. **Urgent non-agenda items** (must meet the requirements of Government Code, Section 54954.2): **None**

There being no further business, the meeting adjourned at 1:30 p.m.

I, Alyssa Turowski, Secretary of the Board of Directors of the San Diego Convention Center Corporation, Inc., do hereby certify that the foregoing is a true and correct copy of the minutes of the business transacted by the Board of Directors of the San Diego Convention Center Corporation, Inc., at a duly noticed meeting held on June 26, 2024, and that said minutes were approved by the Board of Directors on August 28, 2024.

Alyssa Turowski, Secretary

Agenda Item 3.A

MINUTES* SAN DIEGO CONVENTION CENTER CORPORATION BOARD OF DIRECTORS

BOARD MEETING JULY 9, 2024

BOARD MEMBERS PRESENT: Chair Jeff Gattas and Directors Shawn VanDiver, Sam Nejabat, and Gretchen Newsom

BOARD MEMBER(S) ABSENT: Director Jaymie Bradford, Director Will Rodriguez-Kennedy, and Director Alyssa Turowski

STAFF PRESENT: Rip Rippetoe, Mardeen Mattix, Corey Albright, Andy Mikschl, Maren Dougherty, Michael Milligan, Victoria Mitchell, and Pat Evans (Recorder)

ALSO PRESENT: Jennifer Lyon, General Counsel

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1. Call to Order

Chair Jeff Gattas called the Board Meeting to order at 12:00 p.m. in the Executive Boardroom of the San Diego Convention Center Corporation, 111 West Harbor Drive, San Diego, CA 92101.

Chair Gattas then called roll to determine which Directors were present:

Director Gattas – Present
Director VanDiver - Present
Director Bradford – Absent
Director Rodriguez-Kennedy – Absent
Director Turowski – Absent
Director Nejabat – Present
Director Newsom - Present

All Directors were recorded as present except Director Jaymie Bradford, Director Will Rodriguez-Kennedy, and Director Alyssa Turowski. Chair Gattas noted that all votes taken during this meeting would be recorded via roll call vote.

2. **Non-Agenda Public Comment** – Chair Gattas inquired if any member of the public wished to comment on any non-Agenda items. No members of the public responded to the request for comment.

3. **Board Committee Reports and Board Action Items:**

A. Approval of a Resolution of the San Diego Convention Center Corporation, Inc. Authorizing an Extension of the Agreement with Centerplate/SodexoLive! and Authorizing the President & CEO to Sign the Extension

After presentation by staff, Chair Gattas inquired if any member of the public wished to comment on Agenda Item (3.A).

Ms. Lori Saldaña submitted a speaker's slip requesting an opportunity to address the Board regarding Agenda Item (3.A), and she was granted an opportunity to address her comments to the Board regarding the date (July 8, 2024) on the SodexoLive! Work Force Report submitted with the Board packet and the inability of the Corporation to conduct a compliance review due to the submission date on the Report. Ms. Saldaña also questioned how the Corporation would ensure that SodexoLive! does not have any infractions or incidents of discrimination on their record.

Director Will Rodriguez-Kennedy arrived on site at 12:06 p.m.

After presentations by Staff, public comment, and Board discussion, Directors VanDiver and Newsom moved and seconded, respectively, to Approve a Resolution of the San Diego Convention Center Corporation, Inc. Authorizing an Extension of the current Agreement with Centerplate/SodexoLive! and Authorizing the President & CEO to sign the Extension Agreement contingent upon Centerplate/SodexoLive! successfully completing their 2024 labor negotiations with Unite Here Local 30.

**Director Gattas – Aye
Director VanDiver – Aye
Director Bradford – Absent
Director Rodriguez-Kennedy – Aye
Director Turowski – Absent
Director Nejabat – Aye
Director Newsom - Aye**

Vote: Unanimous

AYES: 5

NAYS: 0

ABSTENTIONS: 0

4. **Board Comment** [Govt. Code § 54954.2(a) (2)] – None.

5. **Urgent non-agenda items** (must meet the requirements of Government Code, Section 54954.2): None

There being no further business, the meeting adjourned at 12:17 p.m.

I, Alyssa Turowski, Secretary of the Board of Directors of the San Diego Convention Center Corporation, Inc., do hereby certify that the foregoing is a true and correct copy of the minutes of the business transacted by the Board of Directors of the San Diego Convention Center Corporation, Inc., at a duly noticed meeting held on July 9, 2024, and that said minutes were approved by the Board of Directors on August 28, 2024.

Alyssa Turowski, Secretary

DRAFT

Agenda Item 3.A

MINUTES* SAN DIEGO CONVENTION CENTER CORPORATION “SPECIAL” BOARD OF DIRECTORS

BOARD MEETING AUGUST 14, 2024

BOARD MEMBERS PRESENT: Chair Jeff Gattas and Directors Will Rodriguez-Kennedy, Shawn VanDiver, Alyssa Turowski, Jaymie Bradford, and Gretchen Newsom

BOARD MEMBER(S) ABSENT: Director Sam Nejabat

STAFF PRESENT: Rip Rippetoe, Mardeen Mattix, Corey Albright, Andy Mikschl, Maren Dougherty, Michael Milligan, Victoria Mitchell, and Pat Evans (Recorder)

ALSO PRESENT: Jennifer Lyon, General Counsel

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1. Call to Order

Chair Jeff Gattas called the Board Meeting to order at 12:00 p.m. in the Executive Boardroom of the San Diego Convention Center Corporation, 111 West Harbor Drive, San Diego, CA 92101.

Chair Gattas then called roll to determine which Directors were present:

Director Gattas – Present
Director VanDiver - Present
Director Bradford – Present
Director Rodriguez-Kennedy – Present
Director Turowski – Present
Director Nejabat – Absent
Director Newsom - Present

All Directors were recorded as present except Director Sam Nejabat. Chair Gattas noted that all votes taken during this meeting would be recorded via roll call vote.

2. **Non-Agenda Public Comment** – Chair Gattas inquired if any member of the public wished to comment on any non-Agenda items. No members of the public responded to the request for comment.

3. **Board Committee Reports and Board Action Items:**

A. **Approval of Amendment to the San Diego Convention Center Corporation Conflict of Interest Code**

After presentation by staff, and Board discussion, Chair Gattas inquired if any member of the public wished to comment on Agenda Item (3.A). No members of the public responded to the request for comment.

After presentations by Staff, and Board discussion, Directors Bradford and Newsom moved and seconded, respectively, to Approve the Amendment to the San Diego Convention Center Corporation Conflict of Interest Code.

**Director Gattas – Aye
Director VanDiver – Aye
Director Bradford – Aye
Director Rodriguez-Kennedy – Aye
Director Turowski – Aye
Director Nejabat – Absent
Director Newsom - Aye**

Vote: Unanimous

AYES: 6

NAYS: 0

ABSTENTIONS: 0

4. **Board Comment** [Govt. Code § 54954.2(a) (2)] – Mr. Rippetoe noted that Director Turowski's signature, as Board Secretary, was required on the Amendment to the Conflict of Interest Code.

5. **Urgent non-agenda items** (must meet the requirements of Government Code, Section 54954.2): **None**

6. **Closed Session:** The Board entered into closed session at 12:08 p.m. to discuss the items set forth below.

A. **EMPLOYEE PERFORMANCE EVALUATION**
Pursuant to Government Code Section 54957
Title: President & CEO EMPLOYEE PERFORMANCE EVALUATION

B. **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Government Code section 54957.6
Agency Representative: Board Chair
Unrepresented Employee: President & CEO

The Board returned to open session at 1:15 p.m.

Reporting out of closed session, General Counsel Lyon stated that the Board discussed items “6.A” and “6.B,” and direction was given but no reportable action was taken.

There being no further business, the meeting adjourned at 1:15 p.m.

I, Alyssa Turowski, Secretary of the Board of Directors of the San Diego Convention Center Corporation, Inc., do hereby certify that the foregoing is a true and correct copy of the minutes of the business transacted by the Board of Directors of the San Diego Convention Center Corporation, Inc., at a duly noticed meeting held on August 14, 2024, and that said minutes were approved by the Board of Directors on August 28, 2024.

Alyssa Turowski, Secretary

Agenda Item 4.A.1

CFO Report to Board of Directors For the month ending July 31, 2024 *(As of August 22, 2024)*

FY24 (Preliminary Audit) Financial Performance:

The Corporation does not publicly release preliminary financial statements for year-end while finalizing details in preparation for the annual financial statement audit, which begins next week. Below is a summary report based on preliminary year-end results:

Revenue: As of June 2024, revenues exceeded budget expectations by \$2.6M, largely due to higher-than-anticipated income from exhibitor ancillary services. June was particularly active, featuring five Citywide events and two short-term business activities.

Expenses: Most expense categories were below budget projections, with the exception of utilities, which ended the year \$468K over budget, totaling \$6.4M (13% of the \$50M budget). Some categories fell short of budget expectations due to strategic spending deferrals in anticipation of potential City funding cuts and project delays in maintenance related to supply chain issues and event-related repairs.

Non-operating Revenue: Interest and investment income exceeded the budget by \$1.2M. This positive variance is attributed to investment vehicles maturing during a period of high returns due to increased interest rates, coupled with a cash reserve that surpassed initial budget projections. Additionally, an unexpected capital contribution for telecom enhancements from SmartCity further contributed to this favorable outcome.

The ending reserve balance remained steady at \$29.5M. The fiscal year began with \$29.2M in reserves, adding \$4.5M in operational surplus, investing \$6.1M in capital improvements, and accounting for \$3.3M in depreciated asset values and \$1.4M in capital debt payments.

FY25 Results:

Revenues: July kicked off the year strongly, with two major events generating \$3.8M in operational revenues, surpassing the \$3.6M budget. This positive outcome was largely due to higher-than-expected attendance at Comic-Con, which led to record-breaking concession sales. The month's two large Citywide events also contributed an estimated \$4.2M in taxes to the City's general fund with a regional impact of nearly \$223M for San Diego.

Expenses: Most expense categories are currently below budget projections, particularly in repair and maintenance and contracted services. This is typical at the beginning of the year due to limited access to building repairs. We anticipate expenses in these areas will increase during the first quarter. Additionally, utility costs were lower than expected in July, primarily due to mild weather during Comic-Con, which reduced utility demand.

Non-operating Revenue: Interest and investment income exceeded the budget by nearly \$300K. This favorable variance is due to investments maturing during a period of high returns, thanks to elevated interest rates, combined with a cash reserve that exceeded initial budget projections.

Agenda Item 4.A.1

SDCC employs a comprehensive approach to managing its business operations, including monitoring debt, lease payments, and capital renewal investments through reserve activity tracking. Based on the current budgetary outlook, the unrestricted reserve balance is projected to reach \$15M by the end of the year.

Agenda Item 4.A.2

SAN DIEGO CONVENTION CENTER CORPORATION M E M O R A N D U M

TO: Board of Directors

FROM: Will Rodriguez-Kennedy, Budget Committee Chair

DATE: For the Agenda of August 28, 2024

RE: Recommendation to Enter into A Lease Agreement for 825 Energy Way, Chula Vista, CA 91911

BACKGROUND

The San Diego Convention Center relies on efficient logistics to ensure smooth operations and a positive experience for all clients and exhibitors. A key component of this logistics infrastructure is a dedicated marshaling yard, which serves as a staging area for trucks and trailers delivering various freight requirements to the Convention Center. The marshaling yard allows for the orderly coordination and scheduling of vehicle arrivals and departures, minimizing congestion in and around the convention center. By centralizing these operations in a dedicated yard, the Convention Center mitigates air pollution, noise, and traffic congestion, contributing to a more sustainable and environmentally responsible operation in accordance with previous Environmental Impact Report (EIR) requirements.

