

SETTLEMENT AND
MUTUAL RELEASE AGREEMENT

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
CHICAGO TITLE COMPANY

BY Rene D. Marshall
ESCROW OFFICER

This Settlement Agreement and Mutual Release [Agreement] is made and entered into by and between the CITY OF SAN DIEGO [City] and WAVE THE PLANET, LLC, a California limited liability company [Lessee] with respect to the following facts.

- A. City owns the real property located in San Diego California, described on attached Exhibit "A" and commonly known as Belmont Park [the Park].
- B. City and Belmont Park Associates executed a Percentage Lease dated March 4, 1987 [the Percentage Lease] for the development and operation of the Park. The Percentage Lease was clarified and amended in an Operating Memorandum to Percentage Lease dated December 23, 1987; a Second Operating Memorandum to Percentage Lease dated December 11, 1990; a Third Operating Memorandum to Percentage Lease dated February 25, 1991; a Fourth Operating Memorandum to Percentage Lease dated August 12, 1991; and a Fifth Operating Memorandum to Percentage Lease dated June 26, 2000 [collectively, the Lease]. The Lease was assigned to PARS Belmont Park, LLC in a Lessor Consent, Estoppel and Nondisturbance Agreement dated December 1, 1995, which interest was subsequently assigned to Lessee as successor-in-interest on June 22, 2000.
- C. The Fifth Operating Memorandum requires Lessee to spend at least \$4 million over a four-year period on improvements at the Park, intended to revitalize the Park with a new business concept, including recreational water features, retail shops and restaurants.
- D. On April 15, 2002, the City Manager issued a Notice of Default with respect to the Lease contending that Lessee has 1) failed to pay required percentage rent under the Lease, 2) failed to repair and maintain the leased premises as required by the Lease, 3) failed to diligently conduct or cause the business to be conducted on the premises to produce the most gross income that can be reasonably expected as required in Article 1.02 of the Lease; and 4) failed to competently manage the property in accordance with Article 1.06 of the Lease.
- E. Lessee disputes the various allegations of default and contends that compliance with improvement requirements for portions of the premises is commercially impracticable. City disputes Lessee's contention.
- F. City and Lessee desire to resolve and settle their disputes and claims as between them arising out of or relating to the Lease, and for the mutual release of all claims between them arising out of or relating to the Lease on the terms and conditions set forth below. As further consideration, City desires Lessee to assign Lease to Wave House San Diego, LLC and Lessee has agreed to do so.

The parties agree:

1. Mutual Release. Excepting the rights and obligations expressly created by and described in this Agreement, City and Lessee, mutually, on behalf of themselves and their successors, assigns,

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agents, officers, directors, stockholders, members, managers, partners and representatives, hereby fully, finally and forever release, acquit and discharge each other and each of, their successors, assigns, agents, employees, officers, directors, stockholders, partners and representatives and all other persons and entities now or hereafter affiliated with them (hereinafter collectively referred to as "Affiliated Entities and Persons"), from any and all liabilities, claims, demands, actions, cause of action, liens, obligations, indebtedness, damages losses, suits, costs, expenses and demands of any nature whatsoever (hereinafter collectively referred to as "Claims"), known or unknown, foreseen or unforeseen, arising now or hereafter out of or related to the Lease, the Lessor Consent, Estoppel and Nondisturbance Agreement, all matters set forth in the Notice of Default dated April 15, 2002, all matters related to or arising from the Lease and any other agreements, understanding or dealings between the parties relating to or arising out of the foregoing.

2. Mutual Waiver of Statutory Rights. In connection with the above release, each of the parties to this Agreement expressly waives all rights which may exist under section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is understood and agreed that the release provision in Section 1 above is a full and final release of all liability, claims, demands, actions, causes of action, and rights of every nature and kind whatsoever and that it extinguishes claims that are known, unknown, foreseen, or unforeseen. The parties understand and acknowledge the significance and consequence of this specific waiver of Civil Code section 1542 and assume full responsibility for any injuries, damages, losses, or liability that each of them may hereafter incur.

Each party represents and warrants that it has not assigned, transferred or purported to assign or transfer, and will not hereafter transfer, assign, or purport to assign or transfer, to any person or entity, any Claim which is the subject of the release set forth in section 1 of this Agreement.

3. Terms of Settlement.

- A. City and Lessee shall execute a consent to the assignment of the Lease to Wave House San Diego, LLC, a California limited liability company, on the terms and conditions of the Consent to Assignment attached as Exhibit 1 to this Agreement.
- B. Effective upon assignment of the Lease, pursuant to Section 3.A., above, Lessee shall be relieved of all obligations under the Lease up to the effective date of the Assignment of Ground Lease.

4. Representation Regarding Authority. Those parties, as individuals or as representative of corporate parties, partnerships, or the City, executing this Agreement, and each of them, represent and warrant that they are over the age of twenty-one and are legally authorized and

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competent to execute this Agreement which is intended to be a legally binding contract dealing with the release and/or conveyance of certain valuable, important rights.

Each individual signing this Agreement on behalf of a party represents and warrants to the other party that he or she is authorized to execute this Agreement on behalf of such party.

The execution, delivery and/or performance of this Agreement are within the power and authority of each party, have been duly authorized by all necessary action and do not and will not require any authorization which has not been obtained, contravene any charter documents of such party.

5. Time. Time is of the essence in the preparation and execution of this Agreement.

6. Independent Counsel. Each of the parties to this Agreement acknowledges and represents that it has been represented by independent counsel of its own choice throughout all negotiations which preceded the execution of this Agreement, and that it has freely and voluntarily executed this Agreement with the consent and upon the advice of counsel. Each of the parties to this Agreement further represents that it has read this Agreement and has had the terms used herein and the consequences thereof explained by counsel. _____

7. Complete Terms of Settlement Contained in this Agreement. This Agreement memorializes and constitutes the entire Agreement and understanding between the parties, and supersedes and replaces all prior negotiations, proposed Agreements and Agreements, written or unwritten. Each of the parties acknowledges that no other party nor any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, whether expressed, implied, or statutory, not contained herein concerning the subject matter of the Agreement, to induce the parties to execute the Agreement, and acknowledges that it has not executed this release in reliance on any such promise, representation, or warranty not contained herein. This Agreement may be modified or amended only by a writing signed by all parties to this Agreement which specifically states that it is an amendment to this Agreement

8. Agreement Not Admission Of Liability. It is expressly understood, acknowledged, and agreed to by the parties that by reason of entering into this Agreement, no party admits, expressly or impliedly, any fact or liability of any type with respect to any matter, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions of any party. No party has made any such admissions, and this Agreement is entered into solely by way of compromise and settlement only.

9. California Law. This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced, and governed by the laws of the State of California.

10. Attorney's Fees. In the event litigation is commenced to interpret or enforce any of the provisions of this Agreement, to recover damages for the breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover its actual and reasonable attorney's fees and costs in addition to any other relief granted. _____

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11. Settlement Expenses. Each party hereto shall bear the cost of its own attorney's fees and costs in connection with the settlement related to this Agreement, and in connection with the preparation of this Agreement.

12. Effective Date. This Agreement shall be effective upon execution by the parties according to its terms and upon approval as to form and legality by the San Diego City Attorney.

Executed by the City, acting through its City Manager, pursuant to grant of authority to do so given by the City Council, and by Lessee, acting by and through its lawfully authorized officers, on the dates shown below, at San Diego, California.

THE CITY

THE CITY OF SAN DIEGO

Date: May 20, 2002

By: [Signature]

Its: LEGAL ESTATE ASSTS. DIRECTOR

LESSEE

WAVE THE PLANET, LLC
a California limited liability company

Date: May 15, 2002

By: [Signature]
Firouz Memarzadeh, Member

Approved as to form and legality
this 20th day of May, 2002

CASEY GWINN, City Attorney

By: [Signature]
Prescilla Dugard, Head Deputy City Attorney

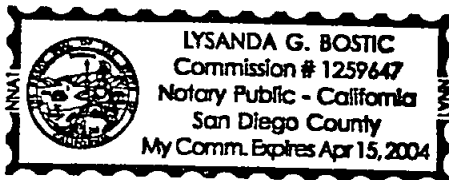
[Handwritten initials]

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BY [Signature]
ESCROW OFFICER

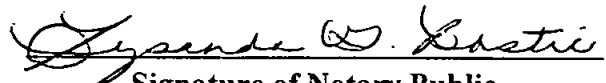
ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On May 20, 2002, before me, Lysanda G. Bostic, the undersigned, a Notary Public in and for said State, personally appeared William T. Griffith, personally known to me (~~or 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.



WITNESS my hand and official seal.


Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

DESCRIPTION OF ATTACHED DOCUMENT

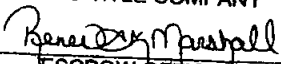
Title or Type of Document: Settlement and Mutual Release Agreement -- Wave House Planet, LLC.

Document Date: May 20, 2002

Number of Pages: Four

Signer is Representing: The City of San Diego

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BY 
ESCROW OFFICER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On May 15, 2002, before me

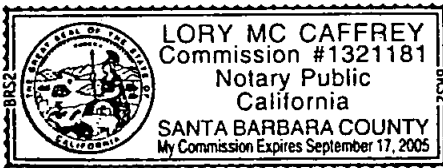
Lory McCaffrey
Name and Title of Officer

personally appeared Firouz Memarzadeh

Name(s) of Signer(s)

☐ personally know to me

☒ provided to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge 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.

WITNESS my hand and official seal.

Place Notary Seal Above

Lory McCaffrey
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer - Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

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ESCROW OFFICER

EXHIBIT A

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 36, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO SURVEY MONUMENT "BELMONT" AT THE INTERSECTION OF VENTURA PLACE AND OCEAN FRONT WALK AS SHOWN ON SAID MAP OF MISSION BEACH, SAID MONUMENT HAVING THE NAD83 COORDINATES OF NORTH 1862178.44 AND EAST 6253378.64; THENCE SOUTH 16°37'33" EAST 59.92 FEET; THENCE NORTH 87°54'07" EAST 95.24 FEET, TO THE TRUE POINT OF BEGINNING; THENCE NORTH 87°54'07" EAST 282.37 FEET TO A POINT WHICH BEARS SOUTH 58°19'53" WEST 117.98 FEET FROM FOUND CITY ENGINEERS DISK, HAVING NAD83 COORDINATES OF NORTH 1862196.79 AND EAST 6253873.55; THENCE SOUTH 2°05'26" EAST 6.00 FEET; THENCE SOUTH 82°10'35" EAST 48.54 FEET; THENCE SOUTH 2°06'02" EAST 15.35 FEET; THENCE SOUTH 76°46'12" WEST 2.48 FEET; THENCE SOUTH 85°50'44" WEST 8.27 FEET; THENCE SOUTH 61°52'00" WEST 16.35 FEET; THENCE SOUTH 45°55'46" WEST 16.67 FEET; THENCE SOUTH 27°35'45" WEST 16.17 FEET; THENCE SOUTH 8°34'44" WEST 16.24 FEET; THENCE SOUTH 0°48'23" WEST 7.96 FEET; THENCE SOUTH 10°58'52" EAST 16.51 FEET; THENCE SOUTH 18°19'55" EAST 39.37 FEET; THENCE SOUTH 66°29'00" WEST 7.24 FEET; THENCE SOUTH 29°04'14" WEST 16.54 FEET; THENCE SOUTH 12°29'57" WEST 16.04 FEET; THENCE SOUTH 43°28'16" WEST 22.28 FEET; THENCE NORTH 48°23'47" WEST 3.43 FEET; THENCE SOUTH 43°11'04" WEST 41.48 FEET; THENCE SOUTH 45°36'13" EAST 3.49 FEET; THENCE SOUTH 43°00'50" WEST 37.12 FEET; THENCE SOUTH 2°28'19" WEST 52.83 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 20.00 FEET, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°58'26" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.19 FEET, THROUGH A CENTRAL ANGLE OF 135°11'04"; THENCE SOUTH 1°59'46" EAST 148.09 FEET; THENCE SOUTH 43°30'22" EAST 8.93 FEET; THENCE SOUTH 36°18'07" EAST 24.47 FEET; THENCE SOUTH 64°23'15" EAST 24.49 FEET; THENCE NORTH 85°57'19" EAST 24.31 FEET; THENCE NORTH 62°39'09" EAST 16.27 FEET; THENCE NORTH 36°08'36" EAST 24.54 FEET; THENCE NORTH 6°31'45" EAST 32.32 FEET; THENCE NORTH 1°55'51" WEST 119.94 FEET; THENCE NORTH 2°22'56" WEST 63.36 FEET; TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 120.00 FEET, CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87°37'04" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 63.59 FEET, THROUGH A CENTRAL ANGLE OF 30°21'47"; THENCE NORTH 27°58'51" EAST 94.78 FEET; THENCE NORTH 28°02'49" EAST 15.98 FEET; THENCE NORTH 20°38'12" EAST 17.70 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 54.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 69°21'52" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.70 FEET, THROUGH A CENTRAL ANGLE OF 10°17'47"; THENCE NORTH 81°24'11" EAST 7.51 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF MISSION BOULEVARD; THENCE SOUTH 8°36'03" EAST 71.87 FEET; TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1,980.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 81°23'57" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 224.62 FEET, THROUGH A CENTRAL ANGLE OF 6°30'00"; THENCE SOUTH 2°06'03" EAST 363.91 FEET; THENCE SOUTH 87°50'57" WEST 511.36 FEET; THENCE NORTH 2°01'38" WEST 532.19 FEET; THENCE NORTH 87°58'21" EAST 75.73 FEET; THENCE NORTH 2°02'55" WEST 92.48 FEET; THENCE NORTH 87°56'16" EAST 19.62 FEET; THENCE NORTH 2°03'45" WEST 129.99 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION, LYING BELOW THE MEAN TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THEREFROM ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE AND THE SAME AS RESERVED BY THE

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BY Ronald M. Marshall
ESCROW OFFICER

STATE OF CALIFORNIA BY CHAPTER 119 STATUTES OF 1943, RECORDED SEPTEMBER 3,
1986 AS FILE NO. 86-385271 OF OFFICIAL RECORDS.

