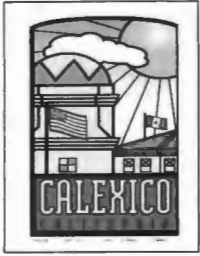


**AGENDA
ITEM**

7



CITY COUNCIL AGENDA STAFF REPORT

DATE: December 2, 2020

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager *MF*

PREPARED BY: Norma Gerardo, Recreation Manager *ng*

SUBJECT: Approve and Authorize the City Manager to Sign the Enclosed Sublease Agreement with the Calexico Arts Council

=====

Recommendation:

Consideration to approve and authorize the City Manager to sign the enclosed Sublease Agreement with the Calexico Arts Council for premises located at 421 Heffernan Ave., Calexico, CA, known as the Carmen Durazo Cultural Arts Center (CDCAC).

Background:

The Calexico Arts Council is a non-profit organization that seeks to fundraise funds to provide the community with artistic and cultural opportunities at the CDCAC. The Calexico Arts Council has collaborated with the City ever since the development of the CDCAC. They have provided financial support for classes, for events and to furnish the center. This agreement will strengthen the collaboration between the two agencies to provide and promote the arts in Calexico.

Discussion & Analysis:

The sublease agreement is for office space at the CDCAC from the period the agreement enters into effective through September 18, 2029. The Calexico Arts Council intends to use the office space to conduct their business activities and to draft and complete grant applications with the goal of collaborating with the City to provide and promote arts programs at the CDCAC. Considering the longstanding partnership between the two agencies and their shared goals, rent fee for the term of this agreement will be waived.

Fiscal Impact:

None.

Coordinated With:

The City Manager's Office.



Attachment:

1. Assignment, Assumptions, Consent, and Estoppel Certificates of Landlord, Tenant and Assignee.
2. City of Calexico and Calexico Arts Council Sublease Agreement.
3. De Anza Hotel Limited Partnership and the City of Calexico Original Lease Agreement

**ASSIGNMENT, ASSUMPTION, CONSENT, AND ESTOPPEL CERTIFICATES
OF LANDLORD, TENANT, AND ASSIGNEE**

This ASSIGNMENT, ASSUMPTION, AND CONSENT OF LANDLORD, TENANT, AND ASSIGNEE ("Consent") is made and entered into effective as of _____, 2020 ("Effective Date") between DE ANZA HOTEL LIMITED PARTNERSHIP, a California limited partnership ("Landlord") and CITY OF CALEXICO, a California municipal corporation ("Tenant"). Landlord and Tenant are sometimes referred to collectively in this Consent as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, under that certain Lease Agreement (the "Original Lease"), dated September 18, 2019, between Landlord and Tenant, whereby Landlord leased the commercial property located at 233 Fourth Street in Calexico, California, consisting of approximately 10,000 square feet of rentable space located at the northeast corner of the first floor of the De Anza Hotel (the "Premises") to Tenant for a term expiring September 18, 2029.

WHEREAS, Tenant now wishes to assign a portion of the Premises to the Calexico Arts Council ("Assignee").

WHEREAS, pursuant to Section 12. Transfer of the Original Lease. Tenant may permit occupancy of any portion of the Premises to another party with Landlord's written consent, not to be unreasonably withheld.

WHEREAS, Landlord is willing to consent to the assignment of the Original Lease subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Assignment of Lease.** Tenant hereby assigns and transfers to Assignee all of its right, title, and interest in and to a portion of the leased Premises as described in the Sublease attached hereto as **Exhibit "A"** as of the Effective Date. From and after the Effective Date, Assignee shall have all rights of the Tenant in the Original Lease.
- 2. Acceptance of Assignment and Obligations.** Assignee hereby assumes all of Tenant's obligations, duties, responsibilities, and liabilities under the Original Lease and agrees to be bound by all of the terms, covenants, and provisions of the Original Lease from and after the Effective Date for the remainder of the term of the Original Lease.
- 3. No Release of Tenant.** Assignee's assumption of the Original Lease shall not release Tenant of any liabilities or obligations under the Original Lease.
- 4. Consent.** Landlord hereby consents to the assignment of the Original Lease, which is a change of control. Landlord's consent shall not constitute a waiver of the obligations of Tenant

under the Original Lease nor shall Landlord's consent be deemed a consent or waiver of the consent requirement for any subsequent assignment, sublease, or other transfer under the Original Lease.

5. Original Lease Term. The current term of the Original Lease commenced on September 18, 2019 and will expire on September 18, 2029.

6. Landlord Estoppel. In connection with the Consent, Landlord hereby certifies to Tenant the following as of the Effective Date:

6.1 Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Original Lease, which is in full force and effect in accordance with its terms and is the valid and binding obligation of Landlord.

6.2 Landlord and, to Landlord's knowledge, Tenant, have performed all of their respective obligations under the Original Lease, and neither Landlord nor, to Landlord's knowledge, Tenant is in default under the Original Lease and no event has occurred which with the giving of notice or the passage of time would constitute such a default by either Landlord or Tenant. Landlord has not given any default notice to Tenant.

