

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

PARKING LICENSE AGREEMENT

32678

THIS PARKING LICENSE AGREEMENT ("Agreement") is entered into this 25th day of May, 2012, by the CITY OF LONG BEACH, a California municipal corporation ("Licensor"), pursuant to a minute order adopted by its City Council on May 1, 2012, and 6TH & PINE DEVELOPMENT, LLC, a California limited liability company ("Licensee").

For and in consideration of the faithful performance of the terms and conditions hereinafter set forth, the parties agree as follows:

1. PARKING SPACES AND PREMISES. City hereby grants Licensee the use of not more than five hundred (500) parking spaces on all weekdays during the Term from the hours of 7:00am through 6:00pm ("Parking Spaces") for purposes of providing parking to its tenant at the development at the corner of 6th Street and Pine Avenue, Long Beach, California, and commonly known as the "Press-Telegram Building" (the "Development"). The Parking Spaces may be located on more than one City-owned parking lot or structure, located anywhere within the City limits, as designated by City (collectively, the "Premises"). City, upon sixty (60) days advance written notice to Licensee and at its sole and absolute discretion, may relocate all or a portion of the Parking Spaces to alternate Premises located anywhere within the City limits. City shall issue to Licensee annual parking permits authorizing use of the Parking Spaces ("Permits") in accordance with its standard procedures. City shall issue only as many Permits as Licensee requests in writing, which such total requested number of Permits may increase or decrease from month-to-month and costs associated with such Permits shall be pro-rated accordingly. This Agreement is meant to meet the parking demands of Licensee's tenant at the Development only, and in no way shall the parking rights granted to Licensee under this Agreement be interpreted to satisfy or displace any code-required parking in connection with new construction at the Development as required by the Long Beach Municipal Code or other applicable regulations.

2. TERM. The term of this Agreement shall commence on January 1,

1 2013 (the "Commencement Date"), and shall terminate at midnight on December 31,
2 2024, unless sooner terminated as provided herein (the "Term"). City and Licensee may
3 mutually agree to renew this Agreement for two (2) additional five (5)-year terms. All
4 provisions of this Agreement applicable to the original term shall apply with equal force to
5 the extended term.

6 3. PARKING PERMIT FEES. Subject to the provisions of Section 4,
7 Licensee shall pay an annual fee equal to Six Hundred Dollars (\$600) per Permit issued
8 by City ("Parking Fee").

9 4. ADJUSTMENT TO PARKING FEES. The Parking Fee to be paid to
10 City by Licensee for each Permit shall be adjusted annually effective on the adjustment
11 date of January 1st, by the 12 Months Percent Change in the Consumer Price Index for
12 All Urban Consumers, All Items, Base Period 1982-84=100, for the Los Angeles-
13 Riverside-Orange County, CA Area, published by the United States Department of Labor,
14 Bureau of Labor Statistics. The December Index immediately prior to the adjustment
15 date shall be the "Current Index," and the December Index for the year previous shall be
16 the "Beginning Index". If the Current Index is greater than the Beginning Index, the then-
17 current rent or adjusted Parking Fee shall increase by the same percentage rounded to
18 the nearest tenth as did the Current Index increase over the Beginning Index, so that the
19 Parking Fee shall increase each year by the same percentage as did the Consumer Price
20 Index. In no event shall any Parking Fee adjustment result in a Parking Fee less than
21 that paid during the preceding period.

22 5. USE OF PREMISES. The Premises shall be used during Licensee's
23 periods of exclusive occupancy for parking by employees of Licensee's tenant at the
24 Development and for no other purpose. Licensee shall not occupy, use, or grant
25 permission to anyone to occupy or use the Premises for any unlawful purpose. Licensee
26 shall conduct its business and activities and control its agents, employees, invitees,
27 licensees, volunteers, and visitors in such a manner that will not create any nuisance,
28 unreasonable annoyance or waste. On weekends and weekday overnights between the

1 hours of 6:00pm through 7:00am the Premises shall be available to the public. Nothing
2 contained in this Section 5 shall require Licensee to supervise, control, or be responsible
3 for activities upon or use of the Premises by the public. Prior to issuing a parking citation
4 to any vehicle displaying a valid Permit issued pursuant to this Agreement, City shall
5 grant such vehicle a 30-minute grace period.

6 6. CONDITION OF PREMISES. City shall deliver the Premises to
7 Licensee paved, striped, and free of debris on the Commencement Date. Any
8 replacement Premises designated by City pursuant to Section 1 shall also be delivered to
9 Licensee, paved, striped and free of debris. Except as otherwise described above, City
10 delivers the Premises to Licensee "AS IS" and with all faults.

