

FIRST RESTATEMENT OF LEASE AGREEMENT

By and between

THE CITY OF SAN JOSE
("Landlord" or "City")

And

GUGGENHEIM ENTERTAINMENT, INC., a California corporation
("Tenant")

Site Address:
288 S. Second Street
San Jose, California 95113

EXHIBITS TO LEASE

EXHIBIT A The Premises and the Common Areas

EXHIBIT B Legal Description of the Property

EXHIBIT C Insurance Requirements

EXHIBIT D Executed Release Document from Resolution Capital

FIRST RESTATEMENT OF LEASE AGREEMENT

This First Restatement of the Lease Agreement dated August 1, 2015 by and between the City of San Jose and Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment L.P. ("**First Restatement**" or "**Lease**") is made and entered into by and between THE CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter "**Landlord**" or "**City**"), and GUGGENHEIM ENTERTAINMENT, INC. a California corporation ("**Tenant**"), and is effective as of October 18, 2021 ("**Effective Date**").

RECITALS

WHEREAS, City is the owner of a building located at 288 South Second Street, San Jose, California ("**Building**"); and

WHEREAS, Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment L.P. ("**Camera 3**") entered into a Lease agreement with the City on August 1, 2015, leasing approximately 7,850 square feet of space in the Building ("Premises") for an initial period of five (5) years with two five (5) year options to extend ("**Original Lease**"); and

WHEREAS, City and Camera 3 executed a First Amendment to the Lease on October 3, 2017, in which City provided a grant of \$500,000 for Camera 3 to use for Council-directed nonstructural improvements per the City Manager's Budget Addendum #22, as approved in the Mayor's June Budget Message for Fiscal Year 2017-2018; and

WHEREAS, Camera 3 exercised its first option to extend the Original Lease for an additional five years, extending the term of the Original Lease until July 31, 2025;

WHEREAS, Camera 3 has been subleasing the Premises to Tenant pursuant to that certain Management and License Agreement dated August 30, 2017 by and between Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment L.P., and Guggenheim Entertainment, Inc., a California corporation; and

WHEREAS, Camera 3 and Tenant have entered into that certain Termination of Management and License Agreement dated April 15, 2021, allowing Tenant to become the master tenant at the Premises; and

WHEREAS, as of October 1, 2021, Camera 3 owes City approximately \$123,000 in back rent. City will forgive the entirety of Camera 3's back rent provided that Camera 3 complies with the terms in this Agreement; and

WHEREAS, Camera 3 has paid the City Twenty-One Thousand Three Hundred Dollars in back-owed rent in anticipation of this Agreement, ; and

WHEREAS, Camera 3 and/or Tenant will transfer the two projectors specified in Section 8.5(a) to the City and confirms that the executed Release Document from Resolution Capital attached as Exhibit D demonstrates clear title and confirms to the City's satisfaction that all liens have been removed against the projectors and related equipment; and

WHEREAS, City agrees to allow Tenant to replace Camera 3 as the Tenant at the Premises; and

WHEREAS, City, Tenant, and Camera 3 desire to restate the Original Lease pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to be legally bound to this First Restatement as follows:

1. Basic Lease Provisions and Definitions.

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|-------------------------------------|---|
| 1.1. <u>Tenant.</u> | Guggenheim Entertainment, Inc., a California corporation |
| 1.2. <u>Landlord.</u> | City of San Jose, a municipal corporation of the State of California |
| 1.3. <u>Address of Premises.</u> | Second and San Carlos Streets Garage; 280-288 South Second Street San Jose, CA |
| 1.4. <u>Floor Area of Premises.</u> | The rentable area is ±7,850 square feet as depicted on <u>Exhibit A.</u> |
| 1.5. <u>Initial Lease Term.</u> | Commence on October 1, 2021 (the " Commencement Date ") and terminate five (5) years from the Commencement Date, unless earlier terminated. |
| 1.6. <u>Options to Extend.</u> | One (1) five (5) year option to extend at a rental rate to be negotiated based upon the prevailing fair market rate for the rental of movie theaters. |

1.7. Monthly Base Rent.

Year	Adjustment Date	Monthly Rent	Escalation
1	October 1, 2021 – September 30, 2022	\$3,000.00	-
2	October 1, 2022 – September 30, 2023	\$3,045.00	1.5% from Year 1
3	October 1, 2023 – September 30, 2024	\$3,090.68	1.5% from Year 2
4	October 1, 2024 – September 30, 2025	\$3,137.04	1.5% from Year 3
5	October 1, 2025 – September 30, 2026	\$3,184.09	1.5% from Year 4

1.8. Common Area Maintenance. None.

1.9. Security Deposit. \$6,000

1.10. Use. Operation of a movie theater. Subject to the limitations set forth in Section 6. Tenant shall operate and be open for business for not less than six (6) hours per day and five days per week.

2. Leased Area.

2.1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises (hereinafter called the “**Premises**”) deemed to be ±7,850 square feet of first floor retail and second floor office space within that certain building commonly known as the Second/San Carlos Street Garage located at 280-288 South Second Street, San Jose, CA (“**Building**”), which Premises are shown on **Exhibit A** attached hereto. The real property on which the Premises are located is hereinafter referred to as the “**Property**,” and is shown as the “Site” on **Exhibit B** attached hereto.

2.2. Common Areas. Tenant shall have the nonexclusive right (unless otherwise provided herein) in common with Landlord, other tenants, sub-lessees and their customers, employees and invitees to use the common areas as shown on **Exhibit A** attached hereto (“**Common Areas**”) and such other portions of the Building and Property designated by Landlord from time to time for the general use and convenience of occupants of the Building and other authorized users.

3. Term. The term of this Lease shall commence on **October 1, 2021** and terminate on **September 30, 2026** (“**Termination Date**”) which is five (5) years after the Commencement Date, subject to the option to extend the term as provided in **Section 5**. The period between the Commencement Date and the Termination date shall be referred to as the “**Initial Term**.”

4. Rent. As of **October 1, 2021**, Tenant agrees to pay Landlord (at the address set forth in below) as rent for the Premises, in the manner and at the times set forth herein, the base rent described below ("**Base Rent**"). Tenant shall make an initial first month rent payment in the amount of Three Thousand Dollars (\$3,000.00) (the "**First Rent Payment**"), made payable to Landlord upon mutual execution and delivery of this Lease by Landlord and Tenant. Checks should be made payable to: "City of San Jose." Base Rent shall be paid to Landlord absolutely net of all costs and expenses incurred by Tenant in connection with its occupancy of the Premises. City shall provide a \$500 monthly credit to Tenant for fifty (50) months, beginning October of 2021 and ending November of 2025 ("Projector Rent Credit"). There will be no credit applied to the rent for December of 2025 and any month(s) thereafter. All rent payments shall be sent to the Landlord's address below and shall be free from all credits, claims, demands, off-sets or counterclaims of any kind against City:

City of San Jose
c/o Real Estate Services
200 E Santa Clara, 12th Floor
San Jose, CA 95113
Attn: Real Estate Finance

- 4.1. Monthly Payment of Base Rent. Except for the First Rent Payment, Base Rent due each month shall be the amounts set forth in **Section 1.7** above.
- 4.2. Method and Time of Payment of Base Rent. Commencing with the Commencement Date and continuing thereafter during the term of this Lease, the Base Rent shall be paid by Tenant to Landlord on a monthly basis on the first (1st) day of each calendar month. Notwithstanding anything to the contrary contained in this Lease, if the first day of the month is a Saturday, Sunday or a holiday recognized by the Federal Reserve Bank or the City of San Jose, then Base Rent shall be due on the preceding business day.
- 4.3. Additional Rent. Pursuant to Section 16 below, if the term of any existing or new subtenant's sublease exceeds six (6) consecutive, and/or nonconsecutive, months within a one (1) year period, Tenant shall pay as Additional Rent to City fifty percent (50%) of all monthly gross sublease rents received that are greater than the Tenant's Base Rent listed in Section 1.7 (e.g. If Tenant's Base Rent is \$3,000 and gross monthly sublease rents across all qualifying subleases are \$5,000, Tenant would pay City \$1,000 as Additional Rent, which is 50% of the \$2,000 difference between the gross monthly sublease rents and Base Rent).
- 4.4. Interest. Any payment due from Tenant to City that is not paid within ten (10) days after the due date for that payment, including but not limited to rent, shall bear interest from the due date until the date paid at an annual rate equal to the greater of ten percent (10%) or the maximum rate permitted by law. In

addition, Tenant shall pay City all reasonable costs and expenses incurred by City in the collection of such payments and interest.

