

1 MANAGEMENT AGREEMENT

2 35442

3 This Management Agreement ("Agreement") is made and entered into, in
4 duplicate, as of November 27, 2019, pursuant to a minute order adopted by the
5 City Council, City of Long Beach, at its meeting held on the December 11, 2018, by and
6 between the CITY OF LONG BEACH, a municipal corporation ("CITY") and LONG BEACH
7 CENTER, LLC, a Delaware limited liability company, with its place of business at 9200
8 West Sunset Boulevard, Penthouse 9, West Hollywood, California 90069 ("LBC").

9 1. SUBJECT PROPERTY. In consideration of the faithful performance
10 of the covenants and conditions hereinafter agreed to be kept by CITY and LBC, LBC shall
11 take maintenance responsibilities over the following described property consisting of
12 approximately 7,400 square feet of land located at 185 E. 3rd Street as shown on the
13 depiction marked Exhibit "A" attached hereto and made a part hereof (the "Subject
14 Property").

15 2. TERM. The term of this Agreement shall be for a period of five (5)
16 years commencing on November 27, 2019 ("Commencement Date") and ending
17 on November 26, 2024, subject to earlier termination rights provided below. The
18 term of this Agreement may be extended for two (2) additional periods of five (5) years
19 each upon the mutual agreement of the parties. Upon thirty (30) days from and after written
20 notice from CITY, CITY may declare this Agreement and all rights and interests created
21 thereby to be terminated, for any reason whatsoever. Upon thirty (30) days from and after
22 written notice by LBC to CITY, LBC may declare this Agreement and all rights and interests
23 created thereby to be terminated

24 3. FEES. In lieu of payment of a fee by CITY to LBC, LBC shall have the
25 right to credit its reasonable costs and expenses from its rental obligations under, and in
26 accordance with, that certain Ground Lease dated November 14, 2017 by and between
27 CITY and LBC. LBC shall be responsible for all costs associated with maintaining the
28 Subject Property as described by Section 15. LBC will receive credit for the costs of all

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Fl
Long Beach, CA 90802-4664



1 improvements made by it to the Subject Property and approved by the CITY on a dollar-
2 for-dollar against its rent obligations under the Ground Lease.

3 4. USE. The Subject Property shall be used as special events space and
4 public space, and such events shall be coordinated by CITY in accordance with its
5 generally applicable rules and regulations. LBC may promote select programs and events
6 for the downtown Long Beach community, and may provide limited concessions in
7 connection therewith and in accordance with all applicable regulations. The Subject
8 Property is not zoned Park (P), however use of the Subject Property shall be consistent
9 with standard park uses. LBC may apply for special event permits at the Subject Property.
10 City shall post "no loitering" (or similar language as required by applicable law) signs at the
11 Subject Property.

12 5. CONDITION OF SUBJECT PROPERTY.

13 A. LBC accepts the Subject Property in an "AS IS" condition and
14 acknowledges that LBC has not received and CITY has not made any warranty,
15 express or implied as to the condition of the Subject Property or any improvements,
16 structures substructures, or infrastructures located thereon.

17 B. LBC agrees to keep the Subject Property in a neat, orderly and
18 safe condition and free of waste, rubbish and debris during the term of this
19 Agreement.

20 6. CONSTRUCTION, ALTERATION AND CHANGES.

21 A. LBC shall not construct, install, or modify any structures,
22 facilities or exterior signs on the Subject Property without the prior written approval
23 of CITY.

24 B. LBC shall not place upon the Subject Property any portable
25 buildings, trailers, or other portable structures without the prior written approval of
26 CITY.

27 7. FORCE MAJEURE. The time within which LBC is obligated hereunder
28 to construct, repair or rebuild any building or other improvement, or cure any default on the



1 part of LBC hereunder shall be extended for a period of time equal in duration to, and
2 performance in the meantime shall be excused on account of and for and during the period
3 of time equal in duration to, any delay caused by strikes, threats of strikes, lockouts, war,
4 threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements,
5 fire action or regulation of any governmental agency, law or ordinance, impossibility of
6 obtaining materials, or other things beyond the reasonable control of LBC.