7. Tenant Estoppel. In connection with the Consent, Tenant hereby certifies the following as of the Effective Date:

7.1 Attached hereto as Exhibit "B" is a true, correct and complete copy of the Original Lease, which is in full force and effect in accordance with its terms and is the valid and binding obligation of Tenant.

7.2 Tenant and, to Tenant's knowledge, Landlord have performed all of their respective obligations under the Original Lease, and neither Tenant nor, to Tenant's knowledge, Landlord is in default under the Original Lease and no event has occurred which with the giving of notice or the passage of time would constitute such a default by either Landlord or Tenant. Tenant has not received any default notice from Landlord.

7.3 Tenant has no known defenses as to its obligations under the Original Lease and presently claims no set-off or counterclaim against Landlord. Tenant has not entered into any agreements concerning free rent, rent concessions or rent credit, or providing for the discounting, advance payment, abatement, or offsetting of rents except as may be set forth in the Original Lease.

7.4 There are no proceedings pending or, to Tenant's knowledge, threatened against Tenant before or by any court or any administrative agency which if adversely decided would materially and adversely affect the financial condition and operations of Tenant.

8. Capitalized Terms. All capitalized terms not defined in this Consent shall have the respective meanings given such terms in the Original Lease.

9. Counterparts. This Consent may be executed in one or more counterparts, and all such counterparts shall constitute one and the same instrument. Facsimiles and email transmissions of ".pdf" or similar format shall be considered originals for purposes of this Consent.

10. Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.

11. Ratification. Except as modified by this Consent, in all other respects the Original Lease is hereby ratified and affirmed and remains in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the Effective Date.

TENANT:

CITY OF CALEXICO, a municipal corporation

By: _____
—

Name: _____

Title: _____

LANDLORD:

DE ANZA HOTEL LIMITED PARTNERSHIP, a California limited partnership

By: _____
—

Name: _____

Title: _____

ASSIGNEE:

[NAME]

By: _____
—

Name: _____

Title: _____

EXHIBIT "A"
SUBLEASE AGREEMENT

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (this "Sublease") is made and entered into effective as of this ___ day of _____ 2020 (the "Effective Date"), by and between the CITY OF CALEXICO, a California municipal corporation ("Sublandlord") and Calexico Arts Council ("Subtenant"). Sublandlord and Subtenant are sometimes referred to collectively in this Sublease as the "Parties," and individually as a "Party."

RECITALS

WHEREAS, the Sublandlord is the Tenant under that certain Lease Agreement (the "Original Lease"), dated September 18, 2019, between De Anza Hotel Limited Partnership ("Landlord") and Sublandlord, whereby Landlord leased the commercial property located at 233 Fourth Street in Calexico, California, consisting of approximately 10,000 square feet of rentable space located at the northeast corner of the first floor of the De Anza Hotel (the "Premises") for a term expiring September 18, 2029. The Premises, along with the remaining portions of the building in which the Premises are located, are sometimes referred to herein as the "Building." The Building, the areas servicing the Building (including any adjacent parking areas), and the land upon which the Building are located are sometimes collectively referred to as the "Hotel Property." The Parties acknowledge that the Premises do not include any portion of the areas servicing the Building, including the parking area(s) or any other Building common area.

WHEREAS, the Parties wish to enter into this Sublease for a portion of the Premises described as the Office (231 square-foot space) and Restrooms, and does not include the Gallery Room, Storage Room, Custodian Room, Refrigerator Room, or the Reception Area (the "Subleased Premises").

NOW, THEREFORE, in consideration of the Sublandlord subletting and the Subtenant renting the Subleased Premises, both Parties agree to keep, perform, and fulfill the promises, conditions, and agreements below:

AGREEMENT

1. Subleasing of Premises; Condition of Premises; No Default; Consent of Landlord.

1.1 Subleasing of Premises. Sublandlord hereby subleases to Subtenant, and Subtenant hereby leases from Sublandlord, the Subleased Premises upon and subject to all of the terms, covenants, and conditions hereinafter set forth, for the Sublease Term.

1.2 Condition of Premises. Subtenant is familiar with the Subleased Premises and, Subtenant shall accept the Subleased Premises in the condition and state of repair on the Effective Date, in their "AS IS" condition. Subtenant expressly acknowledges and agrees that Sublandlord has made no representations with respect to the Premises, the Subleased Premises, or the Building. Sublandlord shall not be obligated to do any work or pay any amount to prepare the Subleased Premises for occupancy by Subtenant.

1.3 No Knowledge of Default. Sublandlord warrants and represents that Sublandlord has received no notice, and has no actual knowledge, of any default by Sublandlord or any breach by Sublandlord of any of its obligations under the Original Lease.

1.4 Consent of Landlord. Sublandlord and Subtenant each acknowledge and agree that this Sublease is subject to the approval of Landlord, as required by the Original Lease. A true and correct copy of the Assignment, Assumption, Consent, and Estoppel Certificates is attached hereto as **Exhibit "A,"** and incorporated herewith.

2. Term. This Sublease term shall commence on the Effective Date and continue until September 18, 2029. Provided that Tenant renews lease agreement with Landlord, and provided that this Lease shall be in full force and effect, and Subtenant shall not be in default under any of Subtenant's obligations under this Lease at the time of Subtenant's election to extend the term of this Lease, Subtenant shall have one (1) option to extend the term (the "Term Extension") for an additional term of ten (10) years (the "Option Term") to commence upon expiration of the Term.