- 4.5. Late Charge. For all rent due and owing, Tenant shall pay, without the necessity of prior demand or notice, to City a late charge equal to five percent (5%) (“**Late Charge**”) of any installment of Base Rent that is not received by City within ten (10) days after the due date for that payment. Tenant and City agree that this Late Charge represents a fair and reasonable estimate of the additional costs and expenses City will incur by reason of a late payment of rent or back rent by Tenant. In no event shall this subsection be deemed or interpreted to grant Tenant a grace period or extension of time within which to pay any payment of rent or to prevent City from pursuing or exercising any right or remedy available to City for Tenant’s failure to pay a rent payment when due.
- 4.6. Camera 3’s Back Rent. As of October 2021, Camera 3 owes City approximately \$123,000 in back rent. City will forgive the entirety of Camera 3’s back rent provided that Camera 3 complies with the following terms:
- (a) Jack Nyblom, President of Camera 3, shall personally guarantee this **Section 4.6** and **Section 8.5(a)** of this First Restatement with the forgiven rent as consideration for said guarantee;
 - (b) Jack Nyblom represents and warrants that there are no outstanding liens on the projectors and related equipment specified in **Section 8.5(a)**;
 - (c) Camera 3 will transfer ownership of the projectors and related equipment listed in **Section 8.5(a)** to City;
 - (d) The executed Release Document from Resolution Capital _____ attached as Exhibit D demonstrates clear title and confirms to City’s satisfaction that all liens have been removed against the projectors and related equipment specified in **Section 8.5(a)**;
 - (e) The parties acknowledge and accept the City’s receipt of Eleven Thousand Three Hundred Dollars (\$11,300) as proceeds from the Shuttered Venue Operators Grant for rental assistance, Ten Thousand Dollars (\$10,000) in rent payments received from Camera 3’s sublessees, and application of Camera 3’s security deposit in the amount of Two Thousand Four Hundred Thirty-Three Dollars and Fifty Cents (\$2,433.50) as sufficient payment of back-owed rent.

Agreed, Accepted, and Guaranteed by:

Signature:  _____
ferrand@aol.com (10/20/2021)
Email: ferrand@aol.com
Name: Jack Nyblom

5. Option to Extend. If this Lease shall not have been previously terminated and if Tenant is not in default under the terms of this Lease as of the date Tenant exercises its option hereunder, then Tenant shall have the option to extend the term of this Lease on the same terms and conditions (except for Base Rent) for one (1) additional term of five

(5) years("**Option Term**") at the expiration of the existing Term. Said option may be exercised only by the delivery of written notice by Tenant to City at least one hundred eighty (180) days, but not more than three hundred sixty (360) days, prior to the expiration of the existing Term (the "**Tenant's Option Election Notice**"). Base Rent due each month during any Option Term shall be adjusted to (i) the "Prevailing Fair Market Rate" for the rental of movie theaters ("Renewal Rental Rate") or (ii) such other rental amount as may be agreed upon between Landlord and Tenant. Within one hundred eighty (180) days after receipt of Tenant's Option Election Notice, Landlord shall deliver written notice of Landlord's determination of the Renewal Rental Rate for the Option Term (the "**Option Rent Notice**"). If Tenant disputes such determination by Landlord Tenant may elect to withdraw Tenant's Option Election Notice within ten (10) business days after receipt of the Option Rent Notice and this Lease shall terminate on the original Termination Date. For the purposes of this Section, "**Prevailing Fair Market Rate**" shall be the monthly base rent in the San Jose metropolitan area for leases with substantially similar terms and square footage as may be reasonably determined by Landlord in Landlord's reasonable discretion.

6. Use of Premises; Operating Hours; No Covenant of Continuous Operation.

6.1. Use of Premises.

- (a) The Premises shall be used during the term hereof for the purpose of operating a movie theatre, live entertainment and café, including the ancillary sale of concession items related to the above use. At all times during the term of this Lease, Tenant shall conduct and maintain a first-class movie theatre, live entertainment venue and café.
- (b) Tenant shall not use any portion of the Premises for other than Tenant's Exclusive Uses without the prior written approval of the Landlord, which Landlord may provide or withhold at its reasonable discretion. Provided Tenant is not in default under this Lease at the time of Tenant's request, City shall approve or reject the request for additional uses within thirty (30) days after receipt of the request; a failure to respond within said thirty (30) days shall be deemed a denial of the request. Such request shall be in writing and shall describe in reasonable detail the additional use Tenant proposes.

6.2. Operating Hours. Landlord agrees that Tenant shall have the right, at Tenant's option, to operate its business twenty-four (24) hours per day, seven (7) days per week, from and after the Commencement Date. Landlord hereby consents to such operating hours, subject to local ordinances, statutes and laws and the provisions of **Section 35** below.

6.3. Covenant of Continuous Operation. Tenant covenants and agrees to continuously operate its business on the Premises which shall mean that Tenant shall be open for business and serving customers for no less than six

(6) hours per day for no less than five (5) days per week. Notwithstanding anything to the contrary contained in this Section, Tenant may be closed for business for more than two (2) days in any week in which there is a holiday recognized by the Federal government, the State California or the City of San Jose, and for no more than fourteen (14) consecutive days once every five (5) years for the sole purpose of performing upgrades or remodeling of the Premises.

6.4. Use of the Premises by City. Subject to the terms and conditions set forth in this Lease Agreement, the City reserves unto itself and Tenant grants to the City, for the term of this Agreement, the right to use the Premises for meetings, seminars, lectures and other similar City uses. City's use may include use by licensed users of City facilities and participants in the City sponsored or operated educational programs. All such uses by City shall be coordinated by such parties through the City's Real Estate Services Division. Tenant acknowledges and affirms that the use of the Premises as set forth in this Section is material consideration paid by Tenant for the Premises.

(a) Tenant shall cooperate with City to make the Premises available to City from 8:00 am to 5:00 pm for not less than three (3) days in any calendar month subject to availability ("**Public Use Hours**"), upon no less than ten (10) days prior written request.

(b) City shall not be charged any rent for use of the Premises. Tenant shall be reimbursed by City for actual direct expenses which are incurred by Tenant for extraordinary cleaning, staffing and other direct expenses that exceeds the typical cost for normal operation and maintenance of the Premises and for any costs incurred by Tenant as the result of any damage to the Premises caused by City or its employees, agents, invitees or permittees during the course of any of their uses of the Premises permitted in accordance with this Section.

7. Condition of the Premises.

1.1. As-is. The parties acknowledge that Camera 3 has possessed the Premises since September 2010 pursuant to that certain lease dated September 14, 2010 by and between the City of San Jose and Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment L.P. ("**Prior Lease**"), and Tenant has been in possession of the Premises since August 2017, pursuant to that certain Management and License Agreement dated August 30, 2017; accordingly Tenant agrees that it continues to occupy the Premises "**AS-IS**" and with all faults. Landlord makes no representation or warranty as to the condition of the Premises and is not liable for said condition unless otherwise stated herein.

7.1. Disclosure. Pursuant to California Civil Code Section 1938, Landlord states that, as of the Effective Date, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code section 55.53.

8. Leasehold Improvements.

8.1. Improvements. In the event Tenant elects, in Tenant's sole discretion, to make additional improvements in or alterations to the Premises, as reasonably necessary for the continued operation of Tenant's business ("**Tenant's Work**"), such work shall be accomplished pursuant to this **Section 8**.

8.2. City's Right to Review Plans. The City shall have the right to review and approve all plans and drawings, including any material changes to the plans and drawings, for the Tenant's Work, provided, however, that nothing herein shall relieve Tenant of any obligation to submit plans and drawings to City departments or other public agencies as required for construction of the Tenant's Work.

8.3. Liens. All Tenant's Work shall be completed free of mechanic's liens, with first-class materials and workmanship, and in compliance with all laws, applicable permits, ordinances, orders, rules and regulations (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to Tenant's Work, regardless of when they become effective. Nothing done by Tenant in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or improvement to the Building.

8.4. Performance and Payment Bonds. A performance bond and payment bond pursuant to this **Section 8.3** shall be required in the event the cost of Tenant's Work exceeds twenty five thousand dollars (\$25,000.00).