7 8. COMPLIANCE WITH LAW. LBC shall at all times conduct its
8 operations in accordance with all applicable Federal, State and/or Municipal rules and
9 regulations. No improvements or structures, either permanent, temporary or portable, shall
10 be erected, placed upon, operated or maintained on the Subject Property, nor shall
11 business or any other activity be conducted or carried on, in, onto, or from the Subject
12 Property in violation of the terms of this Agreement or any duly adopted rules, regulations,
13 orders, law, statute, by-law, or ordinance of any governmental agency having jurisdiction
14 thereover.

15 9. LBC INDEMNIFICATION AND HOLD HARMLESS.

16 A. LBC shall indemnify, protect and hold harmless CITY, its
17 Boards, Commissions, and their officials, employees and agents ("Indemnified
18 Parties"), from and against any and all liability, claims, demands, damage, loss,
19 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
20 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
21 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
22 in part, out of or in connection with (1) the use of the Subject Property by LBC, its
23 officers, employees, agents, subcontractors, or anyone under LBC's control, or (2)
24 LBC's breach or failure to comply with any of its obligations contained in this
25 Agreement (collectively "Claims" or individually "Claim").

26 B. In addition to LBC's duty to indemnify as described above, LBC
27 shall have a separate and wholly independent duty to defend Indemnified Parties at
28 LBC's expense by legal counsel approved by CITY, from and against all Claims,

1 and shall continue this defense until the Claims are resolved, whether by settlement,
2 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the
3 like on the part of LBC shall be required for the duty to defend to arise. CITY shall
4 notify LBC of any Claim, shall tender the defense of the Claim to LBC, and shall
5 assist LBC, as may be reasonably requested, in the defense.

6 C. If a court of competent jurisdiction determines that a Claim was
7 caused by the sole negligence or willful misconduct of Indemnified Parties, LBC's
8 costs of defense and indemnity shall be (1) reimbursed in full if the court determines
9 sole negligence by the Indemnified Parties, or (2) reduced by the percentage of
10 willful misconduct attributed by the court to the Indemnified Parties.

11 D. The provisions of this Section 9 shall survive the expiration or
12 termination of this Agreement.

13 10. CITY INDEMNIFICATION AND HOLD HARMLESS.

14 A. CITY shall indemnify, protect and hold harmless LBC, its
15 Boards and their officials, employees and agents ("Indemnified Parties"), from and
16 against any and all liability, claims, demands, damage, loss, obligations, causes of
17 action, proceedings, awards, fines, judgments, penalties, costs and expenses,
18 including attorneys' fees, court costs, expert and witness fees, and other costs and
19 fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in
20 connection with (1) the use of the Subject Property by CITY's officers, employees,
21 agents, subcontractors, or anyone under CITY'S control, or (2) CITY's breach or
22 failure to comply with any of its obligations contained in this Agreement (collectively
23 "Claims" or individually "Claim").

24 B. In addition to CITY's duty to indemnify as described above,
25 CITY shall have a separate and wholly independent duty to defend Indemnified
26 Parties at CITY's expense by legal counsel approved by LBC, from and against all
27 Claims, and shall continue this defense until the Claims are resolved, whether by
28 settlement, judgment or otherwise. No finding or judgment of negligence, fault,



1 breach, or the like on the part of CITY shall be required for the duty to defend to
2 arise. LBC shall notify CITY of any Claim, shall tender the defense of the Claim to
3 CITY, and shall assist CITY, as may be reasonably requested, in the defense.

4 C. If a court of competent jurisdiction determines that a Claim was
5 caused by the sole negligence or willful misconduct of Indemnified Parties, CITY's
6 costs of defense and indemnity shall be (1) reimbursed in full if the court determines
7 sole negligence by the Indemnified Parties, or (2) reduced by the percentage of
8 willful misconduct attributed by the court to the Indemnified Parties.

9 D. The provisions of this Section 10 shall survive the expiration or
10 termination of this Agreement.

11 11. WAIVER. This Agreement confers no rights upon LBC other
12 than expressly stated herein.

