

SHOPPING CENTER COMMON AREA LICENSE AGREEMENT

Charge Code: APL

This Shopping Center License Agreement (the "License") is entered into as of 10/7/2021 (the "Effective Date"), by and between Weingarten Nostat, Inc. as "Licensor" and City of San Jose, as "Licensee", who hereby agree that, for good and valuable consideration, the receipt of which is hereby acknowledged and upon the terms and conditions set forth in this License, Licensor licenses to Licensee and Licensee licenses from Licensor, the Premises (defined below).

1. Basic License Provisions and Definitions.

- (A) **Shopping Center:** Cambrian Park Plaza located , San Jose, CA as depicted on Exhibit "A"; Building No.: 118560.
- (B) **Premises:** The premises within a portion of the common area identified as Suite CM012 shown hatched on Exhibit "A".
- (C) **License Term:** Licensor hereby grants to Licensee a revocable license to use the Premises for the purpose stated below, subject to, and in accordance with, the provisions of this License, on October 23, 2021 starting at 6:30am and ending at 11:00am.
- (D) **Termination Right:** Licensor and Licensee each shall have the right to terminate this License at any time upon not less than 24 hours written notice to the other party. In the event this License is terminated pursuant to this Article, the License Term shall expire on the termination date provided in the notice as if that was the date of expiration originally provided in this License. Notwithstanding the License Term or any other consideration, in the event Licensor receives a complaint from any tenant of the Shopping Center, a party with whom Licensor has an agreement relating to the Shopping Center, neighbor or governmental authority, Licensor shall have the immediate right to terminate the License, which notice be given verbally.

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(E) **License Fee Schedule-** see article 2.

- (F) **Security Deposit:** Intentionally Deleted
- (G) **Permitted Use:** The right to use the rear parking area as depicted on Exhibit A for an event "dumpster day" and for no other purpose. Licensee shall have an adequate number of personnel on site to manage the flow of traffic and place the appropriate signage to direct people.

(H) **Licensee's Address:** City of San Jose
 Kyle Laveroni
 200 E. Santa Clara St., 18th Floor
 San Jose, CA 95113
 (408) 535-4974
 Kyle.laveroni@sanjoseca.gov

(I) **Licensor's Notice Address:** Weingarten Nostat Inc.
 500 North Broadway
 Suite 201
 Jericho, NY 11735
 Attn: Barbara Hall, Director Specialty Leasing

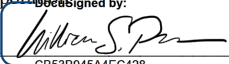
License Fee Payment Address: c/o Weingarten Nostat Inc.
 P.O. Box 62045
 Newark, NJ 07101

Exhibits: The following Exhibits are attached to this License and incorporated and made a part of this License:

- General Terms and Provisions
- Exhibit "A" - Site Plan

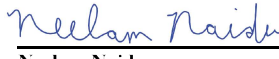
IN WITNESS WHEREOF, the parties hereto have executed this License under their respective hands as of the day and year first above written.

LICENSOR:

DS **WEINGARTEN NOSTAT, INC.,**
 a Texas corporation
 Signed by: 
 BY: _____
CB53B945A4EC428...
 NAME: William S. Teichman
 TITLE: Vice President
 DATE: 10/7/2021

LICENSEE: City of San Jose
 BY: Rebecca Hall
 NAME: Rebecca Hall for Toni Taber - Clerk
 TITLE: Analyst II
 DATE: September 29, 2021

APPROVED AS TO FORM

 9/29/21
Neelam Naidu
Senior Deputy City Attorney

GENERAL TERMS AND PROVISIONS

2. **License Fee.**
 (A) Licensee shall pay to Licensor a License Fee as set forth in Article 1(E), at Licensor's payment address as set forth in Article 1. In addition, Licensee shall pay directly to Licensor any tax or license fee measured by Licensee's gross fees receivable by Licensor. If Licensee remains in the Premises after the end of the License Term, Licensee shall be liable for triple the **daily** License Fee payable each week in advance. This provision shall not limit Licensor's rights to evict or remove Licensee if it remains after the end of the License Term or to collect for any damages that Licensor may sustain