(a) Payment Bond. Tenant shall, at its own cost and expense, procure and provide a payment bond in an amount equal to not less than one hundred percent of the cost estimate of the Tenant Work, as approved by the City, to cover the costs of materials and labor, supplies and equipment used directly or indirectly for Tenant Work to be constructed, to guarantee and assure the prompt payment of same and to protect City from all liens or liability arising from such construction. The surety furnishing the bond shall be an Admitted Surety and the legal form of the bond shall be satisfactory to the City Attorney. Tenant shall refrain from performing, or causing the performance of, any work related to the construction of Tenant Work until Tenant furnishes a bond satisfying this subsection.

- (b) Liens. Tenant shall keep the Premises, the Building and the Property free from any liens arising from any cause whatsoever directly or indirectly attributable to the activities of Tenant or its contractors, agents, or sublessees or assignees. Tenant shall, within ten (10) days following receipt of notice or actual knowledge of the imposition of any such lien, cause such lien to be released of record by payment or posting of a bond fully satisfactory to Landlord in form and substance, and otherwise in the amount required to bond against any relevant lien by statute. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or that Landlord shall deem proper for the protection of Landlord, the Premises, the Project and any other party having an interest therein, from mechanics', materialmen's and other liens. In addition to all other requirements contained in this Lease, Tenant shall give to Landlord at least ten (10) business days prior written notice before commencement of any construction on the Premises and shall give the Landlord adequate access to the Leased Premises for the purposes of posting notices of nonresponsibility or other notices provided by applicable law or appropriate in the judgment of Landlord.

8.5. Ownership and Removal.

- (a) Projectors and Related Equipment. The executed Release Document from Resolution Capital provided by Camera 3 attached as Exhibit D demonstrates clear title and confirms to City's satisfaction that all liens have been removed against the following projectors and related equipment:
- (i) Sony SRX R320 Projector and System Serial No.#121316;
and
 - (ii) Sony SRX R320 Projector and System Serial No.#130101;
and
 - (iii) All lenses and component parts related to the specified projectors, and automation systems (i, ii, and iii collectively "Theater Equipment").

Camera 3 and/or Tenant will transfer ownership of the above listed Theater Equipment to the City. The above Theater Equipment will be owned by the City and maintained by Tenant at Tenant's sole expense. If Tenant elects to upgrade or replace the Theater Equipment and/or related equipment, which shall be at Tenant's own expense, Tenant will be required to safely remove and store City's Theater Equipment for the duration of the First Restatement and reinstall upon Termination of the Lease. City, at its sole discretion, may waive this requirement with written notice.

In the event that City terminates this Agreement pursuant to Section 21 before the full Projector Rent Credit is credited, the City

will transfer ownership of the above listed Theater Equipment to Tenant.

Agreed, Accepted, and Guaranteed by:

Signature:  _____
ferrand@aol.com (10/20/2021)
Email: ferrand@aol.com
Name: Jack Nyblom

- (b) Personal Property. All personal property not affixed in any way to the Premises including inventory, together with Tenant's trade fixtures (excluding the Theatre Equipment) shall remain the property of Tenant ("**Tenant's Property**"). Upon the termination or expiration of the Lease term, if Tenant is not then in default under the Lease, Tenant may remove Tenant's Property from the Premises no later than the termination or expiration date. In the event that City terminates this Lease in accordance with Section 24 below, and only in that event, Tenant may remove seating and staging that is affixed to the property. In addition, if requested in writing by Landlord, in connection with its surrender of the Premises Tenant shall remove from the Premises all alterations and other improvements made to the Premises by or on behalf of Tenant. Tenant shall repair any damage to the Premises or the Building caused by such removal, including patching and filling holes. In no event shall Tenant remove or be required to remove any restrooms, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems. All other utility systems will be capped and returned to a condition compatible with code requirements.

Landlord acknowledges and agrees that all of Tenant's Property bearing any of Tenant's trade names or trademarks, service marks, designs, logos, indicia, corporate names, company names, business names, fictitious business names, trade styles and any other service or business identifier and related applications, whether registered or unregistered (collectively, "**Tenant's Intellectual Property**"), shall not be deemed to become part of the Premises however attached to or incorporated into the Premises, and whether or not they become a component part of the Premises. Except as provided below to the contrary, Tenant's Intellectual Property is and shall remain the property of Tenant. Tenant shall remove Tenant's Intellectual Property from the Premises prior to the termination of this Lease. Landlord hereby waives any statutory lien and any attachment for rent on Tenant's Intellectual Property that Landlord may have or hereafter acquire.

9. Abandonment. Any of Tenant's Property not removed from the Premises within fifteen (15) business days of the date the Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord. Landlord may possess and dispose of such property provided that Landlord shall not use or permit anyone holding under Landlord to use on the Premises any of Tenant's Intellectual Property. This

provision shall apply under all circumstances, including default by Tenant under this Lease.

10. Prevailing Wages. Throughout the term of this Lease, Tenant shall cause to be paid prevailing wages for all work or services performed ON-SITE at the Premises to the extent required pursuant to Section 1720 *et. seq.* of the California Labor Code. Prevailing Wages must be paid for any construction, alteration, demolition, installation, maintenance, or repair work at the Premises. For the purposes of this Lease, “prevailing wages” means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code (the “**Labor Code**”) and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 *et seq.*) (the “**Labor Regulations**”), and as established by the Director of the California Department of Industrial Relations (“**DIR**”), or in the absence of such establishment by the DIR, by the City’s Office of Equality Assurance (“**OEA**”), for the respective craft classification.

10.1. Goals. In addition to State Law requirements regarding prevailing wages, the City of San Jose recognizes that Tenant’s payment of prevailing wages promotes: (a) protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas; (b) benefiting the public through superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace; (c) payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer social services; and (d) increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

10.2. Compliance. Tenant’s compliance with prevailing wage requirements is a material consideration of City in entering into this Lease. At its sole costs and expense Tenant shall prepare and submit all compliance documentation to the DIR or such other applicable authority under the Labor Code and Labor Regulations. Tenant shall provide the City with reasonably satisfactory documentation and evidence demonstrating Tenant’s compliance with the Labor Code and Labor Regulations within ten (10) business days after delivery of a written request from the City to Tenant. Compliance documentation shall be submitted to the City’s Office of Equality Assurance via electronic mail (e-mail) or United States Mail to the addresses below:

City of San Jose
Attn: Office of Equality Assurance
200 E Santa Clara Street, 5th Floor
San Jose, CA 95113

E-mail: SJMWO@sanjoseca.gov
Phone Number: 408-535-8430

- 10.3. **Indemnity.** Tenant shall indemnify and hold the City harmless from any and all costs, expenses, fines, fees, losses, claims, or damages arising from Tenant's or any of Tenant's contractor's, subcontractor's or agents failure to pay prevailing wages or to otherwise comply with the Labor Code and Labor Regulations.
- 10.4. **Breach.** City and Tenant recognize that Tenant's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and City's additional prevailing wage compliance provisions within this Lease, will cause the City damage by undermining City's goals in assuring timely payment of prevailing wages, and will cause the City additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by Tenant's payment of restitution to the worker paid less than the prevailing wage. City and Tenant further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, City and Tenant agree that:
- (a) for each day that Tenant fails to submit contractor's certified payroll to OEA or the City on or before the date due, Tenant shall pay to City as liquidated damages the sum of FIFTY DOLLARS (\$50.00); and
 - (b) for each instance where City or OEA has determined that prevailing wage requirements were not met, Tenant shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

Nanci Klein
Nanci Klein (10/20/2021)
Email: nanci.klein@sanjoseca.gov

CITY Signature

Scott Evan Guggenheim
scott@guggent.com (10/18/2021)
Email: scott@guggent.com

TENANT Signature

11. Maintenance, Repairs, and Alterations.

- 11.1. **Tenant's Obligations.** Except for damage caused by fire or other casualty, whether or not insured and subject to Landlord's obligations described in **Section 11.2** below, Tenant, at Tenant's sole cost and expense, shall keep the Premises in first class condition and repair, including maintaining all plumbing, electrical, HVAC and lighting facilities and equipment solely within the Premises and exclusively serving the Premises, the storefront and all doors and plate glass windows (both interior and exterior) in or relating to the Premises, interior walls, ceiling, utility outlets, fixtures, any Tenant signage and any floor covering

and repair all damage caused by Tenant, its agents, employees, customers, invitees and licensees to any installations in the Premises or any portion of the Common Area, Building or Premises. Except for interior structural and other items to be maintained and repaired by Landlord pursuant to **Section 11.1** below, Tenant, at its sole cost and expense, shall keep the entirety of the interior of the Premises, including without limitation Tenant's fixtures, case goods, furnishings, and improvements in good condition and repair. Tenant shall provide a contract for quarterly maintenance and inspection of the HVAC with an HVAC company approved by Landlord. Tenant shall promptly provide copies to Landlord of any and all inspection reports that it shall obtain with respect to the foregoing. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants, or of any other tenant of the Property; or (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant.