13 12. INSURANCE. LBC shall procure and maintain the following insurance
14 at LBC's sole expense for the duration of this Agreement, including any extensions,
15 renewals, or holding over thereof, from insurance companies that are admitted to write
16 insurance in the State of California or from non-admitted insurers that are on California's
17 List of Eligible Surplus Lines Insurers (LESLI) and that have ratings of or equivalent to an
18 A:VIII by A.M. Best Company:

19 A. Commercial general liability insurance equivalent in coverage
20 scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than One Million
21 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general
22 aggregate. Such coverage shall include but is not limited to broad form contractual
23 liability, cross liability protection, products and completed operations liability, and
24 garage-keepers legal liability. The City of Long Beach, and its boards, officials,
25 employees, and agents shall be added as additional insureds by endorsement
26 (equivalent in coverage scope to ISO form CG 20 26 11 85) and this coverage shall
27 contain no special limitations on the scope of protection afforded to the City, and its
28 boards, officials, employees, and agents.



1 B. Workers' compensation insurance as required by the California
2 Labor Code and Employer's Liability insurance in an amount not less than One
3 Million Dollars (\$1,000,000) per accident or occupational illness.

4 Any self-insurance program, self-insured retention or deductible must be
5 approved separately in writing by the City's Risk Manager or designee and shall protect
6 the City of Long Beach, and its boards, officials, employees, and agents in the same
7 manner and to the same extent as they would have been protected had the policy or
8 policies not contained such self-insurance or deductible provisions.

9 Each insurance required hereunder shall be endorsed to provide that
10 coverage shall not be canceled, nonrenewed, or materially changed in coverage or limits
11 (other than by reduction of limits by payment of claims) except after thirty (30) days prior
12 written notice to City, and that coverage shall be primary and not contributing to any other
13 insurance or self-insurance maintained by the City of Long Beach, or its boards,
14 employees, or agents.

15 Prior to the commencement of this Agreement, LBC shall deliver to City
16 certificates of insurance and the endorsements required hereunder for approval as to
17 sufficiency and form. The certificates and endorsements for each insurance policy shall
18 contain the original signature of a person authorized by that insurer to bind coverage on its
19 behalf. In addition, LBC shall, at least thirty (30) days prior to expiration of such policies,
20 furnish City with evidence of renewals. City reserves the right to require complete certified
21 copies of all said policies at any time.

22 Such insurance as required herein shall not be deemed to limit LBC's liability
23 under this Agreement. The procuring of insurance shall not be construed as a limitation
24 on liability or as full performance of the indemnification and hold harmless provisions of
25 this Agreement.

26 Not more frequently than every six (6) months if, in the opinion of CITY, the
27 amount of insurance coverages is not adequate, LBC shall provide the insurance required
28 by CITY's Risk Manager or designee.



1 Any modification or waiver of the insurance requirements herein shall be
2 made only with the written approval of CITY's Risk Manager or designee.

3 13. WORKERS' COMPENSATION. Evidence of current workers'
4 compensation coverage as required by the Labor Code of the State of California and
5 Employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000)
6 per accident or occupational illness shall be provided to City. The policy shall be endorsed
7 with a waiver of the insurer's right of subrogation against the City of Long Beach, and its
8 officials, employees, and agents.

9 14. EMINENT DOMAIN. Should the Subject Property or any portion
10 thereof be condemned or otherwise subject to eminent domain proceedings, then this
11 Agreement shall automatically terminate and LBC shall not be entitled to any award or
12 compensation from the condemning authority or CITY.

13 15. MAINTENANCE AND SECURITY.

14 A. LBC agrees, at LBC's sole cost and expense, make best efforts
15 to maintain the Subject Property and all improvements existing or constructed
16 thereon in good order and repair and to keep the Subject Property and facilities in a
17 neat, clean, attractive and orderly condition, including daily emptying of all trash
18 containers at the Subject Property. LBC shall pressure wash hardscaping at least
19 once per week. LBC shall not be required to replace existing trees, landscaping or
20 furniture and fixtures damaged by regular use of the Subject Property. CITY is
21 responsible for reimbursing LBC for reasonable costs associated with repairs
22 approved in advance by the CITY.

23 B. LBC shall add the Subject Property to its routine 24-hour-per-
24 day regular security patrol of the development owned and operated by LBC
25 immediately adjacent to the Subject Property.

