



CITY of ESCONDIDO

SPECIAL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

3:00 PM - Closed Session (Parkview Conference Room)

4:00 PM - Regular Session

Escondido City Council Chambers, 201 North Broadway, Escondido, CA 92025

WELCOME TO YOUR CITY COUNCIL MEETING

We welcome your interest and involvement in the legislative process of Escondido. This agenda includes information about topics coming before the City Council and the action recommended by City staff.

MAYOR

Dane White

DEPUTY MAYOR

Joe Garcia (District 2)

COUNCILMEMBERS

Consuelo Martinez (District 1)

Christian Garcia (District 3)

Michael Morasco (District 4)

CITY MANAGER

Sean McGlynn

CITY ATTORNEY

Michael McGuinness

CITY CLERK

Zack Beck

HOW TO WATCH

The City of Escondido provides three ways to watch a City Council meeting:

In Person



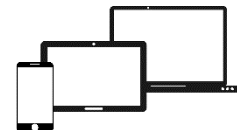
201 N. Broadway

On TV



Cox Cable Channel 19 and U-verse Channel 99

Online



www.escondido.org



CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

HOW TO PARTICIPATE

The City of Escondido provides two ways to communicate with the City Council during a meeting:

In Person



Fill out Speaker Slip and Submit to City Clerk

In Writing



<https://escondido-ca.municodemeetings.com>

ASSISTANCE PROVIDED

If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 760-839-4869. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility. Listening devices are available for the hearing impaired – please see the City Clerk.





CITY of ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

CLOSED SESSION

3:00 PM

CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

CLOSED SESSION

I. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)

- a. Agency Representative: Sean McGlynn, City Manager, or designee
Employee Organization: Police Officers' Association Sworn Personnel Bargaining Unit
- b. Agency Representative: Sean McGlynn, City Manager, or designee
Employee Organization: Police Officers' Association Non-Sworn Personnel Bargaining Unit
- c. Agency Representative: Sean McGlynn, City Manager, or designee
Employee Organization: Firefighters' Association Safety and Non-safety Bargaining Unit
- d. Agency Representative: Sean McGlynn, City Manager, or designee
Employee Organization: ECEA Unit (SUP)
- e. Agency Representative: Sean McGlynn, City Manager, or designee
Employee Organization: Maintenance and Operations Bargaining Unit (Teamsters Local 911 and ACE)

ADJOURNMENT



CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

REGULAR SESSION

4:00 PM Regular Session

MOMENT OF REFLECTION

City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.

FLAG SALUTE

The City Council conducts the Pledge of Allegiance at the beginning of every City Council meeting.

CALL TO ORDER

Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

CLOSED SESSION REPORT

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

1. 480 N. SPRUCE LEASE AGREEMENT WITH BIG AND BOLD WHOLESALE

Request the City Council adopt Resolution No. 2023-130, authorizing the Mayor to execute, on behalf of the City of Escondido as Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency"), a Lease Agreement with Big and Bold Wholesale, for the use of the Successor Agency owned property located at 480 Spruce Street, for wholesale of kitchen remodeling material and the storage of material inside the building and outdoors, and the Broker's Commission Agreement for the services provided by Kidder Matthews representing the Successor Agency and Venture Pacific Commercial Services representing the Lessee.

Staff Recommendation: Approval (City Manager Department: Jennifer Schoeneck, Director of Economic Development)

Presenter: Jennifer Schoeneck, Director of Economic Development

a) Resolution No. 2023-130

FUTURE AGENDA

2. FUTURE AGENDA

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: None (City Clerk's Office: Zack Beck)

COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development. This report is also available on the City's website, www.escondido.org.



CITY *of* ESCONDIDO

COUNCIL MEETING AGENDA

MONDAY, SEPTEMBER 25, 2023

ORAL COMMUNICATIONS

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Wednesday, October 11, 2023	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>
Wednesday, October 18, 2023	4:00 & 5:00 PM	Regular Meeting, <i>Council Chambers</i>

SUCCESSOR AGENCY

Members of the Escondido City Council also sit as the Successor Agency to the Community Development Commission, Escondido Joint Powers Financing Authority, and the Mobilehome Rent Review Board.



STAFF REPORT

September 25, 2023
File Number 0600-10; A-3477

SUBJECT

480 N. SPRUCE LEASE AGREEMENT WITH BIG AND BOLD WHOLESALE

DEPARTMENT

City Manager; Economic Development

RECOMMENDATION

Request the City Council adopt Resolution No. 2023-130, authorizing the Mayor to execute, on behalf of the City of Escondido as Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency"), a Lease Agreement with Big and Bold Wholesale, for the use of the Successor Agency owned property located at 480 Spruce Street, for wholesale of kitchen remodeling material and the storage of material inside the building and outdoors, and the Broker's Commission Agreement for the services provided by Kidder Matthews representing the Successor Agency and Venture Pacific Commercial Services representing the Lessee.

Staff Recommendation: Approval (City Manager Department: Jennifer Schoeneck, Director of Economic Development)

Presenter: Jennifer Schoeneck, Director of Economic Development

FISCAL ANALYSIS

The Successor Agency will receive revenue in the amount of \$50,575.35 per month in year 1 of the lease which increases by four percent each year commencing October 1, 2023 and ending August 31, 2028. \$10,000 will be deducted from the first month lease for the tenant to repair broken bathroom toilets/drains. The total revenue received for the duration of this lease is \$3,218,022.90 (Attachment "2"). In addition to base rent, the tenant shall be responsible for the property insurance and property maintenance with the exception of the roof which currently has a leak that will be repaired by the Successor Agency.