3. Use and Priority. Subtenant shall use the Subleased Premises as office space for its business activities and to draft and complete grant applications with the ultimate goal of providing and promoting arts programs at the Carmen Durazo Cultural Arts Center in conjunction with the City of Calexico. Sublandlord shall maintain a master calendar for Subtenant. Prior to any use of the Premises by Subtenant, Subtenant shall preschedule such use with the City of Calexico's Recreation Manager to ensure building availability. City is not responsible for any loss and/or damage to Subtenant's property. The City shall retain first priority for use of the Subleased Premises for its own uses and may cancel Subtenant's use of the Subleased Premises during certain days or weeks as needed without prior notice.

4. Rent. Accounting for the collaboration between the Tenant and Subtenant, Subtenant shall pay no rent fee to Tenant.

5. Subtenant Responsibilities. Subtenant shall be responsible for all insurance for the Subleased Premises. Subtenant shall leave premises clear and clean after each use and must use its own office supplies, cleaning supplies, and office equipment. Subtenant assumes full responsibility for any damage done to artwork on the Premises, equipment, and the Hotel Property due to misuse and negligence of Subtenant's staff, guests, and clients.

6. Alterations by Subtenant. The Subtenant will have the same rights to make such alterations and improvements to the Subleased Premises as the Sublandlord is allowed, provided the Subtenant gets the prior written consent of both the Landlord and the Sublandlord.

7. Indemnification. To the maximum extent permitted by law, Subtenant shall, at Subtenant's sole expense and with counsel reasonably acceptable to Sublandlord, indemnify, defend, and hold harmless Sublandlord, its officers, elected representatives, directors, members, partners, agents, employees, and independent contractors and any other affiliated entities (the "Sublandlord Parties"), free and harmless from liability, costs or damages, including attorney fees, resulting from negligent acts or omissions to act by Subtenant, its officers, directors, shareholders, members, partners, agents, employees, and independent contractors and any other affiliated entities

(the "Subtenant Parties"), arising out of Subtenant's occupancy of the Subleased Premises, including but not limited to:

7.1 The use or occupancy, or manner of use or occupancy, of the Subleased Premises or the Building by the Subtenant Parties;

7.2 Any act, error, omission, or negligence of Subtenant Parties or of any invitee, guest, or licensee of Subtenant in, on, or about the Subleased Premises or the Building;

7.3 Subtenant's conducting of its business or activities;

7.4 Any Alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Subtenant Parties in, at, or about the Subleased Premises or Building, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence at the beginning of the Term or enacted, promulgated or issued after the date of this Sublease.

Subtenant's duty to defend Sublandlord Parties is separate and independent of Subtenant's duty to indemnify Sublandlord Parties and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Subtenant Parties have been determined, and regardless of the allegations against Sublandlord Parties. This clause shall survive the expiration or earlier termination of this Sublease.

8. Insurance. In addition (and independent of Subtenant's indemnification obligations under this Sublease), Subtenant shall carry at Subtenant's sole expense commercial general liability insurance written on an "occurrence" policy form, covering claims for bodily injury or damage to property arising out of or relating out of or relating (directly or indirectly) to Subtenant's operations, conduct, assumed liabilities, or use occupancy of the Subleased Premises in the amount of One Million Dollars (\$1,000,000). All deductibles and self-insured retentions under Subtenant's policies are subject to Sublandlord's prior written approval. It is the Parties' intent that Subtenant's liability coverage provide coverage, to the maximum extent possible, of Subtenant's indemnification obligations under this Sublease. Sublandlord shall have the right to demand that Subtenant raise the limits of this coverage in the event that subsequent to the date of this Sublease, such an increase in coverage is made necessary due to Sublandlord's obligations pursuant to any partnership or loan agreement(s) or pursuant to the requirements of any of its lenders. Subtenant's liability insurance shall name Landlord, Sublandlord, and any other parties requested by Sublandlord at any time as an additional insured, including all of Sublandlord's lenders. Prior to the commencement of the Term, Subtenant shall deliver to Sublandlord evidence of such insurance satisfactory to Sublandlord and any time Subtenant, upon Sublandlord's request, shall provide Sublandlord with certificate(s) of insurance establishing Subtenant's compliance with the foregoing insurance requirements and providing for no less than thirty (30) days advance written notice to Sublandlord from the insures(s) of any cancellation, nonrenewal, or material change in coverage or available limits of liability and shall confirm compliance with the liability insurance requirements in this Sublease.

9. Assignment and Subletting. Sublessee shall not assign the Sublease or further sublet all or any part of the Premises.

10. Entry by Landlord and Sublandlord. Landlord and Sublandlord shall have the right to enter the Subleased Premises at all reasonable hours upon reasonable prior notice to Subtenant for the purpose of inspecting the Subleased Premises, for the purpose of making repairs, additions, or alterations thereto, or for any other lawful purpose; provided, that such entry shall not unreasonably interfere with the conduct of Subtenant's business and/or use of and access to the Subleased Premises.