DISCUSSION

The San Diego Convention Center's current 5.35-acre marshaling yard, leased since April 1, 2013, was initially secured through a 10-year lease directly with the property owner. However, upon the lease's expiration, the landlord chose to lease the property to a new tenant, who is now subleasing it back to the Corporation under less desirable terms for two (2) years. This sublease, which runs through March 2025, has prompted a search for a more stable and long-term solution to continue supporting the Convention Center's logistics operations. Despite extensive efforts, including inquiries into City-owned properties, viable alternatives have been limited.

In June 2024, staff identified a promising opportunity with a vacant 10.3-acre property at 825 Energy Way, Chula Vista, CA 91911. This property is ideally suited for a truck marshaling yard featuring a fully paved lot with existing infrastructure such as a truck scale, office trailer, restrooms, updated fencing, and utilities, making it operationally ready without the need for significant capital improvements.

Pursuant to Board Policy 517, this item was brought to the Board on June 26, 2024, and the Board authorized the business purpose for the negotiations of a marshaling yard, the location of the 10.3-acre property at 825 Energy Way, Chula Vista, CA 91911, the negotiating party and authorized Staff to begin negotiations on a potential lease.

The property owner is Santa Ana Energy Properties LLC, and they originally proposed a sublease arrangement for the Corporation with one of their entities known as Ecology Auto Parts, Inc. However, the property owner has now proposed a direct lease with the Corporation of the new yard at 825 Energy Way, Chula Vista, CA, which is 10.3 acres, at a base rent of \$125,000 per month, which is approximately \$12,136 per acre. This rate is well within the market range for comparable properties, which typically fall between \$11,000 and \$14,000 per acre, according to multiple reliable sources. The existing site improvements and the property's readiness to meet our immediate operational needs negate the necessity for much of the \$250,000 capital investment anticipated in the FY25 budget for improvements to a marshaling yard. Additionally, the property owner is willing to discount the initial 3 months of rent to \$35,000 per month from September 1, 2024, through December 31, 2024, reverting to \$125,000 per month with an annual 3% escalation for a 10-year lease term securing the property through 2034.

The proposed lease agreement includes two options to extend the lease term for additional five-year periods each, ensuring flexibility and long-term control of the property. These extension options allow the Corporation to continue leasing the yard under the same terms and conditions, with the Base Rent for the first year of the extension period adjusted to fair market value due to the exhaustion of the initial 10-year lease period. Following the fair market evaluation, the base rent would increase annually by 3% based on the then-current rate, providing predictable cost management for the duration of the lease.

For the current marshaling yard, the Corporation uses a sublease to Freeman to operate the yard on the Corporation's behalf and manage the space for other entities that need to use the yard. This sublease currently offsets a portion of the costs of the lease rental amount. It is anticipated that a similar arrangement through a sublease will be used with Freeman for the new marshaling yard. This will offset a portion of rent that the Corporation will pay for the new property.

While the proposed yard at 825 Energy Way is larger than our current operational needs, this additional space offers several strategic benefits. The extra capacity provides flexibility for future growth and operational expansion. Additionally, it may present an opportunity to generate revenue through subleasing the unused portions to various entities, ensuring that the property not only meets our immediate needs but also future needs.

A copy of the Lease Agreement will be provided prior to or at the Board meeting.

STAFF RECOMMENDATION

Authorize the President & CEO to finalize and execute a lease on behalf of the Corporation for 825 Energy Way, Chula Vista, CA 91911.

/s/
Will Rodriguez-Kennedy
Budget Committee Chair

INDUSTRIAL REAL ESTATE LEASE

BETWEEN

Santa Ana Energy Properties, LLC,
a California limited liability company

as Landlord

and

San Diego Convention Center Corporation, Inc.,
a California nonprofit public benefit corporation

as Tenant

DATE OF LEASE: _____, 2024

Premises:

825 Energy Way, Chula Vista, CA 91911

INDUSTRIAL REAL ESTATE LEASE

THIS INDUSTRIAL REAL ESTATE LEASE (“Lease”) is made as of August __, 2024 by and between Santa Ana Energy Properties, LLC, a California limited liability company (“Landlord”), and San Diego Convention Center Corporation, Inc., a California nonprofit public benefit corporation (“Tenant”).

ARTICLE I

GRANT AND TERM

1.1 Landlord is owner of land comprising approximately 10.3 acres of land (the “Land”), located 825 Energy Way, Chula Vista, CA 91911, APN 644-182-01 and APN 644-182-02, as legally described on Exhibit A attached hereto and by this reference made a part hereof, together with all buildings, office trailers, and all other improvements located thereon (the “Improvements”) and all appurtenances belonging to or in any way pertaining to such premises (the Land, Improvements and appurtenances are hereinafter collectively referred to as the “Premises”). The Premises is depicted on the site plan attached hereto as Exhibit B.

1.2 Subject to the terms, conditions and covenants set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises defined herein.

1.3 The Term hereof (the “Term”) shall commence on _____, 2024 (the “Commencement Date”) and shall terminate on _____, 2034 (“Expiration Date”), unless such Term is extended in accordance with the terms of this Lease.

1.4 Landlord hereby grants Tenant options to extend the Term on the same terms, conditions and provisions as contained in this Lease, except as otherwise expressly provided herein, for two (2) periods of five (5) years each, each to be successively exercised (collectively the “Extension Periods,” or individually an “Extension Period,” as applicable), and there shall be no further right to extend the Term beyond the express provisions hereof. If exercised in accordance herewith, the first Extension Period shall commence on the first (1st) day after the Expiration Date and each successive Extension Period shall commence on the day after the expiration of the immediately preceding Extension Period. Not less than one hundred eighty (180) days prior to the Expiration Date or the last day of the applicable Extension Period, Tenant, by written notice to Landlord (“Extension Notice”), may exercise Tenant’s option to extend for the next occurring Extension Period; provided that, (i) if Tenant is in default on the date of giving the Extension Notice, the Extension Notice shall be totally ineffective and null and void; (ii) if Tenant is in default on the date the Extension Period is to commence, the Extension Period shall not commence; and (iii) in either case, this Lease shall expire at the end of the initial Term or initial Extension Period, as applicable, unless terminated sooner under the provisions hereof and the time for exercise of the option or commencement of the Extension Period shall not be extended by Tenant’s default or any cure period for such default. If an option to extend the Term, as the same may have been previously extended, is not extended in the aforesaid manner, the Term and Tenant’s rights hereunder and its rights to occupy and possess the Premises shall expire on the Expiration Date, or the last day of the then applicable Extension Period, as the case may be. Options may only be exercised consecutively. All terms and conditions of the Lease shall remain

unchanged during the Extension Periods, except the Base Rent for the first year of the first Extension Period shall be adjusted to fair market value but not less than the previous year's rent. The parties will have thirty (30) days after Tenant timely delivers the Extension Notice to agree on the fair market rent for the first Extension Period. If the parties are unable to agree on the fair market rent for the first year of the Extension Period, Landlord and Tenant shall each appoint a single impartial arbitrator who shall by profession be a real estate broker or agent who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of similar buildings in the geographical area of the Premises. Neither Landlord nor Tenant shall have consulted with the arbitrators as to their opinion as to the Base Rent prior to the appointment. The determination of the arbitrators shall be limited solely to the issue of the Base Rent for the Premises. Within five (5) business days after the appointment of the arbitrator, Landlord and Tenant shall submit to the arbitrator such party's proposed Base Rent for the Extension Period (each a "Proposal"). Each arbitrator shall, within thirty (30) days of receipt of the Proposal, reach a decision on the Base Rent. If each party's proposed Base Rents are within seven percent (7%) of one another, the Base Rent shall be the average of the two proposed Base Rents. If each party's proposed Base Rents are not within seven percent (7%) of one another, the two arbitrators shall appoint a third arbitrator to determine the Base Rent and such third arbitrator's determination shall be final and binding upon Landlord and Tenant; provided that the third appraiser shall be limited to awarding only one or the other of the two appraisals submitted by the parties' respective appraisers. The fair market rent as determined by the foregoing process shall be the Base Rent for the first year of the Extension Period. The cost of the arbitration shall be paid by Landlord and Tenant equally. Landlord shall have the right to require Tenant to execute and to deliver to Landlord an amendment to the Lease that accurately sets forth the Extension Period of the Lease and the new Base Rent. Within ten (10) business days after Landlord provides the amendment to Tenant, Tenant shall execute the amendment and deliver the amendment to Landlord. The Base Rent for each subsequent year of an Extension Period shall increase by an amount equal to three percent (3%) of the then-current rent.

ARTICLE II

RENT

2.1 Tenant agrees to pay to Landlord, without deduction, setoff, prior notice, or demand, base rent ("Base Rent"), in advance on the first day of each and every month during the Term commencing on the Commencement Date, to Landlord or its agent, at the Notice address set forth herein, or at such other place or places Landlord may, from time to time, designate by written notice delivered to Tenant, in the amounts set forth below. Base Rent for any partial month at the beginning or end of the Term shall be prorated using the actual number of days in the month. All monetary obligations of Tenant to Landlord under the terms of this Lease (other than the Security Deposit) are deemed to be "Rent".

Months of Term or Period	Monthly Base Rent (rounded to the nearest 100th of a dollar)
Commencement Date - December 31, 2024	\$35,000.00

Months of Term or Period	Monthly Base Rent (rounded to the nearest 100th of a dollar)
January 1, 2025 – Month 12	\$125,000.00
Month 13 – Month 24	\$128,750.00
Month 25 – Month 36	\$132,612.50
Month 37 – Month 48	\$136,590.88
Month 49 – Month 60	\$140,688.61
Month 61 – Month 72	\$144,909.27
Month 73 – Month 84	\$149,256.55
Month 85 – Month 96	\$153,734.25
Month 97 – Month 108	\$158,346.28
Month 109 – Expiration Date	\$163,096.67

2.2 Upon the Commencement Date, Tenant shall pay to Landlord a security deposit in the amount of One Hundred Sixty-Three Thousand Ninety-Six and 67/100 Dollars (\$163,096.67) (the “Security Deposit”). If Tenant fails to pay Rent, or otherwise defaults under this Lease, Landlord may use, apply, or retain all or any portion of the Security Deposit for the payment of any amount already due Landlord, or Rent that will be due in the future and/or to reimburse or compensate Landlord for any liability, expense, loss, or damage that Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall within ten (10) days after written request therefor deposit funds with Landlord sufficient to restore the Security Deposit to the full amount required by this Lease. Within thirty (30) days after the expiration of termination of this Lease, Landlord shall return that portion of the Security Deposit not used or applied by Landlord. Tenant hereby waives the protections of Section 1950.7 of the California Civil Code, as it may hereafter be amended.

2.3 Tenant acknowledges that late payment of Rent to Landlord will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed upon Landlord by any lender. Accordingly, if any Rent shall not be received by Landlord within five (5) days after the same is due and notice has been provided to Tenant in accordance with the terms of this Lease, Tenant shall pay to Landlord a one-time late charge equal to three percent (3%) of each such overdue amount or Two Hundred Fifty Dollars and 00/100 (\$250.00), whichever is greater.

2.4 If the Commencement Date occurs on other than the first (1st) day of the month, or the Term shall end other than on the last day of the month, Tenant shall pay proportionate Base

Rent at the monthly rate set forth herein (in advance) for such partial month, as well as any other charges payable for such partial month.