26 C. If, in the opinion of CITY, the Subject Property are not being
27 properly maintained, CITY, after giving thirty (30) days written notice to LBC to
28 remedy discrepancies, shall cause such repair and maintenance to be made. The



1 cost of such maintenance or repair shall be added to the rent. If said costs are not
2 paid promptly by LBC, this Agreement shall be deemed to be in default, and CITY
3 shall be entitled to all legal remedies provided hereunder. Failure of LBC to properly
4 maintain and repair the Subject Property shall constitute a breach of the terms of
5 this Agreement.

6 D. Notwithstanding anything to the contrary in this Agreement,
7 LBC shall not be responsible for extraordinary maintenance or security costs caused
8 by special events held at the Subject Property permitted by City and not sponsored
9 by LBC.

10 16. UTILITIES. CITY shall, at its own cost, pay for all electricity, gas,
11 water, telephone and other utility services furnished to LBC, including the cost of
12 installation of necessary connections for all of said services. All utilities added from or after
13 the Commencement Date shall be underground.

14 17. WASTE DISPOSAL.

15 A. LBC shall construct all facilities necessary to prevent any water
16 or industrial waste from the operations of LBC on the Subject Property from flowing
17 into adjacent property. LBC shall dispose of all sewage and industrial waste in
18 accordance with all applicable regulations and laws of those governmental agencies
19 having jurisdiction or authority thereover.

20 B. LBC shall ensure that all solid waste materials are placed in
21 appropriate covered containers designed for use with the type of waste involved,
22 which shall remain covered, and that said containers are maintained within
23 enclosures located on the Subject Property and designated to keep said trash
24 containers out of the flow of traffic and obscured from view.

25 C. Notwithstanding anything to the contrary contained in this
26 Agreement, LBC shall not be responsible for extraordinary waste disposal caused
27 by special events held at the Subject Property permitted by City and not sponsored
28 by LBC.



1 18. BILLBOARDS AND SIGNS. LBC agrees not to construct, install or
2 maintain, nor to allow upon the Subject Property any billboards, signs, banners or like
3 displays without City's reasonable approval, and subject to the limitations of applicable sign
4 and zoning ordinances.

5 19. AUDIT. CITY and its designated representatives shall be permitted to
6 examine and review LBC'S records at all reasonable times, with or without prior notification,
7 for the purpose of determining compliance with all terms, covenants and conditions of this
8 Agreement. Such examinations and reviews shall be conducted during LBC'S regular
9 business hours in a manner causing as little inconvenience as possible to LBC.

10 20. POSSESSORY INTEREST. LBC recognizes and understands that
11 this Agreement may create a possessory interest subject to property taxation and that LBC
12 may be subject to the payment of property taxes on such interest.

13 21. GENERAL CONDITIONS.

14 A. BANKRUPTCY. Should LBC make an assignment for benefit
15 of creditors or should a voluntary or involuntary petition of bankruptcy or for
16 reorganization or for any arrangements be filed by or against LBC, or if LBC
17 becomes bankrupt or insolvent, or if a receiver be appointed of LBC's business or
18 assets (except a receiver appointed at request of CITY), such action shall constitute
19 a breach of this Agreement for which CITY, at its option, may terminate all rights of
20 LBC or LBC'S successors in interest under this Agreement except as provided in
21 this Agreement; provided, however, that an involuntary petition for bankruptcy or
22 reorganization which is dismissed within sixty (60) days after filing without loss to
23 CITY shall not constitute a breach of this Agreement.

24 B. DISPOSITION OF PERSONAL PROPERTY ABANDONED BY
25 LBC. If this Agreement terminates, title to any personal property belonging to LBC
26 and left on the Subject Property thirty (30) days after such termination shall be
27 deemed to have been transferred to CITY. CITY shall have the right to remove and
28 to dispose of such property without liability therefore to LBC or to any person



1 claiming under LBC and shall have no duty or obligation to account therefore.

2 C. SUCCESSORS IN INTEREST. Unless otherwise provided in
3 this Agreement, the terms, covenants and conditions contained herein shall apply
4 to and bind the heirs, successors, executors, administrators and assigns of all of the
5 parties hereto, all of whom shall be jointly and severably liable hereunder.