The Successor Agency will compensate the Lessee's broker, Venture Pacific Commercial Services, with a leasing commission of 3%, and the Lessor's broker, Kidder Mathews, will receive 2%. This totals a commission of 5% of the overall lease consideration. Half of this commission, amounting to \$80,450.57, will be paid upon execution, with the remaining half paid upon Lessee occupancy, making the total commission for this lease \$160,901.15 (Attachment "3"). The Guarantee of Lease (Attachment "1") unconditionally guarantees all obligations and liabilities of Big and Bold Wholesale, under the Lease, including rent payments and performance of lease terms, will be signed by HD Wholesale. The lease revenue will go to the Successor Agency fund 791 and the broker payments will also be paid from the



CITY *of* ESCONDIDO

STAFF REPORT

fund. The tenant will also be a point of sale location and is expected to generate sales tax revenue for the City's general fund.

PREVIOUS ACTION

None.

BACKGROUND

The City of Escondido is the Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency") for the property located at 480 N. Spruce Street. The industrial property is approximately 48,167 square feet situated on 3.79 acres. The proposed lease with Big and Bold Wholesale will allow for the Lessee's use of the industrial building and property, defined in the attached agreement as "Premises."

Big and Bold Wholesale is a kitchen remodeling material company and will also use the Premises as storage of material inside the industrial building and outdoors, subject to the allowed use of the City's zoning code. The initial term of the agreement is for 59 months.

RESOLUTIONS

- a. Resolution No. 2023-130
- b. Resolution No. 2023-130 Exhibit "A" – Lease Agreement
- c. Resolution No. 2023-130 Exhibit "B" - Commission Agreement

ATTACHMENTS

- a. Attachment "1" - Guaranty of Lease
- b. Attachment "2" - Lease Rent Calculations Spreadsheet
- c. Attachment "3" - Broker Commission Calculations Spreadsheet

GUARANTY OF LEASE

WHEREAS BIG & BOLD WHOLESALE ("**Lessee**") desires to lease from the CITY OF ESCONDIDO ("**Lessor**") the premises commonly known as 480 N Spruce Street Escondido, CA 92025 ("**Premises**") pursuant to a lease dated for reference purposes only as of October 1, 2023 ("**Lease**").

WHEREAS, as a material inducement to and in consideration of Lessor executing the Lease, Lessor requires HD WHOLESALE ("**Guarantor**") to execute this Guaranty of Lease ("**Guaranty**"); Guarantor desires Lessee to consummate the Lease. Accordingly, contemporaneous with execution of the Lease, Guarantor is executing this Guaranty to induce Lessor to execute the Lease with Lessee.

NOW THEREFORE, Guarantor hereby unconditionally and irrevocably guarantees and promises to perform and be liable for any and all obligations and liabilities of Lessee under the Lease, including, but not limited to, payment of all rents and all other sums payable by Lessee under the Lease and performance by Lessee of each and every one of the terms, conditions and covenants to be kept and performed by Lessee under the Lease.

Guarantor hereby agrees that, without the consent of, or notice to, Guarantor and without affecting or in any way releasing Guarantor's obligations under this Guaranty: (i) Lessor and Lessee may, by agreement or course of conduct, amend, extend, renew or otherwise alter any term, covenant or condition of the Lease, or the Lease may be assigned by Lessor or Lessee (and their successors and assigns) and this Guaranty shall guarantee all obligations of Lessee under the Lease as so amended, extended, renewed, altered or assigned; (ii) Lessor may release, change or add a party to the Lease and/or a guarantor of the Lease; (iii) Lessor may exercise, not exercise, delay exercising, impair, modify, limit, terminate or suspend any of Lessor's rights or remedies under the Lease or this Guaranty; and (iv) Lessor may permit all or any part of the Premises to be subleased, or the Lease to be assigned, assumed, transferred, mortgaged or encumbered.

Guarantor hereby agrees that no notice of nonperformance or default by Lessee or by another guarantor need be given to Guarantor. This Guaranty is a continuing and irrevocable guarantee. Guarantor waives the benefit of any law allowing Guarantor to revoke this Guaranty. No provision of this Guaranty or rights of Lessor hereunder may be waived, nor may any Guarantor be released from any obligation under this Guaranty except by a writing duly executed by Lessor.

Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on: (i) notice of acceptance of this Guaranty; (ii) demands (including demands for payment or performance), presentation and protest; (iii) any statute of limitations; (iv) requiring Lessor to proceed against Lessee, any Guarantor or other guarantor or any other person (as herein defined) liable to Lessor, or to proceed against these persons in any order; (v) requiring Lessor to apply any security deposit or other security; (vi) requiring Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantor; (vii) any right of subrogation that Guarantor may have against Lessee or other guarantors; (viii) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Lessee, any guarantor or any other person; (ix) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Lessee, of the subrogation rights of Guarantor, or of the rights of Guarantor to proceed against Lessee for reimbursement; (x) limiting Guarantor's obligations to not exceed Lessee's obligations; and (xi) notices (including notices of adverse change in the financial status of Lessee or other facts that increase the risk to Guarantor).

The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization or liquidation of Lessee, Guarantor, any other guarantor, or by any defense that Lessee, Guarantor or any other guarantor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding.

Guarantor subordinates any and all existing or future indebtedness of Lessee to Guarantor to Lessee's obligations owed to Lessor under the Lease. Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantor under this Guaranty. If a person comprising Guarantor is married, such Guarantor expressly agrees that recourse may be had against such Guarantor's separate or community property.

Guarantor shall, upon ten (10) days' prior written notice from Lessor, provide Lessor with Guarantor's financial statements for the current year and tax returns for the three (3) preceding years and, if such is the

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normal practice of Guarantor, such statements shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. Lessor shall maintain Guarantor's financial statements and tax returns in confidence but shall be permitted to disclose Guarantor's financial statements and tax returns to prospective lenders, purchasers or others for a bona fide business purpose.

Guarantor shall, upon ten (10) days' prior written notice from Lessor, in writing reaffirm that this Guaranty remains and continues in full force and effect, that no event has occurred that would invalidate the Guaranty or excuse Guarantor's obligations or performance under the Guaranty, and that the Guaranty applies to the Lease, as amended, extended, renewed, altered or assigned. Guarantor shall, upon ten (10) days' prior written notice from Lessor, execute such other and further documents and do such further acts as may be reasonably necessary or required by Lessor to effectuate the intent of the parties and carry out the terms of this Guaranty.