- 11.2. Landlord's Obligations. Except for repairs and replacements to the Premises that Tenant must make under **Section 11.1** above, and subject to the provisions of **Section 20** below, Landlord shall pay for and make all other repairs and/or replacements to the Building. Landlord shall commence such repairs and/or replacements within thirty (30) days of receiving, from Tenant, written notice of the need for the repairs and/or replacements. Landlord shall, at its sole cost and expense, make the repairs and replacements necessary to maintain the Building in a good condition. Such repairs, replacements and maintenance shall include without limitation the upkeep of the roof, roof structures and supports, HVAC (excluding Tenant's maintenance contract), sprinkler system, gutters, downspouts, foundation, exterior walls, and all structural components of the Building. Landlord shall also repair and maintain all sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Building as a whole. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass, signage, storefronts, night deposit boxes or automatic dispensing machines or equipment relating to the Premises. For the avoidance of doubt, in no event shall Landlord be required to repair or maintain Tenant's improvements or trade fixtures. In the event of imminent threat to life or of bodily injury or substantial damage to property within the Premises, Tenant may give Landlord such notice as is practicable under the circumstances, and if Landlord fails to undertake to make such repairs immediately, Tenant may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to Landlord for reimbursement and Landlord shall reimburse Tenant within a reasonable period after its receipt of invoicing and reasonable supporting documentation. Except as provided in the immediately preceding sentence, Tenant waives any right to make repairs at Landlord's expense. Further, in no event shall any

abatement of rent result (except as provide in **Section 20** below), nor shall any liability to Landlord (whether for injury or interference with Tenant's business or otherwise) accrue based upon any need arising for repairs or maintenance for which Landlord is responsible under this **Section 11.1**. Notwithstanding any provision to the contrary, Landlord's obligations under this Section shall not include making (a) any repair or improvement necessitated by the negligence or willful misconduct of Tenant, its agents, employees or servants; or (b) any repair or improvement caused by Tenant's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant.

- 11.3. Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as when Tenant took possession (but subject to Tenant's removal obligations, if any, under **Section 8.5**, and except for ordinary wear and tear, damage by fire or other casualty, whether or not insured, and/or failure by Landlord to make repairs for which Landlord is responsible), and in a broom clean condition.
- 11.4. Landlord's Rights. If Tenant fails to perform Tenant's obligations under this Lease, Landlord may, but shall not be required to, enter upon the Premises, after ten (10) days prior written notice to Tenant, and put the same in good order, condition and repair, and the actual costs thereof and an administrative fee of not less than 20% of the actual costs thereof, shall become due and payable as additional rent to Landlord upon demand by Landlord, and in no event shall payment be made later than Tenant's next monthly installment of Base Rent falling due after Tenant's receipt of an invoice describing such costs.
- 11.5. Alterations. Notwithstanding the generality of **Section 8.1** above, Tenant shall not make any alterations, improvements, additions, or utility installations in, on or about the Premises without Landlord's consent, which consent shall not be unreasonably withheld with respect to any non-structural alteration of the Premises that does not affect the exterior appearance of the Building or the Common Area or affect in any material way Building systems (i.e. electrical, plumbing and HVAC), but may be conditioned upon compliance with the provisions of **Section 8**. All other alterations, improvements, additions or installations shall be subject to Landlord's prior approval which may be withheld or conditioned in its sole discretion. Landlord shall provide a written response to Tenant's request for approval within thirty (30) days after receipt of Tenant's written request; a failure to receive a written approval shall be deemed a denial. Notwithstanding the foregoing, during the Lease term, Tenant may replace and repair the improvements existing as of the Commencement Date, without Landlord's prior consent, if such replacement and repair: (1) remains consistent with such pre-existing improvements, or (2) is not visible from the sidewalk in front of the Premises, and the requirements of **Section 8.3** are met.

12. Compliance with Law and Increased Hazards.

- 12.1. Compliance with Laws. During the Lease term, Tenant, at its sole cost and expense, shall comply promptly with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances (“**Laws**”) affecting the Premises or the improvements therein, or any part thereof, or the use thereof, including those which require the making of any unforeseen or extraordinary changes to the Premises (but only insofar as such unforeseen or extraordinary changes apply to Tenant’s use of the Premises), whether or not any such Laws which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same. In connection with the foregoing, Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that “Law” as defined herein includes any legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body. Without limiting the generality of the foregoing, Tenant shall be responsible, at its sole cost and expense, for applying for and obtaining any and all permits or other approvals required by any governmental agency permitting Tenant’s use or occupancy of the Premises.
- 12.2. Increased Hazards. Tenant shall not occupy or use, or permit any portion of the Premises to be occupied or used, for any business or purpose that is disreputable or productive of fire hazard, or permit anything to be done that would increase the rate of fire or other insurance coverage on the Building and/or its contents. Tenant shall comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions and other environmental matters. Nothing done by Tenant in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or improvement to the Premises or the Building.

13. Signage and Displays. With respect to signage on the Premises, Landlord and Tenant agree as follows:

- 13.1. Landlord shall allow Tenant, at Tenant’s sole costs and expense, to place signage on the Premises provided that any such signs are in accordance with the City’s Sign Ordinance and Landlord’s sign criteria and the design and location of any such signs have been approved in advance in writing by Landlord. Upon expiration or earlier termination of this Lease, Tenant shall remove Tenant’s signs from the interior of the Premises and restore the interior

of the Premises to its original condition, unless otherwise approved by Landlord.

- 13.2. Except as provided below, no merchandise shall be displayed except within the Premises, without Landlord's prior written approval, which approval shall be within the sole and absolute discretion of Landlord. No merchandise shall be displayed except within the Premises.
- 13.3. Tenant shall comply with such reasonable rules and regulations with respect to the Premises and the Common Area as the Landlord may from time to time enact, provided that Landlord shall first notify Tenant in writing as to any such rules and regulations, and further provided that such rules and regulations: (i) are customary for the operation of similar sized commercial buildings in the San Jose, California area, and (ii) do not otherwise materially interfere with Tenant's use, access, visibility, signage and/or parking. In the event of a conflict between any rules and regulations and the provisions of this Lease, the provisions of this Lease shall control.

14. Taxes and Assessments/ Possessory Interest Tax.

- 14.1. Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the Commencement Date), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "**taxes**") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease. Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Tenant hereunder. Taxes shall not include any inheritance, gift, estate, successor, profit, excise, capital stock, penalties, interest, municipal, county, state or federal income, margin, gross receipts or franchise taxes with respect to the rent received by Landlord under this Lease, or upon the right of Landlord to receive such rent or to

do business, or any tax, assessment, or governmental imposition in lieu of the foregoing, or documentary transfer taxes in connection with the sale or other transfer of all or part of the Property, Building or Premises.

14.2.If at any time during the term of this Lease any taxes (other than personal property taxes) are levied which may, at the election of the taxpayer, be paid in installments and the taxpayer makes such election, Tenant shall pay such installments during the term of this Lease and Landlord shall pay any installments thereafter. If any such taxes must be paid in a lump sum, Tenant shall pay the entire amount.

15. Utilities. Tenant shall pay for all utilities and other services provided to the Premises, including, but not limited to: water, sewer, storm, gas, electricity, telephone, internet, trash collection and recycling used by Tenant during the Lease term, all of which shall be separately metered to the Premises and paid by Tenant directly to the provider of such service (as applicable).