11. Utilities and Taxes. Subtenant is not responsible for any charges for utilities or real estate taxes.

12. Holdover. In the event that Subtenant remains in possession of the Subleased Premises after the expiration or termination of this Sublease, then Subtenant shall be deemed to be occupying the Subleased Premises as a Subtenant from month-to-month, subject to all of the conditions, provisions, and obligations of this Sublease, but without any rights to extend the term of this Sublease. Sublandlord's acceptance of rent from Subtenant in such event shall not alter the status of Subtenant as a month-to-month tenant whose occupancy of the Subleased Premises may be terminated by Sublandlord at any time upon one month's notice in advance.

13. Waivers. One or more waivers by Sublandlord or Subtenant of a breach of any covenant or condition by the other of them shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Sublandlord or Subtenant to or of any act by either requiring the other's consent or approval shall not be deemed to waive or render unnecessary either party's consent to or approval of any subsequent similar act by the other Party. No waiver or consent of either Party shall be binding unless in writing, and Sublandlord's acceptance of rent with knowledge of the existence of any breach of this Sublease by Subtenant shall not constitute a waiver of such breach.

14. Notices. Whenever under this Sublease a provision is made for notice of any kind, such notice and the service thereof shall be deemed sufficient if such notice to Subtenant is in writing addressed to Subtenant at the address set forth below and is delivered personally or sent by overnight express delivery or by United States certified mail, return receipt requested, with postage prepaid and if such notice to Sublandlord is in writing addressed to Sublandlord at the address set forth below and is delivered personally or sent by overnight express delivery or by United States certified mail, return receipt requested, with postage prepaid. Either Party may by notice to the other Party change the address at which it wishes to receive any notice given under this Sublease. Any notices sent by certified mail shall be deemed given forty-eight (48) hours after mailing.

SUBLANDLORD:

CITY OF CALEXICO, a municipal corporation
608 Heber Avenue
Calexico, CA 92231

Contact: _____

Telephone: _____

SUBTENANT:

Calexico Arts Council

Name: _____

Its: _____

Address: _____

Telephone: _____

15. Relationship of Parties. Nothing contained in this Sublease shall be deemed or construed by Sublandlord or Subtenant, or by any third party, to create the relationship of principal and agent or of partnership or of joint venture between Sublandlord and Subtenant.

16. Sublandlord's Remedies on Subtenant's Breach

In the event of any default hereunder which default has not been timely cured, and in addition to any or all other rights or remedies of the Sublandlord hereunder or by law, Sublandlord may, at its option:

16.1 Exercise its right to maintain any all actions at law or suits in equity to compel Subtenant to correct or cause to be corrected said default;

16.2 Maintain and operate the Premises, including any Alterations, without terminating this Sublease; or

16.3 Terminate this Sublease by written notice to Subtenant of its intention to do so.

17. Cumulative Rights. The rights, options, elections, and remedies of Sublandlord and Subtenant contained in this Sublease shall be cumulative and may be exercised on one or more occasions; and none of them shall be construed as excluding any other or additional right, priority, or remedy allowed or provided by law.

18. Binding Agreement. All rights and liabilities given to or imposed upon Sublandlord or Subtenant in this Sublease shall extend to and bind their respective heirs, executors, administrators, personal representatives, successors, and assigns. No rights, however, shall inure to the benefit of any assigns of Subtenant unless the assignment thereof to such assignee has been approved in writing by Sublandlord.

19. Governing Law. This Sublease shall be governed by and construed in accordance with the laws of the State of California in which the Subleased Premises are located.

20. Multiple Counterparts. This Sublease may be executed in multiple counterparts, each of which shall be deemed to be an original for all purposes.

21. Severability. If any provision of this Sublease shall be declared legally invalid or unenforceable, then the remaining provisions of this Sublease nevertheless shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.

22. Sublandlord's Right to Cure. Sublandlord may, but shall not be obligated to, cure any default by Subtenant in the performance of any of Subtenant's obligations under this Sublease,

including but not limited to Subtenant's failure to pay any taxes, obtain any insurance, make any repairs, or satisfy any lien claims, after complying with the notice provisions contained in paragraph 13 and upon the expiration of applicable notice and cure periods; in the event that Sublandlord elects to so cure any default by Subtenant, then all actual, reasonable third party out of pocket costs and expenses paid by Sublandlord in so curing such default, including but not limited to reasonable attorney's fees, shall be deemed to be additional rent due immediately after such payment by Sublandlord, together with interest thereon (except in the case of such attorneys' fees) from the date of such payment by Sublandlord to the date of repayment by Subtenant to Sublandlord.

23. Modification. This Sublease may not be amended or supplemented orally but only by an agreement in writing which has been signed by both Parties

24. Surrender. Upon the expiration or termination of this Sublease, Subtenant agrees forthwith to surrender to Sublandlord possession of the Subleased Premises and the fixtures constituting a part thereof with all keys thereto, reasonable wear and tear and damage by casualty and condemnation and any repairs not required to be made by Subtenant excepted. Subtenant has the right any time during the Sublease Term to remove any personal property and trade fixture from the Subleased Premises.