ARTICLE III

USE

3.1 The Premises may be used and occupied for outside truck and trailer storage, truck marshaling operations, and all ancillary or related activities necessary for the efficient operation of such functions ("Permitted Use"). This includes, but is not limited to, staging, coordination, and scheduling of truck arrivals and departures; temporary parking; inspection, maintenance, and fueling of trucks and trailers; related office uses, driver rest and break areas; installation and maintenance of necessary infrastructure and equipment; activities incidental to or required for the effective use of the Premises for truck marshaling operations. Tenant shall not use the Premises for any purpose other than the Permitted Use without the prior written consent of Landlord. In any instance, Tenant shall not use or permit the Premises to be used for any unlawful purpose. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations caused by, permitted by, or resulting from the specific use by Tenant, or in, upon, or in connection with the Premises, all at Tenant's sole cost and expense.

ARTICLE IV

POSSESSION

4.1 Except as otherwise expressly provided herein, Landlord shall deliver exclusive possession of the Premises to Tenant on the Commencement Date and Tenant accepts the Premises in their present "As Is" condition. By taking possession of the Premises, Tenant accepts them as being in good order, condition, and repair and in the condition in which Landlord is obligated to deliver them. It is hereby understood and agreed that no representations respecting the condition of the Premises have been made by Landlord to Tenant, except as specifically set forth in this Lease.

ARTICLE V

TAXES

5.1 "Taxes" shall mean real estate taxes, sewer rents, rates and charges, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary, including special or general assessments (but not including income or franchise taxes or any other taxes imposed upon or measured by Landlord's income or profits, except as provided herein), which may now or hereafter be levied or imposed against the Premises or any portion thereof or interest therein.

5.2 Tenant shall reimburse Landlord, before any fine, penalty, interest or cost is

incurred, all Taxes which are levied, confirmed, imposed or which become a lien upon the Premises with respect to any period of time within the Term; provided, however, that as to any calendar year not falling entirely within the Term, Tenant shall be obligated to pay only a prorated share of Taxes based upon the number of days of the Term falling within the calendar year. At least thirty (30) calendar days prior to the due date of the Taxes, Landlord shall forward a copy of the applicable tax bill, or other such notice, to Tenant, and within fifteen (15) calendar days thereafter, Tenant shall make payment to Landlord in the amount of the Taxes before any fine, penalty, interest or cost is incurred, for all Taxes that are levied, confirmed, imposed or that become a lien upon the Premises with respect to any period of time within the Term. Tenant shall not be liable for any costs, penalties or other expenses due to Landlord's failure to provide copies of such tax bills or notices in a timely manner, but Tenant shall be liable for such costs, penalties or other expenses due to Tenant's failure to make timely payments hereunder. Should Landlord pay such Taxes on Tenant's behalf before payment is made by Tenant to Landlord hereunder in order to avoid a late charge, cost or penalty, then Tenant shall promptly reimburse Landlord.

5.3 Tenant shall pay for any and all personal property taxes assessed against and levied upon trade fixtures, equipment, or other personal property of Tenant.

5.4 Tenant shall have the right to contest at its own expense the amount or validity, in whole or in part, of any Taxes by appropriate proceedings diligently conducted in good faith, but only after payment of such Taxes, unless such payment, or a payment thereof under protest, would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 5.2 hereof, Tenant may postpone or defer payment of such Taxes if neither the Premises nor any portion thereof, by reason of such postponement or deferment, would be in danger of being forfeited or lost. Tenant also shall have the right to select the counsel to be retained in connection with the prosecution of any such proceedings. Upon the termination of any such proceedings, Tenant shall pay the amount of such Taxes or part thereof, if any, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, including attorneys' fees, interest, penalties, fines and other liability in connection therewith. Tenant shall be entitled to the refund of any Taxes, penalty, fine and interest thereon received by Landlord which have been paid by Tenant or which have been paid by Landlord but for which Landlord previously has been reimbursed in full by Tenant. Landlord shall not be required to join in any proceedings referred to in this Section 5.4 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in Landlord's name.

ARTICLE VI

INSURANCE

6.1 Tenant shall procure and maintain the following policies of insurance, at its own cost and expense, and shall maintain such policies throughout the Term, and any Extension Period(s):

(a) Commercial General Liability insurance protecting Tenant and Landlord, and Landlord as an additional insured, against claims for bodily injury, personal injury and property

damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000.

(b) Commercial “all risk” property insurance for the Building and Improvements in an amount equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time.

(c) Pollution Liability insurance covering bodily injury, property damage and environment damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises in an amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

(d) Auto Liability insurance covering Bodily Injury and Property Damage in an amount of not less than \$1,000,000.00 per accident. Coverage is to include all owned, hired and leased vehicles, including trailers.

(e) Worker’s Compensation insurance, including occupational disease coverage, providing for the payment of statutory benefits required by the applicable state laws; and Employer’s Liability insurance with limits of not less than \$1,000,000.00 per occurrence.

(f) Employer’s liability insurance with limits of not less than \$1,000,000.00 per occurrence.

The above limits of insurance may be met by an umbrella liability policy covering the types of insurance identified above.

6.2 Notwithstanding any other provision of this Lease to the contrary, and without limitation of the provisions of this Article VI, whenever (a) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by Tenant, or anyone claiming by, through, or under it in connection with the Premises, and (b) Tenant then is covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Lease to be so insured or is permissibly self-insured as provided for herein, then Tenant hereby waives any claims against and releases Landlord from any liability Landlord have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered had such insurance been carried as so required). Tenant agrees to furnish to each insurance company which has or will issue policies of casualty insurance on the Improvements, and to all the insurance companies providing the types of insurance required under this Article, written notice of said waivers of subrogation in favor of Landlord, and to have the insurance policies properly endorsed, if necessary, to acknowledge such subrogation waivers and if Tenant is self-insured as provided for herein, Tenant shall provide a written acknowledgment to Landlord of such waiver of its subrogation rights.

6.3 Tenant shall name Landlord as an additional insured under all of the above policies of insurance except under Worker’s Compensation and Employer’s Liability policies, and if required by Landlord, any appropriate parties designated by Landlord as loss payees on the

property policy. Tenant shall, upon written request, provide Landlord with a certificate of insurance evidencing coverage required under this Lease.

The insurance described herein shall be maintained throughout the Term and shall not be interpreted in any way as a limitation of Tenant's liability under this Lease and shall be written by companies having a Best's Rating of A or better, unless Tenant is self-insured as provided for herein.

Tenant shall provide Landlord with a Certificate of Insurance and an additional insured endorsement confirming the existence of the policies of insurance and the status as an additional insured. Further, Tenant will have all of the policies of insurance issued with a waiver of subrogation provision as set forth herein. Tenant acknowledges and accepts these terms and conditions granted and shall exercise its rights in this paragraph in a commercially reasonable fashion.

Regardless of whether any of the policies of insurance have deductible or self-insured retention provisions, Tenant agrees to be responsible for the payment of all deductible and self-insured amounts. Tenant acknowledges and accepts these terms and conditions granted and shall exercise its rights in this paragraph in a commercially reasonable fashion.

The above paragraphs are meant by the Parties to be construed as an insured contract for insurance purposes.

ARTICLE VII

UTILITIES

7.1 Tenant will pay, when due, all charges of every nature, kind or description for utilities consumed by Tenant at the Premises, including all charges for water, sewage, heat, gas, light, garbage, electricity, telephone, steam, power, security system, or other public or private utility or other services, together with any taxes, penalties, and surcharges or the like pertaining thereto and any maintenance charges for utilities. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Property.

ARTICLE VIII

MAINTENANCE AND ALTERATIONS

8.1 Tenant, at its sole expense, shall keep and maintain the Premises in good condition and repair. As used herein, each and every obligation of Tenant to keep, maintain and repair shall include, without limitation, all ordinary structural and nonstructural repairs and replacements on any existing buildings, and on any structures placed on the Premises during the Term of the Agreement, including to utility systems or installations as of the Commencement Date (collectively "Improvements"). Further, Tenant, at its sole expense, shall keep and maintain the Premises and the Improvements at all times situated upon the Premises, any and all parking areas and areas adjacent thereto, safe, secure, clean, in good repair and sanitary (including, without

limitation, snow and ice clearance, gardening, planting and replacing flowers and landscaping, as necessary), and in compliance with all zoning, municipal, county and state laws, ordinances and regulations applicable to the Premises. Unless otherwise disclosed in writing by Landlord, Landlord makes no representation or warranty that the Premises are as of the date of this Lease in material compliance with all applicable zoning, municipal, county, state, and federal laws, ordinances and regulations (together the “Regulations”). Tenant shall pay for all maintenance and repairs for which Tenant is responsible.

8.2 Landlord will have no responsibility to maintain, repair, or replace the Premises or any systems that serve the Premises.

8.3 If Tenant refuses or neglects to make repairs or maintain the Premises, or any part thereof, as required under this Lease in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event the cost of such work shall be paid by Tenant as additional Rent promptly upon receipt of an invoice therefor.

8.4 Notwithstanding anything to the contrary contained in the foregoing, Tenant has or will have prior to the Commencement Date, inspected the Premises and Tenant’s taking of possession of the Premises shall constitute its acknowledgment that the Premises are in good condition and repair as of the Commencement Date.

8.5 Tenant waives the benefits of any law existing now or at any time during the Term of this Lease and any extension thereof or thereafter giving Tenant rights or remedies as a result of the physical condition of the Premises and, without limitation, Sections 1932, 1933, 1941, 1941.2, 1942 and 1942.1 of the Civil Code of California and all right to make repairs at the expense of Landlord or to terminate this Lease as provided in said Sections of said Civil Code or otherwise, except as expressly provided herein.

8.6 Tenant shall not make any alterations to the Premises (“Alterations”) without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord shall be deemed to have reasonably withheld consent unless each and every proposed alteration (i) shall not, individually or in the aggregate, lessen the fair market value of the Premises, or materially affect the usefulness of the Premises, either for Tenant’s business or the business of potential successor tenants, (ii) be accompanied by all final plans and specifications with any deviation therefrom constituting a separate alteration subject to this Section 8.6, (iii) be constructed by a California licensed contractor and under the direction of a California licensed architect satisfactory to Landlord, and (iv) once consented to by Landlord, shall be completed expeditiously in a good and workmanlike manner, with first class quality materials, and in compliance with all applicable legal, permit, and insurance requirements, and (v) shall become part of the Premises and subject to this Lease, provided, at Landlord’s option, Tenant shall remove any such alteration and restore the Premises to their condition prior to the making of same, normal wear and tear excepted, upon the expiration or earlier termination of the term hereof. Landlord shall exercise its option by thirty (30) days’ notice given no later than thirty (30) days after such expiration or termination and, if Tenant has not so removed and restored within thirty (30) days after Landlord gives said notice, Tenant shall pay Landlord upon demand the reasonable rental value of the Premises during the

period beginning with the date immediately following said thirty (30) days after Landlord gives its notice and ending with the date upon which the removal and restoration is completed and Landlord may, but shall not be obligated to, remove such alteration and restore the Premises and Tenant also shall pay Landlord its cost of same upon demand.

8.7 Landlord shall not be required to make any contribution to the cost of any Alterations or any part thereof, and Tenant covenants that Landlord shall not be required to pay any cost, expense or liability arising out of or in connection with or by reason of any alterations and shall indemnify and hold Landlord harmless from and against, and shall reimburse Landlord upon demand for, all such costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements).

ARTICLE IX

COMPLIANCE WITH LAWS AND ORDINANCES

9.1 Except with respect to matters arising prior to Tenant's occupancy of the Premises, at its sole cost and expense throughout the Term, Tenant shall comply or cause compliance in all material respects with or remove or cure any material violation of any and all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and other governmental bodies having jurisdiction over the Premises and relating to Tenant's use of the Premises. Tenant shall be responsible, at its sole cost and expense, for ensuring that the Premises are in compliance with all applicable laws, including the Americans with Disabilities Act, as amended (the "ADA"), including the correction or remediation of such non-complying conditions that exist as of the Commencement Date; provided, however, that Landlord shall reimburse Tenant up to Fifty Thousand Dollars (\$50,000.00) to repair any violations of the ADA that exist as of the Commencement Date. Tenant shall solely be responsible for costs associated with correcting any ADA violations that arise due to modifications or alterations made by the Tenant after the Commencement Date. Tenant shall obtain and maintain all required governmental permits and licenses, including but not limited to business licenses and environmental permits, necessary to lawfully conduct its business at the Premises.

