

AGREEMENT FOR AMENDMENT OF LEASE.
AMENDMENT NO. 2

THIS AGREEMENT FOR AMENDMENT OF LEASE, AMENDMENT NO. 2 ("Amendment No. 2") is made and entered into this ____ day of _____, 2020, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Lessor"), and OLD TOWN TROLLEY TOURS OF SAN DIEGO, a California corporation ("Lessee").

Recitals

WHEREAS, Lessor and Lessee, on the 1st day of December, 2014, entered into a lease of certain tidelands in the City of San Diego, California, which lease is on file in the Office of the Clerk of Lessor bearing Document No. 62637 ("Original Lease"); and

WHEREAS, Lessor and Lessee on the 26th day of November 2018, entered into an Agreement for Amendment of Lease, Amendment No. 1 which is on file in the Office of the Clerk of Lessor bearing Document No. 69100 ("Amendment No. 1", together with Original Lease, the "Lease"); and

WHEREAS, Lessee provides a valuable service to the public and the San Diego region through its operation of the Visitor Information Center on the Embarcadero by directing visitors to attractions and businesses both on and off of tidelands and providing important information on Lessor's tenants to the general public; and

WHEREAS, Lessee is in a unique situation compared to most of Lessor's tenants because Lessee cannot adjust its business to accommodate more patrons like hotel, restaurant, and other retail tenants by providing services outdoors or offer alternative options; and

WHEREAS, while many restaurant and retail tenants have had success moving their operations outside, and hotels are able to adapt to social distancing and sanitation requirements to operate, a large part of Lessee's business relies on tourism and the ability to sell attraction tickets which is very difficult when many attractions are closed or have very low demand during the pandemic and Lessee is not in control of when these attractions will open; and

WHEREAS, as a result of the economic impacts to the hospitality and tourism industry directly resulting from the COVID-19 public health crisis, the parties desire to amend some of the terms of the Lease to provide for temporary economic relief to the Lessee and ensure continued operations of the Lessee; and

WHEREAS, at this time of economic uncertainty, it is critical for the Lessor to support the financial stability of Lessor's tenants, especially those renting Lessor owned improvements such as Lessee, if possible and economically justified, to ensure the continued stability of the Lessor itself, as the Lessor depends on rents from the tenants to operate as a self- sustaining agency; and

WHEREAS, the proposed modifications to the Lease would reduce the minimum annual rent and improvement rent to allow Lessee to adjust to the economic effects of COVID-19; and

WHEREAS, the proposed modifications to the Lease are economically justified because Lessee offers a unique and valuable service to the public and the San Diego region through the use of Lessor's owned improvements, the Lessor will receive Percentage Rent if Lessee is able to achieve typical revenues notwithstanding the pandemic, the Lessor will recoup lost revenue from the abatement of improvement rent if the term extension is exercised and if not, put the Lessor in a better position to find a tenant to replace Lessee after the pandemic, and Lessee will continue to provide an important service for waterfront visitors while at the same time ensuring that the Lessor still receives rent; and

WHEREAS, the Lessor and Lessee are mutually desirous of amending the Lease.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants, and conditions of said Lease shall remain in full force and effect:

A. The Lease is hereby amended by deleting Paragraph 1.1 of the Lease and replacing it with the following Paragraph 1.1:

"1.1 TERM EXTENSION: Lessee may extend the term of this Lease for five (5) additional years, commencing immediately upon the expiration of the Term, if all of the following are satisfied:

- (a) At least two hundred seventy (270) days before expiration of the Term, Lessee notifies Lessor in writing that it wishes to extend the Term for five (5) additional years, for a total Term of fifteen (15) years; and,
- (b) Following notification to Lessor in 1.1(a) above, but before expiration of the Term, Lessee satisfies the requirements of Paragraph 15.1 Facility Condition Inspections as may be required by Lessor; and
- (c) The Executive Director of Lessor consents, in his or her sole and absolute discretion, to the Term extension by delivering written notification to Lessee of his or her consent within sixty (60) days following receipt of Lessor's notice to extend described in 1.1(a) above.

Upon timely exercise of said option as provided herein, this Lease shall continue in full force and effect in accordance with the terms, covenants, and conditions hereof, including without limitation the rent set forth in Paragraph 3. Should Lessee fail to properly exercise said option, or the Executive Director shall reject the extension, all in accordance with this Paragraph 1.1, the option shall automatically become null and void and of no further force and effect. The option to extend set forth in this Paragraph 1.1 shall be personal to Lessee and may not be transferred to another person or entity without the prior written consent of Lessor, which may be withheld or denied in Lessor's sole and absolute discretion."

B. The Lease is hereby amended by deleting Paragraph 3(a) of the Lease and replacing it with the following Paragraph 3(a):

“3(a) The term of this Lease shall be divided into the following rental periods, hereinafter “Rental Periods” and each a “Rental Period”:

December 1, 2014 to March 31, 2020

April 1, 2020 to November 30, 2021

December 1, 2021 to November 30, 2024

December 1, 2024 to November 30, 2029 (subject to proper exercise of extension and approval of such extension pursuant to Paragraph 1.1 herein)”

C. The Lease is hereby amended by deleting Paragraph 3(b) of the Lease and replacing it with the following Paragraph 3(b):

“3(b)

The rent for the Term of the Lease shall be the minimum annual rent (“Minimum Annual Rent”) set forth below for each of the Rental Periods, subject to adjustment as described in Paragraph 3.1 herein, or the cumulative total of the percentage rents per year of the Term of the Lease as provided in (c) below, whichever is greater.