Guarantor agrees that any suit, action or proceeding arising directly or indirectly from the Guaranty or the Lease shall be litigated only in courts located within the county and state in which the Premises is located. Guarantor irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located, and waives and agrees not to assert by way of motion, defense or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

Each person which comprises Guarantor consents to service of process by a nationally recognized overnight courier service (such as Federal Express) at either the Premises or at the Guarantor's address for notices set forth below, and shall be deemed served and received three (3) business days after deposit with the overnight mail service. Guarantor irrevocably waives and agrees not to plead or claim in any action or proceeding that such service of process was in any way invalid or ineffective. Lessor reserves the right to serve process in any other manner permitted by law.

This Guaranty shall be governed by the laws of the state in which the Premises is located and, for purposes of conflicts of law, Guarantor shall be treated as if resident of or domiciled in such state. Guarantor waives the right to a jury trial of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought against Guarantor. If and to the extent the Lease requires Lessor and Lessee to arbitrate any disputes, then Guarantor also agrees to arbitrate such disputes in the same arbitration to the extent related to the Guaranty and upon the same terms and conditions provided in the Lease.

If Lessor brings an action or proceeding against Guarantor to enforce this Guaranty, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, the party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

This Guaranty constitutes the entire agreement between Guarantor and Lessor with respect to the subject matter of this Guaranty and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to such subject matter. Guarantor is not relying on any representations, warranties or inducements from Lessor that are not expressly stated in this Guaranty.

If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions hereof shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty, nor shall any single or partial exercise of any right, power or privilege preclude any other or further such exercise or the exercise of any other right, power or privilege. Time is strictly of the essence under this Guaranty and any amendment, modification or revision of this Guaranty.

Each person executing this Guaranty represents and warrants to Lessor that (i) each individual executing this Guaranty has the legal power, right, and actual authority to bind Guarantor; (ii) Guarantor has the legal right, power and authority to enter into and perform this Guaranty; (iii) all requisite action by or on behalf of a corporation, limited liability company, partnership (general or limited), trust or other legal entity ("entity") has been taken for this Guaranty to be duly authorized by such entity or Guarantor; (vi) no consent of any partner, shareholder, member, creditor, investor, government, judicial or administrative body or other party is required in connection with Guarantor executing this Guaranty; (v) this Guaranty is a valid and legally binding obligation

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GR-4.00, Revised 10-13-2022

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Last Edited: 1/30/2023 9:51 AM

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of Guarantor; (vi) the execution and delivery of this Guaranty does not conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement or other agreements or instruments to which Guarantor is a party or by which Guarantor is bound; and (vi) Guarantor will derive a substantial and material economic benefit from Lessor's execution of the Lease. If Guarantor is an entity, Guarantor shall, concurrently with the execution of this Guaranty (or upon ten (10) days' prior written notice from Lessor), deliver to Lessor a certified copy of a resolution or other documentation evidencing that such entity is authorized or ratifies the entity's execution of this Guaranty.

The term "person" as used in this Guaranty shall include an individual and/or an entity. If more than one (1) person comprises Guarantor, the obligations of such persons shall be joint and several. The unenforceability of this Guaranty or Lessor's election not to enforce this Guaranty against one (1) or more persons shall not affect the obligations of the remaining persons which comprise Guarantor or the enforceability of this Guaranty against such remaining persons.

Any notice, request, demand, instruction or other communication to be given to Guarantor under this Guaranty shall be in writing and shall be delivered at either the Premises or the address set forth beneath the Guarantor's signature below, or to such other place as Guarantor may from time to time in writing designate by at least fifteen (15) days' notice to Lessor.

When the context and construction so requires, all words used in the singular in this Guaranty shall be deemed to have been used in the plural. The term "Lessee" as used in this Guaranty shall mean the Lessee named in the Lease, any assignee of Lessee's interest under the Lease and their respective successors and assigns. The term "Lessor" as used in this Guaranty shall mean the Lessor named in the Lease, any assignee of Lessor, whether by outright assignment, assignment for security or otherwise. Lessor may without Guarantor's consent assign this Guaranty, voluntarily or by operation of law. This Guaranty applies to, inures to the benefit of, and binds all persons that comprise Guarantor, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns.

Signatures to this Guaranty accomplished by means of electronic signature or similar technology shall be legal and binding. This Guaranty may be executed in counterparts.

Guarantor is advised to seek advice of legal counsel before signing this Guaranty. Guarantor acknowledges that AIR CRE, the real estate brokers or their agents or employees have not made any representation or statement as to the legal sufficiency or effect or tax consequences of this Guaranty or the Lease.

GUARANTOR: HD WHOLESALE	Executed At: _____
_____	On: _____
By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Address: _____	Address: _____
Email Address: _____	Email Address: _____

480 N. Spruce St. Property Rent

Updated 9/19/23

Building SF 48167

Escalations 4%

	Per SF	fixed rent	Number of months	Total rent	Deductions
Year 1	\$ 1.05	\$ 50,575.35	12	\$ 606,904.20	\$ (10,000.00)
Year 2		\$ 52,598.36	12	\$ 631,180.37	
Year 3		\$ 54,702.30	12	\$ 656,427.58	
Year 4		\$ 56,890.39	12	\$ 682,684.69	
Year 5		\$ 59,166.01	11	\$ 650,826.07	
			<u>total number of months</u>		
			59	\$ 3,218,022.90	

Notes

Lessor to deduct \$10,000 from first month's rent to repair broken bathroom toilets/drains.