25. Continuation of Sublease. Notwithstanding anything to the contrary contained herein, in the event the Original Lease terminates for any reason prior to the expiration of this Sublease, this Sublease, at Subtenant's election, will continue as a direct lease between Landlord, as landlord, and Subtenant, as tenant, with the same force and effect as if Landlord, as landlord, and Subtenant, as tenant, had entered into a lease as of the end of the Original Lease, containing the same terms, covenants, and conditions as those contained in this Sublease for a term equal to the unexpired term of the Sublease.

IN WITNESS WHEREOF, the Parties have executed this Agreement of Sublease as of the day and year first set forth above.

SUBLANDLORD:

CITY OF CALEXICO, a municipal corporation

By: _____

Name: _____

Title: _____

SUBTENANT:

Calexico Arts Council

By: _____

Name: _____

Title: _____

EXHIBIT "B"
ORIGINAL LEASE AGREEMENT

LEASE AGREEMENT

This LEASE ("Lease") is entered into as of September 18, 2019, by and between DE ANZA HOTEL LIMITED PARTNERSHIP, a California limited partnership, as "Landlord," and the THE CTIY OF CALEXICO, a public body corporate and politic, as "Tenant":

1. Lease of Premises

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, that certain property located at 233 Fourth Street in Calexico, California, consisting of approximately 10,000 square feet of rentable space located at the northeast corner of the first floor of the De Anza Hotel (the "Premises") and as depicted on the attached Exhibit A. The Premises, along with the remaining portions of the building in which the Premises are located, are sometimes referred to herein as the "Building." The Building, the areas servicing the Building (including any adjacent parking areas) and the land upon which the Building are located are sometimes collectively referred to as the "Hotel Property". The parties acknowledge that the Premises do not include any portion of the areas servicing the Building, including the parking area(s) or any other Building common area.

2. Term

The term of this lease (the "Term") shall commence on September 18, 2019 and shall expire on the tenth (10th) anniversary thereof, unless earlier terminated pursuant to this Lease.

3. Term Extension

Provided that this Lease shall be in full force and effect, and Tenant shall not be in default under any of Tenant's obligations under this Lease at the time of Tenant's election to extend the term of this Lease, Tenant shall have one (1) option to extend the term (the "Term Extension") for an additional term of ten (10) years (the "Option Term") to commence upon expiration of the Term. If the Term Extension is exercised, all of the terms and provisions of this Lease (except the Term and further excepting Tenant's right to extend the Term) shall extend to and be applicable during the Option Term, except as specifically set forth in this Lease to the contrary. The Term Extension shall be exercised by Tenant giving written notice thereof to Landlord at least six (6) months but no more than nine (9) months prior to the expiration of the Term. The exercise of the Term Extension shall be irrevocable.

4. Rent

In consideration of Tenant's intention to invest funds into Tenant's intended renovation of the Premises, the base rent during the Term and the Option Term, if applicable, shall be One Dollar (\$1.00) per year payable each year on or prior to February 1. Any reference herein to Rent shall include all annual base rental described in this section, and all other sums or monetary obligations of any and every sort payable hereunder by Tenant, including, but not limited to, payment for Utilities and Taxes pursuant to section 10 herein.

5. Use of Premises

Landlord agrees that Tenant may utilize the Premises for any lawful commercial enterprise or other business activity consistent with the City zoning, other land use controls, designation of the

Premises as a historical landmark or other designations of the Building or Hotel Property, and all other applicable laws, ordinances and regulations, subject to the limitation that any such use is compatible with Landlord's primary use of the De Anza Hotel for residences. Landlord shall be entitled to determine, in its sole reasonable discretion, whether or not any proposed use by Tenant of the Premises is compatible. Only the Premises as described above are subject to this Lease, and Tenant is not entitled to use of any common areas of the Building, (including the lobby and parking area(s)). At the request of Tenant and conditioned upon any requirements Landlord deems reasonable or necessary, in its sole discretion, Tenant may arrange during the Term for non-exclusive use of the patio located on the east side of the courtyard located in the Building, and/or non-exclusive use of the tenant restrooms located on the first floor of the Building. Any such use shall require Tenant to extend the obligations of the Lease as to all obligations and requirements to the non-exclusive use, including, without limitation, as to insurance coverage.

6. Nuisance or Unlawful Uses

(a) Tenant shall not commit, or permit or suffer the commitment by any subtenant, licensee, invitee, or guest of Tenant, of waste or nuisance on the Premises or the Hotel Property, nor shall it use or allow the Premises to be used in violation of federal, state, county or city laws, ordinances or regulations.

(b) Landlord makes no representation or warranty as to whether any hazardous materials are present upon, in or under, or have been released from the Hotel Property. As used in this lease, hazardous materials shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Hotel Property.

(c) Tenant shall not cause or permit the release of hazardous materials in, on or under the Premises or Hotel Property. The presence or use of hazardous materials in products required for the prudent and ordinary management and operation of the Premises held and used strictly in accordance with applicable laws and orders issued by insurance underwriters and prudent standards of practice shall not violate this covenant. If Landlord or any county, state, or federal enforcement agency finds Tenant to be in violation of this Section 6, then Tenant shall perform investigations, removal, or other remedial work required under applicable law. Tenant may delay commencement of remedial work pending resolution of a good faith contest regarding the application, interpretation or validity of laws, orders, or agreements. Landlord shall approve the remedial work, which approval shall not be unreasonably withheld or delayed.

