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*Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego*

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CITY OF SAN DIEGO

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO CENTRAL DIVISION**

16 CITY OF SAN DIEGO, a Municipal
17 corporation;

18 Plaintiff,

19 v.

20 101 ASH, LLC, a Delaware limited liability
company; WILMINGTON TRUST,
21 NATIONAL ASSOCIATION, an unknown
business entity, as trustee of CGA CAPITAL
22 CREDIT LEASE-BACKED PASS-THROUGH
TRUST, SERIES 2017-CTL-1; and DOES 1
23 through 20, inclusive,

24 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF AND REFORMATION**

1 Comes now Plaintiff City of San Diego (“City”) and alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. City comes now before the Court requesting an order confirming that the language
4 of its lease with Defendants permits abatement of rental payments during a period that the leased
5 premises cannot be occupied, as an alternative reading of the lease would violate the prohibitions
6 detailed in Article 16, Section 18(a), of the California Constitution, known as the constitutional
7 debt limitation.

8 2. City asserts that jurisdiction and venue are proper before this Court as the events
9 which underlie this lawsuit occurred within the City of San Diego and County of San Diego.

10 3. City is, and at all times herein mentioned was, a California Charter City, duly
11 organized and existing by virtue of the laws of the State of California.

12 4. City is informed and believes, and thereon alleges, that Defendant 101 Ash, LLC is
13 a limited liability company existing under the laws of the State of Delaware, registered to do
14 business in the State of California, with its principal place of business located in San Diego
15 County, California.

16 5. City alleges that Defendant Wilmington Trust, National Association (“Wilmington
17 Trust”), an unknown business entity, is the trustee of CGA Capital Credit Lease-Backed Pass-
18 Through Trust, Series 2017-CTL-1, and has a principal place of business in Baltimore, MD.

19 6. The true names and capacities of Defendants named as DOES 1 through 20,
20 inclusive, whether individual, corporate, or otherwise, are unknown to City, which is informed and
21 believes, and therefore alleges, that each of said fictitiously named Defendants is liable to City on
22 the causes of action herein alleged, and, therefore, City sues such Defendants by said fictitious
23 names. City will move to amend this complaint when the true names and capacities of said
24 fictitiously named Defendants have been ascertained.

25 7. City is informed and believes, and thereon alleges, that at all times herein
26 mentioned each of the Defendants was the agent and/or employee of each of their Co-Defendants,
27 and in doing the things herein mentioned, was acting within the scope and course of the authority
28 of such agency and/or employment, and with the express or implied permission and consent of

1 their Co-Defendants.

2 8. On November 15, 2016, City approved a “Lease Agreement” relating to the 101
3 Ash Street building, as set forth in Ordinance OO-20745, and effective January 3, 2017
4 (hereinafter the “Lease”).

5 9. The Lease grants the City certain tenancy rights and obligations with respect to a
6 21-story commercial office building located at 101 Ash Street, San Diego, California (the
7 “Premises”) with 101 Ash, LLC having certain landlord rights and obligations.

8 10. On January 3, 2017, 101 Ash, LLC and Wilmington Trust entered into an
9 Assignment of Lease and Rents with respect to the Premises. The Assignment of Lease and Rents
10 is notarized in San Diego, California and contains a selection of law clause and a jurisdiction
11 clause in favor of California.

12 11. Pursuant to the Assignment of Lease and Rents, City was directed to make rental
13 payments under the Lease directly to Wilmington Trust and did in fact make rental payments
14 directly to Wilmington Trust.

15 12. On January 16, 2020, the County Air Pollution Control District issued a Public
16 Nuisance Violation for asbestos found in the Premises. The County Air Pollution Control District
17 stated the Premises should be shut down because the Premises was unsafe for human occupancy.

18 13. Since January 16, 2020, City has not been able to occupy the 101 Ash Street
19 building and it remains unoccupied.

20 14. City made rental payments from January 2017 through August 2020 as set forth in
21 the Lease.

22 15. On September 1, 2020, City, through the Mayor of San Diego, announced it would
23 be suspending further lease payments for the Premises, and in furtherance thereof, City advised the
24 landlord of the Premises of same, citing that the City could not occupy the building and use the
25 building for the purposes which were intended.

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1 **FIRST CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **(Against All Defendants)**

4 16. City hereby incorporates by reference and realleges each allegation above as
5 though fully set forth herein.

6 17. City and 101 Ash, LLC entered into the subject Lease pertaining to the rights and
7 obligations of each with respect to the Premises, a 21-story commercial office building located at
8 101 Ash Street, San Diego, California.

9 18. Pursuant to Section 5(a), Section 5(b), Section 11(a), and Section 11(i) of the
10 Lease, certain events give rise to abatement of rent such that the City is not obligated to pay rent to
11 Defendants.

12 19. Section 11(a) defines a “Destruction” of the Premises as “an event of loss, damage
13 or destruction, whether by fire or hazard or other casualty to all or any portion of the Premises (a
14 “**Casualty**”) that is caused by a peril which is or should have been covered by a policy of
15 insurance described in Section 12 of [the] Lease.”

16 20. Section 12(a) of the Lease identifies specific insurances that the City is required to
17 maintain including risk property insurance, commercial general liability, and business interruption
18 insurance.

19 21. Section 11(i) states that “during any period in which, by reason of an event of
20 Destruction, there is substantial interference with the use and occupancy by Tenant of any portion
21 of the Premises, payments of Base Rent due hereunder with respect to the Premises shall be
22 abated” to the extent of the loss.

23 22. An event of loss, damage, or destruction has occurred at the Premises that was
24 caused by a peril that should be covered by insurance.

25 23. The event of loss, damage, or destruction has resulted in substantial interference
26 with the use and occupancy by the City of the Premises, such that City is not able to occupy any
27 portion of the Premises as envisioned by the Lease.

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