480 N. Spruce St. Property Rent

Updated 9/19/23

Building SF 48167

Escalations 4%

	Per SF	fixed rent	Number of months	Total rent	Deductions	Brokers' Commission Rate	Brokers' Commission
Year 1	\$ 1.05	\$ 50,575.35	12	\$ 606,904.20	\$ (10,000.00)	5%	\$ 29,845.21
Year 2		\$ 52,598.36	12	\$ 631,180.37		5%	\$ 31,559.02
Year 3		\$ 54,702.30	12	\$ 656,427.58		5%	\$ 32,821.38
Year 4		\$ 56,890.39	12	\$ 682,684.69		5%	\$ 34,134.23
Year 5		\$ 59,166.01	11	\$ 650,826.07		5%	\$ 32,541.30
<u>Total number of months</u>						<u>Total Commission</u>	
			59	\$ 3,218,022.90			\$ 160,901.15

Notes

Lessor to deduct \$10,000 from first month's rent to repair broken bathroom toilets/drains.

RESOLUTION NO. 2023-130

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF ESCONDIDO AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF ESCONDIDO ("SUCCESSOR AGENCY"), THE LEASE AGREEMENT WITH BIG & BOLD WHOLESALE FOR THE PROPERTY LOCATED AT 480 NORTH SPRUCE ST. AND THE BROKER'S COMMISSION AGREEMENT

WHEREAS, the City of Escondido as Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency") is responsible for the long range management plan and market rate lease of the property located at 480 North Spruce St.; and

WHEREAS, the Successor Agency has worked with a broker agency to list a vacant building at 480 N Spruce St. to find a tenant; and

WHEREAS, the Successor Agency and Big & Bold Wholesale have agreed upon terms to enter into a 59 month lease starting October 1, 2023 and ending on August 31, 2028; and

WHEREAS, the Successor Agency desires at this time and deems it to be in the best interest to approve the Lease Agreement and the Broker's Commission Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the Successor Agency authorizes the Mayor to execute, on behalf of the Successor Agency, the Lease Agreement with Big & Bold Wholesale and the Broker's Commission Agreement in

substantially the same form as attached to this Resolution as Exhibits "A" and "B", respectively, and incorporated by this reference, and subject to final approval as to form by the City Attorney.



LEASE AGREEMENT

for

480 N Spruce Escondido, CA 92025

between

**the City of Escondido as Successor Agency to the Redevelopment Agency of the
City of Escondido ("Successor Agency") and**

Big & Bold Wholesale

Effective Date: October 1, 2023

Term: 59 Months

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") is entered into the 1 day of October, 2023 ("Effective Date"), by and between the City of Escondido as Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency") and BIG & BOLD WHOLESALE, a California corporation; ("Lessee") regarding the Successor Agency's real property located at 480 N Spruce Street Escondido CA 92025, and having assessor's parcel number (APN) 232-091-28-00, premises more particularly described in Exhibit A of this Lease, which is attached hereto and incorporated herein by this reference ("Premises"). (The Successor Agency and Lessee each may be referred to herein as a "Party" and collectively as the "Parties.")

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Lease shall be for a period of 59 months, commencing on the Effective Date ("Term").

2. **Holdover.** Occupancy of the Premises by Lessee after the expiration of the Term shall be construed as a month-to-month tenancy in which all other terms and conditions of this Lease shall continue in full force and effect, on a month-to-month basis. Lessee may not occupy the Premises after the expiration of the Term without the express consent of Successor Agency. The Successor Agency shall have the right to terminate the month-to-month tenancy without cause and for any reason by giving 30 days' prior notice to Lessee.

3. **Rent.**

3.1 *Base Rent.* In consideration of the possession and use of the Premises, Lessee shall pay to the Successor Agency rent in the amount of \$50,575 per month ("Rent"), due and payable on or before the first day of each month, commencing on the Effective Date for the first year of the term. The amount of monthly rent shall increase by 4% annually, making the monthly rent amount as follows:

Year 2: \$52,598.36

Year 3: \$54,702.30

Year 4: \$56,890.39

Year 5: \$59,166.01

Checks should be made payable to the City of Escondido as Successor Agency and delivered to Attn: Accounts Receivable at 201 N. Broadway, Escondido, CA 92025.

3.2 *Holdover Rent.* Rent for any holdover as described in Paragraph 2 of this Lease shall be equal to the previous year's Rent plus an additional 2% of the Base Rent amount stated in Paragraph 3.1 of this Lease.

3.3 *Late Fee.* Rent payments received after the fifth day of any month during the Term of this Lease will be considered late and Lessee shall be charged the Rent plus an additional 5% of the Base Rent amount stated in Paragraph 3.1 of this Lease.

4. **Security Deposit.** Lessee shall pay to the Successor Agency a security deposit in the amount of \$59,166.01 prior to the Effective Date.

5. **Utility Payments.** Lessee shall pay before delinquency all charges for utilities and services necessary for Lessee's occupancy and use of the Premises, including but not limited to the following: gas, water, electricity, sewage charges, trash, and any telecommunications services.

6. **Taxes, Assessments, and Fees.**

6.1 The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee shall pay, prior to delinquency, all taxes and assessments that may be levied upon or assessed against the Premises and all taxes and assessments of every kind and nature whatsoever arising in any way from the use, occupancy, or possession of the Premises or assessed against the improvements situated thereon. Neither the City of Escondido ("City") or the Successor Agency shall be required to pay any taxes or assessments whatsoever that relate to or may be assessed against this Lease or the Premises, including but not limited to any buildings, improvements, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.

6.2 Lessee may, at its option, contest in good faith, and by an appropriate and timely legal proceeding, any such tax and assessment; provided, however, that Lessee shall indemnify and hold harmless the City and the Successor Agency from any loss or damage resulting from any such contest, and all expenses of the same (including, without limitation, all attorneys' fees, court costs, and other costs) shall be paid solely by Lessee.

6.3 Lessee further agrees not to allow such taxes, assessments, or fees to become a lien against the Premises or any improvement thereon. Nothing in this Lease shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment, or fee in any manner authorized by law.

7. **Use.**

7.1 *Permitted Uses.* Lessee shall use and occupy the Premises exclusively for the following uses: Showcase, inside and outside storage and sales of kitchen remodeling materials. Lessee's use and occupancy of the Premises shall comply with all provisions and requirements contained in any permits or approvals issued by the City of Escondido or any other governmental agency relating to the Premises. Lessee shall not use or occupy, nor permit the use or occupancy of, the Premises other than as authorized in this Lease.