6 D. TAXES AND ASSESSMENTS. LBC shall pay before
7 delinquency, all taxes, license fees, assessments and other charges which are
8 levied and assessed against and upon the Subject Property, fixtures, equipment, or
9 other property caused or suffered by LBC to be placed upon the Subject Property.
10 LBC shall furnish CITY with satisfactory evidence of these payments upon demand
11 by CITY.

12 E. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE. If
13 either party hereto shall be delayed or prevented from the performance of any act
14 required hereunder by reason of acts of God, restrictive governmental laws or
15 regulations or other cause, without fault and beyond control of the party obligated
16 other than financial incapacity, performance of such act shall be excused for the
17 period of the delay; and the period for the performance of any such act shall be
18 extended for a period equivalent to the period of such delay, provided, however,
19 nothing in this section shall excuse LBC from the prompt payment of any rental or
20 other charge required of LBC hereunder except as may be expressly provided
21 elsewhere in this Agreement.

22 F. AMENDMENTS. This Agreement sets forth all of the
23 agreements and understandings of the parties hereto and is not subject to
24 modification, except in writing duly executed by the legally authorized
25 representatives of each of the parties.

26 G. AGREEMENT ORGANIZATION. The various headings in this
27 Agreement, the number of letters thereof, and the organization of this Agreement
28 into separate sections and paragraphs are for purposes of convenience only and



1 shall not be considered otherwise.

2 H. PARTIAL INVALIDITY. If any term, covenant, condition or
3 provisions of this Agreement is held by a court of competent jurisdiction to be invalid,
4 void or unenforceable, the remainder of the provisions hereof shall remain in full
5 force and effect and shall in no way be affected, impaired or invalidated thereby.

6 I. WAIVER OF RIGHTS. The failure of LBC or CITY to insist
7 upon strict performance of any of the terms, conditions or covenants herein shall
8 not be deemed a waiver of any rights or remedies that either may have, and shall
9 not be deemed a waiver of any subsequent breach or default of the terms, conditions
10 or covenants herein contained.

11 J. NOTICES. All notices given or to be given by either party to
12 the other, shall be served by either: (1) enclosing the same in a sealed envelope
13 addressed to the party intended to receive the same at the address indicated herein
14 or at such other address as the parties may by written notice hereafter designate,
15 and deposited in the U. S. Postal Service, with postage prepaid; or (2) personal
16 service upon CITY or upon an officer or authorized agent of LBC. Such notices shall
17 be effective on the date of mailing if served by mail or on the date personal service
18 is effected if such notice is personally served. For the purposes hereof, notices to
19 CITY and LBC shall be addressed as follows:

20
21 CITY: City of Long Beach
22 411 W. Ocean Blvd., 10th Floor
23 Long Beach, CA 90802
24 Attn: City Manager

25 With a copy to: City of Long Beach
26 411 W. Ocean Blvd., 10th Floor
27 Long Beach, CA 90802
28 Attn: Director, Economic Development

LBC: Long Beach Center, LLC
9200 West Sunset Boulevard, PH9
West Hollywood, CA 90069
Attn: Tony Shooshani



OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Fl
Long Beach, CA 90802-4664

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K. TIME. Time is of the essence of this Agreement.

L. APPROVALS AND CONSENTS BY CITY. Wherever in this Agreement consents or approvals by CITY are required, such consents or approvals shall not unreasonably be withheld or delayed.

M. PROHIBITION AGAINST RECORDING AGREEMENT; RECORDABLE MEMORANDUM OF AGREEMENT. This Agreement shall not be recorded.

N. NO RELOCATION OR GOODWILL VALUE. LBC agrees that nothing contained in this Agreement creates any right in LBC for any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16 of the California Government Code from CITY on the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY OF LONG BEACH, a municipal corporation

Nov. 27, 2019

By Rebecca G. Garner
City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

"CITY"

LONG BEACH CENTER, a Delaware limited liability company

Oct. 31st, 2019

By [Signature]
Name Tony Stovishani
Title Managing Member

"LBC"

This Agreement is approved as to form on November 7, 2019.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Fl
Long Beach, CA 90802-4664