11 7. MAINTENANCE OF PREMISES. City shall provide for the ordinary
12 care and maintenance of the Premises; provided, however, that Licensee shall be
13 responsible for all costs associated with damage caused by Licensee's use of the
14 Premises beyond reasonable wear and tear.

15 8. INDEMNIFICATION. Licensee shall defend, indemnify, and hold
16 harmless City, its officers and employees ("City Indemnified Parties") from and against all
17 causes of actions, damage, proceedings, claims, demands, loss, liens, costs and
18 expenses alleging injury to or death of persons, or damage to property, or any other claim
19 of damage brought, made, filed against, imposed on or sustained by the City Indemnified
20 Parties, or any of them, and arising from or attributable to or caused, directly or indirectly
21 (collectively or individually, a "claim"):

22 (i) by the use of the Premises or any equipment or materials located
23 thereon, or from activities conducted thereon by Licensee, its employees, invitees,
24 agents, or by any person or persons acting on behalf of Licensee and with
25 Licensee's knowledge and consent, express or implied during periods of
26 Licensee's exclusive use; or

27 City shall defend, indemnify, and hold harmless Licensee, its officers
28 and employees ("Licensee Indemnified Parties") from and against all causes of

1 actions, damage, proceedings, claims, demands, loss, liens, costs and expenses
2 alleging injury to or death of persons, or damage to property, or any other claim of
3 damage brought, made, filed against, imposed on or sustained by the Licensee
4 Indemnified Parties, or any of them, and arising from or attributable to or caused,
5 directly or indirectly (collectively or individually, a "claim") by the use of the
6 Premises by the public, or the employees, agents or invitees of City or by any
7 person or persons acting on behalf of City.

8 9. INSURANCE. Upon execution of this Agreement and in partial
9 performance of Licensee's obligations hereunder, Licensee shall procure and maintain, at
10 its cost, during the Term and any extensions or renewals thereof, from an insurer
11 admitted in California or having a minimum rating of or equivalent to A:VIII in Best's
12 Insurance Guide:

13 (i) Comprehensive General Liability insurance with a combined
14 single limit of at least \$1,000,000 for each occurrence or Two Million Dollars (\$2,000,000)
15 general aggregate. City, its officials, employees and agents shall be covered as
16 additional insureds with respect to liability arising from activities performed by or on
17 behalf of Licensee. Said insurance shall be primary insurance with respect to City and
18 shall contain a cross-liability endorsement.

19 (ii) "All Risk" property insurance in an amount sufficient to cover
20 the full replacement value of Licensee's personal property, improvements and equipment
21 on the Premises.

22 (iii) Upon the execution of this Agreement, Licensee shall deliver
23 to City certificates of insurance with original endorsements evidencing the coverage
24 required by this Agreement. The certificates and endorsements shall be signed by a
25 person authorized by the insurer to bind coverage on its behalf. City reserves the right to
26 require complete certified copies of all policies at any time.

27 (iv) Said insurance shall contain an endorsement requiring thirty
28 (30) days' prior written notice from insurers to City before cancellation or change of

1 coverage.

2 (v) Said insurances may provide for such deductibles or self-
3 insured retention as may be acceptable to the City Manager or his designee. In the event
4 such insurance does provide for deductibles or self-insured retention, Licensee agrees
5 that it will fully protect City, its officials, and employees in the same manner as these
6 interests would have been protected had the policy or policies not contained a deductible
7 or retention provisions. With respect to damage to property, City and Licensee hereby
8 waive all rights of subrogation, one against the other, but only to the extent that collectible
9 commercial insurance is available for said damage.

10 (vi) Not more frequently than every two (2) years, if, in the opinion
11 of City, or of an insurance broker retained by City, the amount of the foregoing insurance
12 coverages is not adequate, Licensee shall increase the insurance coverage as required
13 by City.

14 (vii) The procuring of said insurance shall not be construed as a
15 limitation on Licensee's liability or as full performance on Licensee's part of the
16 indemnification and hold harmless provisions of this Agreement; and Licensee
17 understands and agrees that, notwithstanding any insurance, Licensee's obligation to
18 defend, indemnify and hold City, its officials and employees harmless hereunder is for the
19 full and total amount of any damage, injuries, loss, expense, costs or liabilities in any
20 manner connected with or attributed to the acts or omissions of Licensee, its officers,
21 agents, employees, patrons or visitors, or the operations conducted by Licensee, or the
22 Licensee's use, misuse or neglect of the Premises.