7.2 *Prohibited Use.* Lessee shall not use or allow the Premises to be used for any unlawful purpose, nor shall Lessee cause or maintain or permit any nuisance in, on, or about the Premises. Lessee shall not commit or suffer the commission of any waste in, on, or about the Premises. Lessee shall not use or permit the use of the Premises for any purpose prohibited by this Lease.

7.3 *Use Determination.* In any case where Lessee is in doubt as to the propriety of any particular use, Lessee may request written determination of the Successor Agency that such use is or is not permitted at the Premises.

7.4 *Right to Inspect.* The Premises shall at all times be open to inspection by all local, state, and federal governmental authorities. In the event the City or the Successor Agency determines

that Lessee's use of the Premises creates an unnecessary or unreasonable risk to the Premises or to public health, safety, or welfare, the City or the Successor Agency may require that Lessee cease using the Premises until such risk no longer exists.

7.5 *Pets.* No pets or livestock of any kind may be kept on the Premises throughout the Term without the prior written consent of the City's Real Property Manager.

8. **Acceptance and Maintenance.**

8.1 Lessee hereby acknowledges and agrees that Lessee has inspected the Premises and Lessee accepts said Premises "as is" and "where is." With the exception of the leaking roof which lessor shall repair within 90 days of lease effective date. Lessor to deduct \$10,000 from first month's rent to repair broken bathroom toilets/drains. Lessee acknowledges that the Successor Agency makes no representations as to the condition or suitability of the Premises or any improvements on the Premises.

8.2 Pursuant to the noticing requirements of California Civil Code section 1938, Lessee acknowledges that the Premises being leased has not undergone inspection by a Certified Access Specialist (CASP). Pursuant to California Civil Code section 1938(e), the Successor Agency states as follows:

a. A CASp can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the Successor Agency may not prohibit Lessee from obtaining a CASp inspection of the Premises, if requested by Lessee. Should Lessee request a CASp inspection, the Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

b. Lessee hereby expressly agrees that the CASp inspection fee and any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp's inspection report are the sole responsibility of Lessee.

8.3 Lessee agrees to maintain the Premises in good condition and in compliance with all applicable property maintenance and related laws. Lessee releases the City and the Successor Agency from any obligation to maintain any portion of the Premises. Said release is part of the consideration for the rental of the Premises, and Lessee therefore waives all rights it may otherwise have under California Civil Code sections 1941 and 1942.

8.4 In the event Lessee fails to properly maintain the Premises as required by the Successor Agency, the Successor Agency shall notify Lessee in writing of the same. If Lessee fails to correct the identified insufficient maintenance within 30 days of the Successor Agency's notice, the Successor Agency may either:

a. Treat Lessee's failure as an Event of Default pursuant to Paragraph 11.2 of this Lease; or

b. Perform such maintenance as the Successor Agency deems necessary, at Lessee's sole cost, to keep the Premises in good condition and in compliance with all applicable property maintenance and related laws ("Necessary Maintenance"). If the Successor Agency performs Necessary Maintenance, costs resulting therefrom may include, but are not limited to, labor, material, and equipment. Upon completion of Necessary Maintenance by the Successor Agency, the Successor

Agency shall provide Lessee with an invoice for all Necessary Maintenance costs. Lessee shall pay the Successor Agency the full invoiced amount within 10 days of receipt of the invoice. Lessee's failure to pay the full invoiced amount within 10 days of receipt of the invoice may be treated as an Event of Default pursuant to Paragraph 11.2 of this Lease.

9. **Alterations.** Lessee shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the City's Real Property Manager and only after obtaining all applicable permits and approvals. Any improvements to the Premises during the Term shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.

10. **Occupancy, Assignment, and Subletting.**

10.1 *Occupancy.* Lessee shall take occupancy of the Premises within 30 days of the Effective Date of this Lease. The Premises shall only be occupied by Lessee, except with prior written consent of the City's Real Property Manager.

10.2 *Assignment and Subletting.* Lessee may not assign or sublease any interest in this Lease to any third party, at any time, including by means of a transfer of a controlling interest in Lessee, without prior written consent of the City's Real Property Manager.

11. **Lease Termination.**

11.1 *Event of Default.* The following shall constitute an event of default ("Event of Default") whereby the Successor Agency may immediately terminate this lease upon written notice:

a. Lessee's violation of any provision of this Lease, excluding a default in the timely payment of Rent or other payment required to be made by Lessee under this Lease as described in Paragraph 11.1(b) of this Lease; or

b. Lessee's default in the timely payment of Rent or other payment required to be made by Lessee under this Lease, where such default is not cured within five business days after written notice of such default is given to Lessee.

11.2 *Vacation of Premises.* Upon termination of this Lease for any reason, Lessee shall peaceably vacate and deliver the Premises to the Successor Agency in the same condition as Lessee found it upon Lessee's acceptance of the Premises hereunder, excepting ordinary wear and tear and other conditions accepted in the Successor Agency's sole and absolute discretion.

11.3 Upon termination of this Lease, Lessee shall immediately:

a. Arrange and pay for the disconnection of all utilities and services as referenced in Paragraph 5 of this Lease;

b. Provide a written statement to the City's Real Property Manager identifying Lessee's new address for purpose of refunding monies, if any, due Lessee under this Lease; and

c. Deliver any keys for the Premises to the City's Real Property Manager, the means of such delivery consisting of personal delivery or, if in-person delivery is not possible, by certified mail.

12. **Notice.** Unless otherwise provided herein, any statements, communications, or notices to be

Lease Agreement

provided pursuant to this Lease shall be sent by personal delivery, certified or registered mail, or email to the addresses and to the attention of the persons set forth herein. Either Party shall provide the other Party with 10 days' written notice of any change of person to be notified or change of address.