3. **Condition of Premises; Repairs.** Licensee shall accept the Premises, Shopping Center and all of the utility systems "AS IS". Licensor shall not be obligated to: (i) make any installations or improvements, (ii) obtain any permits, licenses or governmental approvals, (iii) spend any money either to put Licensee in possession or to permit Licensee to operate for business, or (iv) provide any services to Licensee. Licensor does not make any representation or warranty with respect to the following: (i) whether the Permitted Use is permitted by applicable law, (ii) whether the Premises comply with all applicable codes, (iii) whether a certificate of occupancy or similar use permit has been issued, or (iv) whether the Premises are in good and proper condition sufficient to enable Licensee to use same for the Permitted Use. Prior to opening for business, Licensee shall obtain all governmental permits required for Licensee to use and occupy the Premises. Prior to making any alterations to the Premises, Licensee must first obtain Licensor's written approval. Upon the expiration or sooner termination of this License, Licensee shall vacate the Premises and leave it in a good, clean, and safe condition with all of Licensee's property removed, and in the same condition as at the beginning of the License Term. Any property not removed within five (5) days following the end of the License Term shall, at Licensor's option, become the property of Licensor, or be disposed of by Licensor at Licensee's expense. Licensee shall pay promptly when due all charges for labor and materials in connection with any work done by or for Licensee and Licensee shall remove, within ten (10) days after notice, all liens placed on the public record, failing which Licensor may remove such lien and collect all expenses incurred from Licensee as additional License Fees.

4. **Utilities.** Licensee acknowledges that there are no utilities (i.e. plumbing electrical, gas, telephone, sanitary sewer, or otherwise) available for the Premises.

5. **Indemnification of Licensor.** Licensee shall indemnify and hold harmless Licensor against all lawsuits, damages, liabilities, injuries, expenses (including reasonable legal fees): (i) claimed to have been caused by or resulted from any act, omission or negligence of Licensee or its sublicensees, employees, agents, invitees, licensees, and contractors no matter where occurring, (ii) occurring in the Premises, or (iii) arising out of any default by Licensee. Licensor is not liable for any injury or any loss or damage to, or interference with, any merchandise, equipment, fixtures, or other personal property or the business operations of Licensee occasioned by (i) the act or omission of persons occupying other premises, (ii) any defect in the building or the Premises, latent or otherwise, (iii) any breakage or leakage of the roof, walls, floor, pipes or equipment, (iv) any backing up, seepage or overflow of water or sewerage, or (v) flood, rain, snowfall or other elements or Acts of God.

6. **Insurance.** Licensee agrees to maintain during the License Term a policy of commercial liability insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury (including death) and property damage in any one occurrence, and a policy of worker's compensation insurance at statutory limits. All such insurance shall name Licensor and Kimco Realty Corporation as an additional insured. Licensee shall deliver certificates of such insurance to Licensor prior to the Commencement Date. **As a public entity, Licensee may meet these insurance requirements through an approved program of self-insurance.**

7. **Signage.** Licensee shall be prohibited from displaying any signs, sponsor messages and/or advertisements on the Premises unless Licensee obtains Licensor's prior written consent and all necessary governmental permits and approvals therefore.

8. **Relocation.** Licensor shall have the option to require Licensee to relocate from the Premises (the "Present Premises") into another area within the Shopping Center (the "New Premises"), on giving Licensee at least forty-eight (48) hours advance notice of the date Licensee is to move to the New Premises. Licensee shall accept the New Premises "As Is". The New Premises will become the Premises (instead of the Present Premises) and all of Licensee's obligations to Licensor under this License shall apply, without interruption, to the New Premises from and after the date Licensee is required to move.

9. **Licensee Default.** If Licensee defaults in the performance of any of its obligations under this License, in addition to all other rights Licensor may have at law or in equity, Licensor may terminate this License upon three (3) days' notice to Licensee. Licensee shall pay all reasonable legal fees incurred by Licensor in enforcing Licensor's rights hereunder. To the extent allowed by laws, Licensor and Licensee waive trial by jury in any action.

10. **Hazardous Substances.** Licensee may only use, handle, sell or store in the Premises and/or the Shopping Center Permitted Hazardous Materials. "Hazardous Materials" are materials which are deemed, under applicable laws, to be hazardous to health, safety or the environment. "Permitted Hazardous Materials" are Hazardous Materials of the type and quantities that are safely and legally found in first class shopping centers. Licensee's use, sale, storage and disposal of the Permitted Hazardous Materials must comply with all environmental and other laws.