23 (viii) Any modification or waiver of the insurance requirements
24 herein shall only be made with the written approval of the City's Risk Manager or
25 designee.

26 10. CITY'S NON-LIABILITY. Except as expressly provided for in this
27 Agreement, City shall not be liable for any damage to Licensee or Licensee's property or
28 any of Licensee's employees, agents, invitees, licensees, volunteers or visitors, and

1 Licensee, as a material part of the consideration of this Agreement, hereby waives all
2 claims and demands against City for any such damage, to the extent allowed by law,
3 except to the extent that such damage is caused by City's negligence. Licensee
4 assumes all risk of theft, misappropriation, damage, injury, claims or losses of its
5 personal property kept, stored, held, placed or otherwise left on the Premises, except as
6 expressly provided for in this Agreement. Licensee shall not be responsible for theft,
7 misappropriation, damage, injury, claims or losses of personal property belonging to
8 members of the public.

9 11. ASSIGNMENT AND SUBLETTING. Licensee may not assign or
10 sub-license the Premises without the express written consent of the City, which may be
11 withheld at City's sole discretion. Notwithstanding the preceding sentence, Licensee may
12 assign this Agreement to a purchaser of the Development. No assumption or sub-
13 licensing of this Agreement will be effective without the express written assumption by
14 such assignee of the obligations of Licensee under this Agreement, nor shall such sub-
15 licensing or assignment alter the primary liability of Licensee for the payment of Parking
16 Fees or for the performance of any other obligations to be performed by Licensee.

17 12. TAXES. Licensee shall pay all assessments or real estate taxes or
18 possessory interest taxes, if any, levied against the Premises due to Licensee's periods
19 of exclusive use; provided that Licensee shall only be responsible for its pro-rata share of
20 taxes levied against the Premises.

21 13. INSPECTION AND ENTRY. City shall have the right, at all
22 reasonable times, to enter the Premises to inspect them to determine if Licensee is
23 complying with the terms, covenants and conditions of this Agreement, to comply with
24 any law, order, or requirement of any governmental authority, and to serve or post any
25 notice.

26 14. DEFAULT. The occurrence of any one or more of the following acts
27 shall constitute a default by Licensee, if said failure is not cured within thirty (30) days
28 after City gives notice to Licensee of said failure:

- 1 (i) Failure to use the Premises as described in Section 5;
- 2 (ii) Failure to pay Parking Fees;
- 3 (iii) Failure to maintain the insurance required herein;
- 4 (iv) Failure to execute a Lease with Molina Health Care Group
- 5 respecting the Development with a term of at least ten (10) years;
- 6 (iv) Failure to comply with any applicable law, rule, ordinance, or
- 7 regulation; or
- 8 (v) Any failure to perform any other term, covenant, or condition
- 9 of this Agreement not specifically identified in this Section or in elsewhere in this
- 10 Agreement. If the default cannot reasonably be cured in thirty (30) days, then Licensee
- 11 shall not be in default if Licensee begins to cure within said period and diligently proceeds
- 12 to cure to completion; provided that in no event shall such cure period extend beyond
- 13 ninety (90) days.

14 15. NOTICE. Any notice or request given under this Agreement shall be
15 in writing and personally delivered or deposited in the U.S. Postal Service, postage
16 prepaid, first class, addressed as follows:

17 To City: City of Long Beach
18 333 West Ocean Boulevard, 13th Floor
19 Long Beach, CA 90802
Attn: City Manager

20 To Licensee: 6th & Pine Development, LLC
21 741 Atlantic Avenue
22 Long Beach, CA 90813
Attn: Michelle Molina

23 Notice shall be effective on the date of personal delivery or deposit in the
24 mail, whichever first occurs. Notice of change of address or the person to whom notice
25 shall be directed shall be given in the manner prescribed herein.

26 16. NO WAIVER. The failure or delay of either party to insist on strict
27 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of
28 any right or remedy either party may have and shall not be deemed a waiver of any

1 subsequent or other breach of any term, covenant, or condition. Any waiver or
2 permission of any kind by either party shall be in writing and signed to be effective.

3 17. SURRENDER OF PREMISES. On the expiration or sooner
4 termination of this Agreement, Licensee shall deliver to City possession of the Premises.
5 Licensee shall remove its equipment, supplies and other items so as to leave the
6 Premises in a condition which does not damage the Premises and the improvements
7 thereto in any way.