7. Holdover and Surrender

(a) At the termination of this Lease, Tenant shall vacate the Premises, leaving them in the same condition as existed at the commencement of the Lease, reasonable wear and tear, acts of God, and damage by casualty beyond the control of Tenant excepted. Tenant shall leave the Premises free and clear of all rubbish upon vacating.

(b) If Tenant holds over beyond the end of the Term with the consent, express or implied, of Landlord, such tenancy shall be deemed to be a month- to- month tenancy subject to all terms of this Lease except the definition of the Term.

8. Fixtures and Improvements

(a) Tenant shall not construct or place or permit to be constructed or placed, signs, awnings, marquees, or other structures projecting from the exterior of the Premises without Landlord's prior written consent, which consent shall be in the sole discretion of the Landlord. Tenant shall request such consent in the same manner by which Tenant is to request consent for Alterations pursuant to this section 8. Tenant shall remove signs, displays, advertisements or decoration Tenant has placed, or permitted to be placed, on the Premises without the consent of Landlord. If Tenant fails to remove such signs, displays, advertisements or decorations within three (3) days after having received written notice to remove the same from Landlord, Landlord may re- enter the Premises and remove them at Tenant's expense.

(b) Tenant may not make any improvements, alterations, additions (including, without limitation, adding any signage) or changes to the Premises ("Alterations") without first obtaining Landlord's prior written consent. Tenant shall request such consent by written notice to Landlord, which must be accompanied by detailed and complete plans and specifications for the proposed work. As a condition of its consent to Alterations, Landlord may impose any requirements that Landlord considers desirable, including a requirement that Tenant provide Landlord with a surety bond, a letter of credit, or other financial assurance that the cost of the Alterations will be paid when due.

(c) Landlord shall not unreasonably withhold or delay or condition its consent to proposed Alterations. Notwithstanding the foregoing, however, the Alterations for which Landlord may reasonably withhold, delay or condition consent in its sole discretion include, but are not limited to, those that would or could:

(i) Affect the structure of the Building or any portion thereof, including the Premises, or require any permits by a governmental entity having jurisdiction over the Building;

(ii) Affect any building systems or equipment, including plumbing, heating, air-conditioning, ventilation, electrical, and elevator that serve all or part of the Building;

(iii) Result in Landlord's being required, as a result of Tenant's use or Alterations, under any federal, state, county, city or government agency laws; statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued, including, but not limited to, government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords or tenants, to perform any work ("Additional Required Work"). Tenant shall, at Tenant's sole expense, perform any Additional Required Work in or to the Building, which shall be subject to the same requirements as any Alterations. If any of the Additional Required Work must be performed outside the Premises, Landlord may elect to perform that work at Tenant's expense. No consent by Landlord to any Alterations shall constitute a waiver of Tenant's obligations under this section.

(iv) Result in an increase in the demand for utilities or services in the Building,
or

(v) Cause an increase in the premiums for hazard, liability, or any other type of insurance on the Hotel Property carried by Landlord.

(d) Tenant shall not remove leasehold improvements, but may remove fixtures, equipment and other personal property placed on the Premises by Tenant or under its authority. Tenant shall repair any damage to the Premises or any other portion of the Building resulting from removal of fixtures, equipment and other personal property.

(e) Except as otherwise set forth in this Lease, by written notice to Tenant either before expiration of the term or within a reasonable time after any earlier termination of this Lease, Landlord may require Tenant, at tenant's sole expense, to remove any Alterations, fixtures, equipment, or other personal property and restore the Premises to their configuration and condition before the Alterations were made. If Tenant fails to complete that restoration and/or removal before expiration of the Term, or, in the case of earlier termination, within fifteen (15) days after written notice from Landlord requesting the restoration, Landlord may do so, and the cost of the restoration shall be paid by Tenant to Landlord upon demand.

(f) Tenant shall pay Landlord's actual reasonable expenses incurred in reviewing any plans for Alterations to the Premises. All plans for Alterations shall be submitted to Landlord for approval prior to any performance of the work of Alterations. Landlord shall have the right and a reasonable opportunity to post a Notice of Non-Responsibility.

9. Inspection and Maintenance

(a) Landlord makes no representation, express or implied, about the Premises whatsoever. Tenant acknowledges that it has had time and opportunity to perform its own investigation of the Premises and accepts the Premises "AS IS," and acknowledge that is in a reasonable, safe, and business-like working condition. Landlord shall have no responsibility for maintenance and repairs of the Premises and makes no warranty regarding the condition of the Premises.

(b) Tenant shall, at its sole cost and expense, at any time and from time to time during the Term, maintain and repair the Premises. Said obligation shall include, without limitation, costs to insure that all plumbing, heating, air-conditioning, ventilation, storm and sanitary sewers and electrical system that serves the Premises, any plate glass, and any fixtures, are in neat, clean, safe, good order and working condition ("Maintenance"). Tenant shall make any alterations, improvements or replacements in, on, to or of the Premises, in whole or in part, which may be necessary or desirable to keep the Premises in good and safe condition and repair. In the event Landlord shall for any reason pay any charges related to Tenant's obligations under this section, the amount of such payment shall be additional Rent, due and owing immediately upon written notice to Tenant of such amounts paid by Landlord. During the Term of this Lease, should Tenant's use or occupancy of the Premises result in increases in Landlord's costs for Maintenance for the Hotel Property in excess of its costs incurred in the previous calendar year, Landlord shall have the right to charge Tenant its pro rata share of such increase, the amount of which shall be additional Rent, due and owing immediately upon written notice to Tenant.