(CONTAINS 7.191 ACRES (MORE OR LESS))

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DUPLICATE

FIFTH OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Fifth Operating Memorandum to Percentage Lease is dated June 26, 2000 ["Effective Date"] by and between the City of San Diego, ["CITY"] and Wave the Planet, LLC, a California Limited Liability Company ["LESSEE"], who are collectively referred to hereinafter as ["the Parties"], with respect to the following facts:

RECITALS

A. WHEREAS, the CITY and Belmont Park Associates entered into a Percentage Lease dated March 4, 1987 for the development and operation of Belmont Park; an Operating Memorandum to Percentage Lease dated December 23, 1987; a Second Operating Memorandum to Percentage Lease dated December 11, 1990; a Third Operating Memorandum to Percentage Lease dated February 25, 1991; and a Fourth Operating Memorandum to Percentage Lease dated August 12, 1991 [collectively, the "Lease"]; and

B. WHEREAS, PARS Belmont Park, LLC was successor in interest to Belmont Park Associates in that Lessor Consent, Estoppel, and Non-Disturbance Agreement dated December 1, 1995, which interest was subsequently assigned to Wave the Planet, LLC as successor in interest to PARS Belmont Park, LLC in that Assignment of Ground Lease dated June 22, 2000; and

C. WHEREAS, the Parties desire to revitalize Belmont Park ["the Leasehold"], by including in the Leasehold appropriate park visitor-oriented commercial and recreational uses, specifically the installation of water theme features consisting of a primary show wave, a half-pipe walk-through tunnel wave, a children's wave with "Swirl Pool," a "Point Break" wave, two training waves on roof top decks, and other appropriate miscellaneous water features ["the Features"]; and

D. WHEREAS, to accomplish this revitalization, LESSEE has agreed, pursuant to a separate Management and Operations Agreement dated September 1, 1999, to hire Wave Loch Tool & Die, LLC, a company managed by Thomas J. Lochtefeld, who specializes in the design, manufacture, and operation of simulated wave machines and other interactive water-related recreational items, to manage the revitalization of the Leasehold; and

E. WHEREAS, the Features are designed to enhance the attractiveness of the Plunge and to stimulate the economic viability and use of the existing restaurants and retail in the Leasehold; and

F. WHEREAS, installation of the Features is consistent with the development permitted under the terms of the Lease; and

G. WHEREAS, in order to improve traffic circulation in the area, CITY desires to build, at its sole cost and expense, a turn-around at the foot of Ventura Place near the northwest corner

DOCUMENT NO. 293393

FILED JUN 26 2000
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Initials WLP

of the north parking lot ["Turn-Around"], however, construction of the Turn-Around will reduce the total number of parking spaces in LESSEE'S north parking lot; and

H. WHEREAS, to compensate LESSEE for the loss of parking, CITY intends to substitute an equal number of public parking spaces in the CITY-owned parking lot on the southern boundary of the Leasehold ["Relocated Parking"]; and

I. WHEREAS, CITY is willing to permit, as consistent with Section 1.09 of the Lease, Parking, on a trial basis, and LESSEE desires to install and operate at its sole cost and expense, a nine-stall valet/passenger drop-off zone in its north parking lot; and

J. WHEREAS, CITY is willing to permit, on a trial basis, and LESSEE desires to provide, a beach concession program to be located on the beach adjacent to the west boundary of the Leasehold; and

K. WHEREAS, CITY is willing to permit, on a trial basis, and LESSEE is willing to install, a non-exclusive charter/shuttle bus drop-off in the CITY-owned south parking lot in order to enhance public access to the beach and the Leasehold.

NOW, THEREFORE, in consideration of the Recitals and the mutual obligations of the Parties as set forth herein, the Parties agree as follows:

AGREEMENT

1. Section 1.01. of the Lease, Premises, is amended as follows:

Exhibit A-1 attached to the Third Operating Memorandum to Percentage Lease is deleted and Exhibit "A-2," which is attached hereto and incorporated herein by this reference, is substituted as the true and correct legal description of the real property leased by CITY to LESSEE. Exhibit "A-2" excludes the Turn-Around and reflects the reconfiguration of the City Lifeguard facility in the north parking lot. Due to the loss of spaces within the Leasehold caused by the Turn-Around project, LESSEE'S parking requirements under the lease will be reduced by an equal number of spaces. CITY will substitute an equal number of permanent public parking spaces in the CITY-owned parking lot south of the leasehold to ensure compliance with Coastal Development Permit #686-396.

2. CITY agrees to obtain an American Land Title Association (ALTA) survey on the Leasehold, at its sole cost and expense, such that an endorsement may be added to LESSEE'S title insurance policy reflecting the new legal description of the Premises as described in Exhibit "A-2," and the preceding paragraph.
3. The Parties acknowledge and agree that the Features are appropriate park visitor-oriented commercial recreational uses that are consistent with the basic concept of

the Development Plan discussed in Section 6.12 of the Lease and more fully described in Section 8.0 Contemplated Uses in Exhibit "C" of the Lease. LESSEE acknowledges and agrees that it must construct, operate, and maintain the Features in accordance with the terms of the Lease and with the Supplemental Development Plan attached hereto as Exhibit "C-1" and incorporated herein by this reference.

4. Section 1.09 of the Lease, Parking, is amended to include the following paragraph:

Additionally, LESSEE may, subject to annual approval by CITY, per paragraph 10. below, install and operate a nine-stall valet/passenger drop-off zone in the north lot of the Premises, the exact location of which must be approved by CITY. Operation of this valet parking is subject to all other terms and conditions of this Lease, including Section 7.02 Compliance with Laws and Section 3.02(c) Percentage Rents.

5. Section 2.04 of the Lease, Extension of Lease Term, is added to read as follows:

As a consideration for the capital commitment made by LESSEE sufficient to satisfy reasonable criteria as established by the City Manager, CITY shall consider LESSEE'S request for an extension of the Lease Term if the proposed Phase II improvements are approved.

6. Section 3.02.d. of the Lease, Percentage Rate Adjustment, is amended to add the following paragraphs at the beginning of Section 3.02.d.:

The Parties agree that for a period of ten (10) years commencing on July 1, 2003, LESSEE shall pay to CITY percentage rent calculated at a rate of five percent (5%) of LESSEE'S gross income rather than three percent (3%) to seven percent (7%) of gross income depending upon the nature of the sale.

The first sentence therefore becomes the second sentence of Section 3.02.d. and is modified to read as follows:

At least four (4) months prior to the end of the twenty-fifth Lease Year and at least four (4) months prior to the end of each ten-year period thereafter, the Parties, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY, if appropriate, effective upon the first day of the succeeding ten-year period.

7. Section 3.03 of the Lease, Rent Credit, is amended in its entirety to read as follows:

3.03 Rent Credit. Public improvements were constructed as described in Exhibit "D" of the Lease (the "Public Improvements") and as further described in Exhibit "C-1." In consideration for same LESSEE was provided with a Rent Credit, a portion of which is part of the tiered Rent Credit as restated and described below. The Rent Credit shall be applied on a monthly basis against monthly installments of Minimum Rent and/or Percentage Rent due to CITY, until the Rent Credit balance is fully repaid or credited as more particularly prescribed in subparagraph a., b., c., herein. The Rent Credits set forth below in subparagraphs a. and b. are fixed amounts and any Rent Credit described herein is intended to be fully expended. No fees, interest charges or adjustments based on financing shall be applied to any of the Rent Credit calculations. CITY shall not be liable for any unused Rent Credit upon expiration or early termination of this Lease. No permanent improvements for which any rent credit is given shall be removed by LESSEE at any time without prior written approval of City Manager, including upon expiration or earlier termination of this Lease.

a. Tier I - Original Rent Credit: LESSEE shall receive a Rent Credit of Eight Million Five Hundred Thousand Dollars (\$8,500,000). The Tier I Rent Credit shall only be applicable to fifty percent (50%) of any Rent due in excess of the Minimum Rent payment described in Section 3.04.e. The remaining rent due shall either be paid to CITY as cash or shall be offset by Tier 2 or Tier 3 Rent Credit as described below.

b. Tier 2 - New Capital Improvement Rent Credit: LESSEE shall receive a Rent Credit not to exceed Four Million Dollars (\$4,000,000) as Tier 2 Rent Credit for approved expenditures related to Phase I Water Themed Features as set forth in the Supplemental Development Plan attached as Exhibit "C-1." The Tier 2 Rent Credit shall expire ten (10) years from the Effective Date. Any Tier 2 Rent Credit remaining upon expiration of this ten-year period shall be reduced to zero. If the Tier 2 Rent Credit is expended prior to its ten-year sunset, then the remaining rent due after application of the Tier I Rent Credit shall either be paid to CITY as cash or shall be offset by the Tier 3 Rent Credit as described below.

c. Tier 3 - Plunge Building Re-Use and Additional Parking. LESSEE shall use all best efforts to develop an adaptive reuse of the Plunge Building and/or to construct additional parking to generate sufficient revenues to justify expenditure of funds for said reuse or construction. If LESSEE is unable to develop such economic reuse, but still desires to redevelop the Plunge building and/or construct additional parking, LESSEE may request Additional Tier 3 rent credits to be treated similarly to Tier 2 rent credits from the date the improvement is placed in to service. Approval of Tier 3 or any other additional rent credits shall be in the City's Manager's sole discretion.

8. Section 4.02 of the Lease, Assignment and Subletting, paragraph four, is deleted in its entirety and amended to read as follows:

City Manager shall approve or disapprove any requested assignment or sublease, describing the reasons therefor, within thirty (30) days after presentation by LESSEE and, in the event that no written response either approving or denying approval is received during such period, such assignment shall be deemed approved, provided, however, that CITY may disapprove any assignment that does not comply with San Diego Charter section 225.

9. Section 3.05 of the Lease, Gross Income, is amended to include the following paragraphs after the second full paragraph:

a. Offset to Gross Income by Capital Improvements. Upon completion of LESSEE'S initial capital investment (Phase I), LESSEE shall commit to spending at least two and one-half percent (2½%) of its gross income towards approved ongoing capital improvements described below. The calculation of funds spent shall be two and one-half percent (2½%) percent of the total gross income during any consecutive four-year period commencing January 1, 2004 ["Total Capital Offset"]. In consideration for this commitment to enhance the Leasehold with approved ongoing capital improvements described below ["Approved Ongoing Capital Improvements"], LESSEE shall receive on an annual basis, as such funds are expended, a dollar-for-dollar offset to amounts it reports as gross income under this Section 3.05. ["Annual Capital Offset"]. The definition of Approved Ongoing Capital Improvements includes those costs that are associated with design, engineering, permitting, bonding, and construction (labor, materials, overhead, profit, third-party construction management fee, supervision and general conditions) for:

- (1) Improvements such as additional compatible food facilities, retail shops, rides, attractions, games, water features and/or picnic facilities which result in an increase in LESSEE'S gross revenue;
- (2) Improvement, enhancement, and/or renovation of an existing attraction, landscaping, parking area, food facility, retail shop, game, water feature and/or picnic facility, but only to the extent that such improvement is adding a new feature to an existing element and is not solely for maintenance purposes;
- (3) Improvements that increase the safety and security of Leasehold and/or patrons and employees;
- (4) Improvements installed for the purposes of any Accessory Use Permit, which is defined in Section 10.

b. In the event LESSEE has not expended funds for Approved Ongoing Capital Improvements equal to the Total Capital Offset, CITY shall receive the remaining balance as Additional Rent. Such Additional Rent shall be paid in cash pursuant to the most recent audit at the end of the four year period and shall not be used to offset any rent credits, percentage rent or otherwise.

10. Section 3.09 of the Lease, Accessory Use., is added to read as follows:

3.09 Accessory Use. CITY agrees to issue to LESSEE a one-year renewable license/permit for compatible accessory uses ["Accessory Use Permit"], which is attached hereto as Exhibit "A-3" and incorporated herein by this reference. At the outset, such uses shall include the rental and sales of specific goods and services on the beach area adjacent to the west boundary of the Premises, a non-exclusive charter/shuttle bus drop-off area, and a valet/passenger drop-off zone ["Accessory Uses"].