The Minimum Annual Rent for the **1st Rental Period** of the Lease (December 1st 2014 and ending March 31st 2020) shall be a minimum of Zero Dollars (\$0) for the first six months of the term of this Lease, Thirty Eight Thousand Five Hundred Ninety Two Dollars (\$38,592) for the seventh through the twelfth months of the term, Seventy Seven Thousand One Hundred Eighty Four Dollars (\$77,184) per year from December 1, 2015 through March 31, 2020.

The Minimum Annual Rent for the **2nd Rental Period** of the Lease (April 1st 2020 through November 30th 2021) shall be a minimum of Twenty-One Thousand Eight Hundred and Sixty-Four Dollars (\$21,864) per year.

The Minimum Annual Rent for the **3rd Rental Period** of the Lease (December 1st, 2021 – November 30th, 2024) shall be calculated at 75% of the average total rent paid during the last six months of the 2nd Rental Period (June 1st, 2021 – November 30th, 2021). In no event shall the 3rd Rental Period Minimum Annual Rent be less than the 2nd Rental Period.

If the Term extension set forth in Paragraph 1.1 is properly exercised and approved, the Minimum Annual Rent for such extension period (i.e., December 1, 2024 to November 30, 2029), shall be as determined in Paragraph 3.2 of the Lease.”

D. The Lease is hereby amended by deleting Paragraph 3(k) of the Lease and replacing it with the following Paragraph 3(k):

- “3(k) In addition to the rent provided for in subparagraphs 3(b) and 3(c) above, Lessee shall pay to Lessor as additional rent for use of Lessor-owned improvements located on the Leased Premises the following amounts:

December 1, 2014 – March 31, 2020	\$6,020/month
April 1, 2020 – November 30, 2021	\$1,505/month
December 1, 2021 – November 30, 2024	\$3,010/month
December 1, 2024 – November 30, 2029	\$4,515/month

Commencing on the Commencement Date, said amount shall be payable in advance on or before the tenth (10th) day of each month during the Term, as may be extended pursuant to Paragraph 1.1. Said additional rent is subject to late charges under Paragraph 3(g).”

E. The Lease is hereby amended by modifying Paragraph 3.1 of the Lease as follows:

References to “Paragraphs 3(b) and 3(d)” in Paragraph 3.1 shall be corrected to “Paragraph 3(b)”.

F. This Lease is hereby amended by deleting Paragraph 5(m) of the Lease and replacing it with the following Paragraph 5(m):

- “(m) Lessee shall make an investment in the Information Center Project improvements payable in monthly installments as set forth in Paragraph 3(k). Such investment is payable as additional rent to Lessor on the date set forth in Paragraph 3(k). Such investment is qualification for the term of this Lease, however, neither such investment, nor such improvements, nor any other Lessee investment or improvement shall be considered by the parties hereto or any arbitrator (in event of arbitration) in determining any rent during the Term of this Lease, as may be extended by Paragraph 1.1.”

G. The Lease is hereby amended by deleting Paragraph 46(e)(1) of the Lease and replacing it with the following Paragraph 46(e)(1):

“46(e) Release and Waiver.

- (1) Release. Except to the extent of Other Claims (as defined below) against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, its successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Other Claims"), whether known or unknown, direct or indirect,

foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in connection with prior ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soils, subsoil media, surface waters or groundwaters at the Leased Premises); (C) to the extent not already included in clause (B) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soils, subsoils, surface waters or groundwaters at the Leased Premises); (D) the violation of, or noncompliance with, any Environmental Requirement or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any); (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor."

H. The Lease is hereby amended by modifying Paragraph 46(e)(2) of the Lease as follows:

The reference to "Paragraph 45" in Paragraph 46(e)(2) shall be changed to "Paragraph 46" to correct a scrivener's error.

I. The Lease is hereby amended by modifying Paragraphs 6 and 48 of the Lease as follows:

The term "Termination Date" in Paragraph 6 and Paragraph 48 shall be changed to "termination date" to correct a scrivener's error.

J. Capitalized terms not defined herein shall have the meaning ascribed thereto in the Lease.

K. Lessee warrants and represents to the Lessor that it has the legal authority, capacity and direction from its principal(s) to enter into this Amendment No. 2 and

that all resolutions, ordinances or other actions have been taken so as to enter into this Amendment No. 2.

- L.** Except as modified by this Amendment No. 2, the Lease is hereby ratified and confirmed.
- M.** This Amendment No. 2 may be executed in any number of counterparts, including electronic counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: _____
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Tony Gordon
Director, Real Estate

**OLD TOWN TROLLEY TOURS OF SAN
DIEGO**, a California corporation

By: David Thornton
Signature

PRINT NAME: David Thornton

PRINT TITLE: General Manager

D2 #: 1648861