9.2 Tenant acknowledges that the Premises have not undergone an inspection by a Certified Access Specialist (CAsp). Note: a CAsp can inspect the Premises and determine whether the 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 Premises, the commercial property owner or Landlord may not prohibit the Tenant from obtaining a CAsp inspection of the Premises for the occupancy or potential occupancy of the Tenant, if request by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection.

9.3 After prior written notice to Landlord, Tenant, at its sole cost and expense, shall have the right to contest the validity or application of any law or ordinance referred to in this Article IX in the name of Tenant, Landlord, or both parties, by appropriate legal proceedings diligently conducted. If necessary or proper to permit Tenant to so contest the validity or application of any such law or ordinance, Landlord shall execute and deliver any appropriate papers or other documents. Notwithstanding the foregoing, if the law or ordinance being contested relates to pre-existing conditions or compliance issues existing as of the Commencement Date, the

Landlord shall bear the cost and responsibility for such contest, unless the issue arises solely from the Tenant's modifications or specific use of the Premises after the Commencement Date.

9.4 Notwithstanding anything in this Lease to the contrary, if the Permitted Use specified in Section 3.1 is no longer allowed by any applicable laws, rules, regulations or ordinances of any jurisdiction through no fault of Tenant, Tenant shall have the right to terminate this Lease with no further obligations upon ninety (90) days' notice to Landlord. If Tenant exercises such right, Tenant shall not be deemed to be in default under this Lease and shall have no liability to Landlord, except for any liabilities or obligations that expressly survive termination of this Lease.

ARTICLE X

MECHANIC'S LIENS

10.1 Tenant shall not suffer or permit any mechanic's lien or other lien to be filed against the Premises, or any portion thereof, by reason of work, labor, skill, services, equipment or materials supplied or claimed to have been supplied to the Premises at the request of Tenant, or of anyone holding the Premises, or any portion thereof, by through or under Tenant. If any such mechanic's lien or other lien at any time shall be filed against the Premises or any portion thereof, Tenant, within thirty (30) days after the date Tenant first becomes aware of the filing of the same, at Tenant's election, shall cause said lien either to be discharged of record or to be bonded over in a manner which is reasonably acceptable to Landlord. If Tenant shall fail to discharge such mechanic's lien or liens or other lien or to bond over the same within such period, then Landlord may, but shall not be obligated to, discharge the same by paying to the claimant the amount claimed to be due or by procuring the discharge of such lien as to the Premises by deposit of a cash sum or a bond or other security, or in such other manner as is now or may in the future be provided by present or future law for the discharge of such lien as a lien against the Premises. Any amount paid by Landlord, or the value of any deposit so made by Landlord, together with all costs, fees and expenses in connection therewith (including reasonable attorneys' fees), together with interest thereon at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, shall be repaid by Tenant to Landlord within ten (10) days after demand therefor. Tenant shall indemnify, defend and hold harmless Landlord and the Premises from all losses, costs, damages, expenses, liabilities, suits, penalties, claims, demands and obligations, including, without limitation, reasonable attorneys' fees, resulting from the assertion, filing, foreclosure or other legal proceedings with respect to any such mechanic's lien or other lien.

ARTICLE XI

DEFAULTS OF LANDLORD

11.1 Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Section, a reasonable time shall in no event be less than thirty (30) days after receipt by Landlord and any Lender whose name and address shall have been furnished to Tenant in writing for such purpose, of written notice specifying wherein such obligation of Landlord has not been performed;

provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be in breach if performance is commenced within such 30-day period and thereafter diligently pursued to completion.

11.2 In the event that neither Landlord nor Lender cures said breach within thirty (30) days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Tenant may elect to cure said breach at Tenant's expense and offset from rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to one month's Base Rent, reserving Tenant's right to reimbursement from Landlord for any such expense in excess of such offset. Tenant shall document the cost of said cure and supply said documentation to Landlord.

ARTICLE XII

DEFAULTS OF TENANT

12.1 The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) If default shall be made in the due and punctual payment of any Rent or in the payment of any other amount to be paid by Tenant to Landlord, when and as the same shall become due and payable, and such default shall continue for a period of five (5) days after Tenant's receipt of written notice thereof from Landlord; or

(b) If default shall be made by Tenant in keeping, observing or performing any of the terms contained in this Lease, other than as referred to in subsection (a) of this Section 12.1, and such default shall continue for a period of thirty (30) days after Tenant's receipt of written notice thereof given by Landlord, or such longer period as is reasonable to cure said default, if said default cannot, with due diligence and in good faith, be cured within said thirty (30) days, provided that Tenant promptly and with due diligence and in good faith commences the cure of the same within the thirty (30) day period and thereafter prosecutes the curing of such default with due diligence and in good faith, not to exceed ninety (90) days.

12.2 If an Event of Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative.

(a) Landlord may terminate this Lease by giving Tenant written notice of its election to do so, in which event the Term shall end and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

(b) Landlord may terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon Tenant's right to possess the Premises or any part thereof shall cease on the date stated in such notice; and

(c) Landlord may enforce the provisions of this Lease and may enforce and

protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including, without limitation, injunctive relief, and for recovery of all monies due or to become due from Tenant under any of the provisions of this Lease.

12.3 If Landlord exercises either of the remedies provided for in Sections 12.2(a) and 12.2(b), Tenant shall surrender possession of and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may, upon proper process of law, re-enter and take complete and peaceful possession of the Premises.

12.4 If Landlord terminates Tenant's right to possess the Premises without terminating this Lease, such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full Term, as and when the same becomes due and payable, and Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Rent and any other sums due and payable to Landlord during the period from the date of such notice of termination of possession to the stated end of the Term. In any such case, Landlord shall use reasonable efforts to mitigate damages and to re-let the Premises or any part thereof for the account of Tenant for such time (which may be for a term extending beyond the Term) and upon such terms as Landlord reasonably shall determine. Landlord shall collect the rents from any such re-letting and apply the same to the payment of Rent herein provided to be paid by Tenant, and any excess or residue, until the expiration of the Term, shall operate only as an offsetting credit against the amount of Rent due and owing which thereafter becomes due and payable hereunder, and upon the expiration of the Term, the total aggregate amount of all such excesses which Landlord has then accumulated, if any, shall be paid to Tenant. No such re-entry, repossession or re-letting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention is given to Tenant, and Landlord, at any time and from time to time, may sue and seek a judgment for any deficiencies from time to time remaining after the application of the proceeds of any such re-letting. In no event shall Landlord be entitled to collect Rent or other charges from Tenant prior to the date the same is due and payable under the terms of this Lease.

12.5 If this Lease is terminated as provided above, Landlord shall be entitled to recover from Tenant the following:

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

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided.

As used above, the "worth at the time of award" referred to in subparagraphs (a) and (b) shall be computed with interest at two percent (2%) above the prime rate then published in the Wall Street

Journal. The “worth at the time of the award” referred to subparagraph (c) shall be computed with interest at the discount rate of the Federal Reserve Bank of San Francisco, California, plus one percent (1%); provided, however, in no event shall the interest charged be higher than legal rate.

12.6 All rights, privileges and elections or remedies of the parties are cumulative and, to the extent permitted by applicable law and, except as otherwise provided herein, are not alternative.

ARTICLE XIII

DESTRUCTION AND RESTORATION

13.1 Tenant covenants and agrees that in case of damage or destruction of the Improvements (including to any Tenant Improvements and appurtenances) after the Commencement Date by fire or otherwise, Tenant shall promptly restore, repair, replace and rebuild the same as nearly as possible to the condition that the same were in immediately prior to such damage or destruction with such changes or alterations (made in conformity with Article VIII hereof) as may be reasonably acceptable to Landlord or required by law. Such restoration, repairs, replacements, rebuilding, changes and alterations, including the cost of temporary repairs for the protection of the Improvements, or any portion thereof, pending completion thereof are sometimes hereinafter referred to as the “Restoration.” The Restoration shall be carried on and completed in accordance with the provisions and conditions of this Section and Article VIII hereof. All insurance monies payable on account of such damage or destruction shall be applied to the payment of the costs of the Restoration. Notwithstanding anything to the contrary herein contained, if the insurance monies in the hands of Tenant shall be insufficient to pay the entire costs of the Restoration, or if Tenant has elected to self-insure as provided herein, Tenant shall be obligated to pay all costs of the Restoration, or pay any deficiency. Upon completion of the Restoration, Tenant shall be entitled to any insurance monies then remaining.

13.2 From and after any destruction of or damage to the Improvements (including to any Tenant Improvements and appurtenances), or any portion thereof, by fire, casualty or otherwise, which results in the inability of Tenant to conduct its business, in part or in whole, at the Premises, all Rent and all other charges payable by Tenant hereunder shall, nevertheless, continue to be paid by Tenant to Landlord.

ARTICLE XIV

CONDEMNATION

14.1 If, during the Term, the entire Premises shall be taken as the result of the exercise of the power of eminent domain or conveyed under threat thereof (hereinafter referred to as the “Proceedings”), this Lease and all right, title and interest of Tenant hereunder shall terminate on the earlier of taking of possession by the condemning authority or the date of vesting of title pursuant to such Proceedings.

14.2 If, during the Term, less than the entire Premises shall be taken in any such Proceedings, but such taking is equal to twenty five per cent (25%) or more of the Premises, Tenant

may terminate this Lease. Such termination shall be effected by notice in writing given not more than sixty (60) days after the date of vesting of title in such Proceedings, and shall specify a date not less than three (3) months after the giving of such notice as the date for such termination. Upon the date specified in such notice, the Term of this Lease, and all right, title and interest of Tenant hereunder shall cease and terminate.

14.3 If during the Term, less than the entire Premises shall be taken, but such taking, in Tenant's reasonable judgment, shall not render the Premises unusable, this Lease, upon the earlier of taking of possession by the condemning authority or vesting of title in the Proceedings, shall terminate as to the parts so taken.

14.4 In the event of any termination of this Lease, or any part thereof, as a result of any such Proceedings, Tenant shall pay to Landlord all Rent and all other charges payable hereunder with respect to that portion of the Premises so taken, apportioned to the date of such termination. No award for any taking will be apportioned to Tenant.

14.5 If Tenant either is not entitled, or does not elect, to terminate this Lease in the event of a partial taking of the Premises, the Rent payable hereunder during the period from and after the earlier of the taking of possession by the condemning authority and the date of vesting of title in such Proceedings through to the expiration or termination of this Lease (as the Term may be extended) shall abate and be diminished in proportion to that part of the Improvements and the Land which has been taken.

ARTICLE XV

ASSIGNMENT AND SUBLETTING

15.1 Tenant, at any time and from time to time during the Term, may, with the consent of the Landlord, which shall not be unreasonably withheld, conditioned, or delayed: (a) assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest under it; (b) allow to exist or occur any transfer of or lien upon this Lease or Tenant's interest herein by operation of law; or (c) sublet the Premises or any part thereof (collectively or individually a "Transfer"). Landlord acknowledges and agrees by signing this Lease that Tenant can sublease all or a portion of the Premises to Freeman on terms and conditions subject to Tenant's discretion as long as any sublease does not violate any provisions of this Lease. Landlord agrees to the Freeman sublease and no additional approvals or consent of Landlord are needed in order for Tenant to enter into such sublease with Freeman.