In consideration for CITY granting LESSEE a renewable license/permit for Accessory Uses in accordance with the operations plan as described in the Supplemental Development Plan attached hereto as Exhibit C-1, LESSEE shall pay as additional minimum rent, an annual fee of Seventy Thousand Dollars (\$70,000) payable in minimum monthly installments of Five Thousand Eight-Hundred Thirty-Three Dollars and 33 Cents (\$5,833.33) ["Minimum Monthly Fee"]. The first Minimum Monthly Fee shall be due the first day of the Permit Term as defined in Exhibit "A-3." LESSEE shall pay Percentage Rent on Accessory Uses equal to the applicable Percentage Rent for similar products or services as set forth in this Lease. For the purpose of calculating Percentage Rent due, the Minimum Monthly Fee of Five Thousand Eight Hundred Thirty Three Dollars and 33 Cents (\$5,833.33) shall be credited against any Percentage Rent due under the Lease. If additional compatible Accessory Uses are permitted from time-to-time, additional minimum rent may be charged, depending upon the use. However, in any event, LESSEE shall be required to pay the aforementioned, Minimum Monthly Fee whether such Accessory Uses were awarded or deleted.

CITY agrees to consider in good faith annual renewal of the Accessory Use Permit provided that LESSEE complies with its terms and conditions. Further, any decision to renew or approve any additional Accessory Uses shall be in the sole discretion of CITY.

11. CITY agrees to assist in Lessee's efforts to establish non-exclusive off-site Mission Bay South Shores overflow parking, which may include charter/shuttle bus service.
12. Except as amended hereby, all the provisions of the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, this Fifth Operating Memorandum to Percentage Lease is executed by CITY, acting by and through its City Manager pursuant to Resolution No. R 293393 and by LESSEE, acting by and through its lawfully authorized officers.

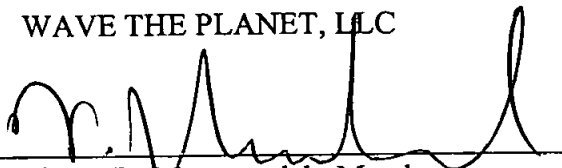
CITY OF SAN DIEGO

Date: June 30, 2000

By: 
Real Estate Assets Director

WAVE THE PLANET, LLC

Date: June 22, 2000

By: 
Firouz D. Memarzadeh, Member

Date: June 22, 2000

By: 
Thomas J. Lochtefeld, Member

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

Date: July 10, 2000

By: 
Deputy City Attorney

LIST OF EXHIBITS TO
FIFTH OPERATING MEMORANDUM TO PERCENTAGE LEASE

1. Exhibit A-2 Legal Description of Premises (To BE SUPPLIED, consisting of ____ pages)
2. Exhibit A-3 Accessory Use Permit, (consisting of 14 pages, plus 2 page Site Map of Permit Area).
3. Exhibit C-1 Supplemental Development Plan (consisting of 4 pages, plus Exhibit 1, 2 page Site Map of Permit Area and Exhibit 2, 1 page Approved Tier 2 Rent Credit List)

EXHIBIT "A-2"
LEGAL DESCRIPTION OF THE PREMISES

All that portion of Pueblo Lot 1803 of Pueblo Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, now known as Miscellaneous Map No. 36, and the unnumbered Tract of Mission Beach according to Map thereof No. 1809, filed in the Office of the County Recorder of San Diego County, more particularly described as follows:

Commencing at City of San Diego Survey Monument "Belmont" at the intersection of Ventura Place and Ocean Front Walk as shown on said Map of Mission Beach, said Monument having the NAD83 Coordinates of North 1862178.44 and East 6253378.64; Thence South $16^{\circ}37'33''$ East 59.92 feet; Thence North $87^{\circ}54'07''$ East 95.24 feet, to the **TRUE POINT OF BEGINNING**;

Thence North $87^{\circ}54'07''$ East 282.37 feet to a point which bears South $58^{\circ}19'53''$ West 117.98 feet from found City Engineers Disk, having the NAD83 coordinates of North 1862196.79 and East 6253873.55; Thence South $2^{\circ}05'26''$ East 6.00 feet; Thence South $82^{\circ}10'35''$ East 48.54 feet; Thence South $2^{\circ}06'02''$ East 15.35 feet; Thence South $76^{\circ}46'12''$ West 2.48 feet; Thence South $85^{\circ}50'44''$ West 8.27 feet; Thence South $61^{\circ}52'00''$ West 16.35 feet; Thence South $45^{\circ}55'46''$ West 16.67 feet; Thence South $27^{\circ}35'45''$ West 16.17 feet; Thence South $8^{\circ}34'44''$ West 16.24 feet; Thence South $0^{\circ}48'23''$ West 7.96 feet; Thence South $10^{\circ}58'52''$ East 16.51 feet; Thence South $18^{\circ}19'55''$ East 39.37 feet; Thence South $66^{\circ}29'00''$ West 7.24 feet; Thence South $29^{\circ}04'14''$ West 16.54 feet; Thence South $12^{\circ}29'57''$ West 16.04 feet; Thence South $43^{\circ}28'16''$ West 22.28 feet; Thence North $48^{\circ}23'47''$ West 3.43 feet; Thence South $43^{\circ}11'04''$ West 41.48 feet; Thence South $45^{\circ}36'13''$ East 3.49 feet; Thence South $43^{\circ}00'50''$ West 37.12 feet; Thence South $2^{\circ}28'19''$ West 52.83 feet, to the beginning of a curve, having a radius of 20.00 feet, concave Westerly, a radial line to said point bears North $10^{\circ}58'26''$ East; Thence Southerly along the arc of said curve a distance of 47.19 feet, through a central angle of $135^{\circ}11'04''$; Thence South $1^{\circ}59'46''$ East 148.09 feet; Thence South $43^{\circ}30'22''$ East 8.93 feet; Thence South $36^{\circ}18'07''$ East 24.47 feet; Thence South $64^{\circ}23'15''$ East 24.49 feet; Thence North $85^{\circ}57'19''$ East 24.31 feet; Thence North $62^{\circ}39'09''$ East 16.27 feet; Thence North $36^{\circ}08'36''$ East 24.54 feet; Thence North $6^{\circ}31'45''$ East 32.32 feet; Thence North $1^{\circ}55'51''$ West 119.94 feet; Thence North $2^{\circ}22'56''$ West 63.36 feet; to the beginning of a curve, having a radius of 120.00 feet, concave Southeasterly, a radial line to said point bears South $87^{\circ}37'04''$ West; Thence Northeasterly along the arc of said curve a distance of 63.59 feet, through a central angle of $30^{\circ}21'47''$; Thence North $27^{\circ}58'51''$ East 94.78 feet; Thence North $28^{\circ}02'49''$ East 15.98 feet; Thence North $20^{\circ}38'12''$ East 17.70 feet; to the beginning of a non-tangent curve, having a radius of 54.00 feet, concave Northwesterly, a radial line to said point bears South $69^{\circ}21'52''$ East; Thence Northeasterly along the arc of said curve a distance of 9.70 feet, through a central angle of $10^{\circ}17'47''$; Thence North $81^{\circ}24'11''$ East 7.51 feet, to the Westerly Right-of-way line of Mission Boulevard; Thence South $8^{\circ}36'03''$ East 71.87 feet; to the beginning of a curve

concave Westerly, having a radius of 1,980.00 feet, a radial line to said point bears North $81^{\circ}23'57''$ East; Thence along the arc of said curve a distance of 224.62 feet, through a central angle of $6^{\circ}30'00''$; Thence South $2^{\circ}06'03''$ East 363.91 feet; Thence South $87^{\circ}50'57''$ West 511.36 feet; Thence North $2^{\circ}01'38''$ West 532.19 feet; Thence North $87^{\circ}58'21''$ East 75.73 feet; Thence North $2^{\circ}02'55''$ West 92.48 feet; Thence North $87^{\circ}56'16''$ East 19.62 feet; Thence North $2^{\circ}03'45''$ West 129.99 feet to the TRUE POINT OF BEGINNING.

Excepting there from any portion lying below the mean tide line of the Pacific Ocean.

Also excepting there from all deposits of minerals, including oil and gas with the right to prospect for, mine and remove and the same as reserved by the State of California by Chapter 119 Statutes of 1943, Recorded September 3, 1986 as File No. 86-385271 of Official Records.

Above described parcel containing 313233.89 Square Feet, or 7.19086 Acres.

Lorne L. Da Pron 6-17-04
Lorne L. Da Pron, PLS 7824 Date
Asst. Land Surveyor, Field Engineering
City of San Diego
My Registration Renews 12/31/05



File: Belmont_Legal.wpd
W.O. 020084 - 5/15/2002 (lhd)

LEGAL DESCRIPTION
BELMONT PARK

All that portion of Pueblo Lot 1803 of Pueblo Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, now known as Miscellaneous Map No. 36, and the unnumbered Tract of Mission Beach according to Map thereof No. 1809, filed in the Office of the County Recorder of San Diego County, more particularly described as follows:

Commencing at City of San Diego Survey Monument "Belmont" at the intersection of Ventura Place and Ocean Front Walk as shown on said Map of Mission Beach, said Monument having the NAD83 Coordinates of North 1862178.44 and East 6253378.64; Thence South 16 47'57" East 59.92 feet; Thence North 87 43'43" East 85.71 feet, to the TRUE POINT OF BEGINNING;

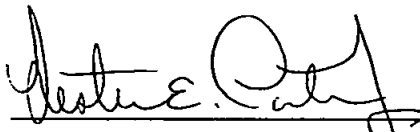
Thence North 87°43'43" East 291.90 feet; Thence South 2°15'49" East 6.00 feet; Thence South 82°20'59" East 48.54 feet; Thence South 2°16'26" East 15.35 feet; Thence South 76 35'48" West 2.48 feet; Thence North 87°43'43" East 8.27 feet; Thence South 61°41'37" West 16.35 feet; Thence South 45°45'21" West 16.67 feet; Thence South 27°25'20.54" West 16.17 feet; Thence South 8°24'19.85" West 16.24 feet; Thence South 0°38'01" West 7.96 feet; Thence South 11°09'17" East 16.51 feet; Thence South 18°30'19" East 39.37 feet; Thence South 66°18'36" West 7.24 feet; Thence South 28°53'50" West 16.54 feet; Thence South 12°19'33" West 16.04 feet; Thence South 43°17'52" West 22.28 feet; Thence North 48°34'08" West 3.43 feet; Thence South 43°00'40" West 41.48 feet; Thence South 45°46'40" East 3.49 feet; Thence South 42°50'26" West 37.12 feet; Thence South 2°17'55" West 52.83 feet, to a point on a curve, having a radius of 20.00 feet, concave Westerly, a radial line to said point bears North 10 48'02" East; Thence Southerly along the arc of said curve a distance of 47.19 feet, through a central angle of 135°11'04" ; Thence South 2°10'10" East 148.09 feet; Thence South 43°40'47" East 8.93 feet; Thence South 36°28'31" East 24.47 feet; Thence South 64°33'39" East 24.49 feet; Thence North 85°46'55" East 24.31 feet; Thence North 62°28'44" East 16.27 feet; Thence North 35°58'12" East 24.54 feet; Thence North 6°21'22" East 32.32 feet; Thence North 2°06'15" West 119.94 feet; Thence North 2°33'20" West 63.36 feet; to a point on a curve, having a radius of 120.00 feet, concave Southeasterly, a radial line to said point bears South 87 26'40" West; Thence Northeasterly along the arc of said curve a distance of 63.59 feet, through a central angle of 30°21'47"; Thence North 27°48'27" East 94.78 feet; Thence North 27°52'25" East 15.98 feet; Thence North 20°27'48" East 17.70 feet; to a point on a curve, having a radius of 54.00 feet, concave Northwesterly, a radial line to said point bears South 69 32'15" East;

Thence Northeasterly along the arc of said curve a distance of 9.70 feet, through a central angle of 10°17'47"; Thence North 81°13'48" East 7.51 feet, to the Westerly Right-of-way line of Mission Boulevard; Thence South 8°46'27" East 71.87 feet; to a point on a curve concave Westerly, having a radius of 1,980.00 feet, a radial line to said point bears North 81°13'33" East; Thence along the arc of said curve a distance of 224.62 feet, through a central angle of 6°30'00"; Thence South 2°16'27" East 363.91 feet; Thence South 87°40'33" West 511.36 feet; Thence North 2°12'02" West 532.19 feet; Thence North 87°47'57" East 71.89 feet; Thence North 1°16'56" West 100.27 feet; Thence North 88°42'16" East 19.62 feet; Thence North 1°17'45" West 112.00 feet; Thence South 88°42'16" West 19.00 feet; Thence North 41°35'47" East 14.19 feet to the POINT OF BEGINNING.