8 18. CITY'S RIGHT TO RE-ENTER ON TERMINATION OR
9 EXPIRATION. Licensee shall peaceably deliver possession of the Premises to City on
10 the date of expiration or sooner termination of this Agreement. On giving notice of
11 termination to Licensee, City shall have the right to re-enter and take possession of the
12 Premises on the date such termination becomes effective without further notice of any
13 kind and without instituting summary or regular legal proceedings.

14 19. RELOCATION WAIVER. Licensee expressly waives any rights to
15 relocation benefits or other compensation pursuant to the California Relocation Act or
16 applicable laws governing eminent domain.

17 20. PERMANENT PARKING. City and Licensee agree to work together
18 in good faith to identify property suitable to provide for permanent parking for the
19 Development, whether publicly-owned or privately-owned, it being the intent of the parties
20 that such permanent parking would replace the Parking Spaces provided pursuant to this
21 Agreement.

22 21. MISCELLANEOUS.

23 A. Each party shall bear its own costs and expenses in connection with
24 the preparation of this Agreement. In the event any action is brought with respect to the
25 enforcement of this Agreement, the prevailing party shall be entitled to recover its costs
26 and expenses from the other party, including, but not limited to, attorney's fees and court
27 costs.

28 B. This Agreement shall be binding on and inure to the benefit of the

1 parties and their successors, heirs, personal representatives, and all of the parties shall
2 be jointly and severally liable hereunder.

3 C. This Agreement constitutes the entire understanding between the
4 parties and supersedes all prior negotiations, agreements and understandings, oral or
5 written, with respect to the subject matter hereof.

6 D. This Agreement may not be amended except in a writing duly
7 executed by both parties.

8 E. This Agreement shall be governed by and construed under the laws
9 of the State of California, and no choice of laws or principles thereof shall apply.

10 F. The captions and numbers herein and the grouping of the provisions
11 of this Agreement into separate sections and paragraphs are for the purpose of
12 convenience only and shall not be considered a part hereof, and shall have no effect on
13 the interpretation of this Agreement.

14 G. If any term, covenant, or condition of this Agreement is found to be
15 invalid, ineffective, void, or unenforceable for any reason by a court of competent
16 jurisdiction, the remaining terms, covenants and conditions shall remain in full force and
17 effect.

18 H. Time is of the essence in this Agreement and all of its provisions.

19 I. This Agreement shall not be recorded.

20 J. The relationship of the parties hereto is that of City and Licensee,
21 and the parties agree that nothing contained in this Agreement shall be deemed or
22 construed as creating a partnership, joint venture, principal-agent relationship,
23 association, or employer-employee relationship between them or between City and any
24 third party.

25 K. This Agreement is created as a joint effort between the parties and
26 fully negotiated as to its terms covenants and conditions. This Agreement shall not be
27 construed against either party as the drafter.

28 L. Each provision of this Agreement shall be deemed both a covenant

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1 and a condition.

2 M. This Agreement is created for the benefit of the parties only and is
3 not intended to benefit any third person or entity.

4 N. Where consent or approval is required from either Licensee or City
5 by the provisions of this Agreement, the giving of consent or approval shall not be
6 unreasonably withheld or delayed by the party from whom consent or approval is
7 required.

8 O. All exhibits to this Agreement are hereby incorporated herein by
9 reference.

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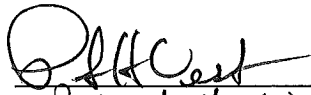
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IN WITNESS WHEREOF, the parties have caused this document to be duly executed as of the date first stated above.

CITY OF LONG BEACH, a California municipal corporation

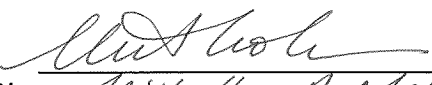
Dated: 5-30-12

By: 
Name: Patrick H. Weser
Title: City Manager

CITY

6TH & PINE DEVELOPMENT, LLC, a California limited liability company

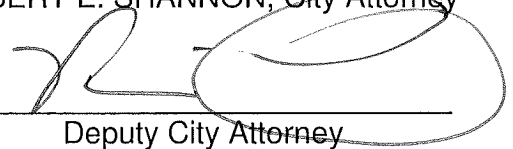
Dated: 5-29-12

By: 
Name: Michelle A. Molina
Title: Manager

LICENSEE

The foregoing Agreement is hereby approved as to form this 29 day of May, 2012.

ROBERT E. SHANNON, City Attorney

By: 
Deputy City Attorney