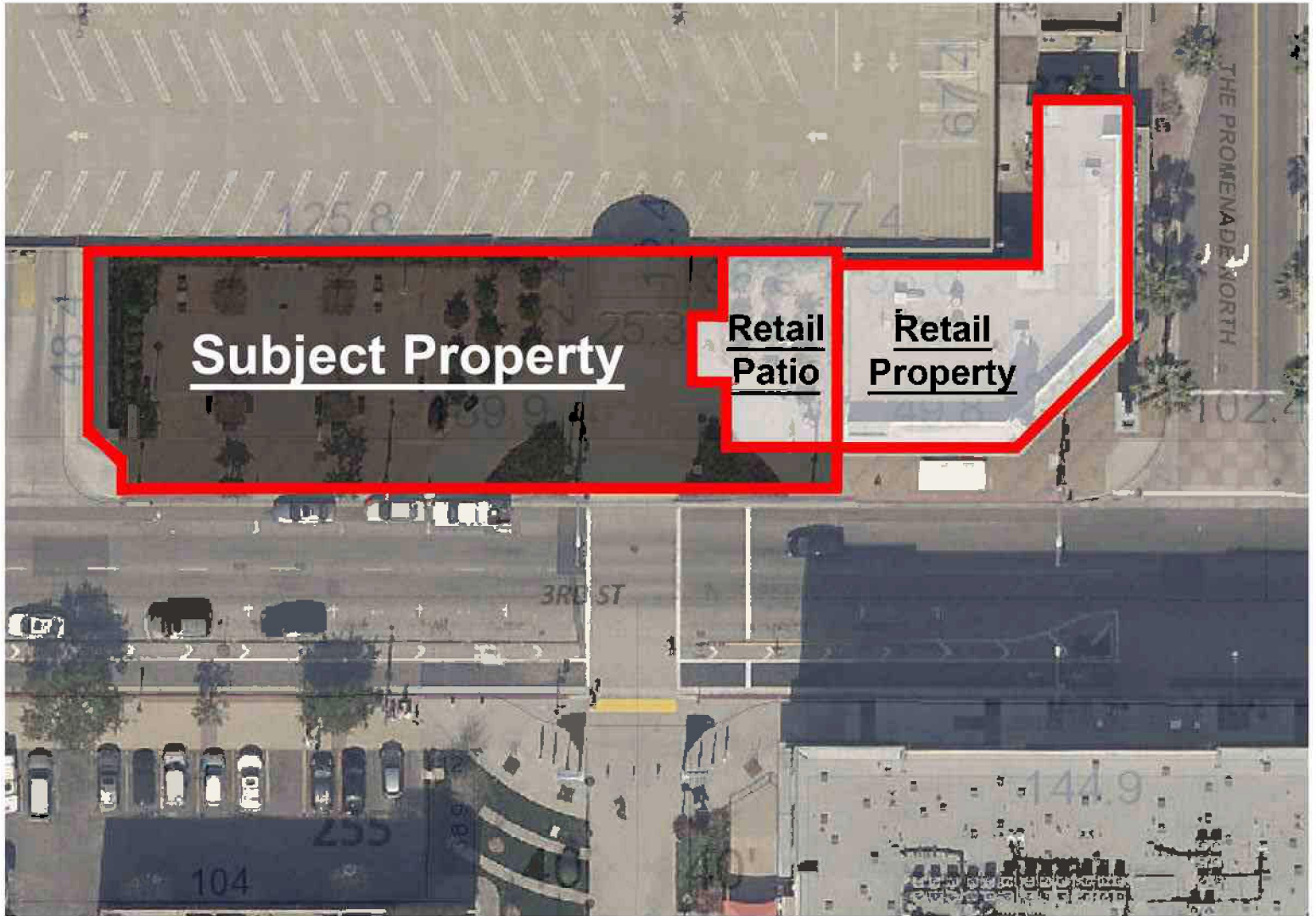
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CHARLES PARKIN, City Attorney

By 
Deputy



Exhibit A



185 East 3rd Street

Subject Property - approx. 7,400 sq. ft.

Retail Patio - "Premises" of Lease No. 34864 - approx. 1,400 sq. ft.