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14		Ε STATE OF CALIFORNIA	
15	SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO CENTRAL DIVISION		
16	CITY OF SAN DIEGO, a Municipal	Case No.	
17	corporation;	COMPLAINT FOR DECLARATORY	
18	Plaintiff,	RELIEF AND REFORMATION	
19	v.		
20	101 ASH, LLC, a Delaware limited liability		
21	company; WILMINGTON TRUST, NATIONAL ASSOCIATION, an unknown		
22	business entity, as trustee of CGA CAPITAL CREDIT LEASE-BACKED PASS-THROUGH		
23	TRUST, SERIES 2017-CTL-1; and DOES 1 through 20, inclusive,		
24	Defendants.		
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	CITY OF SAN DIEGO'S COMPLAINT FOR D	1 ECLARATORY RELIEF AND REFORMATION	

Comes now Plaintiff City of San Diego ("City") and alleges as follows:

## GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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their Co-Defendants.

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

9. The Lease grants the City certain tenancy rights and obligations with respect to a 21-story commercial office building located at 101 Ash Street, San Diego, California (the "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.

15. On September 1, 2020, City, through the Mayor of San Diego, announced it would
be suspending further lease payments for the Premises, and in furtherance thereof, City advised the
landlord of the Premises of same, citing that the City could not occupy the building and use the
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	" <u>Casualty</u> ") 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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24. The Premises are therefore unusable for the purposes intended and thereby confer
 no value to City.

3 25. Defendants are aware of the destructive event, that City is not occupying the
4 building, and that the purpose of the Lease is not being achieved, but nonetheless have continued
5 to demand that rental payments be made on a monthly basis.

6 26. By reason of the foregoing, a dispute has arisen and an actual controversy exists
7 between City and Defendants relating to their legal rights and duties, specifically as to whether
8 City is entitled to rent abatement pursuant to the Lease during the period of time it is not able to
9 use and occupy the Premises as envisioned by the Lease.

To the extent Defendants deny that the Lease permits rent abatement during the
period of time City is not able to use and occupy the Premises, the rental payments would be in
violation of Article 16, Section 18(a), of the California Constitution's debt limitation provision as
the payments are not "contingent on receipt of some additional, contemporaneous consideration,
such as the [City's] ongoing use and occupancy of the building." *Rider v. City of San Diego*(1998) 18 Cal.4th 1035, 1049, *citing Dean v. Kuchel* (1950) 35 Cal.2d 444, 445.

16 28. City therefore asks this Court for a declaration of the respective rights, duties, and
17 obligations of City and Defendants with respect to the Lease. There is no plain, adequate, or
18 speedy remedy at law. It is therefore fair, just, and appropriate that the Court determine the
19 relative rights and obligations of said parties in this proceeding.

## <u>SECOND CAUSE OF ACTION</u> REFORMATION

## (Against All Defendants)

23 29. City hereby incorporates by reference and realleges each allegation above as
24 though fully set forth herein.

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

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31. The parties agreed and intended for the Lease to comply with all applicable laws,
 including Article 16, Section 18(a) of the California Constitution.

3 32. Article 16, Section 18(a) of the California Constitution requires, *inter alia*, that the
4 obligation of City to pay rent be contingent upon the continued use of the leased property. *See*,
5 *e.g.*, *Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1055.

33. To the extent that Sections 5(a), 5(b), 11(a), and/or 11(i) of the Lease do not permit
abatement of rent in the circumstance where City is not able to occupy the Premises as envisioned
by the Lease, the parties have made a mutual mistake when reducing the agreement to writing in
drafting an impermissibly narrow abatement provision. The Lease therefore does not truly express
the intention of the parties.

11 34. Accordingly, City requests judicial reformation of the Lease to include a provision
12 that permits abatement of the rent where City is not able to occupy the Premises as envisioned by
13 the Lease.

## PRAYER FOR RELIEF

15 **WHEREFORE**, City prays for judgment against Defendants as follows:

- For a judicial declaration that City's rent payments under the Lease shall be abated so long as the insured loss causes substantial interference with City's use and occupancy of the Premises;
  - 2. For reformation of the Lease to include a provision that permits abatement of the rent where City is not able to occupy the Premises as envisioned by the Lease;
  - 3. For costs of suit incurred herein;
    - 4. For reasonable attorneys' fees incurred; and
  - 5. For such other and further relief as the Court may deem just and proper.

24 Dated: October 9, 2020

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SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP

By:

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