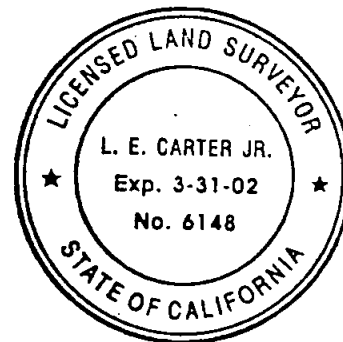
Above described parcel containing 313,978.86 square feet, 7.2079 acres.

Reference:

A.L.T.A. Survey of Belmont Park, by Rick Engineering Company, 5620 Friars Road, San Diego, CA. 92110, dated 2-22-89, updated 12-17-1990.



Lester E. Carter Jr., PLS 6148 Date 8-31-00
Sr. Land Surveyor, Field Engineering
My Registration Expires 3/31/2002



File: belmontx.lgl

W.O. 020084 - 8/31/2000 (lec)

EXHIBIT "A-3"
CITY OF SAN DIEGO
ACCESSORY USE PERMIT

THIS ACCESSORY USE PERMIT ("Permit") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and WAVE THE PLANET, LLC, hereinafter called "PERMITTEE."

SECTION 1: LOCATION AND USES

1.1 Permit Area. PERMITTEE shall be allowed to operate in: (A) the beach area adjacent to the western boundary of the Belmont Park leasehold, excluding the seawall and boardwalk ("Beach Concession Area"); (B) in the parking lot that fronts the southern boundary of the Belmont Park leasehold ("Charter/Shuttle Bus Area"); and (C) the north parking lot of the Leasehold ("Valet/Passenger Drop-Off Zone") [collectively the "Permit Area"], as shown on Exhibit "A," which is attached hereto and incorporated herein by this reference.

1.2 Permitted Uses. This Permit is granted to PERMITTEE for the sole purpose of allowing PERMITTEE to operate the following accessory uses:

(A) Beach Concession. PERMITTEE is authorized to operate a beach accessory rental and food/non-alcoholic beverage concession serving the general public in the Beach Concession Area, from two (2) hours after sunrise to 10:00 p.m. from October 1 to March 31 and 11:00 p.m. from April 1 to September 30, on the terms and conditions set forth herein. PERMITTEE shall be allowed to:

1. place and rent beach chairs, umbrellas and cabanas in the Beach Concession Area; and
2. rent surfboards, body boards and sell beach necessities (e.g. sunscreen, hats, towels, etc.) from the Beach Concession Area; and
3. place temporary potted palm trees and shrubbery on the beach in the Beach Concession Area, at a number and size as approved by City Life Guard Service; and
4. conduct the beach accessory rental concession and serve food and non-alcoholic beverages with order service from a temporary central

beach kiosk, of a design to be mutually agreed upon; or, serve food and non-alcoholic beverages in the Beach Concession Area directly to patrons who are using PERMITTEE'S rental cabanas, umbrellas or beach chairs.

(B) Charter/Shuttle Bus Area. PERMITTEE is authorized to monitor and coordinate a non-exclusive charter/shuttle bus drop-off and loading area in the Charter/Shuttle Bus Area. PERMITTEE understands and agrees that it may not accept any form of consideration for this charter/shuttle bus drop-off and loading area or preclude any charter/shuttle bus from using the area on a first-come, first-served basis.

(C) Valet/Passenger Drop-Off Zone. PERMITTEE shall be authorized to construct and operate a valet/passenger drop-off zone in the north parking lot of the Belmont Park leasehold.

- 1.3 Procedure for Monitoring Use of Beach Concession Area. CITY will monitor PERMITTEE'S use of the Beach Concession Area to ensure that the use is satisfactory to CITY and conforms to the terms of this Permit. CITY will evaluate PERMITTEE'S use of the Beach Concession Area in part by reviewing input from CITY's Park and Recreation Department, Police Department, and Lifeguard Services. CITY will evaluate any written notice from those departments to Real Estate Assets Department regarding the ongoing operations of PERMITTEE that do not constitute a life safety issue on or before April 1, 2001 and again on October 1, 2001. The Real Estate Assets Department will meet with PERMITTEE within ten (10) days of the above evaluation dates to discuss any comments on PERMITTEE'S operations and to require the implementation of mitigation measures if necessary. If the Real Estate Assets Department is notified of a life safety issue involving the Beach Concession Area, then PERMITTEE shall immediately implement any mitigation measures required by CITY.
- 1.4 Weight Restrictions. PERMITTEE shall not place any weight on the boardwalk exceeding three thousand (3,000) pounds at any time, including items in transit, unless PERMITTEE has received the prior written approval of CITY.
- 1.5 Storage. PERMITTEE shall not store any item in the Beach Concession Area or on any other CITY-owned land.
- 1.6 Special Events. On any date that CITY schedules a special event, CITY shall have the exclusive right to use or permit the use of all or a portion of the Permit Area. CITY shall give PERMITTEE advance written notice of any such special events. Whether an event constitutes a "special event" for the purposes of this Section is in the sole discretion of CITY.

- 1.7 Beach Maintenance. When CITY cannot groom the Beach Concession Area within two (2) hours after sunrise, CITY will notify PERMITTEE in advance of the need to mutually schedule a time frame when the beach will be completely cleared of PERMITTEE'S property in order to accommodate beach grooming.
- 1.8 Obligation to Diligently Operate. PERMITTEE covenants to operate the Beach Concession Area for the above-specified purposes and to diligently conduct the business thereon to produce a reasonable and substantial gross income.
- 1.9 Related Council Actions. By the granting of this Permit, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.
- 1.10 Competent Management. Throughout the term of this Permit, PERMITTEE shall provide competent management of the Permit Area to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of beach accessory rentals, food/non-alcoholic beverage concession, charter bus drop-off and related activities in a fiscally responsible manner.
- 1.11 Political Activities. The Permit Area shall be used exclusively for the purposes specified in Section 1.2 Permitted Uses, hereof. The Permit Area shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that PERMITTEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.12 Public Use. The general public shall not be excluded from any portion of the Permit Area. PERMITTEE may propose reasonable restrictions for the use of the Permit Area provided they are consistent with the rights of the general public. PERMITTEE agrees that all activities conducted on the Permit Area shall be as stated in Section 1.2 Permitted Uses, hereof. Implementation of any restrictions in the Permit Area will not occur without advance written approval by CITY.

PERMITTEE shall, at all times during the Permit Term, defined in Section 2.1 below, maintain a CITY-approved sign identifying the Beach Concession Area as CITY-owned and available for public use consistent with the terms of this Permit. The sign shall be installed by PERMITTEE at a location agreeable to CITY.

SECTION 2: TERM

- 2.1 Commencement. The term of this Permit shall commence on October 1, 2000 and expire on September 30, 2001 ("Permit Term").
- 2.2 Holdover. Any use of the Permit Area by PERMITTEE after the expiration of the Permit Term shall be construed to be on a month-to-month basis, and all other terms and conditions of this Permit shall continue in full force and effect.
- 2.3 Renewal. CITY agrees to consider in good faith annual renewal of this Permit provided that LESSEE complies with its terms and conditions. Further, any decision to renew shall be in the sole discretion of City Manager.

SECTION 3: CONSIDERATION

- 3.1 Time and Place of Payment/Payment Procedure. All fees required herein must be paid in conjunction with the rent payment for the Belmont Park lease, filed in the Office of the City Clerk as (Document No. RR-266064), and the first through the fifth Operating Memorandums (collectively, the "Belmont Park Lease"), all of which are incorporated herein by this reference.
- 3.2 Consideration.
 - a. Minimum Monthly Fee. The Minimum Monthly Fee established for Permit Term is Five Thousand Eight Hundred Thirty Three and 33/100 Dollars (\$5,833.33) which shall be payable on the first day of the month beginning with the first day of the Permit term ("Minimum Monthly Fee").
 - b. Percentage Fees. LESSEE shall pay percentage fees equal to the applicable Percentage Rent for similar products or services as set forth in Section 3.02(c) of the Belmont Park Lease ("Percentage Fees"). Percentage Fees will be adjusted based on the provisions of Section 3.02(d), Percentage Rate Adjustment, of the Belmont Park Lease. For the purpose of calculating the Percentage Rent due under the Belmont Park Lease, the Minimum Monthly Fee of Five Thousand Eight Hundred Thirty Three Dollars and 33 Cents (\$5,833.33) shall be credited against any Percentage Rent due. Nothing in this Section 3 shall be construed to relieve PERMITTEE from its obligation to make an annual Seventy Thousand Dollar (\$70,000) payment to a Mission Beach area traffic mitigation fund. If additional compatible Accessory Uses are permitted from time-to-time, additional minimum rent may be charged, depending upon the use.

The fees specified herein shall not be reduced by any interference with PERMITTEE'S operation caused by:

- i. inclement weather;
- ii. beach maintenance;
- iii. demolition, construction repair or maintenance of the seawall; or
- iv. sweeping activities.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Permit, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Permit shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment. PERMITTEE shall not assign any of its rights under this Permit. Any such assignment shall automatically terminate this Permit.
- 4.3 Encumbrance. PERMITTEE shall not encumber this Permit by deed of trust, mortgage, chattel mortgage, or other security instrument during the term hereof.
- 4.4 Defaults and Remedies. In the event that:
- (1) PERMITTEE shall default in the performance of any covenant or condition required by this Permit to be performed by PERMITTEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and PERMITTEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
 - (2) PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
 - (3) PERMITTEE shall be adjudicated a bankrupt; or
 - (4) PERMITTEE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon PERMITTEE or upon any person claiming rights through PERMITTEE, immediately terminate this Permit and all rights of PERMITTEE and of all persons claiming rights through PERMITTEE to the Permit Area or to possession thereof; and CITY may enter and take possession of the Permit Area. Provided, however, in the event that any default described in Section 4.3a.(1), herein above is not curable within thirty (30) days after notice to PERMITTEE, CITY shall not terminate this Permit pursuant to the default if PERMITTEE immediately commences to cure the default and diligently pursues such cure to completion.

- 4.5 Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Permit. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any fee is not a waiver of any default preceding the fee payment. CITY and PERMITTEE specifically agree that the property constituting the Permit Area is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. PERMITTEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
- 5.2 Insurance.
- a. PERMITTEE shall take out and maintain at all times during the term of this Permit the following insurance at its sole expense:
- (1) Commercial General Liability insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or PERMITTEE or by authorized representatives of CITY or PERMITTEE on or in connection with the use or operation of the Permit Area.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Permit Area in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and PERMITTEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- b. PERMITTEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Permit Area, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy must remain on file with CITY during the entire term of the Permit. At least thirty (30) days prior to the expiration of each policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Permit.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving PERMITTEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Permit Area. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
- (3) Accident Reports. PERMITTEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Permit Area. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If PERMITTEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of

coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if PERMITTEE fails or refuses to take out or maintain insurance as required in this Permit or fails to provide the proof of insurance, CITY has the right to declare this Permit in default without further notice to PERMITTEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. PERMITTEE agrees to give notice to CITY of any fire or other damage that may occur on the Permit Area within ten (10) days of such fire or damage. PERMITTEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Permit Area clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Permit Area shall be damaged by any cause which puts the Permit Area into a condition which is not decent, safe, healthy, and sanitary, PERMITTEE agrees to make or cause to be made full repair of said damage and to restore the Permit Area to the condition which existed prior to said damage; or, at CITY'S option, PERMITTEE agrees to clear and remove from the Permit Area all debris resulting from said damage and rebuild the Permit Area in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2 Insurance, hereof.

PERMITTEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Permit Area shall be commenced by PERMITTEE within thirty (30) days of the fire or damage, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that the Permit Area is unusable for the purposes of this Permit by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the

Permit Area. PERMITTEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Permit. PERMITTEE further acknowledges that the Permit Area are in the condition called for by this Permit, that CITY has performed all work with respect to the Permit Area, and that PERMITTEE does not hold CITY responsible for any defects, whether apparent or latent, in the Permit Area, including the presence of any hazardous wastes.

- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said Permit Area for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Permit Area, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Permit Area is not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Permit Area in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Permit Area is not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Permit imposed on CITY.
- 6.3 Maintenance. PERMITTEE agrees to assume full responsibility and cost for keeping the Permit Area clean from litter and other beach debris and maintain and preserve the Permit Area in a decent, safe, healthy, and sanitary condition satisfactory to CITY.
- 6.4 Improvements/Alterations. Other than those temporary installations described above in Section 1.2 Permitted Uses, no improvements, structures, or installations shall be constructed on the Permit Area, and the Permit Area may not be altered by PERMITTEE without prior written approval by the City Manager.
- 6.5 Taxes. PERMITTEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area resulting from PERMITTEE'S use of the Permit Area. PERMITTEE recognizes and agrees that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes. PERMITTEE further agrees that payment for such taxes, fees and assessments will not reduce any fees due CITY.

- 6.6 Signs. PERMITTEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Permit Area, PERMITTEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE'S cost.
- 6.7 Hazardous/Toxic Waste. PERMITTEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the Permit Area. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, PERMITTEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

PERMITTEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S operations on the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. PERMITTEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Permit Area. In addition, PERMITTEE shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to PERMITTEE at:

Wave the Planet, LLC
7310 Miramar Road, Suite 625
San Diego, California 92126

or at such other address designated in writing by PERMITTEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

The notice shall be effective upon personal service or two (2) calendar days following deposit in the United States mail.