16. Assignment and Subletting. Tenant shall not assign, let or sublet the whole or any portion of the Premises without the prior approval of the Landlord, which Landlord may provide or withhold at its sole discretion. Provided Tenant is not in default under this Lease at the time of Tenant's request, City shall approve or reject the request for assignment, let or sublet within thirty (30) days after receipt of a written request; a failure to respond within said thirty (30) days shall be deemed a denial of the request. The written request shall include a summary of the sublease terms, including the name and contact information of the proposed assignee or subtenant, the person or entity who directly or indirectly controls more than 50% of the profits and/or decision making authority thereof, the rent or other consideration to, or from, such subtenant or assignee, the proposed date of occupancy and such other information as Landlord shall reasonably request. Any such consent, if given by City, shall be in writing and may be approved by the City's Director of Economic Development ("**Director**") on behalf of City. An approval of an assignment, let or sublet hereunder shall not relieve **Guggenheim Entertainment, Inc.** or any of its successors and/or assigns of any liability or responsibility under this Lease, and **Guggenheim Entertainment, Inc.**, and its successors and assigns shall remain secondarily liable for fulfilling all terms, provisions, and conditions of this Lease, including payment of rentals, fees and charges. Any new assignee shall be required to execute an agreement expressly assuming the Lease. If the term of any existing or new subtenant's sublease exceeds six (6) consecutive, and/or nonconsecutive, months within any one (1) year period, Tenant shall pay, as Additional Rent pursuant to Section 4.3, to City fifty percent (50%) of all monthly gross sublease rents received that are greater than the Tenant's Base Rent listed in **Section 1.7** (e.g. If Tenant's Base Rent is \$3,000 and gross monthly sublease rents across all qualifying subleases are \$5,000, Tenant would pay City \$1,000 as Additional Rent, which is 50% of the \$2,000 difference between the gross monthly sublease rents and Base Rent).

Notwithstanding anything to the contrary contained in this **Section 16**, Landlord and Tenant acknowledge and affirm that Tenant has and may continue to sublet a portion of

the Premises to **Cinequest, Inc.**. Landlord hereby consents to the sublet to **Cinequest, Inc.** and its use of the Premises for an annual film festival. However, any further assignment or sublet of such portions or any other portion of the Premises shall be done in accordance with this **Section 16**.

17. Deposit. On or before the Commencement Date, Tenant shall deliver deposit to City in the amount of **Six Thousand Dollars** (\$6,000.00) (the "Deposit") to secure the performance of Tenant's obligations under this Lease. Said deposit shall gain no interest while in possession of City. City may claim from such Deposit those amounts as are reasonably necessary to remedy Tenant default(s) or otherwise to repair damages to the Property caused by Tenant or to restore the Property to its condition prior to Tenant's taking possession thereof, upon termination of the tenancy. Any remaining portion of such deposit shall be returned to Tenant within ninety (90) days after termination of tenancy and joint inspection of Property.

18. Insurance; Indemnity.

18.1. Tenant's Insurance. Prior to the Commencement Date, Tenant at its sole cost and expense and for the full term of this Lease and any extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property in or about the Premises which may arise from or in connection with the activities of Tenant and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **Exhibit C**. City shall not be obligated to take out insurance on Tenant's Property or Tenant's Work or other improvements. Upon City's written request therefore, Tenant shall provide City with copies of all policies as may be required by City. These requirements are subject to waiver if so approved in writing by the City's Risk Manager.

18.2. Indemnification and Release by Tenant. Notwithstanding any other provision in this Lease to the contrary (but subject to the remainder of this **Section 18.1**), Tenant hereby releases and agrees to defend, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) in connection with or arising out of Tenant's use of the Premises ("**Claims**"), including, but not limited to: (a) injuries occurring within the Premises; (b) any intentional acts or negligence of Tenant or Tenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease; (d) any violation by Tenant of any law, ordinance or regulation governing the use of the Premises or (e) the failure of any representation or warranty made by Tenant herein to be true when made. This release and indemnity does not include any Claims to the extent caused by the intentional or actively negligent acts of Landlord or its agents, officers, contractors or employees not otherwise insured by coverage required under

Section 18.1 above. Further, to the extent permitted by any policy of property insurance which Landlord may (but shall not be obligated to) maintain with respect to the Building, Landlord hereby waives any right of recovery against Tenant for any loss thereby covered. This release and indemnity shall survive termination of this Lease only as to Claims arising out of events that occur prior to termination of the Lease.

19. Environmental Liability.

- 19.1. Environmental Law. The term “**Environmental Law**” means any federal, state, or local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.
- 19.2. Hazardous Substance. The term “**Hazardous Substance**” shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.
- 19.3. Release of Hazardous Substances. Except as provided below in **Section 19.3**, Tenant shall not store, dispose of, transport, generate or otherwise introduce any Hazardous Substance in, on or around the Premises. If any Hazardous Substance is deposited, released, stored, disposed of, transported, generated or otherwise introduced by Tenant in, on, or around the Premises, the Building or the Property, Tenant, at Tenant’s sole cost and expense, shall comply with all applicable laws, rules, regulations and policies of any governmental body with jurisdiction over the same, to remove, transport and dispose of such substances and perform all remediation and cleanup necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Substances.
- 19.4. Tenant’s Use of Hazardous Substances. Notwithstanding the above and provided that Tenant complies with all applicable Environmental Laws, Tenant shall have the right to use Hazardous Substances on the Premises to the extent such Hazardous Substances (i) are contained in restaurant and/or household products, office supply products or janitorial products customarily used in the maintenance, rehabilitation, or management of facilities similar to the Premises; or (ii) are commonly used in Tenant’s day-to-day business operation, so long as Tenant provides the appropriate warning, if required to do so under any Environmental Law.
- 19.5. Environmental Indemnity. Tenant shall protect, indemnify, and hold harmless Landlord and Landlord’s employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys’ fees), and the costs of repairs and improvements necessary to return

the Premises to the physical condition existing prior to Tenant's undertaking any activity related to any Hazardous Substance, directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises or the Building. This indemnity shall survive the termination of this Lease.

20. Damage to Premises.

- 20.1. Landlord's Option to Repair. If a material part of the Premises provided by Landlord, or any portion of the Building necessary for Tenant's use of the Premises shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, Landlord may elect (but shall not be obligated) to promptly and diligently repair the damage (subject to the limitations set forth in **Section 20.1**) and this Lease shall remain in full force and effect. If a material part of the Premises provided by Landlord in, or any portion of the Building necessary for Tenant's use of the Premises, is damaged, and whether or not the damage can, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.
- 20.2. Election to Terminate. If a material part of the Premises provided by Landlord, or any portion of the Building necessary for Tenant's use of the Premises, are damaged, and either: (i) the damage cannot, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, or (ii) the damage can, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, but Landlord has not elected to promptly and diligently repair the damage, and Landlord has not terminated this Lease pursuant to **Section 20.1** above, then this Lease may be terminated by Tenant by written notice given to Landlord within sixty (60) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.
- 20.3. Abatement of Rent. If a material part of the Premises provided by Landlord, or any portion of the Building necessary for Tenant's use of the Premises, are damaged, and Landlord elects to repair them pursuant to the provisions of **Section 20.1**, the Base Rent payable shall be abated from the date of the casualty and while such repairs are being made. If, however, Tenant is able, in Tenant's reasonable discretion, to occupy and operate its business within a portion of the Premises, Base Rent shall be abated only for the portion of the

Premises that Tenant cannot occupy and operate within. Such partial abatement shall be calculated on a per-square foot basis. The abatement of Base Rent shall be Tenant's sole remedy due to the occurrence of the casualty. Landlord shall not be liable to Tenant or any other person or entity for any direct, indirect or consequential damage due to or arising from the casualty. Except as provided in this **Section 20**, Tenant waives any right to terminate this Lease on account of damage or destruction.

21. Condemnation.

- 21.1. Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable, in Tenant's sole discretion, for the purposes for which Tenant was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Tenant shall be released from any future obligations arising under this Lease.
- 21.2. Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Tenant was using the Premises prior to the taking in the sole discretion of Tenant, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Tenant shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.
- 21.3. Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award, except that portion allocable to any personal property of Tenant or any unsalvageable trade fixtures or furnishings owned by Tenant, and any amounts specifically awarded or agreed upon by the Tenant and the condemning authority for the unamortized portion of Tenant's leasehold improvements and moving expenses, shall be the property of Tenant.
- 21.4. Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this **Section 21** all rentals and other charges payable on the part of Tenant to Landlord hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Tenant ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner and any provisions which survive the termination or expiration of this Lease.