15.2 If Tenant shall assign this Lease, the assignee expressly shall assume in writing all of the obligations of Tenant hereunder. Tenant shall provide copies of any Transfer documents to Landlord. Tenant will pay Landlord, as additional Rent, fifty percent (50%) of all annual base rent as defined in any sublease which Tenant receives as a result of a Transfer for all or any portion of the Premises that is in excess of Tenant's Costs. As used herein, "Tenant's Costs" shall mean Tenant's annual base rent payments to Landlord, annual operating expenses, and annual maintenance obligations for the Premises. If the annual base rent as defined in any sublease which Tenant receives as a result of a Transfer for all or any portion of the Premises does not exceed Tenant's Costs, then no additional Rent under this section will be paid by Tenant to Landlord. If

Tenant is in Default, Landlord may require that all sublease payments be made directly to Landlord, in which case Tenant will receive a credit against Rent in the amount of Tenant's share of payments received by Landlord.

15.3 Landlord may transfer, assign, sell, mortgage or further encumber its interest in the Premises at its sole and absolute discretion, and this Lease shall be subject and subordinate to the lien of any mortgage, deed of trust, security instrument or other document of like nature, hereinafter referred to as a "Mortgage," which now or at any time hereafter may be placed upon the Premises, and to any replacements, renewals, amendments, modifications, extensions or refinancing of any of the foregoing, and to each and every advance made under any Mortgage (unless the holder of any Mortgage [such holder being hereinafter referred to as a "Mortgagee"] requires in writing that this Lease be superior thereto); provided that such subordination is expressly contingent upon the Mortgagee agreeing in writing that so long as no Event of Default by Tenant is continuing, neither Tenant's right to quiet enjoyment under this Lease, nor the right of Tenant to continue to occupy the Premises and to conduct its business thereon in accordance with the covenants, conditions, provisions, terms and agreements of this Lease, shall be interfered with or disturbed by Mortgagee or Landlord or anyone claiming by, through or under Landlord. Tenant agrees at any time hereafter, and from time to time within thirty (30) days after demand of Landlord, to execute and deliver to Landlord any instruments, releases or other documents that reasonably may be required to effect or confirm the subordination or superiority of this Lease to the lien of any such Mortgage. In addition, Landlord, upon Tenant's request, shall use commercially reasonable efforts to cause any Mortgagee to sign a subordination, non-disturbance and attornment agreement, reasonably acceptable to all parties, provided that such agreement shall not change any material term of this Lease and shall require Mortgagee not to interfere with or disturb Tenant's rights as aforesaid so long as no Event of Default is continuing. If any Mortgagee shall succeed to the rights of Landlord under the Lease or to ownership of the Premises, whether through foreclosure or delivery of a deed in lieu thereof, then upon the written request of such Mortgagee, and provided that such Mortgagee agrees in writing to assume and be bound by all of Landlord's obligations hereunder, Tenant shall attorn to and recognize such Mortgagee as Tenant's Landlord under this Lease, and shall execute and deliver any instrument that such Mortgagee may reasonably request to evidence such attornment. In the event of any other transfer or sale of Landlord's interest hereunder, upon the written request of the transferee and Landlord, and provided such transferee agrees in writing to assume and be bound by all of Landlord's obligations hereunder, Tenant shall attorn to and recognize such transferee as Tenant's Landlord under this Lease and shall execute and deliver any instrument that such transferee and Landlord reasonably may request to evidence such attornment.

ARTICLE XVI

SUBORDINATION, NONDISTURBANCE, NOTICE TO MORTGAGEE AND ATTORNMENT

16.1 This Lease is and shall be subject and subordinate to the lien of any Mortgage, which now or at any time hereafter may be placed upon the Premises, or any portion thereof or interest therein, and to all present and future ground or underlying Leases of the Land, and to any replacements, renewals, amendments, modifications, extensions or refinancing of any of the

foregoing, and to each and every advance made under any Mortgage (unless the Mortgagee requires in writing that this Lease be superior thereto); provided that such subordination is expressly contingent upon the Mortgagee agreeing in writing that so long as no Event of Default is continuing, neither Tenant's right to quiet enjoyment under this Lease, nor the right of Tenant to continue to occupy the Premises and all portions thereof, and to conduct its business thereon in accordance with the covenants, conditions, provisions, terms and agreements of this Lease, shall be interfered with or disturbed by Landlord or anyone claiming by, through or under Landlord, including Mortgagee. Tenant agrees at any time hereafter, and from time to time within thirty (30) days after demand of Landlord, to execute and deliver to Landlord any instruments, releases or other documents that reasonably may be required to effect or confirm the subordination or superiority of this Lease to the lien of any such Mortgage or to any such ground or underlying Lease. In addition, Landlord, prior to the Commencement Date, upon Tenant's request, shall cause any Mortgagee currently holding a Mortgage, to agree in writing in a manner satisfactory to Tenant, which satisfaction shall not be unreasonably withheld, not to interfere with or disturb Tenant's rights as aforesaid so long as no Event of Default is continuing said writing to be delivered to Tenant within thirty (30) days of the Commencement Date. The lien of any Mortgage shall not cover Tenant's trade fixtures or other personal property located in or on the Premises.

16.2 If any Mortgagee shall succeed to the rights of Landlord under the Lease or to ownership of the Premises, whether through foreclosure or the delivery of a deed in lieu thereof, then upon the written request of such Mortgagee, and provided that such Mortgagee agrees in writing to assume and be bound by all of Landlord's obligations hereunder, Tenant shall attorn to and recognize such Mortgagee as Tenant's Landlord under this Lease, and shall execute and deliver any instrument that such Mortgagee may reasonably request to evidence such attornment. In the event of any other transfer of Landlord's interest hereunder, upon the written request of the transferee and Landlord, and provided such transferee agrees in writing to assume and be bound by all of Landlord's obligations hereunder, Tenant shall attorn to and recognize such transferee as Tenant's Landlord under this Lease and shall execute and deliver any instrument that such transferee and Landlord reasonably may request to evidence such attornment.

16.3 Landlord shall use commercially reasonable efforts to cause any Mortgagee to sign a subordination, non-disturbance and attornment agreement, reasonably acceptable to all parties, provided that such agreement shall not change any material term of this Lease nor shall it obligate Tenant to provide the Mortgagee any period of time to cure any default of Landlord under this Lease in excess of the time period granted to Landlord under this Lease.

ARTICLE XVII

SIGNS

17.1 Tenant may erect any signs on the exterior or interior of the Improvements or on the landscaped area adjacent thereto, provided that such sign or signs (i) do not cause any substantial structural damage or other damage to the Improvements; (ii) do not violate applicable governmental laws, ordinances, rules or regulations; and (iii) do not violate any covenants, conditions or restrictions affecting the Premises. At the end of the Term, all such signage shall be removed, and any damage caused by such removal shall be repaired, all at Tenant's sole cost and expense.

ARTICLE XVIII

LANDLORD'S ACCESS

18.1 Tenant agrees to permit Landlord and its authorized representatives, at Landlord's sole cost and expense, to enter upon the Premises at all reasonable times during ordinary business hours, upon not less than 24 hours' prior notice, for the purpose of inspecting the same and making any necessary repairs or replacements which are the obligation of Landlord. Landlord may, during the progress of any work required hereunder, keep and store upon the Premises all reasonably necessary materials, tools and equipment.

18.2 Landlord is hereby also given the right at all reasonable times during ordinary business hours, upon not less than 24 hours' prior notice, to enter upon the Premises and to exhibit the same for the purpose of mortgaging or selling the same or, during the final eight (8) months of the Term, leasing the same.

18.3 In exercising its rights hereunder, Landlord shall refrain from any acts which may unreasonably interfere with Tenant's use or occupancy of the Premises or access thereto.

ARTICLE XIX

SURRENDER AND HOLDING-OVER

19.1 Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with all improvements thereon, to Landlord, in good condition and repair, reasonable wear and tear and damage by casualty and condemnation excepted. Said improvements shall include all plumbing, lighting, electrical, and all alterations. All permanent alterations, additions and improvements made in or upon the Premises by Tenant shall become Landlord's property and shall remain upon the Premises on any such termination without compensation, allowance, or credit to Tenant.

19.2 Upon the termination of this Lease, Tenant shall remove Tenant's personal property, trade fixtures and equipment; provided, however, that Tenant shall repair any injury or damage to the Premises which may result from such removal and shall restore the Premises to the same condition as existed prior to the installation thereof. If Tenant does not remove Tenant's personal property, trade fixtures and equipment from the Premises prior to the expiration or earlier termination of the Term, Landlord, upon thirty (30) days' notice to Tenant, at its option, may remove the same (and repair any damage occasioned thereby) and dispose thereof or deliver the same to any other place of business of Tenant or warehouse the same, and Tenant shall pay the cost of such removal, repair, delivery and warehousing to Landlord within thirty (30) days of demand therefor.

19.3 Tenant shall have no right to occupy the Premises or any portion thereof after the expiration of this Lease or after the termination of this Lease or after the termination of Tenant's right to possession pursuant to Article XII hereof. In the event Tenant or any party claiming by,

through or under Tenant holds over, Landlord may exercise any and all remedies available to it at law or in equity to recover possession of the Premises, and for direct damages; provided, however, that Landlord shall not be entitled to recover, and hereby expressly waives any right to recover, consequential damages. Notwithstanding anything contained herein to the contrary, in the event Tenant or any party claiming by, through or under Tenant holds-over after the expiration of the Term, Landlord may elect, in lieu of any other remedy provided by law or herein, that the same shall constitute a month-to-month tenancy upon the same terms as in this Lease at a rate of rent equal to one hundred fifty percent (150%) of the Base Rent for the month in which the Term expires.

ARTICLE XX

HAZARDOUS AND TOXIC MATERIALS

20.1 As used herein:

(a) “Claim” shall mean and include any demand, cause of action, proceeding or suit (i) for damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, or contribution; (ii) for the costs of site investigations, feasibility studies, information requests, health or risk assessments or Response actions; or (iii) for enforcing this Article XX.

(b) “Environmental Law” means federal, state, regional, county and local administrative rules, statutes, codes, ordinances, regulations, licenses, permits, approvals, plans, authorizations, directives, rulings, injunctions, decrees, orders, judgments, and any similar items, relating to the protection of human health, safety, or the environment including without limitation: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. §§ 9601 et seq.); (b) the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.); (c) The Hazardous Materials Transportation Control Act of 1970 (49 U.S.C. §§ 1802 et seq.); (d) the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Act Amendments (“RCRA”) (42 U.S.C. §§ 6901 et seq.); (e) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. §§ 1251 et seq.) (the “Clean Water Act”); (f) the Safe Drinking Water Act (42 U.S.C. §§ 300h et seq.); (g) the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. §§ 1857 et seq.); (h) the Solid Waste Disposal Act, as amended by RCRA (42 U.S.C. § 6901 et seq.); (i) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.); (j) the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”) (42 U.S.C. §§ 11001 et seq.); (k) the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”) (7 U.S.C. §§ 136 et seq.); (l) the National Environmental Policy Act of 1975 (42 U.S.C. §§ 4321 et seq.); (m) the Radon Gas and Indoor Air Quality Reserve Act (42 U.S.C. §§ 7401 et seq.); (n) the National Environmental Policy Act of 1975 (42 U.S.C. §§ 4321 et seq.); (o) the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 et seq.); (p) the Oil Pollution Act of 1990 (33 U.S.C. §§ 1321 et seq.); (q) the Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531 et seq.); (r) the Occupational Safety and Health Act of 1970, as amended, (29 U.S.C. §§ 651 et seq.); (s) North American Free Trade Act, (t) counterparts of any of the foregoing federal statutes enacted within or outside the United States

or by any other nation, any U.S. state, region, county or local government (including any subdivisions thereof); (u) any and all laws, rules, regulations, codes, ordinances, licenses, permits, approvals, plans, authorizations, directives, rulings, injunctions, decrees, orders and judgments enacted or promulgated under any of the foregoing, all as amended and as may be amended in the future, and (v) common law theories of nuisance, trespass, waste, negligence, and abnormally dangerous activities arising out of or relating to the presence of Hazardous Substances in the environment or work place.