If to Lessee:

Big & Bold Wholesale
1043 W 11th Ave
Escondido, CA 92025]
Attn: Liwei Yang Pua
Phone 858-885-5470
Email

If to the Successor Agency:

City of Escondido, Successor
Agency
201 N. Broadway
Escondido, CA 92025
Attn: Jennifer Schoeneck
Director of Economic
Development
760-839-4587
jschoeneck@escondido.org

13. **Indemnification, Hold Harmless, Duty to Defend.**

13.1 Lessee shall indemnify, hold harmless, and defend the City and the Successor Agency, its boards, commissions, departments, officials, officers, agents, employees, and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, liens, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), and any attorney's, consultant, or expert fees and Successor Agency staff costs for investigating and responding to any Claims, and provide and pay all costs for a defense of any and all Claims against any of the Indemnified Parties, in connection with this Lease or any component thereof; the validity, applicability, or implementation of this Lease; the presence of Hazardous Materials caused by lessee as defined in this Lease; or Lessee's use of the Premises.

13.2 Lessee shall further indemnify, protect, defend, and hold harmless the Indemnified Parties from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board Region 9, San Diego, that the City or the Successor Agency might suffer, incur, or become subject to by reason of, occurring as a result of, or allegedly caused by, this Lease or Lessee's use of the Premises.

13.3 All provisions within this Section 11 shall survive termination of this Lease.

14. **Insurance.**

14.1 Lessee shall procure and maintain, at its own cost, during the entire term of this Lease, insurance against claims for injuries to persons or damages to property that may arise from or in connection with this Lease, and the results of Lessee's use of the Premises, by Lessee, its agents, representatives, employees, or volunteers. Insurance coverage shall be at least as broad as the following:

a. *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence/\$4,000,000 general aggregate.

b. *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

c. *Property Insurance.* Lessee shall procure and maintain property insurance against all risks of loss to any Lessee improvements or betterments, at full replacement cost with no coinsurance penalty provision. Property insurance shall include not less than \$1,000,000 Fire Legal liability on the Premises, including improvements and betterments owned by the Successor Agency, and shall name the Successor Agency as a loss payee. Lessee shall also provide fire insurance on all personal property contained within or on the Premises. The policy must be written on an "all risks" basis, excluding earthquake and flood. The contract shall insure for not less than 90% of the actual cash value of the personal property, and Lessee shall name the City and the Successor Agency as an additional insured.

d. *Interruption of Business Insurance.* Lessee shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to the Successor Agency for a period of up to one year if the Premises is destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

e. If Lessee maintains broader coverage and/or higher limits than the minimums otherwise required by this Lease, the City and Successor Agency requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee.

14.2 Each insurance policy required by this Lease must be acceptable to the City Attorney and shall meet the following requirements:

a. *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the Successor Agency.

b. *Additional Insured Status.* Lessee's Commercial General Liability policy must name the City and the Successor Agency (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used.

c. *Primary Coverage.* Lessee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the City and Successor Agency, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City or Successor Agency, its officials, officers, agents, employees, or volunteers shall be in excess of Lessee's insurance and shall not contribute with it.

d. *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the Successor Agency.

e. *Waiver of Subrogation.* Lessee hereby grants to the City and Successor Agency a waiver of any right to subrogation that any insurer of Lessee may acquire against the City or Successor Agency by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply

regardless of whether or not the City or Successor Agency has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Lease shall be endorsed with a waiver of subrogation in favor of the City and Successor Agency for all work performed by Lessee, its agents, representatives, employees and volunteers.

f. *Self-Insurance.* Lessee may, with the Successor Agency's prior written consent, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance if, in the opinion of the Successor Agency, Lessee's (i) net worth and (ii) reserves for payment of claims of liability against Lessee are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit the liabilities assumed by Lessee pursuant to this Lease.

g. *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the Successor Agency.

14.3 *Verification of Coverage.* At the time Lessee executes this Lease, Lessee shall provide the Successor Agency with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Lease), which shall meet all requirements under this Lease. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Lease, at any time.

14.4 *Special Risks or Circumstances.* The Successor Agency reserves the right, at any point during the term of this Lease, to modify the insurance requirements in this Lease, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

14.5 *No Limitation of Obligations.* The insurance requirements within this Lease, including the types and limits of insurance coverage Lessee must maintain, and any approval of such insurance by the Successor Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Lease, including but not limited to any provisions within this Lease concerning indemnification.

14.6 Failure to comply with any of the insurance requirements in this Lease, including but not limited to a lapse in any required insurance coverage during the term of this Lease, shall be a material breach of this Lease. In the event that Lessee fails to comply with any such insurance requirements in this Lease, in addition to any other remedies the Successor Agency may have, the Successor Agency may, at its sole option, (i) immediately terminate this Lease; or (ii) order Lessee to immediately vacate the Premises until Lessee demonstrates compliance with the insurance requirements in this Lease.

15. **Memorandum of Lease Agreement.** Promptly upon execution of this Lease, the Parties shall execute a Memorandum of Lease Agreement ("Memorandum"), in a form and content substantially similar to that contained in Exhibit B of this Lease. The Memorandum shall be filed with the San Diego County Recorder's Office and recorded in the Official Records of San Diego County, as required by Government Code section 37393. Lessee shall pay for all recording costs and fees as determined by the San Diego County Recorder's Office.

16. **Miscellaneous.**

16.1 *Provisions Cumulative.* All provisions contained herein are cumulative and in addition to and not in limitation of any other rights or remedies available to the Successor Agency.

16.2 *Merger Clause.* This Lease and its attachments, if any, constitute the entire understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Lease and any attachments, the provisions of this Lease shall prevail.

16.3 *Anti-Waiver Clause.* None of the provisions contained herein shall be waived because of the Successor Agency's previous failure to insist upon strict performance, nor shall any provision be waived because the Successor Agency has waived any other provision, in whole or in part.

16.4 *Severability.* This Lease shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Lease shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Lease.

16.5 *Choice of Law.* This Lease shall be governed by the laws of the State of California. Venue for any action arising from this Lease, including but not limited to matters concerning validity, construction, performance, or enforcement shall be exclusively in the state or federal courts located in San Diego County, California.