- b. Any party entitled or required to receive notice under this Permit may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. PERMITTEE shall at all times in the construction, maintenance, occupancy, and operation of the Permit Area comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at PERMITTEE'S sole cost and expense. In addition, PERMITTEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this Permit, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for resolution by the City Council.

7.4 Nondiscrimination. PERMITTEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. PERMITTEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. PERMITTEE and all of its subcontractors are individually responsible to abide by its contents.

PERMITTEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. PERMITTEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

PERMITTEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that PERMITTEE will take to achieve the CITY'S commitment to equal employment opportunities.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Captions. The Permit outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Permit.
- 7.8 Entire Understanding. This Permit and the Belmont Park Lease contain the entire understanding of the parties. PERMITTEE, by signing this Permit, agrees that there is no other written or oral understanding between the parties with respect to the Permit Area. Each party has relied on its own examination of the Permit Area, advice from its own attorneys, and the warranties, representations, and covenants of the Permit itself. Each of the parties in this Permit agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Permit.

The failure or refusal of any party to read the Permit or other documents, inspect the Permit Area, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been

based on these actions. No modification, amendment, or alteration of this Permit will be valid unless it is in writing and signed by all parties.

- 7.9 Standard of Employees. PERMITTEE and its employees shall at all times conduct themselves and the operations on the Permit Area in a creditable manner.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this Permit is executed by CITY, acting by and through its City Manager, and by PERMITTEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date June 30, 2000

By [Signature]

Director, Real Estate Assets

PERMITTEE:

WAVE THE PLANET, LLC

Date June 22, 2000

By [Signature]
Firouz D. Memarzadeh, Member

Date June 22, 2000

By [Signature]
Thomas J. Lochtefeld, Member

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

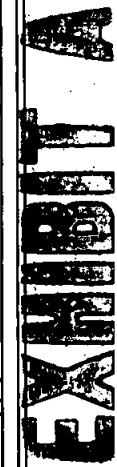
Date July 10, 2000

By [Signature]
Deputy City Attorney

LIST OF EXHIBITS TO
ACCESSORY USE PERMIT

EXHIBIT "A" - Site Map of Permit Area (consisting of 2 pages)

A circular stamp with the word 'INITIAL' written vertically on the left and the letters 'JUL' on the right, separated by a vertical line. A wavy line is drawn across the circle.



INITIAL

EXHIBIT 1

PAGE 2 OF 2

INITIAL
JUL

SOUTH PARKING LOT

C

EXISTING PARKING

NEW DISABLED
PARKING (1,470 SF)

NEW LOADING AREA

NEW TOUR BUS
DROP OFF

NEW DISABLED
PARKING (970 SF)

TOUR BUS DROP OFF

CHUTE BUILDING



NORTH PARKING LOT

EXIST. TRASH ENCLOSURE

(9) VALET PARKING SPACES
/PASSENGER DROP OFF

RECONFIGURED
LIFE GUARD PARKING

RELOCATED
TRANSFORMER

EXIST. BUILDING
(LIFEGUARD STATION W/ RESTROOMS)

TURN
AROUND

A

VALET PARKING AREA

EXIST. BUILDING#6

PROPOSED NAME LOCK SHOW NAME

EXIST. BUILDING#5

CONCRETE BOARDWALK

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

B

BEACH CONCESSIONS AREA

BEACH

SUPPLEMENTAL DEVELOPMENT PLAN

Overview: LESSEE anticipates investing thirteen million (\$13,000,000) in improvements to Mission Beach (Belmont) Park as follows:

Phase I of the Supplemental Development Plan anticipates a LESSEE investment of four million (\$4,000,000) dollars of program enhancements to Mission Beach Park within four (4) years of the effective date of this Memorandum. Improvements include:

- those described on Exhibit "2" attached hereto which are deemed approved qualified Tier 2 Rent Credit expenditures per paragraph 7 of the Fifth Operating Memorandum to Percentage Lease;
- addition of beach theme water recreational features that increase the attractiveness of the existing Plunge and provide an aquatic recreational sports draw for the adjacent boardwalk restaurants and associated north and west common area plazas;
- a trial one-year license to permit LESSEE to build and monitor a new charter/shuttle bus drop-off and loading space, in the CITY-owned lot that fronts the southern boundary of the Leasehold;
- identification of nine (9) valet/passenger drop-off parking spaces in the north Leasehold parking lot and a trial one year license to permit LESSEE to operate a parking valet service without diminishing the number of existing free first-come-first-serve parking;
- a trial one-year license to permit LESSEE beach rentals and food service on a limited sand area adjacent to the west boundary of the Premises.

Phase II of this Supplemental Development Plan envisages LESSEE submitting to CITY within six (6) years of the effective date of this Memorandum, and completing within ten (10) years of the effective date of this Memorandum, a Phase II Capital Improvement Plan for an anticipated nine million (\$9,000,000) dollar capital investment in one or more of the following program enhancements to Mission Beach and Mission Bay Park:

- addition of new water recreation and beach theme features to the Leasehold;
- structural refurbishment / adaptive re-use of the Plunge Building
- Leasehold parking structure to supplement the existing parking reservoir; and,
- Mission Bay South Shores overflow parking / shuttle service.

Initials 

Descriptive details for Phase I and II program elements are as follows:

Phase I -Detailed Description of Program Elements

Recreational Water Attractions:

Two types of water recreation enhancements are proposed for Phase I: the first is a children's interactive water show and stationary surfing wave feature; the second is a simulated surfing attraction.

The children's interactive water show and a stationary surfing wave ("Waterplay") feature is proposed at the north end of the Plunge. The Waterplay feature is proposed to replace two existing trampolines now occupying the site. The trampolines will be moved to a new location in the Leasehold. Participant access to the Waterplay feature will be from the north common area plaza and through a new opening in the north end of the Plunge building. The water show components of the Waterplay feature and north common area plaza include: a walk-through tunnel wave; nighttime special sound and lighting effects; fountains; water mist projections; and music. The stationary surfing wave is a small training wave that may actually be surfed by the general public. Viewing of the interactive water show and Waterplay feature shall be available from the surrounding rooftops.

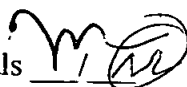
The simulated surfing attraction known as "The Wave Loch Flow Rider®" is proposed to be installed in three locations: the common area plaza west of the Plunge and on each of the rooftops of the respective boardwalk restaurants. The west common area plaza will host the "main show" wave. To provide adequate viewing space for the Flow Rider main show wave, rooftop seating and dining is available from the decks of the two restaurants adjoining the wave, and on walkways connecting the restaurants. The general public may actually ride the Flow Rider main show wave.

Two smaller training Flow Rider units are located on the rooftops of Buildings 5 and 6. The rooftop training Flow Riders are accessible to patrons from a set of existing stairs off the boardwalk. Use of each Flow Rider is controlled by a reservation "check-in" system. In general, only one user at a time is allowed to ride on each wave and 15 users are permitted in the immediate queue.

To aesthetically enhance the currently under-utilized space on the north end of the northerly restaurant, the patio shall be shifted approximately 15' east and extending it to the north Belmont Park property line. Fire pits with small fountains would be the main design feature of the proposed roof top decks and patio areas, which would be framed by arches matching the style of Belmont Park's existing historic arches.

Accessory Uses:

Beach Concessions: Pursuant to a renewable Accessory Use Permit attached as Exhibit A-3, LESSEE shall provide beach accessories and food/non-alcoholic beverage service on the beach adjacent to Belmont Park as shown on Exhibit "1" Site Map of Permit Area.

Initials 

Charter/Shuttle Bus Area: Pursuant to a renewable Accessory Use Permit attached as Exhibit A-3, LESSEE, at its sole cost and expense, shall build and monitor, on a one year trial basis, a new charter/shuttle bus drop-off and loading space, in the CITY-owned lot that fronts the southern boundary of the Leasehold as shown on Exhibit "1" Site Map of Permit Area.

Valet/Passenger Drop-off: Pursuant to a renewable Accessory Use Permit attached as Exhibit A-3, LESSEE shall build and operate, at its sole cost and expense, an nine-stall valet drop-off zone located in its north parking lot immediately adjacent Building 6 as shown on Exhibit "1" Site Map of Permit Area.

Phase II - Detailed Description of Program Elements:

New Water Recreation and Beach Theme Features: Subject to local review and approval by the pertinent planning, design and community groups, development options include:

- a 'Cirque du Soleil' style water and wave show located in the east common area plaza currently occupied by the toy boat pond. Expanded rooftop restaurants, amusements and viewing would surround the central courtyard.
- additional water recreation and group picnic areas located adjacent to or on top of the supplemental beach parking structures.

Structural Refurbishment / Adaptive Re-use of the Plunge Building: In order to insure continued operation of the Plunge swimming pool, the Plunge Building requires major renovation in order to overcome design flaws and permit an economically viable adaptive re-use. LESSEE shall consider commercial uses within a historically rehabilitated Plunge Building which would serve park and beach visitors, including but not limited to: an upper level hotel; a surrounding beach culture and retail arcade; participatory water attractions and games.

Parking Structure(s): LESSEE shall review options and propose alternatives for designing and building parking structure(s) on the Leased Premises and adjacent areas (e.g., Bonita Cove parking lot or the adjacent City owned south parking lot), to supplement the existing beach parking reservoir by three hundred plus (300+) spaces, conditioned upon financial feasibility.

Mission Bay South Shores Overflow Parking / Shuttle Service: To help alleviate beach and bay parking and traffic congestion, LESSEE shall review options and propose financially feasible alternatives for designing and building an overflow parking lot and shuttle service at the triangle parcel defined by Interstate 5, Sea World Drive and Pacific Highway.

EXHIBIT C-1

Page 4 of 4

LIST OF EXHIBITS TO
EXHIBIT C-1

1. Site Map of Permit Area, consisting of 2 pages
2. Approved Tier 2 Rent Credit List, consisting of 1 page

Initials m tu

INITIAL

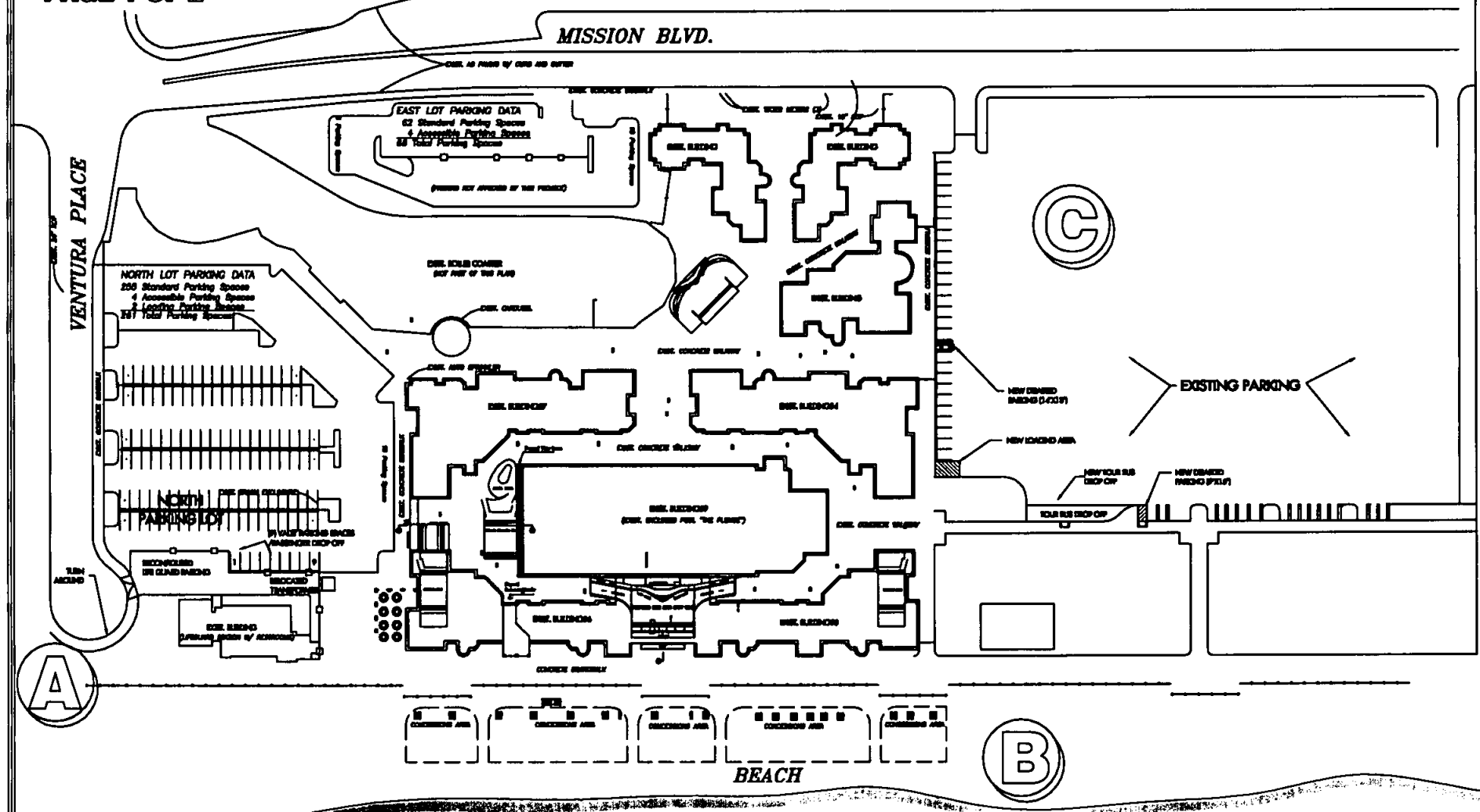


EXHIBIT 1

PAGE 2 OF 2

INITIAL

22

**NORTH
PARKING LOT**

EXIST. TRASH ENCLOSURE

(9) VALET PARKING SPACES
/PASSENGER DROP OFF

RECONFIGURED
LIFE GUARD PARKING

RELOCATED
TRANSFORMER

EXIST. BUILDING
(LIFEGUARD STATION W/ RESTROOMS)