It is intended that the terms of the Lease govern the respective obligations of Tenant and Landlord as to maintenance and repairs of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

(c) If all or portion of the Premises is damaged or destroyed by fire or other casualty, Landlord shall have the prerogative, at its sole discretion, either to (a) repair or rebuild the Premises (or

portion thereof) and diligently pursue the same to completion, or (b) not to repair or rebuild the Premises (or any portion thereof). Landlord shall, by written notice to Tenant, make its election whether to repair and rebuild the Premises within ninety (90) days after the date of the fire or other casualty. In the event that Landlord elects not to repair or rebuild, this Lease shall terminate as of the date of the fire or other casualty and Tenant shall pay any rent accrued only through the date of such termination. The provisions of the Lease, including this Section, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the premises, and Landlord and tenant agree that Sections 1932(2) and 1933(4) of the California Civil Code shall have no application to this Lease or any damage or destruction to the premises.

10. Utilities and Taxes

(a) Tenant will pay, before delinquency, any and all charges for utilities and other services supplied or charges to the Premises, together with any taxes thereon. Said utilities and other services shall include, without limitation, all electricity, water, natural gas or other heating fuel, telephone, use of storm and sanitary sewers, and refuse collection (the "Utilities"). Tenant shall not permit any charges of any kind to accumulate or become a lien against the Premises. Landlord shall have no obligation or responsibility to provide Utilities to the Premises, and no failure or interruption of the same shall entitle Tenant to terminate the Lease or abate any Rent hereunder unless caused by Landlord. In the event Landlord shall for any reason pay charges for Tenant's Utilities, the amount of such payment shall be additional Rent, due and owing immediately upon written notice to Tenant of such amounts paid by Landlord. Tenant shall, wherever possible, obtain separate meters for provision of Utilities to Tenant, and Landlord, at no cost to Landlord, shall cooperate to assist Tenant, when necessary, in obtaining appropriate separate billings for the aforesaid utilities. During the Term of this Lease, should Tenant's use or occupancy of the Premises result in increases in Landlord's costs for Utilities for the Hotel Property in excess of its costs incurred in the previous calendar year, Landlord shall have the right to charge Tenant its pro rata share of such increase, the amount of which shall be additional Rent, due and owing immediately upon written notice to tenant.

(b) Tenant shall pay Tenant's Share, (as defined below), of any and all real estate taxes and general and special assessments (collectively "Real Property Taxes") levied and assessed against the Hotel Property, during the Term. Tenant's Share of Real Property Taxes shall be thirty eight percent (38%). Landlord shall submit to Tenant an invoice for the taxes and assessments so paid, together with evidence of billing to Landlord or payment by Landlord. Tenant shall, in addition, pay one hundred percent (100%) of any increase in Real Property Taxes assessed by reason of any Alterations placed upon the Premises by Tenant or at Tenant's request. The amount of such payment shall be additional Rent, due and owing immediately upon written notice to Tenant of such amounts paid by Landlord.

11. Indemnification; Insurance

(a) To the maximum extent permitted by law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord, its officers, directors, shareholders, members, partners, agents, employees, and independent contractors and any other affiliated entities (the "Landlord Parties"), free and harmless from liability, costs or damages, including attorney fees, resulting from negligent acts or omissions to act by Tenant, its officers, directors, shareholders, members, partners, agents, employees, and independent contractors and any

other affiliated entities (the "Tenant Parties"), arising out of Tenant's occupancy of the Premises, including but not limited to:

(i) The use or occupancy, or manner of use or occupancy, of the Premises or the Building by the Tenant parties;

(ii) Any act, error, omission, or negligence of Tenant Parties or of any invitee, guest, or licensee of Tenant in, on, or about the Premises or the Building;

(iii) Tenant's conducting of its business or activities;

(iv) Any Alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Tenant Parties in, at, or about the Premises or Building, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence at the beginning of the Term or enacted, promulgated or issued after the date of this Lease.

Tenant's duty to defend Landlord Parties is separate and independent of Tenant's duty to indemnify Landlord Parties and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Tenant Parties have been determined, and regardless of the allegations against Landlord parties. This clause shall survive the expiration or earlier termination of this Lease.

(b) Tenant's personal property, fixtures, equipment, inventory and vehicles (collectively, "Tenant's Property") are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is to carry Tenant's own insurance against loss or damage to Tenant's Property at Tenant's sole expense.