(c) “Hazardous Substance” shall be construed broadly to include any substance, material or waste, including without limitation any constituent, chemical, element, particle, compound, material, substance or waste which is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous substance,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “toxic substance,” or “special waste” under any Environmental Law which includes, but is not limited to, petroleum, petroleum by-products (including crude oil and any fraction thereof), waste oils, any hydrocarbon based substance, asbestos, asbestos-containing materials, urea formaldehyde and polychlorinated biphenyls.

(d) “Manage” or “Management” means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Substance.

(e) “Release” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the indoor or outdoor environment, including without limitation the abandonment or discarding of barrels, drums, containers, tanks and other receptacles containing or previously containing any Hazardous Substance.

(f) “Response” or “Respond” shall mean action required by any Environmental Law to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate a Release of a Hazardous Substance.

20.2 During the Term, including any Extension Periods, Tenant, at its sole cost and expense, shall: (a) comply with all Environmental Laws relating to its use of the Premises, and permits issued thereunder; (b) conduct any Management of Hazardous Substances by Tenant on the Premises in compliance with Environmental Laws; (c) use commercially reasonable efforts so as to not cause or allow the Release of any Hazardous Substances on, to or from the Premises, except in compliance with Environmental Laws and permits issued thereunder; (d) arrange for the lawful transportation and off-site disposal of all Hazardous Substances that it generates; (e) secure, maintain, and comply with all permits required by Environmental Laws in connection with Tenant’s use of the Premises, including without limitation, any required Storm Water Pollution Prevention Plan; and (f) at all times operate in accordance with best management practices regarding control of any storm water run-off and ensure that there are no pollutants originating from the Premises, whether from the Land or as a result of Tenant’s operations, the exit the Premises as the result of any storm water run-off.

20.3 Landlord and their agents and employees shall have the right to enter upon the Premises to conduct appropriate inspections or tests in order to determine Tenant’s compliance

with Environmental Laws, provided that: (a) such inspections and tests shall be performed at the sole cost and expense of Landlord; (b) Landlord shall provide Tenant with written notice not less than two (2) business days prior to conducting such inspections or tests; and (c) such tests shall be performed at reasonable times, shall be subject to the provisions of Section 18.3 and in all other respects shall not interfere with Tenant's business operations and shall be in compliance with Tenant's security procedures.

20.4 If Tenant's Management of Hazardous Substances at the Premises (a) results in or causes a Release which violates an Environmental Laws or permits issued thereunder; (b) gives rise to liability or a Claim or requires a Response under common law or any Environmental Law or permit issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, Tenant, in any and all such occurrences and at its sole cost and expense, promptly shall take all applicable action in Response.

20.5 Tenant shall fully indemnify, defend and hold harmless Landlord, its officers, directors, employees, agents, successors, assigns, beneficiary, managing agents and mortgagees from and against any and all liabilities, damages, fines, penalties, expenses, costs and losses (including reasonable attorney's fees and expert consultant fees) and from all Claims arising from or attributable to any breach by Tenant of any of its warranties, representations or covenants in this Article XX or contained elsewhere in this Lease, or involving any Hazardous Substance brought onto the Premises by or for Tenant, and/or from Tenant's use and occupancy of the Premises during the Term.

20.6 Notwithstanding anything in the Article XX to the contrary, Tenant shall not be liable, and Landlord shall fully indemnify, defend, and hold Tenant harmless from and against any and all liabilities, damages, expenses, costs and losses arising from, or as a result of, any use and occupancy of the Premises prior to the Commencement Date (subject to Section 9.1) and from, or as a result of, any breach of Landlord's obligations under this Lease.

20.7 Tenant shall not install any above or below ground storage tank, or utilize any portable or temporary storage tank, for storage of any material or Hazardous Substance without the express prior written consent of Landlord and proof of permitting approval from the appropriate governmental authority. Landlord's consent may be conditioned upon receiving such additional assurances as Landlord reasonably deems necessary to protect itself, the public, the Premises and/or environment against damage, contamination and/or liability, including but not limited to, the installation (and removal on or before lease expiration or termination) of protective modifications (e.g., concrete pads or encasements) and/or increasing the security deposit.

20.8 Baseline Environmental Assessment.

(a) Baseline Assessment: Within one hundred twenty (120) days after the Commencement Date, Tenant shall have the right, at its sole cost and expense, to obtain a Phase I Environmental Site Assessment (ESA) or other appropriate environmental assessment (the "Baseline Environmental Assessment") of the Premises, conducted by a qualified environmental professional selected by Tenant.

(b) Baseline Report: Upon completion, Tenant shall provide Landlord with a

complete copy of the Baseline Environmental Assessment report (the “Baseline Report”). The Baseline Report shall be deemed to establish the environmental condition of the Premises as of the Commencement Date. Tenant shall not conduct a Phase II environmental site assessment or any intrusive samples, borings or other tests on the Premises without the prior written consent of Landlord in Landlord’s sole discretion.

(c) Landlord’s Responsibility: Landlord shall be solely responsible, at its cost and expense, for addressing any environmental conditions or violations of Environmental Laws identified in the Baseline Report that existed prior to the Commencement Date and shall complete such remediation within sixty (60) days of notice from Tenant of the Baseline Report. Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all liabilities, claims, damages, costs, and expenses (including reasonable attorney’s fees) arising out of or related to such pre-existing conditions. Notwithstanding anything in this Lease, if the Baseline Report identifies any environmental conditions or violations of Environmental Laws that cannot be fully remediated by Landlord as described above, Tenant, in its sole discretion, may terminate this Lease upon sixty (60) days written notice to Landlord and will be released from all obligations within the Lease.

(d) Tenant’s Responsibility: Tenant shall be responsible for any environmental conditions or violations of Environmental Laws arising from its use, occupancy, or activities on the Premises after the Commencement Date, provided that such conditions were not identified in the Baseline Report.

(e) Ongoing Compliance: The parties agree that any environmental conditions discovered after the Commencement Date that were not included in the Baseline Report shall be presumed to have occurred during the Tenant’s occupancy unless the Tenant can demonstrate that such conditions existed prior to the Commencement Date or were caused by an unrelated third party.

ARTICLE XXI

MISCELLANEOUS PROVISIONS

21.1 Indemnification.

(a) To the fullest extent allowed by law, Tenant, at all times, shall indemnify, defend and hold Landlord and its affiliates, and each of their respective officers, directors, employees and agents, harmless from and against any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of or from any work or things whatsoever done in or about, the Premises (except to the extent arising out of Landlord’s negligence or other wrongful conduct), including, but not limited to, any acts or omissions of the Tenant or its affiliates, or the agents, employees or contractors thereof, and further will indemnify, defend and hold Landlord, its affiliates, and each of their respective officers, directors, employees and agents, harmless against and from any and all claims arising during the Term and based upon any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the

terms of this Lease, including, without limitation, the breach of any representation or warranty of Tenant contained in this Lease, or arising from any act or neglect of Tenant, its agents, servants, employees, licensees, or contractors, whenever or wherever occurring, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the Term in or about the Premises, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or with respect to any such claim or action or proceeding brought thereon.

(b) To the fullest extent allowed by law, Landlord, at all times, shall indemnify, defend and hold Tenant, its affiliates, and each of their respective officers, directors, employees and agents, harmless from and against any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from Landlord's negligence or intentional misconduct. Notwithstanding the negligence or breach of this Lease by Landlord, Landlord shall not be liable for any: (i) injury or damage to persons or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Premises, from any cause; (ii) injury or damage arising from any acts or omissions of any other tenant of Landlord; (iii) injury to Tenant's business or for any loss of income or profit therefrom; or (iv) any consequential damages.

(c) Notwithstanding anything in this Lease to the contrary, and notwithstanding any law or ordinance to the contrary, Tenant shall not assert nor seek to enforce any claim for breach of the Lease against any of Landlord's assets other than Landlord's interest in the Property and in the rents, issues, and profits thereof. In no event shall Landlord's members, owners, principals, trustees, shareholders, officers, employees, or beneficiaries have any personal liability for any claim, cause of action, damages, or other recovery (including costs, attorneys' fees, or both) of any kinds. Tenant, for itself and its owners, members, principals, trustees, shareholders, offices, employees, and beneficiaries, expressly waives and releases Landlord from any claim to the extent it seeks to recover damages or any other remuneration in excess of Landlord's liability limit as stated herein and covenants to discharge any and all such actions or claims to recovery any such sums.

21.2 All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by Landlord to Tenant shall be sent by United States registered or certified mail, postage prepaid, or by commercial overnight delivery service or other personal service (with evidence of receipt), addressed as follows:

San Diego Convention Center Corporation, Inc.
111 Harbor Drive
San Diego, CA 92101
Attn: Corey Albright
Email: corey.albright@visitsandiego.com

or at such other place as Tenant may from time to time designate by written notice to Landlord. All notices, demands and requests by Tenant to Landlord shall be sent by United States registered or certified mail, postage prepaid, or by commercial overnight delivery service or other personal service (with evidence of receipt), with a copy by e-mail, addressed to Landlord as follows:

Santa Ana Energy Properties, LLC
14150 Vine Place
Cerritos, CA 90703
Attn: Aaron Siroonian
Email: ars@ecoparts.com

or at such other place as Landlord may, from time to time, designate by written notice to Tenant. Notices, demands and requests which shall be served upon Landlord by Tenant, or upon Tenant by Landlord, by mail in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder on the second (2nd) business day after mailing, and notices served by overnight delivery service shall be deemed served or given on the second (2nd) business day after delivery to such service.

21.3 Landlord covenants and agrees that Tenant, upon paying the Rent, and upon observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Lease) during the Term (as it may be extended from time to time as expressly provided herein) without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

21.4 Tenant, each without charge at any time and from time to time, within thirty (30) days after written request by Landlord, shall certify by written instrument, duly executed, acknowledged and delivered to any Mortgagee, assignee of a Mortgagee, proposed Mortgagee, or to any purchaser or proposed purchaser or transferee of the Landlord or Premises or any interest therein:

(a) That this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect, as modified, and stating the modifications);

(b) The dates to which the Rent has been paid in advance;

(c) Whether or not there are then existing any breaches or defaults by the certifying party or by the other party and known by the certifying party under any of the covenants, conditions, provisions, terms or agreements of this Lease, and specifying such breach or default, if any, or any set-offs or defenses against the enforcement of any covenant, condition, provision, term or agreement of this Lease upon the part of Landlord or Tenant, as the case may be, to be performed or complied with (and, if so, specifying the same and the steps being taken to remedy the same);

(d) That Tenant has made no advancements to or on behalf of Landlord for which it has the right to deduct from, or offset against, future Rent payments;

(e) Tenant has accepted the Premises and is in full and complete possession thereof; and

(f) Such other statements or certificates as Landlord or Tenant or any Mortgagee may reasonably request.

21.5 If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law. This Lease shall be construed and be enforceable in accordance with the laws of the State of California and venue for any action shall be in the County where the Premises are located.

21.6 The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and its successors and assigns, and Tenant and its successors and assigns.

21.7 The caption of each article of this Lease is for convenience and reference only and in no way defines limits or describes the scope or intent of such article or of this Lease.