TURN
AROUND

SOUTH PARKING LOT

C

NEW ORANGE
PARKING (14X18)

NEW LOADING AREA

NEW TOUR BUS
DROP OFF

NEW ORANGE
PARKING (7X18)

EXISTING PARKING

TOUR BUS DROP OFF

EXIST. BUILDING

A

VALET PARKING AREA

EXIST. BUILDING#6

PROPOSED NAME LOOK SHOW BUILDING

EXIST. BUILDING#5

CONCRETE BOARDWALK

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

B

BEACH CONCESSIONS AREA

BEACH

EXHIBIT 2

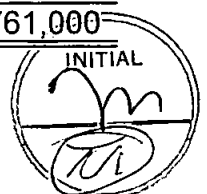
APPROVED TIER 2 RENT CREDIT

Phase I Water Themed Features & Support Facilities

1) General Conditions	\$ 75,000
2) Architectural & Engineering	\$ 180,000
3) Concrete	\$ 60,000
4) Structural Steel	\$ 70,000
5) Wood and Plaster	\$ 100,000
6) Thermal and Moisture Protection	\$ 40,000
7) Access	\$ 40,000
8) Finishes	\$ 10,000
9) Equipment	\$ 30,000
0) Mechanical	\$ 100,000
1) Electrical	\$ 60,000
2) Sound, Light & Cameras	\$ 125,000
3) Coatings	\$ 35,000
4) Installation	\$ 30,000
5) Media Production Facilities	\$ 150,000
6) Grand Stands	\$ 80,000
7) Electrical	\$ 200,000
8) Sub Frame	\$ 20,000
9) Filtration Piping	\$ 20,000
0) Water Containment	\$ 10,000
1) Labor	\$ 100,000
2) Sealing	\$ 10,000
3) Wave Run Out	\$ 10,000
4) POS / Web System	\$ 150,000
5) Storage Containers	\$ 10,000
6) Miscellaneous Equip/Parts	\$ 20,000
7) Permitting	\$ 20,000
8) Elevators - Handicap	\$ 120,000
9) Pumps	\$ 155,000
0) Motor Control Center	\$ 275,000
1) Filter Equipment	\$ 90,000
2) Wave Surface	\$ 195,000
3) Signage	\$ 24,000
4) SS Nozzle Assemblies	\$ 147,000

Total

\$ 2,761,000



RESOLUTION NUMBER R- 293393

ADOPTED ON JUN 26 2000

WHEREAS, in 1986, the Mayor and City Council approved the Belmont Park commercial development project located in Mission Beach [Belmont Park]; and

WHEREAS, despite its unique oceanfront location, Belmont Park has never achieved its full economic potential because the original business concept was similar to a retail mall, which failed to account for the seasonal dynamics of the coastal area; and

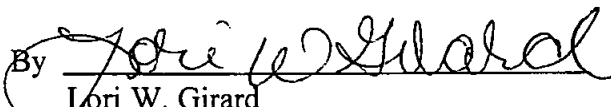
WHEREAS, City desires to revitalize Belmont Park by including appropriate park visitor-oriented commercial and recreational uses, including the installation of water theme features for the amusement and entertainment of the general public [Features]; and

WHEREAS, the Features are designed to enhance the attractiveness of the Plunge Building and to stimulate the economic viability and use of the existing restaurants and retail in Belmont Park; and

WHEREAS, the Features have been approved by the California Coastal Commission and the Park and Recreation Board, and have received positive recommendations from the Mission Beach Town Council, the Mission Beach Precise Planning Board, the Coastal Area Committee, and the Design Review Committee; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager or his designee is authorized and empowered to execute, for and on behalf of The City of San Diego, the Fifth Operating Memorandum to the Belmont Park lease, a copy of which is on file in the office of the City Clerk as Document No. RR- 293393.

APPROVED: CASEY GWINN, City Attorney

By 
Lori W. Girard
Deputy City Attorney

LWG:ccm:Civ.
05/24/00
Or.Dept:REA
R-2000-1616

Passed and adopted by the Council of San Diego on JUN 26 2000 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS, McCARTY, VARGAS, MAYOR GOLDING.

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 293393, passed and adopted by the Council of The City of San
Diego, California on JUN 26 2000.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

FILE : LEGAL
BELMONT PARK ASSOC.
8-27-91

FOURTH OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Fourth Operating Memorandum to Percentage Lease is dated for reference purposes Aug 12, 1991 by and between the City of San Diego, a municipal corporation ("Lessor") and Belmont Park Associates, a California limited partnership ("Lessee"), with respect to the following facts:

RECITALS

A. Lessor and Lessee entered into a Percentage Lease dated March 4, 1987 ("Original Lease"), an Operating Memorandum to Percentage Lease dated December 23, 1987, a Second Operating Memorandum to Percentage Lease dated December 11, 1990 and a Third Operating Memorandum to Percentage Lease dated February 25, 1991 (collectively, the "Lease").

B. The Original Lease, at Section 1.11 and by reference to the Belmont Park Development Plan attached to the Original Lease as Exhibit C, provides that a community meeting room ("Community Room") shall be constructed by the Lessee within the Plunge Fitness Facility located in Belmont Park for use by the general public in accordance with the Original Lease and that certain Recognition and Attornment Agreement between Lessor, Lessee and Southern California Fitness, Inc., a California Corporation ("Fitness") the operator of the Plunge Fitness Facility.

C. Fitness and Lessee wish to relocate the Community Room from its present location in the Plunge Fitness Facility to another location in Belmont Park.

D. Lessor agrees to consent to the foregoing on the following terms and conditions.

NOW, THEREFORE, in consideration of mutual agreements set forth herein, the parties agree as follows:

AGREEMENT

1. Lessor hereby consents to relocation of the Community Room to 3136 Mission Boulevard, Suite G, San Diego, California, which contains approximately 900 square feet of space in Belmont Park effective on or about July 15, 1991.

2. Lessor consents to the use by Fitness of the former location of the Community Room in the Plunge Fitness facility for general commercial uses by Fitness in accordance with its Sublease with Lessee.

3. Except as amended hereby, all the provisions of the Original Lease shall remain unchanged and in full force and effect.

Lessor:

CITY OF SAN DIEGO,
a municipal corporation

By: [Signature]

Name: DON BARONE
Title: PROPERTY SERVICES SUPERVISOR

for City Manager

Approved as to form and legality
this 26 day of August, 1991:

By: [Signature]

Name: A. VALERIANO
Title: Deputy City Attorney

Lessee:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: Phase I Development, Inc.,
a California corporation
General Partner

By: [Signature]
Name: _____
Title: Ex. V.P.

By: _____
Name: _____
Title: _____

THIRD OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Third Operating Memorandum to Percentage Lease is dated for reference purposes February 25, 1991 by and between the City of San Diego, a municipal corporation ("Lessor") and Belmont Park Associates, a California limited partnership ("Lessee"), with respect to the following facts:

RECITALS

A. Lessor and Lessee entered into a Percentage Lease dated March 4, 1987 ("Original Lease"), and Operating Memorandum to Percentage Lease dated December 23, 1987 ("First Memorandum"), and a Second Operating Memorandum to Percentage Lease dated December 11, 1990 (collectively, the "Lease").

B. The legal description of the real property which is leased by Lessor to Lessee pursuant to the Lease is incorrect and the parties desire to incorporate the correct legal description.

NOW, THEREFORE, in consideration of mutual agreements set forth herein, the parties agree as follows:

AGREEMENT

1. Exhibit A which was attached to the Original Lease and Exhibit A which was attached to the First Memorandum are deleted and Exhibit A-1 which is attached hereto is substituted in place thereof as the true and correct legal description of the real property which is leased by Lessor to Lessee pursuant to the Lease.

2. Except as amended hereby, all the provisions of the Lease shall remain unchanged and in full force and effect.

Lessor:

CITY OF SAN DIEGO,
a municipal corporation

By: Robert J. Collins
Name: ROBERT J. COLLINS
Title: ACTING DIRECTOR
REAL ESTATE ASSETS DEPARTMENT
Approved as to form and legality
this 15 day of November, 1991

By: [Signature]
Name: H. VALDEZ HANE
Title: Chief Deputy City Attorney

Lessee:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: Phase I Development, Inc.,
a California corporation
General Partner

By: Donald C. White
Name: DONALD C. WHITE

Title: Ex V.P.

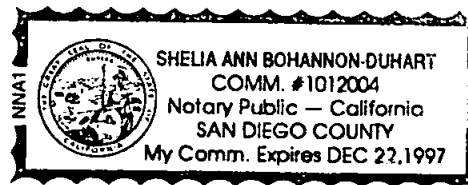
The above Third Operating Memorandum to Percentage Lease replaces the original Third Operating Memorandum to Percentage Lease, which was approved as to form and legality on February 26, 1991 but was not in a recordable format.

STATE OF CALIFORNIA)
COUNTY OF San Diego)

On 11/15/95 before me, Shelia Ann Bohannon-Duhart,
personally appeared Robert J. Collins, personally known to
me ~~(or 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.

WITNESS my hand and official seal.

Signature: Shelia Ann Bohannon-Duhart

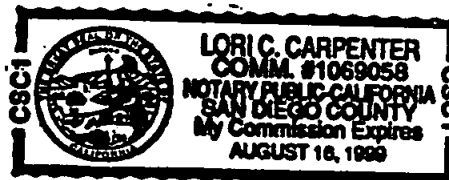


STATE OF CALIFORNIA)
COUNTY OF San Diego)

On November 15, 1995 before me, Lori C. Carpenter,
personally appeared Donald C. White, ~~personally known to~~
~~me~~ ~~(or~~ 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.

WITNESS my hand and official seal.

Signature: Lori C. Carpenter



All that portion of Pueblo Lot 1803 of Pueblo Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, now known as Miscellaneous Map No. 36, and the unnumbered Tract of Mission Beach according to Map thereof No. 1809, filed in the Office of the County Recorder of San Diego County, more particularly described as follows:

Beginning at City Survey Monument "BELMONT" at the intersection of Ventura Place and Ocean Front Walk as shown on said Map of Mission Beach; thence South $17^{\circ} 33' 57''$ East 59.92 feet; thence North $86^{\circ} 57' 43''$ East 70.44 feet the TRUE POINT OF BEGINNING thence continuing North $86^{\circ} 57' 43''$ East 307.18 feet; thence South $03^{\circ} 02' 17''$ East 6.00 feet; thence South $83^{\circ} 06' 55''$ East 48.54 feet; thence South $03^{\circ} 02' 17''$ East 15.35 feet; thence South $75^{\circ} 50' 22''$ West 2.48 feet; thence South $84^{\circ} 54' 14''$ West 8.27 feet; thence South $60^{\circ} 55' 41''$ West 16.35 feet; thence South $44^{\circ} 59' 16''$ West 16.67 feet; thence South $26^{\circ} 39' 19''$ West 16.17 feet; thence South $07^{\circ} 38' 23''$ West 16.24 feet; thence South $00^{\circ} 08' 13''$ East 7.96 feet; thence South $11^{\circ} 55' 16''$ East 16.51 feet; thence South $19^{\circ} 16' 16''$ East 39.37 feet; thence South $65^{\circ} 32' 18''$ West 7.24 feet; thence South $28^{\circ} 07' 54''$ West 16.54 feet; thence South $11^{\circ} 33' 28''$ West 16.04 feet; thence South $42^{\circ} 31' 53''$ West 22.28 feet; thence North $49^{\circ} 19' 28''$ West 3.43 feet; thence South $42^{\circ} 14' 42''$ West 41.48 feet; thence South $46^{\circ} 32' 33''$ East 3.49 feet; thence South $42^{\circ} 04' 28''$ West 37.12 feet; thence South $01^{\circ} 31' 54''$ West 52.83 feet to a point in a non-tangent 20.00 foot radius curve concave Westerly, a radial line to said point bears North $10^{\circ} 02' 02''$ East; thence Southerly along said curve through a central angle of $135^{\circ} 11' 04''$ an arc distance of 47.19 feet; thence along a non-tangent line South $02^{\circ} 56' 09''$ East 148.09 feet; thence South $44^{\circ} 27' 04''$ East 8.93 feet; thence South $37^{\circ} 14' 33''$ East 24.47 feet; thence South $65^{\circ} 19' 34''$ East 24.49 feet; thence North $85^{\circ} 00' 57''$ East 24.31 feet; thence North $61^{\circ} 42' 41''$ East 16.27 feet; thence North $35^{\circ} 12' 19''$ East 24.54 feet; thence North $05^{\circ} 35' 18''$ East 32.32 feet; thence North $02^{\circ} 52' 15''$ West 119.94 feet; thence North $03^{\circ} 19' 20''$ West 63.36 feet to the beginning of a tangent 120.00 foot radius curve concave Southeasterly; thence Northeasterly along said curve through a central angle of $30^{\circ} 21' 47''$ an arc distance of 63.59 feet; thence tangent to said curve North $27^{\circ} 02' 27''$ East 94.78 feet; thence North $27^{\circ} 06' 20''$ East 15.98 feet; thence North $19^{\circ} 41' 45''$ East 17.70 feet to the beginning of a tangent 54.00 foot radius curve concave Northwesterly; thence Northeasterly along said curve through a central angle of $10^{\circ} 17' 45''$ an arc distance 9.70 feet; thence along a non-tangent line North $80^{\circ} 27' 33''$ East 7.51 feet to the Westerly right-of-way of the Westerly lane of Mission Boulevard; thence along said right-of-way South $09^{\circ} 32' 27''$ East 71.87 feet to the beginning of a tangent 1980.00 foot radius curve to the right; thence Southerly along said curve through a central angle of $06^{\circ} 30' 00''$ an arc distance of 224.62 feet; thence tangent South $03^{\circ} 02' 27''$ East 363.91 feet; thence leaving said right-of-way South $86^{\circ} 54' 33''$ West 511.36 feet; thence North $02^{\circ} 58' 02''$ West 532.19 feet; thence North $87^{\circ} 01' 58''$ East 76.27 feet; thence North $03^{\circ} 02' 17''$ West 60.98 feet; thence North $86^{\circ} 57' 43''$ East 17.00 feet to the beginning of a tangent 3.00 foot radius curve to the left; thence Northerly along said curve through a central angle of $90^{\circ} 00' 00''$ an arc distance of 4.71 feet; thence tangent North $03^{\circ} 02' 17''$ West 36.50 feet to the beginning of a tangent 3.00 foot radius curve to the left; thence Westerly along said curve through a central angle of $90^{\circ} 00' 00''$ an arc distance of 4.17 feet; thence tangent South $86^{\circ} 57' 43''$ West 19.56 feet to the beginning of a tangent 3.00 foot radius curve to the right; thence Northerly along said curve through a central angle of $90^{\circ} 00' 00''$ an arc distance of 4.71 feet; thence tangent North $03^{\circ} 02' 17''$ West 115.99 feet to the TRUE POINT OF BEGINNING.

CONTAINS 7.136 ACRES (MORE OR LESS)

SECOND OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Second Operating Memorandum to Percentage Lease ("Operating Memorandum") is executed on December 11, 1990 between the City of San Diego ("CITY") and Belmont Park Associates ("Lessee"), and it is mutually agreed as follows:

1. This Operating Memorandum is made with reference to the following recital of essential facts:

1.01 CITY and Lessee entered into a Percentage Lease dated March 4, 1987 (the "Lease").

1.02 CITY and Lessee entered into an Operating Memorandum To Percentage Lease dated December 23, 1987 for the purposes of (a) substituting a revised Exhibit "A" to the Lease and (b) clarifying that the sentence in Section 3.03 on Page 9 of the Lease reading "In no event shall the total rent credit exceed \$5,617,700." shall be interpreted as follows: "In no event shall the total rent credit exceed \$5,617,700, plus interest expense."

1.03 Uncertainties have arisen relating to the interpretation and manner of computation of the Rent Credit to which Lessee is entitled as referred to in Sections 3.02, (3.03) and 3.04 of the Lease.

1.04 Lessee has constructed the Public Improvements as contemplated by Section 3.03 of the Lease and became entitled to the maximum Rent Credit of \$5,617,700, plus interest expense.

1.05 There currently exists a loan which has funded a portion of the cost of the improvements constructed on the Lease premises by Lessee, and Lessee has paid interest on that loan for the entire period commencing prior to July 1988 and continuing to date at an interest rate which has varied from 10-1/2% at the beginning of July 1988 to a maximum of 13-1/2% in the spring of 1989, and which has been reduced to the current rate of 11.5%.

1.06 Lessee is currently negotiating for a new five year loan which would bear an interest rate of approximately 10-1/2%. It is contemplated that from time to time loans on the Lease premises will be refinanced and/or replaced by new loans bearing presently undetermined rates of interest.

1.07 CITY and Lessee desire to clarify any uncertainties regarding the interpretation and manner of computation of the Rent Credit and to clarify the Lease to accomplish this objective as set forth below.

2. The second sentence of Section 3.03 of the Lease shall be modified in its entirety to read as follows: In consideration for same, CITY shall provide an annual rent credit ("Rent Credit") in an amount equal to the debt service constant (actual interest incurred plus principal repayment) applicable to any loan (which shall be arranged by Lessee at competitive market interest rates) encumbering the Lease premises as of the period for which the Rent Credit is computed, multiplied by the then outstanding balance of

the Rent Credit to which Lessee is then entitled; and Lessee shall continue to be entitled to such Rent Credit until Lessee shall have been reimbursed by CITY through the Rent Credit for the full principal amount of the maximum Rent Credit of \$5,617,700 plus the actual interest which Lessee incurs applicable to each such loan as referred to above.

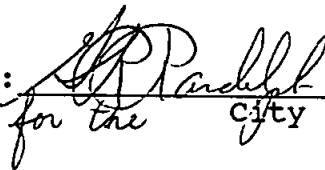
3. The next to last sentence of the first paragraph of Section 3.03 of the Lease shall be modified in its entirety to read as follows: Ninety per cent (90%) of any percentage rent in excess of the minimum rent (before deduction of the Rent Credit) for each Lease Year shall not be paid to CITY, but shall be deducted from the outstanding balance of the Rent Credit to which Lessee is entitled as of the time of such deduction, until such time as the outstanding balance of the Rent Credit has been reduced to zero.

4. Attached as Exhibit "A" and incorporated in this Operating Memorandum by reference is a schedule setting forth the computation of the actual Rent Credit from the beginning on July 1, 1988 through December, 1990, plus a projection for the 12 months of 1991 based on the assumption that the replacement loan currently being negotiated by Lessee becomes effective January 1, 1991 at an interest rate of 10.5% per annum.

5. Except as expressly clarified by this Operating Memorandum all of the provisions of the Lease, as previously clarified by the Operating Memorandum To Percentage Lease dated December 23, 1987, shall remain fully effective.

THE CITY OF SAN DIEGO

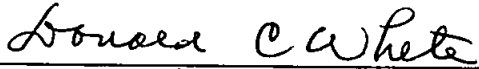
BY:


for the City Manager

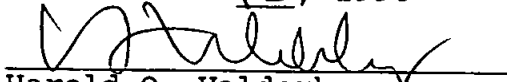
12-13-90
Note:
DS. Barone 02/26/91
Signed 3001 1/1/91
AR

BELMONT PARK ASSOCIATES,
a California Limited Partnership
By: Phase One Development, Inc.

By


Donald White
Executive Vice President

Approved as to form and legality
on December 12, 1990


Harold O. Valderhaug
Deputy City Attorney

Belmont Park
Rent Credit Calculation

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Month	Beginning Balance	Average Interest Rate	Debt Service Constant	(1) * (3) Maximum Rent Credit	Minimum Rent	Minimum Cash Payment	Portion Of Rent Credit Received	Interest Portion Of Rent Credit	Carryover (Principal Reduction)	Ending Balance	Applicable Interest Rate
Jul-88	5,617,700.00	10.77%	10.77%	50,418.86	58,767.33	9,618.58	49,148.75	50,418.86	1,270.11	5,618,970.11	7/1 to 7/14 @ 10.5%, 7/15 to 7/31 @ 11%
Aug-88	5,618,970.11	11.32%	11.32%	53,005.62	58,767.33	9,618.58	49,148.75	53,005.62	3,856.87	5,622,826.98	8/1 to 8/11 @ 11%, 8/12 to 8/31 @ 11.5%
Sep-88	5,622,826.98	11.50%	11.50%	53,885.43	58,767.33	5,833.33	52,934.00	53,885.43	951.43	5,623,778.41	9/1 to 9/30 @ 11.5%
Oct-88	5,623,778.41	11.50%	11.50%	53,894.54	58,767.33	5,833.33	52,934.00	53,894.54	960.54	5,624,738.95	10/1 to 10/31 @ 11.5%
Nov-88	5,624,738.95	11.53%	11.53%	54,044.37	58,767.33	5,833.33	52,934.00	54,044.37	1,110.37	5,625,849.32	11/1 to 11/28 @ 11.5%, 11/29 to 11/30 @ 12%
Dec-88	5,625,849.32	12.00%	12.00%	56,258.49	58,767.33	5,833.33	52,934.00	56,258.49	3,324.49	5,629,173.81	12/1 to 12/31 @ 12%
Jan-89	5,629,173.81	12.00%	12.00%	56,291.74	58,767.33	5,833.33	52,934.00	56,291.74	3,357.74	5,632,531.55	1/1 to 1/31 @ 12%
Feb-89	5,632,531.55	12.32%	12.32%	57,827.32	58,767.33	5,833.33	52,934.00	57,827.32	4,893.32	5,637,424.87	2/1 to 2/12 @ 12%, 2/13 to 2/26 @ 12.5%, 2/27 to 2/28 @ 13%
Mar-89	5,637,424.87	13.00%	13.00%	61,072.10	58,767.33	5,833.33	52,934.00	61,072.10	8,138.10	5,645,562.97	3/1 to 3/31 @ 13%
Apr-89	5,645,562.97	13.00%	13.00%	61,160.27	58,767.33	5,833.33	52,934.00	61,160.27	8,226.27	5,653,789.24	4/1 to 4/30 @ 13%
May-89	5,653,789.24	13.00%	13.00%	61,249.38	58,767.33	5,833.33	52,934.00	61,249.38	8,315.38	5,662,104.62	5/1 to 5/31 @ 13%
Jun-89	5,662,104.62	12.57%	12.57%	59,310.55	58,767.33	5,833.33	52,934.00	59,310.55	6,376.55	5,668,481.17	6/1 to 6/4 @ 13%, 6/5 to 6/30 @ 12.5%
Jul-89	5,668,481.17	12.48%	12.48%	58,952.20	58,767.33	5,833.33	52,934.00	58,952.20	6,018.20	5,674,499.37	7/1 to 7/30 @ 12.5%, 7/31 @ 12%
Aug-89	5,674,499.37	12.00%	12.00%	56,744.99	58,767.33	5,833.33	52,934.00	56,744.99	3,810.99	5,678,310.36	8/1 to 8/31 @ 12%
Sep-89	5,678,310.36	12.00%	12.00%	56,783.10	58,767.33	5,833.33	52,934.00	56,783.10	3,849.10	5,682,159.46	9/1 to 9/30 @ 12%
Oct-89	5,682,159.46	12.00%	12.00%	56,821.59	58,767.33	5,833.33	52,934.00	56,821.59	3,887.59	5,686,047.05	10/1 to 10/31 @ 12%
Nov-89	5,686,047.05	12.00%	12.00%	56,860.47	58,767.33	5,833.33	52,934.00	56,860.47	3,926.47	5,689,973.52	11/1 to 11/30 @ 12%
Dec-89	5,689,973.52	12.00%	12.00%	56,899.74	58,767.33	5,833.33	52,934.00	56,899.74	3,965.74	5,693,939.26	12/1 to 12/31 @ 12%
Jan-90	5,693,939.26	11.63%	11.63%	55,183.76	58,767.33	5,833.33	52,934.00	55,183.76	2,249.76	5,696,189.02	1/1 to 1/8 @ 12%, 1/9 to 1/31 @ 11.5%
Feb-90	5,696,189.02	11.50%	11.50%	54,588.48	58,767.33	5,833.33	52,934.00	54,588.48	1,654.48	5,697,843.50	2/1 to 2/28 @ 11.5%
Mar-90	5,697,843.50	11.50%	11.50%	54,604.33	58,767.33	5,833.33	52,934.00	54,604.33	1,670.33	5,699,513.83	3/1 to 3/31 @ 11.5%
Apr-90	5,699,513.83	11.50%	11.50%	54,620.34	58,767.33	5,833.33	52,934.00	54,620.34	1,686.34	5,701,200.17	4/1 to 4/30 @ 11.5%
May-90	5,701,200.17	11.50%	11.50%	54,636.50	58,767.33	5,833.33	52,934.00	54,636.50	1,702.50	5,702,902.67	5/1 to 5/31 @ 11.5%
Jun-90	5,702,902.67	11.50%	11.50%	54,652.82	58,767.33	5,833.33	52,934.00	54,652.82	1,718.82	5,704,621.49	6/1 to 6/30 @ 11.5%
Jul-90	5,704,621.49	11.50%	11.50%	54,669.29	58,767.33	5,833.33	52,934.00	54,669.29	1,735.29	5,706,356.78	7/1 to 7/31 @ 11.5%
Aug-90	5,706,356.78	11.50%	11.50%	54,685.92	58,767.33	5,833.33	52,934.00	54,685.92	1,751.92	5,708,108.70	8/1 to 8/31 @ 11.5%
Sep-90	5,708,108.70	11.50%	11.50%	54,702.71	58,767.33	5,833.33	52,934.00	54,702.71	1,768.71	5,709,877.41	9/1 to 9/30 @ 11.5%
Oct-90	5,709,877.41	11.50%	11.50%	54,719.66	58,767.33	5,833.33	52,934.00	54,719.66	1,785.66	5,711,663.07	10/1 to 10/31 @ 11.5%
Nov-90	5,711,663.07	11.50%	11.50%	54,736.77	58,767.33	5,833.33	52,934.00	54,736.77	1,802.77	5,713,465.84	11/1 to 11/30 @ 11.5%
Dec-90	5,713,465.84	11.50%	11.50%	54,754.05	58,767.33	5,833.33	52,934.00	54,754.05	1,820.05	5,715,285.89	Assume 11.5% for 12/90
Jan-91	5,715,285.89	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	50,008.75	(2,925.25)	5,712,360.64	Assume 10.5%, 15 year amortization.
Feb-91	5,712,360.64	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,983.16	(2,950.84)	5,709,409.80	Assume 10.5%, 15 year amortization.
Mar-91	5,709,409.80	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,957.34	(2,976.66)	5,706,433.14	Assume 10.5%, 15 year amortization.
Apr-91	5,706,433.14	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,931.29	(3,002.71)	5,703,430.43	Assume 10.5%, 15 year amortization.
May-91	5,703,430.43	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,905.02	(3,028.98)	5,700,401.45	Assume 10.5%, 15 year amortization.
Jun-91	5,700,401.45	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,878.51	(3,055.49)	5,697,345.96	Assume 10.5%, 15 year amortization.
Jul-91	5,697,345.96	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,851.78	(3,082.22)	5,694,263.74	Assume 10.5%, 15 year amortization.
Aug-91	5,694,263.74	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,824.81	(3,109.19)	5,691,154.55	Assume 10.5%, 15 year amortization.
Sep-91	5,691,154.55	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,797.60	(3,136.40)	5,688,018.15	Assume 10.5%, 15 year amortization.
Oct-91	5,688,018.15	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,770.16	(3,163.84)	5,684,854.31	Assume 10.5%, 15 year amortization.
Nov-91	5,684,854.31	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,742.48	(3,191.52)	5,681,662.79	Assume 10.5%, 15 year amortization.
Dec-91	5,681,662.79	10.50%	13.53%	64,415.08	58,767.33	5,833.33	52,934.00	49,714.55	(3,219.45)	5,678,443.34	Assume 10.5%, 15 year amortization.