(c) In addition (and independent of Tenant's indemnification obligations under this Lease), Tenant shall carry at Tenant's sole expense commercial general liability insurance written on an "occurrence" policy form, covering claims for bodily injury or damage to property arising out of or relating out of or relating (directly or indirectly) to Tenant's operations, conduct, assumed liabilities, or use occupancy of the Premises in the amount of Two Million Dollars (\$2,000,000). Said coverage shall include all the coverages typically provided by the Board Form Comprehensive General Liability Endorsement, including broad form property damage coverage. All deductibles and self-insured retentions under Tenant's policies are subject to Landlord's prior written approval. It is the parties intent that Tenant's liability coverage provide coverage, to the maximum extent possible, of Tenant's indemnification obligations under this Lease. Landlord shall have the right to demand that Tenant raise the limits of this coverage in the event that subsequent to the date of this Lease, such an increase in coverage is made necessary due to Landlord's obligations pursuant to any partnership or loan agreement(s) or pursuant to the requirements of any of its lenders. Tenant's liability insurance shall name Landlord and any other parties requested by Landlord at any time as an additional insured, including all of Landlord's lenders. Prior to the commencement of the Term, Tenant shall deliver to Landlord evidence of such insurance satisfactory to Landlord and any time Tenant, upon Landlord's request, shall provide Landlord with certificate(s) of insurance establishing Tenant's compliance with the foregoing insurance requirements and providing for no less than thirty (30) days advance written notice to Landlord from the insures(s) of

any cancellation, nonrenewal, or material change in coverage or available limits of liability and shall confirm compliance with the liability insurance requirements in this Lease.

12. Transfer

Tenant shall not assign, mortgage, pledge, encumber or make any other transfer of interest in this Lease or any right or privilege hereunder, or sublease or permit occupancy of any portion of the Premises to or by any party, (collectively "Transfer"), without Landlord's prior written consent, not to be unreasonable withheld, conditioned or delayed. Any Transfer not in any way release Tenant from its liability to pay Rent as provided herein or from its liability to carry out and perform in the manner herein set forth any of the other covenants and conditions of the Lease. The provisions and conditions of any proposed Transfer must not be consistent with any provision of this Lease. In addition, the assignee, subtenant, occupant or transferee must expressly assume all of the obligations of Tenant under this Lease. In addition, the assignee, subtenant, occupant or transferee must expressly assume all of the obligations of Tenant under Lease. Consent by Landlord to any Transfer shall not constitute a consent to a subsequent Transfer. Tenant's unauthorized Transfer shall be void and shall terminate this Lease at Landlord's option. Tenant's interest in this Lease is not assignable by operation of law.

13. Landlord's Remedies on Tenant's Breach

In the event of any default hereunder which default has not been timely cured, and in addition to any or all other rights or remedies of the Landlord hereunder or by law, Landlord may, at its option:

- (a) Exercise its right to maintain any all actions at law or suits in equity to compel Tenant to correct or cause to be corrected said default;
- (b) Maintain and operate the Premises, including any Alterations, without terminating this Lease; or
- (c) Terminate this Lease by written notice to Tenant of its intention to do so.

14. Miscellaneous

(a) Notices given pursuant to the provisions of the Lease, or necessary to carry out its provisions, shall be in writing and delivered personally to the person to whom the notice is to be given, or mailed postage prepaid, addressed to such person. Landlord's and Tenant's addresses for this purpose shall be:

Landlord: De Anza Hotel Limited Partnership
c/o CIC Management, Inc.
215 S. Highway 101, Ste. 200
Solana Beach, CA 92075
Attention: Robert Harrington

Tenant: Community Redevelopment Agency of
The City of Calexico
608 Heber Avenue
Calexico, CA 92231
Attention: Executive Director

(b) Landlord's waiver of a default of any term, covenant or condition of this Lease is not a waiver of any other or subsequent default of the same or other provisions hereof. Landlord's acceptance of Rent after breach is not waiver of breach.

(c) This Lease supersedes and replaces any prior agreement between the parties with respect to the use of the Premises.

(d) This Lease and its terms, covenants and conditions apply to and are binding upon and inure to the heirs, successors, executors, administrators and assigns of the parties hereto.

(e) Time is to the essence herein.

(f) In the operations pursuant to this Lease and otherwise in the use of the Premises, Tenant will not discriminate or permit discriminations against any person or class of persons by reason of race, color, creed, sex, age or national origin.

(g) The prevailing party shall recover attorney fees and costs if litigation is necessary to interpret or enforce this Lease.

(h) This Lease shall be interpreted and enforced in accordance with California law.

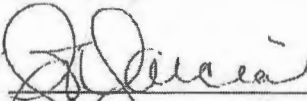
THE PARTIES HAVE CAUSED THIS LEASE TO BE EXECUTED AS OF THE DATE WRITTEN FIRST ABOVE.

THE CITY OF CALEXICO
Executed By:



City Manager

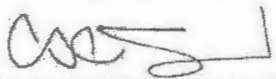
Attested By:



Agency Secretary

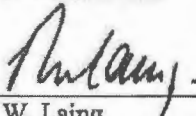
DE ANZA HOTEL LIMITED PARTNERSHIP,
a California limited partnership

By: **CHELSEA ASSET CORPORATION,**
a California Corporation, its Co-General Partner

By: 

Charles Schmid
Authorized Representative

By: **PACIFIC SOUTHWEST COMMUNITY
DEVELOPMENT CORPORATION,**
a California nonprofit public benefit corporation,
its Managing General Partner

By: 

Robert W. Laing
President/Executive Director