21.8 This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of Landlord and Tenant.

21.9 All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

21.10 There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Premises by reason of the fact that the same person, firm, corporation or other entity may acquire, hold or own directly or indirectly, (a) this Lease or the leasehold interest created by this Lease or any interest therein, and (b) any other estate or interest in the Premises or any portion thereof. No such merger shall occur unless and until all persons, firms, corporations or other entities having an interest (including a security interest) in (1) this Lease or the leasehold estate created hereby, and (2) any such other estate or interest in the Premises or any portion thereof, shall join in a written instrument expressly effecting such merger and shall duly record the same.

21.11 All obligations, monetary or otherwise, accruing prior to expiration of the Term (as it may be extended from time to time) shall survive the expiration or other termination of this Lease.

21.12 Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

21.13 Each party acknowledges that James Hixson of CBRE ("Broker") is acting as a dual agent, representing both the Landlord and the Tenant in connection with this Lease. The Landlord agrees to pay the Broker a commission in accordance with the terms of the brokerage agreement. The Tenant shall have no responsibility for the payment of any commission or fee to the Broker. Each party agrees to indemnify and hold the other party and its agents, officers, directors and employees harmless from all losses, damages, liabilities, claims, liens, costs and expenses, including, without limitation, attorneys' fees, arising from any claims or demands of any broker or brokers, salespersons or finders for any commission or fee, except for claims arising

from Broker, which shall be the responsibility of the Landlord.

21.14 This Lease may be executed in counterparts, each of which when taken together shall constitute one instrument.

21.15 This Lease represents the product of the joint negotiation, preparation and agreement of and between the parties hereto and is not to be construed against one party or the other as the principal drafter.

21.16 In the event of a dispute regarding the performance under this Lease resulting in an allegation of default by either party, including but not limited to, a request for termination of the Lease, which default is not cured, Landlord and Tenant shall first participate in good faith in a third party mediation procedure with Judicial Arbitration and Mediation Services (JAMS) in Los Angeles County. The cost of the mediation shall be shared equally between Landlord and Tenant. In the event of any litigation between the Landlord and the Tenant arising out of an alleged breach of this Lease by either of them and such litigation terminates upon the issuance of a final, unappealable judicial order, the unsuccessful party therein shall pay the successful party's reasonable attorneys' fees and expenses in such litigation. This provision shall inure only to the Landlord and Tenant and their respective successors and permitted assigns, if any.

21.17 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, neither shall be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord or Tenant.

21.18 To the extent either party indemnifies and agrees to defend the other under the terms of this Lease, the indemnifying party shall have the right to select counsel to undertake such defense, which counsel shall be reasonably acceptable to the indemnifying party.

21.19 Should Tenant install any form of security system capable of producing or storing images, photographs, video or audio recordings ("Recordings") of the Premises, then Tenant shall: (i) make available to Landlord upon reasonable request all such Recordings; and (ii) post all required and appropriate signage informing all individuals within range of such equipment that such Recordings are in progress and that there is no expected right of privacy within such range.

ARTICLE XXII

LANDLORD'S AND TENANT'S REPRESENTATIONS AND WARRANTIES

22.1 In addition to the other representations and warranties made herein, Landlord hereby represents and warrants to Tenant that as of the date hereof the following representations and warranties are true, correct and complete and that the same will be true, correct and complete on and as of the Commencement Date:

(a) Landlord warrants and represents that the execution and delivery of this Lease by the signatory hereto on behalf of Landlord and the performance of this Lease by Landlord

have been duly authorized by Landlord and this Lease is binding upon Landlord and enforceable against Landlord in accordance with its terms.

(b) Landlord warrants and represents that Landlord is the owner of fee simple title to the Land, which Land is free and clear of any liens, encumbrances, covenants, conditions, restrictions, rights of way, easements, leases, tenancies not otherwise disclosed herein, licenses, claims, options or any other matters which would cause a material impairment to the use or the operation of the business conducted on the Premises as of the Commencement Date.

22.2 In addition to the other representations and warranties made herein, Tenant hereby represents and warrants to Landlord that as of the date hereof the following representations and warranties are true, correct and complete and that the same will be true, correct and complete on and as of the Commencement Date:

(a) Tenant warrants and represents that the execution and delivery of this Lease by the signatory hereto on behalf of Tenant and the performance of this Lease by Tenant have been duly authorized by Tenant and this Lease is binding upon Tenant and enforceable against Tenant in accordance with its terms.

(b) Tenant represents and warrants that Tenant is duly organized and validly existing under the laws of the State of California; that the execution and delivery of this Lease and the transaction contemplated hereto have been duly authorized by Tenant and that the performance of Tenant's obligations under this Lease will not violate its organizational documents, the provisions of any applicable law or agreement to which it is a party or under which it is bound.

(c) Tenant represents and warrants that Tenant has not filed any proceeding or petition in, nor received notice that any proceeding or petition has been filed against Tenant in bankruptcy or insolvency, or for reorganization or for the appointment of a receiver, custodian or trustee, or for the arrangement of debts under any state or federal statute relating to debtor protection or insolvency, and further that Tenant is not insolvent and will not be rendered insolvent by the consummation of the transaction contemplated by this Lease.

(d) All other representations and warranties of Tenant contained in this Lease are true, correct and complete.

All representations made by Landlord and Tenant in this Article XXII shall survive the execution of this Lease and, if later, the Commencement Date.

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the parties has caused this Lease to be duly executed as of the day and year first above written.

LANDLORD:

Santa Ana Energy Properties, LLC,
a California limited liability company

By: _____
Aaron Siroonian, Manager

TENANT:

San Diego Convention Center Corporation,
Inc., a California nonprofit public benefit
corporation

By: _____
Name: Clifford “Rip” Rippetoe
Title: President & CEO

EXHIBIT A

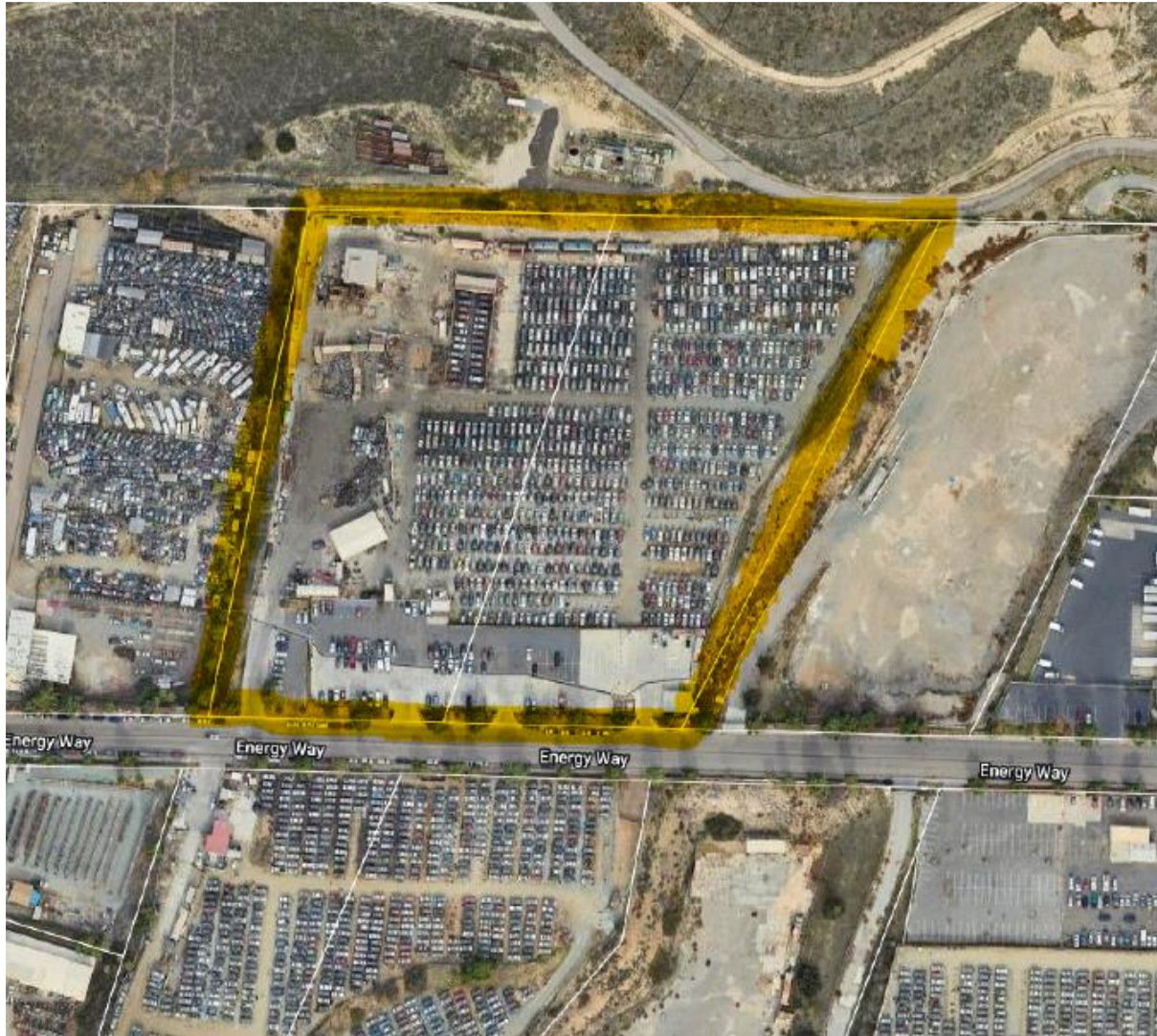
LEGAL DESCRIPTION OF PREMISES

LOT 12 AND LOT 13 OF OTAY INDUSTRIAL PARK, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 8147, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 18, 1975.

EXCEPTING THEREFROM ONE-HALF OF ALL MINERAL AND OIL INTEREST BELOW A DEPTH OF 500.00 FEET WITHOUT SURFACE RIGHTS OF ENTRY AS RESERVED IN DEEDS RECORDED NOVEMBER 21, 1951 IN BOOK 4296, PAGE 592 OF OFFICIAL RECORDS AND RECORDED SEPTEMBER 24, 1974 AS FILE NO. 74-257024 OF OFFICIAL RECORDS.

EXHIBIT B

SITE PLAN DEPICTING THE PREMISES



Agenda Item 4.A.2

RESOLUTION NO. 2024-05

A RESOLUTION OF THE SAN DIEGO CONVENTION CENTER CORPORATION, INC. APPROVING A LEASE AGREEMENT FOR A MARSHALING YARD LOCATED AT 825 ENERGY WAY, CHULA VISTA, CA 91911

WHEREAS, the San Diego Convention Center Corporation (“Corporation”) relies on efficient logistics to ensure smooth operations and a positive experience for all clients and exhibitors, and a key component of this logistics infrastructure is a dedicated marshaling yard, which serves as a staging area for trucks and trailers delivering various freight requirements to the Convention Center; and

WHEREAS, the marshaling yard allows for the orderly coordination and scheduling of vehicle arrivals and departures, minimizing congestion in and around the Convention Center, and mitigating air pollution, noise, and traffic congestion; and

WHEREAS, pursuant to Board Policy 517, this item was brought to the Board on June 26, 2024, and the Board authorized the business purpose for the negotiations of a marshaling yard, the location of the 10.3-acre property at 825 Energy Way, Chula Vista, CA 91911 (“Property”), the negotiating party and authorized Staff to begin negotiations on a potential lease; and

WHEREAS, the property owner of the Property is Santa Ana Energy Properties LLC, and they have proposed a direct lease (“Lease”) with the Corporation of the Property at a base rent of \$125,000 per month, which is approximately \$12,136 per acre with an annual 3% escalation for a 10-year lease term securing the Property through 2034.

NOW, THEREFORE, be it resolved by the Board of Directors of the San Diego Convention Center Corporation (the “Board”) as follows:

Section 1. The findings listed in the above recitals are true and correct and are used as a basis for approving this Resolution.