16.6 *Entire Lease.* This Lease, together with its attachments or other documents, if any, described or incorporated herein, contains the entire Lease and understanding concerning the subject of this Lease and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. Each of the Parties hereto acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Lease and acknowledges that this Lease has not been executed in reliance upon any promise, representation, or warranty not contained herein. This Lease shall supersede any leases or rental agreements heretofore made or issued for the Premises between the Successor Agency and Lessee.

16.7 *Amendment.* This Lease may not be amended except in a writing signed by all of the Parties hereto, and then only in the specific instance and for the specific purpose given.

16.8 *Independent Investigation.* The Parties acknowledge that they have conducted an independent investigation of the facts concerning the subject matter of this Lease. The Parties agree that the factual recitals are correct and expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

16.9 *Advice of Counsel.* The Parties hereby acknowledge that they have executed this Lease after having the opportunity to consult with, and receive the advice of, their own counsel.

16.10 *Capacity.* Each individual signing this Lease represents and warrants that he or she has been authorized to do so by proper action of the Party on whose behalf he or she has signed.

16.11 *Attorney's Fees.* In any action to enforce the terms of this Lease, the Parties agree that the prevailing party shall be entitled to its reasonable attorney's fees and all costs, fees, and expenses, including the fees of expert witnesses and consultants, whether or not such costs, fees, and expenses are recoverable or allowed as costs under California Code of Civil Procedure section 1033.5. In addition to the foregoing award of attorney's fees and costs, the prevailing party shall be entitled to its attorney's

fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Lease.

16.12 *Counterparts.* This Lease may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Lease by electronic means, including an attachment to an email, shall be effective as delivery of an executed original.

16.13 *Compliance with Federal, State, and Local Laws.* Lessee acknowledges, understands, and agrees that it is the duty of Lessee, while operating under this Lease, to comply with all federal, state, and local laws, and to indemnify the City and the Successor Agency from any violation of any such law. Failure to comply with a provision of federal, state, or local law shall constitute an Event of Default and is grounds for the Successor Agency's immediate termination of this Lease.

16.14 *Non-Discrimination.* Lessee understands, acknowledges, and agrees that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against any person or group of persons on account of race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, or an individual's status in any group or class protected by applicable federal, state, or local laws, in the use, occupancy, tenure, or enjoyment of the Premises. Lessee shall not establish or permit any such practice of discrimination with reference to the treatment, selection, location, number, or occupancy of customers, tenants, or vendees on the Premises.

16.15 *Hazardous Materials or Contaminated Soil.* Lessee shall not place or permit to be placed any chemical, material, or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state, or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Premises, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (CERCLA); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. (RCRA), that requires special handling in collection, storage, treatment, and/or disposal ("Hazardous Materials"). Lessee also hereby covenants and agrees that if at any time it is determined there are Hazardous Materials or contaminated soils located on the Premises, Lessee shall immediately notify the Successor Agency. Within 30 days of notice to the Successor Agency, Lessee shall commence all necessary action, at Lessee's sole cost and expense, to ensure the Hazardous Materials or contaminated soil are removed from the Premises and shall otherwise ensure swift compliance with all applicable federal, state, and local laws and other environmental requirements.

16.16 *Special Provisions.* Lessee hereby acknowledges that Lessee waives all rights to any form of relocation assistance provided for by local, state, or federal law to which Lessee may be entitled by reason of this Lease.

16.17 *Effective Date.* Unless a different date is provided in this Lease, the effective date of this Lease shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties below are authorized to act on behalf of their organizations, and have executed this Lease as of the Effective Date.

SUCCESSOR AGENCY

Date: _____

Dane White, Mayor

[BIG&BOLDWholesale]

Date: _____

(Liwei Yang Pua, President)

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

City of Escondido

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me, _____, a
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

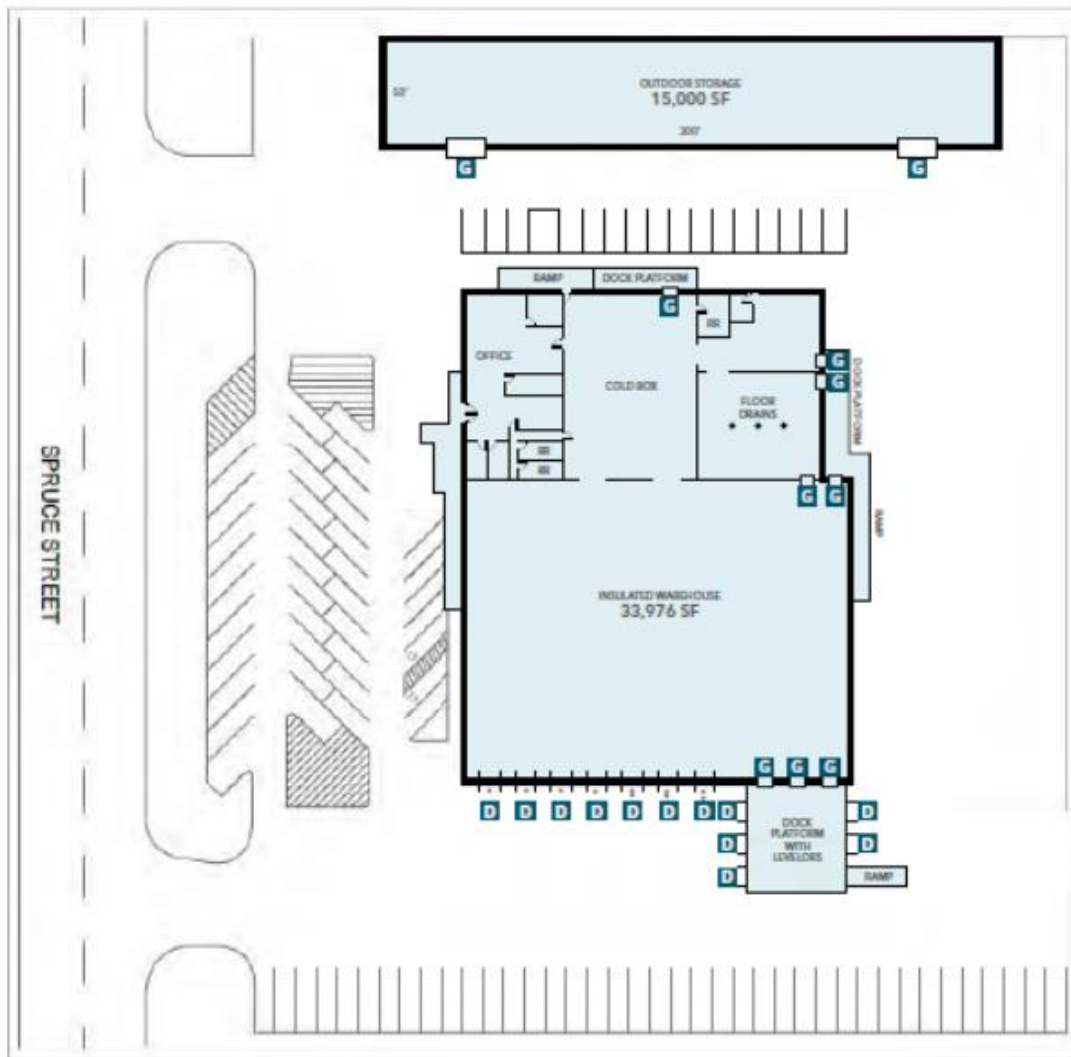
Signature: _____ (Seal)