22. Default and Remedies.

22.1. Tenant's Default. If: (i) Tenant shall fail to pay any rent or other monies due under this Lease after the same are due, and such failure shall continue for ten (10) days after receipt of written notice thereof to Tenant, or (ii) Tenant shall fail to perform any other term, covenant, or condition herein contained, and such failure shall continue for thirty (30) days after receipt of written notice thereof, unless Tenant shall have taken steps in good faith within such period to remedy such failure and is continuing to so act with diligence and continuity, or (iii) the Tenant's interest herein or any part thereof be assigned or transferred, either voluntarily or by operation of law, without permission of the Landlord when such permission is required by the terms of this Lease, whether by judgment, execution, death or any other means, or (iv) the Tenant shall file any petition or institute any proceedings under any bankruptcy act, state or federal, or if such petition or proceeding be filed or be instituted or taken against the Tenant and such petition remains undischarged for a period of ninety (90) days; or if any receiver of the business or of the property or assets of Tenant shall be appointed by any court (except a receiver appointed at the instance or request of the Landlord) and Tenant fails to obtain dissolution of the receiver within ninety (90) days after appointment of the receiver; or (v) Tenant shall make a general or any assignment for the benefit of its creditors; or (vi) Tenant shall abandon or vacate the Premises (other than a temporary cessation of operations in connection with renovations of the Premises to which Tenant has obtained Landlord's approval as required by the terms hereof or a cessation pursuant to Section 7 above); then in any of such events Landlord shall have the following options, in addition to any other remedies available to Landlord at law or in equity:

- (a) To continue this Lease in effect and recover all rent as it becomes due, as provided in California Civil Code Section 1951.4 (which provides that when a tenant has the right to sublet or assign, subject only to reasonable limitations, the landlord may continue the lease in effect after the tenant's breach and recover such rent); and/or
- (b) To terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of such intention to terminate, in which event Landlord may recover from Tenant:
 - (i) The worth at the time of award of any unpaid rent that had been earned at the time of such termination; plus
 - (ii) The worth at the time of award of the amount by which the unpaid rent, which would have been earned after termination until the time of award, exceeds the amount of such rent loss Tenant proves could have been reasonably avoided; plus

- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided; plus
 - (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including, without limitation, all costs and expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorney fees; (ii) maintaining or preserving the Premises; (iii) preparing the Premises for a new tenant, including repairs or alterations to the Premises; and (iv) leasing commissions; plus
 - (v) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law; and/or
- (c) To collect, by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Tenant required to be kept or performed. For purposes of this subsection, an installment of rent shall become due on a monthly, not quarterly basis and the applicable monthly rent installment shall be calculated the same as the monthly rent is calculated pursuant to **Section 23**, Holdover; and/or
- (d) To reenter the Premises, remove all persons therefrom, take possession of the Premises and of all equipment, fixtures and personal property thereon or therein, and either with or without terminating this Lease to make commercially reasonable efforts to relet the Premises or any portion thereof (but nothing contained herein shall be construed as obligating Landlord to relet the whole or any portion of the Premises) for such term or terms (which may be for a term extending beyond the term of the Lease) and at such reasonable rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. In addition to the foregoing, Landlord shall have the right, but not the obligation to, make such alterations and repairs to the Premises, or to divide or subdivide the Premises, as may be required or occasioned by any such reletting. Provided, however, Landlord's right to make alterations, repairs or improvements to the Premises after Tenant's default shall be limited to those alterations, repairs, and/or improvements necessary for the purpose of re-letting the Premises. In the event Landlord relets the Premises, or any portion thereof, it may execute any such lease either in its own name or in the name of the Tenant as Landlord shall see fit, but the Tenant in such lease of reletting shall be under no obligation whatsoever to see to the

application by Landlord of any rent collected by Landlord for the account of Tenant, nor shall Tenant hereunder have any right or authority whatsoever to collect any rent from the Tenant in the lease of reletting. Upon any such reletting, the rents received on any such reletting shall be applied first to the expenses of reletting and collecting, including necessary renovations and alterations of the Premises and reasonable attorneys' fees and any real estate commissions actually paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder if a sufficient sum shall not be thus realized to pay such rent and other charges, Tenant shall pay to Landlord monthly any deficiency, and Landlord may sue therefor as each such deficiency shall arise, but if the Premises are relet for an amount in excess of that necessary to pay such rent and other charges, Tenant shall not be entitled to any such excess.

For purposes of the above section, the phrase "sums due or to become due" shall refer to monthly rent due Landlord, by Tenant, calculated on a monthly basis using the average monthly rent for the quarter immediately preceding the quarter in which the first day of the hold over at issue occurred. The average monthly rent for such quarter shall be calculated by dividing the total rent due for such quarter, pursuant to **Section 4.1**, by three.

As used in subsections (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum (or, if applicable, such lesser amount as shall be permitted by law). As used in subsection (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). All rents and other payments Landlord shall receive from subtenants, and other occupants of the Premises, shall be credited against Tenant's rent obligations under this Lease.

23. Holding Over. If Tenant shall hold over the term of this Lease, without Landlord's prior written consent, such holding over shall be construed as a tenancy from month to month, on the same terms and conditions as this Lease, and at one hundred fifty (150%) percent of the Base Rent in effect during the final full month of the term of this Lease.

24. City's Right to Terminate. City shall have the right to terminate this Lease without cause at any time, upon three hundred sixty (360) days prior written notification delivered to Tenant at any time following the end of the first year of the Initial Term.

25. Time of the Essence. Time is of the essence hereof, and waiver by the Landlord or Tenant of a breach of any term, covenant or condition herein contained, whether express or implied, shall not constitute a waiver of any subsequent breach thereof, or a breach of any other term, covenant, or condition herein contained, and acceptance of rent hereunder shall not be a waiver of any breach, except a breach of covenant to pay the rent so accepted. No acceptance by Landlord of any partial payment of any sum due hereunder shall be deemed an accord and satisfaction or otherwise bar Landlord from

recovering the full amount due, even if such payment is designated “payment in full,” bears any restrictive endorsement, or is otherwise conditionally tendered. The times for Tenant’s performance of any obligations set forth in this Lease and the Exhibits may be extended by the Director, if she finds, at her sole discretion, that Tenant has been delayed for reasons not in Tenant’s control. Any such extension shall be in writing.

26. Successors and Assigns. Subject to the provisions of **Section 16** hereof, this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.

27. Notices. Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, (a) if via e-mail, when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement); (b) three (3) business days after deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; or (c) the next business day if sent via a recognized overnight carrier addressed to:

Tenant at: Guggenheim Entertainment, Inc.
Attention: Scott Guggenheim
1535 Willow Oaks Drive
San Jose, CA 95125
E-Mail: scott@guggyent.com

Landlord at: City of San Jose
OED – Real Estate Services
200 E Santa Clara St, 12th Floor
San Jose, CA 95113
Attention: Real Estate Manager
E-Mail: kevin.ice@sanjoseca.gov

with a copy to: City of San Jose
Office of the City Attorney
200 East Santa Clara, 16th Floor
San Jose, CA 95113
Attention: Real Estate Attorney
E-Mail: cao.main@sanjoseca.gov

or to such other address as either party may designate by notice in accordance with this Section.

28. Landlord’s Access. Landlord and its agents shall have the right to enter the Premises upon seventy two (72) hours prior written notice for the purpose of inspecting the same, and making such alterations, repairs, improvements or additions to the

Premises or to the Building as are deemed necessary or desirable consistent with this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Premises, and (b) shall not unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

29. Legal Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Landlord and Tenant. Landlord and Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

30. Consents. Whenever the right of approval or consent is given to a party pursuant to this Lease, the party shall not unreasonably withhold, condition or delay its consent unless this Lease expressly provides otherwise. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by the Director.

31. Non-discrimination. Tenant shall not restrict the rental, use, occupancy, tenure, or enjoyment of the Premises or any portion thereof, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. During the term hereof, any contracts or subleases relating to the construction, use or occupancy of the Premises or any portion thereof, shall contain or be subject to substantially the following non-discrimination and non-segregation policy:

“There shall be no discrimination against or segregation of any person, or group of persons, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or vendees of the land.”

32. General. The terms “**Landlord**” and “**Tenant**” herein or any pronouns used in place thereof shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof. The headings of Sections herein are inserted only for convenience and reference and shall in no way define or limit the scope or intent of any provisions of this Lease. This Lease shall be construed under the laws of the State of California, and venue shall be in San Jose, California.

33. Quiet Enjoyment. Upon payment of the rent as aforesaid and upon the observance and performance by Tenant of all of the terms and provisions to be observed by Tenant under this Lease, Tenant shall peaceably hold and enjoy the Premises for the term hereof without hindrance or interruption by Landlord or any other person claiming through Landlord, except as herein expressly, provided.

34. Force Majeure. If any act required to be performed by Landlord or Tenant hereunder, other than the payment of money, shall be delayed due to strikes, riots, acts of God, shortages of labor or materials, national emergency, governmental restrictions, laws or regulations, or any other causes beyond either party's control, such delay shall not be a violation of this Lease and the time within which such act is required to be performed shall be extended for a period of time equal to the period of such delay.