11. **Casualty; Eminent Domain.** If due to a fire, casualty, or eminent domain either: (i) the Premises or (ii) a substantial portion of the Shopping Center is materially damaged and/or rendered untenantable then either Licensee or Licensor shall have the option, within ninety (90) days after the date of casualty or notice of the eminent domain, on written notice to the other, to terminate the License, in which case the License shall end on the date specified in the notice. Licensee shall not be entitled to any condemnation award or insurance proceeds, except insurance proceeds recovered for damage to Licensee's personal property.

12. **OFAC.** Licensee represents and warrants to Licensor that neither Licensee nor any of its subsidiaries, directors, officers, or employees, nor, to the knowledge of the Licensee, any agent or affiliate or representative of Licensee (i) is the target of any sanctions administered or enforced by the U.S. Government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State and including, without limitation, the designation as a

"specially designated national" or "blocked person" (collectively, "Sanctions")), (ii) is engaged in activities in violation of Sanctions; or (iii) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering. In the event any of the representations in this Article are determined to be false now or at any time during the License Term, Licensee shall be deemed to have committed an incurable default, entitling Licensor, in addition to all other remedies at law or in equity, to immediately terminate this License on written notice to Licensee.

13. **Miscellaneous Provisions.**

(A) All notices in connection with this License shall be in writing and given by overnight delivery service, personal delivery or electronic transmission (upon confirmation of receipt therefore by the other party) and shall be effective upon delivery (or the date delivery refused);

(B) Licensee accepts the Premises subject to all covenants, agreements, easements and other matters affecting the Premises;

(C) Licensee shall not assign or sublicense this License;

(D) this License or a memorandum thereof shall not be recorded;

(E) Licensee warrants and represents that no broker or other intermediary brought about this transaction.

(F) this License contains the entire and only agreement among the parties hereto with respect to the subject matter hereof;

(G) this License shall be governed by, and construed under, the laws of the state in which the Premises are located;

(H) the License Fee provided hereunder shall be absolutely net to Licensor, and Licensee shall be responsible for any rent or occupancy tax payable with respect thereto;

(I) the exhibits attached to this License are hereby made a part of this License;

(J) Licensor will be excused from performing any obligation hereunder for such period of time it is delayed from doing so by an act of God, inclement weather, war, civil commotion, casualty, labor difficulties, government regulations or other causes beyond its reasonable control;

(K) Licensee shall look solely to Licensor's estate in the Shopping Center as the sole asset for collection of any claim or damages against Licensor; and

(L) the parties hereby each agree that its authorized signatories may receive and review this License via electronic record and may sign this License via electronic digital signature (i.e., DocuSign or similar electronic signature technology), and the parties may rely on such electronic digital signatures as if they are original signatures by each party or duly authorized representatives of each party;

EXHIBIT A

This site plan is intended to be an approximate depiction of the Shopping Center. No representation or warranty is made with respect to the actual location, number or configuration of Buildings, Curb Cuts, Abutting Thoroughfares, Parking Areas, Traffic Patterns, or of the Tenants intended to be within the Shopping Center. The Landlord specifically reserves the right to change the content and configuration of the Shopping Center from time to time and at any time the Landlord desires in its sole and absolute discretion, or as is required to conform to Local Governing Agencies.

The leased premises shall be the area identified below.



City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Select one
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Other

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667193-000

Contractor: Weingarten Nostat Inc

Address: 500 North Broadway Suite 201, Jericho, NY 11735

Phone: 916-727-2101

Email: bhall@weingarten.com

Contract Description: Facility Use agreement between Weingarten Reality and Councilmember Pam Foley District 9 Office for Dumpster Day Event on October 23, 2021.

Term Start Date: October 23, 2021 Term End Date: _____ Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): N/A

Agenda Item No.: N/A

Resolution No.: N/A

Ordinance No.: N/A

Original Contract Amount: _____

Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____

NTE/Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): Select one Revenue Agreement: Select one

Tax Certificate No.: _____

Expiration Date: _____

Department: Council (40)

Department Contact: Charu Thiyagarajan

Customer (Finance Only): _____

Notes:

Department Director Signature: _____ Date

Office of the City Manager Signature: _____ Date