

AGREEMENT FOR AMENDMENT OF LEASE,
AMENDMENT NO. 1

THIS AGREEMENT FOR AMENDMENT OF LEASE, AMENDMENT NO. 1 ("Amendment No. 1") 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 entered into an Amended, Restated, and Combined Lease, which was filed on the 3rd day of August 2018 with the Office of the Clerk of Lessor bearing Document No. 68731 ("Lease") for a kiosk on the Embarcadero; and

WHEREAS, Lessee provides a valuable service to the public and the San Diego region through its operation of the kiosk 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 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, 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 and seventy (270) days before the 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 Paragraph 1.1 (a) above, but before expiration of the Term, Lessor may, in Lessor’s sole and absolute discretion, require a facility inspection. If requested, Lessee shall satisfy the requirements of Paragraph 16.1 Facility Condition Inspections; 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 Paragraph 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 Sixty-Seven Thousand One Hundred and Twenty Dollars (\$67,120) per year.

The Minimum Annual Rent for the **2nd Rental Period** of the Lease (April 1st 2020 through November 30th 2021) shall be a minimum of Nineteen Thousand Thirteen Dollars (\$19,013).

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 1st, 2024 to November 30th, 2029), shall be as determined in Paragraph 3.2 of the Lease.”

D. 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)”.

E. The Lease is hereby amended by deleting Paragraph 7 of the Lease and replacing it with the following Paragraph 7:

“For the purpose of this Paragraph 7, "improvements" shall include, but are not limited to subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessor, with the exception of title to the artwork created in compliance with Board of Port Commissioners Policy No. 608 -Tenant Percent for Art which title to the artwork shall be determined based on a tenant art agreement. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option

of Lessor, be removed by Lessee at Lessee's expense. Lessor may exercise said option as to any or all of the structures, buildings, installations, and improvements either before or after the termination date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the termination date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal. If Lessee does not remove such structures, buildings, installations, and/or improvements, and repair any and all damage occasioned by their removal, within sixty (60) days after the termination date of this Lease or sooner termination thereof, whichever occurs earlier, Lessor shall have the right to have such structures, buildings, installations, and/or improvements removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee. At the election of Lessor, title to any structures, buildings, installations, and/or improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor.

On the Commencement Date of this Lease, all existing machines, appliances, equipment and trade fixtures located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment and trade fixtures placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are owned by and title thereto is vested in Lessee. All machines, appliances, equipment and trade fixtures shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the termination date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

Notwithstanding the foregoing, any machines, appliances, equipment and trade fixtures placed on the Leased Premises by Lessee as qualification for the term of this Lease pursuant to Paragraph 5 herein, may only be removed by Lessee, at Lessor's option. If machines, appliances, equipment and trade fixtures required by Lessor to be removed are not removed by Lessee within sixty (60) days after the termination date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph 7 to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily."

F. The Lease is hereby amended by deleting Paragraph 47(e)(1) of the Lease and replacing it with the following Paragraph 47(e)(1):

"47(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 of Lessor."

G. The Lease is hereby amended by modifying Paragraph 49 of the Lease as follows:

The term "Termination Date" in Paragraph 49 shall be changed to "termination date".

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

I. 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. 1 and that all resolutions, ordinances or other actions have been taken so as to enter into this Amendment No. 1.

- J.** Except as modified by this Amendment No. 1, the Lease is hereby ratified and confirmed.
- K.** This Amendment No. 1 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. 1 as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Assistant/Deputy

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 #: 1648858