35. Regulatory Authority. Tenant acknowledges that, at any time when City is the Landlord hereunder, Landlord shall have certain governmental regulatory authority over the Premises. Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by City, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

36. Landlord's Alteration of Building. Landlord may, at any time and from time to time: (A) make alterations, structural modifications, seismic modifications or additions to the Building; (B) change, add to, eliminate or reduce the extent, size, shape or configuration of any aspect of the Building or its operations; (C) change the arrangement, character, use or location of corridors stairs, toilets, mechanical, plumbing, electrical or other operating systems or any other parts of the Building; and (D) change the name or designation by which the Building is commonly known, provided Landlord shall provide Tenant with at least sixty (60) days prior notice of any change in the address of the Building and further provided that there is no unreasonable interference with Tenant's use, occupancy and business operations. None of the foregoing acts shall be deemed an actual or constructive eviction of Tenant shall entitle Tenant to any reduction of Base Rent or shall result in any liability of Landlord to Tenant. Landlord shall have the exclusive rights to the airspace above and around, and the subsurface below, the Premises and other portions of the Building, including, without limitation, the exclusive right to use all exterior walls, roofs and other portions of the Building for signs, notices and other promotional purposes.

37. City Ethics Requirements.

37.1. Prohibition of Gifts.

- (a) Tenant is familiar with City's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- (b) Tenant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.
- (c) The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Lease by Tenant. In addition to any other remedies Landlord may have in law or equity, Landlord may terminate this Lease for such breach as provided in this Lease.

37.2. Disqualification of City Employees. Tenant is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("**Revolving Door Ordinance**"). Tenant shall not utilize either directly or indirectly any officer, employee, or agent of Tenant to perform services under this Lease, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

38. Trash Removal. Aside from the currently existing trash receptacle and recycle bin in the Common Area, in no event shall any trash receptacle or recycle bin be stored outside the Premises.

39. Deliveries. All deliveries shall be made at the hours not in violation of municipal ordinances.

40. Subordination. This Lease shall, at Landlord's option, be subordinate or superior to any mortgage, deed of trust or ground lease that may exist or hereafter be placed upon the Premises or any part thereof and to any and all advances to be made thereunder and to the interest thereon and to all renewals, replacements and extensions thereof, provided, however, so long as Tenant performs its obligations under this Lease, no foreclosure, deed given in lieu of foreclosure, sale, or procedures taken under the encumbrance shall affect Tenant's rights under this Lease and the holder of such encumbrance shall agree to recognize this Lease and all of Tenant's rights hereunder. Tenant shall upon written demand by Landlord execute such instruments, reasonably acceptable to Tenant, as may be required at any time and from time to time to subordinate the rights and interest of Tenant under this Lease to the lien of any such ground lease, mortgage or deed of trust, or, if requested by Landlord, to subordinate any such ground lease, mortgage or deed of trust to the Lease; provided, however, that Tenant shall, in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust or termination of such ground lease, attorn to the purchaser upon foreclosure sale or sale under power of sale to the ground lessor under such ground lease, and shall recognize such purchaser or ground lessor as Landlord under this Lease, and so long as

Tenant is not in default hereunder, no such termination or foreclosure shall terminate this Lease or otherwise affect Tenant's rights hereunder.

41. Estoppel Certificate. Within ten (10) business days following Landlord's request, Tenant shall execute estoppel certificates addressed to (A) any mortgagee or prospective mortgagee of Landlord or, (B) any purchaser or prospective purchaser of all or any portion of, or interest in, the Building or the Property, on a form specified by Landlord, certifying as to such facts (if true) and agreeing to such notice provisions and other matters as such mortgagee(s) or purchaser(s) may reasonably require. Tenant agrees that it is foreseeable that any prospective lender, purchaser or ground lessor will require Tenant to execute an estoppel certificate hereunder as a condition to any purchase or financing. Tenant may make reasonable and appropriate modifications to a proposed statement to the extent required to correct misstatements in the proposed statement.

42. Costs and Expenses. Whenever this Lease provides that either party shall be entitled to recover fees, costs or expenses from the other, such fees, costs or expenses shall be reasonable in nature.

43. No Relocation. City and Tenant agree that the tenancy created hereby is of a temporary nature and that no relocation payments of assistance will be paid or claimed in any form as a consequence of this Lease.

44. Authorization to Director of Economic Development. Where this Lease requires or permits City to act and no officer of the City is specified, the Director or the designated representative of the Director has the authority to act on City's behalf.

45. Entire Agreement; Amendment. This Lease and the exhibits attached hereto (which are incorporated herein by this reference) represent the entire agreement between the parties concerning the subject matter hereof, and supersede any prior written or verbal agreements or understandings with respect thereto. This Lease may only be amended in writing; no such amendment shall be effective as to City or Tenant unless the individual signing on behalf of City or Tenant has been duly authorized to execute such amendment.

46. Termination of Prior Leases. Landlord and Tenant acknowledge, affirm and agree that all other leases or occupancy agreements between Landlord (or its predecessor in interest) and Tenant with respect to the Premises or any space in the Building are superseded by this Lease, are terminated and are of no further force or effect, including, without limitation, the Prior Lease; provided, however, that any indemnities or waivers therein, which by the terms of the Prior Lease survive the termination thereof shall survive with respect to the period of tenancy thereunder.

47. No Broker. No brokerage fees have been incurred in connection with this Lease. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the other party has or purportedly has dealt.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

“Landlord” or “City”

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation of the State of
California

× Cameron Day
Cameron Day (10/20/2021)
Email: cameron.day@sanjoseca.gov

× Nanci Klein
Nanci Klein (10/20/2021)
Email: nanci.klein@sanjoseca.gov

CAMERON DAY
Deputy City Attorney

Name: NANCI KLEIN
Title: Director of Economic Development

“Camera 3”

CAMERA 3 ENTERTAINMENT, INC.,
a California corporation, dba:
CAMERA 3 ENTERTAINMENT, L.P.

“Tenant”

GUGGENHEIM ENTERTAINMENT, INC.,
a California corporation, dba: 3Below
Theaters and Lounge

× Jack E. NyBlom
ferrand@aol.com (10/20/2021)
Email: ferrand@aol.com

× Scott Evan Guggenheim
scott@guggyent.com (10/18/2021)
Email: scott@guggyent.com

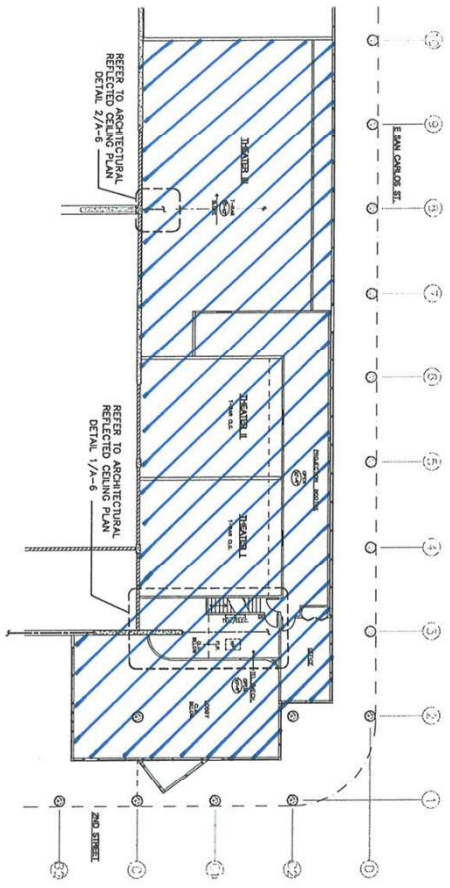
Name: JACK NYBLOM
Title: President

Name: SCOTT GUGGENHEIM
Title: President

**SECTIONS 4.5 AND 8.5(A) OF THIS
AGREEMENT PERSONALLY
GUARANTEED BY:**

× Jack E. NyBlom
ferrand@aol.com (10/20/2021)
Email: ferrand@aol.com

JACK NYBLOM



KEY PLAN - THEATERS SECOND FLOOR
3/22' = 1'-0"

 Leased Area

APPROVED: [Signature] DATE: 3/27/20
 CHECKED: [Signature] DATE: 3/27/20
 DESIGNED: [Signature] DATE: 3/27/20