[Lessee]

EXHIBIT A

PLOT PLAN

480 Spruce Street, Escondido, CA 92025



EXEMPT FROM FEES pursuant to
Gov't Code §§ 6103, 27383, and 27388.1
(filing requested/executed by municipality)

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

Attn: Real Property Manager
City of Escondido
201 North Broadway
Escondido, California 92025-2798

This Space for Recorder's Use Only

APN [232-091-28-00]
Escondido Document No. [M-18-23-]

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement ("Memorandum") is dated _____ 20____, and is made between the City of Escondido, as Successor Agency to the Redevelopment Agency of the City of Escondido ("Successor Agency") and Big & Bold Wholesale, a California corporation ("Lessee"), concerning the Successor Agency's real property located at 480 N Spruce Street Escondido, CA 92025], and having assessor's parcel number (APN) 232-091-28-00, as more particularly described in Exhibit A of this Memorandum, which is attached hereto and incorporated herein by this reference ("Premises"). (The Successor Agency and Lessee each may be referred to herein as a "Party" and collectively as the "Parties.")

For good and valuable consideration, the Successor Agency has leased the Premises to Lessee subject to the terms and conditions contained within that certain Lease Agreement executed by the Parties dated _____, 20____ and incorporated herein by this reference ("Lease"), including without limitation provisions prohibiting assignment, subleasing, and encumbering any interest in the Lease without the prior written consent of the Successor Agency, all as more specifically set forth in the Lease.

The term of the Lease is for 59 months, commencing on October 1, 2023 ("Effective Date") and ending on August 31, 2028.

In the event that the Lease has been terminated, the Successor Agency shall have the unilateral right to record a Termination of this Memorandum which shall have the effect of terminating this Memorandum when recorded in the public record.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease's provisions, and in the event of conflict between this Memorandum and the Lease, the Lease shall control.

This Memorandum may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties below are authorized to act on behalf of their organizations, and have executed this Memorandum as of the Effective Date.

SUCCESSOR AGENCY

Date: _____

Dane White, Mayor

BIG & BOLD WHOLESALE

Date: _____

Liwei Yang Pua, President

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me,

_____, a Notary Public, personally appeared
_____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

City of Escondido

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me,

_____, a Notary Public, personally appeared
_____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Big & Bold Wholesale

Exhibit A

Legal Description of Premises

That certain real property in the County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NO. 12361, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 6, 1982 AS FILE NO. 82-307983 OF OFFICIAL RECORDS.

480 N. SPRUCE STREET - COMMISSION AGREEMENT

September 15, 2023

City of Escondido Successor Agency
c/o Jennifer Schoeneck
Director of Economic Development
201 N. Broadway
Escondido, CA 92025

**Re: Commission Agreement
Lease of 480 N. Spruce Street, Escondido, CA**

Jennifer:

This confirms our agreement that in the event the lease between Big and Bold Wholesale ("Lessee"), which lease shall be guaranteed by HD Wholesale ("Guarantor"), and the Successor Agency ("Lessor") is consummated, the City of Escondido Successor Agency, as the Lessor of the building, agrees to pay Kidder Mathews a commission in the amount of 2% of the total lease consideration and pay Venture Pacific Commercial Services a commission in the amount of 3% of the total lease consideration, which shall be paid upon a lease being fully executed and Lessee taking occupancy of the property. If the lease does not get signed for any reason, a commission will not be paid.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Each of the individuals signing this Agreement represents and warrants that he or she is authorized to execute and deliver this Agreement. If this Agreement gives rise to a lawsuit or other legal proceeding between the parties hereto, the prevailing party shall be entitled to recover actual court costs and reasonable attorneys' and experts' fees in addition to any other relief to which such party may be entitled.

If the foregoing accurately sets forth our understanding, please sign and return to me.

I look forward to working with you and finalizing the transaction.

Sincerely,

Kidder Mathews of California, Inc.

Eric Paulsen
Regional President|Brokerage|Southern CA & AZ
LIC # 01001040

LESSOR: City of Escondido
Successor Agency

AGENT: Todd Davis

By: _____
Authorized Agent

By: _____
Todd Davis

Title: _____

Title: Senior Vice President
License #01383147

Date: _____

Date: _____

KEY-

CONSENT CALENDAR CURRENT BUSINESS

PUBLIC HEARING WORKSHOP

Item2.



CITY *of* ESCONDIDO

FUTURE AGENDA

9/27/2023 - COUNCIL VISION AND STRUCTURAL DEFICIT STRATEGY WORKSHOP PART 2

10/4/2023 - NO MEETING