Section 2. The Board hereby approves the Lease in substantially the form attached to the Board memo. The Board hereby authorizes the President & CEO to finalize and execute the Lease on behalf of the Corporation and take any and all actions necessary to carry out the intent of this Resolution and the Lease.

Agenda Item 4.A.2

Section 3. This Resolution shall become effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this 28th day of August, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeff Gattas, Chairperson

ATTEST:

Alyssa Turowski, Secretary of the Board

Agenda Item 4.B.1

**SAN DIEGO CONVENTION CENTER CORPORATION
M E M O R A N D U M**

TO: Board of Directors

FROM: Jeff Gattas, Chairperson

DATE: For the Agenda of August 28, 2024

RE: Approval of a Resolution of the San Diego Convention Center Corporation, Inc. Approving the Fifth Amendment to the Amended and Restated Employment Agreement with the President & CEO

BACKGROUND

After a professional recruitment, in March of 2016, the Board of Directors hired Rip Rippetoe (“Rippetoe”) as the President & CEO of the San Diego Convention Center Corporation (“Corporation”). He began work on April 18, 2016. In June of 2017, the Board approved an Amended and Restated Employment Agreement (“Amended Agreement”) with Rippetoe. In March and June of 2020, the Board approved the First and Second Amendments to the Amended Agreement. In December of 2021, the Board approved the Third Amendment, and in August of 2022, the Board approved the Fourth Amendment.

DISCUSSION

In August of 2024, the Board evaluated the performance of Rippetoe and found that he has performed well. Rippetoe’s Amended Agreement has a term until June 30, 2027 unless extended or terminated sooner pursuant to the Agreement’s provisions. The parties wish to amend Rippetoe’s base salary effective July 1, 2024 to reflect a 4% increase from the prior year rather than the 3% increase per the Amended Agreement to align with the 4% increase given to SDCCC non-represented Staff on July 1, 2024. Therefore, the base salary as of July 1, 2024 will be \$368,716.58. The Board evaluated the fairness of compensation pursuant to the Corporation’s Amended and Restated Bylaws and applicable state laws of the proposed compensation embodied in the Fifth Amendment to the Amended Agreement and has found that the proposed compensation is just and reasonable based on the 4% increase given to SDCCC non-represented Staff.

RECOMMENDATION

That the Board approve the Resolution to approve the Fifth Amendment.

Attachments:

1. Resolution
2. Proposed Fifth Amendment

Agenda Item 4.B.1

RESOLUTION NO. 2024-03

A RESOLUTION OF THE SAN DIEGO CONVENTION CENTER CORPORATION, INC. FINDING THAT THE COMPENSATION OF THE PRESIDENT AND CEO IS JUST AND REASONABLE AND AUTHORIZING THE CHAIR TO EXECUTE THE FIFTH AMENDMENT TO THE AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN THE CORPORATION AND RIPPETOE TO AMEND THE TERMS OF EMPLOYMENT AS SPECIFIED HEREIN

WHEREAS, after a professional recruitment, in March of 2016, the Board of Directors hired Rip Rippetoe (“Rippetoe”) as the President & CEO of the San Diego Convention Center Corporation (“Corporation”). He began work on April 18, 2016 pursuant to an employment agreement; and

WHEREAS, the Corporation and Rippetoe entered into an Amended and Restated Employment Agreement on June 21, 2017 (“Amended Agreement”) and the First, Second, Third, and Fourth Amendments to the Amended Agreement thereafter; and

WHEREAS, in August of 2024, the Board evaluated the performance of Rippetoe and found that he has performed in an exemplary manner; and

WHEREAS, the parties now wish to amend the Amended Agreement only as to the specific terms shown below to provide for a 4% increase to base salary in alignment with the 4% increase provided to the Corporation’s unrepresented Staff as of July 1, 2024.

NOW, THEREFORE, be it resolved by the Board of Directors of the San Diego Convention Center Corporation (the “Board”) as follows:

Section 1. The Board hereby finds that it has reviewed the fairness of compensation pursuant to the Corporation’s Amended and Restated Bylaws and applicable state laws of the proposed compensation embodied in the proposed Fifth Amendment to the Amended Agreement as specified below for the President & CEO, Rip Rippetoe, and has found that the proposed compensation is just and reasonable based on the increase given to all other non-represented employees given the current circumstances and challenges that convention centers and the workforce are facing, including but not limited to, inflation and the increased cost of living, as well as the Corporation’s budgetary constraints.

Section 2. The Board hereby approves and authorizes the Chair of the Board to execute the Fifth Amendment to the Amended and Restated Employment Agreement for the President & CEO, Rip Rippetoe, with the following amended terms:

Agenda Item 4.B.1

- Effective July 1, 2024, the annual base salary for the position of President & Chief Executive Officer shall be \$368,716.58 (*to reflect a 4% increase to base salary as of July 1, 2024*).
- Except as specified above, all other terms of the existing Amended Agreement and any applicable amendments will remain the same.

Section 3. This resolution shall become effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this 28th day of August, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeff Gattas, Chairperson

ATTEST:

Alyssa Turowski, Secretary of the Board

Agenda Item 4.B.1

**FIFTH AMENDMENT TO AMENDED AND RESTATED
EMPLOYMENT AGREEMENT**

between

**The San Diego Convention Center Corporation
and
Clifford Rippetoe**

This Fifth Amendment to Amended and Restated Employment Agreement ("Fifth Amendment") is entered into this 28th day of August 2024 (hereinafter "Effective Date"), by and between the San Diego Convention Center Corporation, California, a California nonprofit public benefit corporation (hereinafter "Corporation") and Clifford Rippetoe, an individual (hereinafter "Officer") (Corporation and Officer referred to collectively as "Parties") with respect to the employment of Officer as the President and Chief Executive Officer of the Corporation.

RECITALS

WHEREAS, on March 16, 2016, the Corporation and Officer entered into the Employment Agreement and thereafter on June 21, 2017, entered into the Amended and Restated Employment Agreement ("Amended Agreement");

WHEREAS, such Amended Agreement requires the Board to conduct a formal evaluation of Officer's performance at least once each year;

WHEREAS, the Board conducted a performance evaluation of Officer in August of 2024, and now desires to make the following amendments to the Amended Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Section 2 of the Fourth Amendment is specifically superseded and replaced by this Fifth Amendment.

Section 2. Section 3(A)(1)(a) of the Amended Agreement shall be amended in its entirety and replaced with the following text (underlined and ~~striktthrough~~ text represent the changes from the text in the Fourth Amendment):

- (a) ~~For July 1, 2021 through June 30, 2022, the annual base salary for the position of President and Chief Executive Officer shall remain at \$327,818. Beginning July 1, 2022, the annual base salary for the position of President and Chief Executive Officer shall be \$344,208.90. Beginning July 1, 2024, the annual base salary for the position of President and Chief Executive Officer shall be \$368,716.58.~~ Thereafter, the annual base salary for the position of President and Chief Executive Officer may be increased at the discretion of the Board provided, however, that without any further action of the Board, the annual base salary shall increase automatically each year as described below effective July 1 of the

Agenda Item 4.B.1

applicable year for ~~2023, 2024~~, 2025 and 2026: in an amount equal to the most recent annual cost of living adjustment where "Cost-of-Living" is the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations or in the amount of 3%, whichever is less.

Section 3. Except as stated herein, all other terms of the Amended Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment shall remain in full force in effect.

Section 4. The amendment in Section 2 above shall be effective as of July 1, 2024.

IN WITNESS WHEREOF the Parties have executed this Fifth Amendment as of the day and year first above written.

CORPORATION

OFFICER

By: _____
Jeff Gattas, Chairperson

By: _____
Clifford "Rip" Rippetoe

APPROVED AS TO FORM:

By: _____
Jennifer M. Lyon, General Counsel

Agenda Item 4.B.2

**SAN DIEGO CONVENTION CENTER CORPORATION
M E M O R A N D U M**

TO: Board of Directors

FROM: Rip Rippetoe, President & CEO

DATE: For the Agenda of August 28, 2024

RE: Approval of a Resolution of the San Diego Convention Center Corporation, Inc. Creating a Deputy Chief Executive Officer & Chief Financial Officer Position for the Corporation, and Authorizing the President & CEO to create a Job Description for the Position

BACKGROUND

Pursuant to the San Diego Convention Center Corporation's ("Corporation") Amended and Restated Bylaws Article 11, Section 1, the two specified officers of the Corporation are the President and CEO and Chief Financial Officer. Additionally, Article 11, Section 1 of the Bylaws enables the Board to create officers of the Corporation via resolution of the Board. Pursuant to that authority, the Board has also created the Chief Operating Officer position. The Corporation's Amended and Restated Bylaws Article 11, Section 3(a) further specify that the President and Chief Executive Officer is responsible for hiring and firing of all Corporation personnel which would include any such Corporate officers. The President and Chief Executive Officer also supervises and directs all Corporation personnel.

DISCUSSION

The President and Chief Executive Officer proposes creating a new officer position titled "Deputy Chief Executive Officer & Chief Financial Officer." This role will combine responsibilities of overseeing financial management and leading strategic initiatives, which will enhance operational efficiency and support the Corporation's long-term objectives. If this Resolution is approved by the Board, the proposed job description for the newly created at-will position will be created and brought back to the Board for approval prior to appointment to the position. It will clearly define the position and the role. This position will create a role that provides all the CFO functions as well as responsibility of leading strategic objectives, initiatives, large scale efforts, and internal operations for various departments.

RECOMMENDATION

That the Board approve the attached Resolution to create a new officer of the Corporation titled the “Deputy Chief Executive Officer & Chief Financial Officer,” and authorize the President & CEO to take all actions necessary to create a job description for Board consideration for approval at an upcoming Board meeting. If the Board adopts a job description at a future meeting and takes all other actions necessary to create the position, the Board can also authorize the President & CEO to appoint to the newly created position.

Attachment:

1. Resolution

Agenda Item 4.B.2

RESOLUTION NO. 2024-04

A RESOLUTION OF THE SAN DIEGO CONVENTION CENTER CORPORATION, INC. CREATING A DEPUTY CHIEF EXECUTIVE OFFICER & CHIEF FINANCIAL OFFICER POSITION FOR THE CORPORATION AND AUTHORIZING THE PRESIDENT AND CEO TO CREATE A JOB DESCRIPTION FOR FUTURE BOARD APPROVAL

WHEREAS, pursuant to the San Diego Convention Center Corporation's ("Corporation") Amended and Restated Bylaws Article 11, Section 1, the Board may create officers of the Corporation via resolution of the Board; and

WHEREAS, currently, the only officers of the Corporation are the President and Chief Executive Officer, the Chief Financial Officer; and Chief Operating Officer; and

WHEREAS, the Corporation's Amended and Restated Bylaws Article 11, Section 3(a) specify that the President and Chief Executive Officer is responsible for hiring and firing of all Corporation personnel which would include any such corporate officers; and

WHEREAS, the President and Chief Executive Officer desires to have the Board create a new officer of the Corporation titled the "Deputy Chief Executive Officer & Chief Financial Officer."

NOW, THEREFORE, be it resolved by the Board of Directors of the San Diego Convention Center Corporation (the "Board") as follows:

Section 1. The recitals set forth above are true and correct and are incorporated into this Resolution as findings.

Section 2. The Board hereby creates the Deputy Chief Executive Officer & Chief Financial Officer position as a new officer of the Corporation and authorizes the President & CEO to create a job description and take all other necessary actions to bring the item back for future Board consideration to approve the job description and any other necessary documents prior to appointment to the position.

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Section 3. This Resolution shall become effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this 28th day of August 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Jeff Gattas, Chairperson

Alyssa Turowski, Secretary of the Board