PROJECT TITLE: SECOND / SAN CARLOS GARAGE SEISMIC UPGRADE 220 SOUTH SECOND STREET SAN JOSE, CA 95128	SHEET TITLE: KEY PLAN THEATERS F2	SCALE: AS SHOWN	DRAWN BY: DCT	REVISIONS: 1/27/20M	REVISIONS IN THIS SHEET WILL BE INDICATED BY A CIRCLED NUMBER IN THE MARGINS. ALL REVISIONS SHALL BE APPROVED BY THE PROJECT MANAGER. THE PROJECT MANAGER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED AND SHALL SIGN AND DATE THE SHEET.	 DEPARTMENT OF PUBLIC WORKS City Facilities and Architectural Services Division
		DATE: 3/27/20M	CHECKED BY: [Signature]	PREPARED BY: [Signature]		

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

[ATTACHED]

LEGAL DESCRIPTION

The land referred to is situated in the State of California, County of Santa Clara, City of San Jose, and is described as follows:

PARCEL ONE:

PORTION of Lots 5, 6 and 8 in Block 2 of Range 3 South, as shown upon that certain Map entitled "City of San Jose, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book A of Maps, at Pages 72 and 73 and more particularly described as follows:

BEGINNING at the intersection of the Southeasterly line of Parcel 1 with the Northeasterly line of South Second Street, as said Parcel and Street are shown upon the Parcel Map filed for record on November 21, 1979 in Book 454 of Maps, at Pages 48 and 49; thence along said Southeasterly line North 59° 21' 20" East 275.92 feet to a point in the Southwesterly line of South Third Street, as shown on said Map; thence along said Southwesterly line South 30° 38' 20" East 87.28 feet to the Northwesterly line of the 0.624 acre parcel of land shown on the Record of Survey filed for record on June 27, 1980 in Book 466 of Maps, at Page 1; thence along the Northwesterly and Northeasterly lines of said 0.624 acre parcel the following courses and distances: South 59° 21' 34" West 137.94 feet, North 30° 39' 33" West 42.62 feet and South 59° 21' 34" West 137.94 feet to a point in the Northeasterly line of South Second Street, as hereinabove referred to; thence along said Northeasterly line North 30° 41' 09" West 44.66 feet to the point of beginning.

PARCEL TWO:

PORTION of Lots 6 and 8, and all of Lot 7, in Block 2 of Range 3 South, as shown upon that certain Map entitled, "CITY OF SAN JOSE, copied from the original Map drawn by Sherman Day, Civil Engineer", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Volume "A" of Maps, Pages 72 and 73, and more particularly described as follows:

BEGINNING at the point of intersection of the Northwesterly line of San Carlos Street with the Northeasterly line of Second Street, running thence along said line of Second Street North 30° 40' West 154.56 feet to the intersection thereof with the Northwesterly line of that certain Parcel of land conveyed by Grace H. Leonard, et al, to Michael Bonasera, et al, by Deed recorded December 30, 1948 in Book 1725 of Official Records, Page 259, Santa Clara County Records; thence leaving said line of Second Street and running along said Northwesterly line of the land conveyed to Bonasera, and parallel with said Northwesterly line of San Carlos Street North 59° 21' 10" East 137.94 feet to a point on the dividing line between Lots 5 and 6 in Block 2, Range 3 South of the base line of the City of San Jose at the most Northerly corner of the land conveyed to said Bonasera; thence running along said dividing line between Lots 5 and 6 and also along the dividing line between Lots 7 and 8, said dividing line also being the Northeasterly line of the land conveyed to said Bonasera, South 30° 39' 25" East 42.62 feet to the intersection thereof with the

Northwesterly line of that certain parcel of land conveyed by George Koch to Ralph Swickard by Deed recorded January 15, 1952 in Book 2349 of Official Records, Page 169, Santa Clara County Records; thence leaving said dividing line between Lots 7 and 8 and running along said Northwesterly line of the land conveyed to Swickard and parallel with said line of San Carlos Street North 59° 21' 10" East 137.93 feet to the most Northerly corner thereof on the Southwesterly line of Third Street; running thence along said line of Third Street South 30° 38' 50" East 111.94 feet to the intersection thereof with said Northwesterly line of San Carlos Street, running thence along said line of San Carlos Street South 59° 21' 10" West 275.82 feet to the point of beginning and being all of Lot 7 and a portion of Lots 6 and 8 in Block 2 Range 3 South of the Base Line of the City of San Jose.

EXCEPTING THEREFROM that portion thereof described as follows:

BEGINNING at the intersection of the Northwesterly line of San Carlos Street, 60 feet wide, with the Northeasterly line of Second Street, 80 feet wide; thence North 30° 40' 00" West 53.99 feet along said Northeasterly line of Second Street to a point of cusp; thence on the arc of a curve tangent to said Northeasterly line of Second Street and concave to the North with a radius of 20.00 feet, through a central angle of 89° 58' 50", an arc distance of 31.41 feet to a point of tangency on a line parallel with and 34.00 feet Northwesterly, measured at right angles from said Northwesterly line of San Carlos Street; thence North 59° 21' 10" East 235.82 feet, along said parallel line to the beginning of a curve; thence on a curve concave to the West and tangent to the last described course with a radius of 20.00 feet, through a central angle of 90° 00' 00", an arc distance of 31.42 feet to a point of tangency with the Southwesterly line of Third Street; thence South 30° 38' 50" East 54.00 feet along said Southwesterly line of Third Street to said Northwesterly line of San Carlos Street; thence South 59° 21' 10" West 275.82 feet along the Northwesterly line of San Carlos Street to the point of beginning.

467-46-097
17 101
CR/CI/DOT/AD
A467-46-073 and 002

EXHIBIT C

INSURANCE REQUIREMENTS

TENANT, at TENANT's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by TENANT, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001, and;
2. The coverage provided by Insurance Services Office Form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles;
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance;
4. Liquor Legal Liability: "Bodily injury" or "property damage" for which any insured may be held liable.
5. Property for all personal property, contents or materials of TENANT, its licensees, contractors or materials men or subcontractors stored at, on or about the Premises
6. Builder's Risk insurance covering Leasehold Improvements during the course of construction.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

TENANT shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers Compensation limits as required by California Labor Code and Employer's Liability with employer liability limits of \$1,000,000 per accident; per disease, per employee; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors;
4. Liquor Legal Liability: minimum \$2,000,000 limit per occurrence; and
5. Property insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through TENANT at the Premises.
6. Builder's Risk insurance in an amount not less than one hundred percent (100%) of the actual replacement value of the Leasehold Improvements.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City.

D. **Other Insurance Provisions**

1. Commercial General Liability and Automobile Liability Coverages
 - a. The CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, TENANT; products and completed operations of TENANT; premises owned, leased or used by TENANT; and automobiles owned, leased, hired or borrowed by TENANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. The TENANT's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of TENANT's insurance and shall not contribute with it.

- c. Any failure to comply with reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or contractors.
- d. Coverage shall state that the TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation by endorsement in favor of the CITY, its officials, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain a waiver of subrogation by endorsement in favor of the City, its officials, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the CITY; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

TENANT shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Tenant's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov:

CERTIFICATE HOLDER
City of San Jose – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor

G. **Contractors**

TENANT shall include all contractors or subtenants as insureds under its policies or shall obtain separate certificates and endorsements for each contractor.

H. **Review of Coverage**

These insurance requirements shall be subject to periodic review by CITY's Risk Manager. Should the Risk Manager require any change in any coverage such change shall be communicated in writing to TENANT and TENANT shall comply with the said change within thirty (30) days of the date of receipt of the notice.

EXHIBIT D

EXECUTED RELEASE DOCUMENT FROM RESOLUTION CAPITAL

RESOLUTION CAPITAL STRATEGIES, LLC

August 9, 2021

Camera 3 Entertainment, Inc.
Jack Nyblom, President
P.O. Box 231
Campbell, CA 95009

Re: Security Agreement Release

Sent Via Email: ferrand@aol.com

Dear Jack,

I am in receipt of the payment of \$20,000.00 regarding the final payment for the Sony projectors on the Security and Loan Agreement dated September 19, 2019, between Camera 3 Entertainment, Inc., a California corporation and Resolution Capital Strategies, LLC, an Arizona limited liability company. This represents payment in full and any collateral security held by Resolution Capital Strategies, LLC is hereby released.

Should any person or company require other documents or forms of release, please have the party prepare the necessary documents and I will sign off. I can be reached at (520) 425-8759.

Sincerely,



Michael N. Figueroa
Manager

428 S. 3rd Avenue
Tucson, Arizona 85701
Phone: (520) 425-8759 Fax: (520) 382-5867