Assumptions: New loan beginning January 1, 1991 (10.5% interest and 15 year amortization)
No City percentage rent assumed due to it being a variable factor.

EXHIBIT "A"

EXHIBIT "A"

OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Operating Memorandum to Percentage Lease by and between the City of San Diego (the "City") and Belmont Park Associates, a California limited partnership ("Lessee"), is entered into as of this 23 day of DECEMBER, 1987, with reference to the following facts:

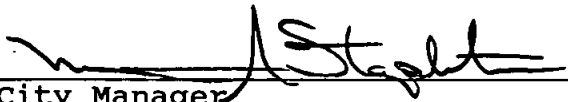
- A. City and Lessee entered into a Percentage Lease dated March 4, 1987, with respect to certain real property described therein.
- B. Section 3.03 is ambiguous and the parties desire to clarify such provision.
- C. The agreed legal description attached to said Percentage Lease conflicts with the legal description contained in the lease executed between the City and Save The Coaster Committee. The parties desire to resolve such conflict.

NOW, THEREFORE, the parties agree as follows:

- 1. On Page 9, Section 3.03, the following sentence is included: "In no event shall the total rent credit exceed \$5,617,700." This provision shall be interpreted as follows:

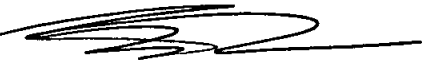
"In no event shall the total rent credit exceed \$5,617,700, plus interest expense."
- 2. Exhibit "A" to said Percentage Lease shall be deleted and Exhibit "A" attached hereto shall be substituted therefor and be defined as the Premises therein. For the purpose of (i) interpretation of the property vested under Proposition "G", and (ii) defining areas available to Lessee for the operation and maintenance of park/visitor oriented commercial and recreational uses, the legal description originally attached to said Ground Lease shall govern.

THE CITY OF SAN DIEGO

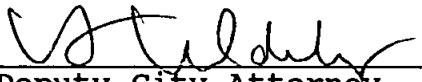
By: 
DEP City Manager

BELMONT PARK ASSOCIATES,
a California limited partnership

PHASE ONE DEVELOPMENT, INC.

By: 
Steven L. Davis, President

APPROVED as to form and legality this 22 day of December,
1987.

By: 
Deputy City Attorney

JB
Mar 4, 1987
REV. APRIL 16, 1987LEGAL DESCRIPTION

BELMONT PARK BOUNDARY:

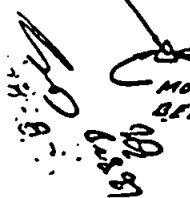
BASIS OF BEARINGS: Being the centerline of Strandway adjacent to Block 100, Parcel Map No. 8978, recorded July 27, 1979, F/P No. 79-315081 O.R.; in the City of San Diego, County of San Diego, State of California; i.e. North 2°48'00" West.

Beginning at City survey monument "Belmont" at the intersection of Ventura Place and Ocean Front Walk; thence South 17°33'57" East 59.92 feet; thence North 86°57'43" East 70.44 feet to the TRUE POINT OF BEGINNING; thence continuing along said line North 86°57'43" East 339.18 feet to the Southwesterly curb line of Ventura Place; thence along said curblines South 71°07'05" East 17.05 feet; thence leaving said curb line South 3°02'17" East 21.14 feet to a point with an iron pin with cap marked RCE 27741; thence South 81°10'03" West 57.96 feet to a point with an iron pin with cap marked RCE 27741; thence South 2°26'48" East 144.33 feet to a point with an iron pin with cap marked RCE 27741; thence South 52°40'55" West 81.33 feet to a point with a disk marked RCE 27741; thence South 2°57'28" East 302.14 feet to a point with a disk marked RCE 27741; thence North 86°57'41" East 100.77 feet to a point with a disk marked RCE 27741; thence North 3°02'19" West 214.00 feet to the beginning of a 240.13 foot radius curve, concave Easterly to a point with an iron pin with cap marked RCE 27741; thence along said curve through a central angle of 34°27'47" a distance of 144.44 feet to a point with a disk marked RCE 27741; thence North 31°25'28" East 34.51 feet to the beginning of a 158.47 foot radius curve, concave Northwesterly to a point with a disk marked RCE 27741; thence along said curve through a central angle of 20°44'09" a distance of 57.35 feet, to a point with an iron pin with cap marked RCE 27741 a radial bearing to the center of said curve bears North 79°18'41" West; thence non-tangent to said curve North 80°27'33" East 5.20 feet to the Westerly right-of-way line of the West lane of Mission Boulevard per Miscellaneous Map No. 148; thence along said Westerly line South 9°32'27" East 71.87 feet to the beginning of a 1980.00 foot radius curve, concave Westerly; thence along said curve through a central angle of 6°30'00" a distance of 224.62 feet; thence South 3°02'27" East 363.91 feet; thence leaving aforementioned Westerly line South 86°54'33" West 511.36 feet; thence North 2°58'02" West 532.19 feet; thence North 87°01'58" East 76.27 feet; thence North 3°02'17" West 60.98 feet; thence North 86°57'43" East 17.00 feet to the beginning of 3.00 foot radius curve, concave Northwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 36.50 feet to the beginning of 3.00 foot radius curve, concave Southwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence South 86°57'43" West 19.56 feet to the beginning of a 3.00 foot radius curve, concave Northeasterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 116.00 feet to the TRUE POINT OF BEGINNING.

Contains 7.136 Acres (More or Less)

DR
4-28-87
4-28-87

"Y. 118142"



NO.	BEARING	DISTANCE
- T1	N71° 07' 05" W	61.06
- T2	N09° 32' 27" W	65.91
T3	N87° 01' 56" E	5.00
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- INDICATES FD. 5/8" x 18" I.P.
W/CAP MARKED ACE 27741
- INDICATES FD. BRASS DISK
AND TACK MARKED ACE
27741

SCALE: 1" = 100'

CITY OF SAN DIEGO
M E M O R A N D U M

FILE: Leases - Belmont Park Associates
DATE: March 7, 1990
TO: City Attorney
FROM: Property Department
SUBJECT: Belmont Park Associates Lease - Commencement Date

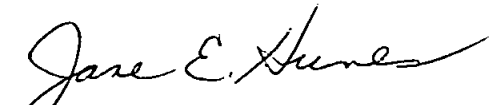
This is in reference to your memorandum dated February 26, 1990 to the City Auditor.

Council Resolution R-270781 referred to in your memorandum was a resolution established in connection with Proposition G and not the long-term lease approved by the City Council. The Council Resolution for the lease is Resolution R-266064 and was adopted on June 23, 1986, prior to the aforesaid resolution.

In any event, the Lease Agreement states in part at Section 2.01, Commencement, "The term of this lease shall be fifty (50) years commencing on the first day of the calendar month following the receipt of all discretionary approvals required by governmental authorities having jurisdiction to approve same as described in Section 1.03 ("Commencement Date") or July 1, 1988, whichever date or event first occurs."

If you review Section 1.03, Related Council Actions, you will note that, in negotiating the lease, we specifically listed Certificate of Occupancy as one of the required discretionary actions. Therefore, since the first Certificate of Occupancy is dated June 30, 1988, the lease term is effective and, in fact, commences on July 1, 1988.

Please acknowledge your agreement with the above on the copy of this memorandum.


Jane E. Humes, Property Agent
Property Management Division

JEH:st(43-2)

cc: James L. Spotts
Rhea Kuhlman
Don Barone
G. R. Randolph
Bob Kruger
Betty Conley
Susan Drake
Darryl Jensen
Eugene Ruzinni

ABOVE ACCEPTABLE

By 
City Attorney

Date 3/12/90

Property
51-A
Jane Hume

(R-90-135)

RESOLUTION NUMBER R- 274210

ADOPTED ON AUG 7 1989

WHEREAS, The City has entered into a lease with Belmont Park Associates "for construction, operation and maintenance of a park/visitor-oriented commercial and recreational center, as described in the Development Plan attached [to the lease], and for such other related or incidental purposes as may be first approved in writing by the City Manager, which approval shall not be unreasonably withheld . . ."; and

WHEREAS, the Mission Beach Park lease project has been determined to have "vested rights" under the Save Mission Beach Park (Belmont Park) Initiative, also known as Proposition G; and

WHEREAS, Belmont Park Associates has proposed the addition of a carousel 30 feet in diameter within the lease area as a "related or incidental" use under the lease; and

WHEREAS, Proposition G basically requires public park and recreational uses within Mission Beach Park but excludes commercial uses except within the plunge building and except in connection with historical preservation uses; and

WHEREAS, Proposition G further allows "incidental and related" uses to those uses specifically authorized; and

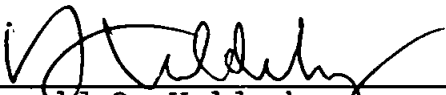
WHEREAS, the proposed carousel has been determined by the City Manager to be an incidental and related use under the vested lease project and the carousel use can be considered an incidental and related use to the historical rehabilitation of the plunge and the adjacent roller coaster; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Council hereby finds that the proposed carousel operation is a "related or incidental" use under the lease and that it is also an "incidental and related" use to those uses specifically authorized under Proposition G.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to approve the installation and operation of a carousel in Mission Beach Park in a manner and as more particularly described in the Manager's report, a copy of which is attached hereto and by this reference incorporated herein.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/21/89
Or.Dept:Prop.
Job:220307
R-90-135
Form=r.none

RECORDING REQUESTED BY

CITY OF SAN DIEGO

AND WHEN RECORDED MAIL TO

Name City of San Diego
Street Address Property Department
Security Pacific Plaza
1200 Third Ave., Suite 1700
City San Diego, CA 92101
State Attn: Property Management
Zip Mail Station 51-A

MAIL TAX STATEMENTS TO

Name City of San Diego
Street Address Property Department
Security Pacific Plaza
1200 Third Ave., Suite 1700
City San Diego, CA 92101
State Attn: Property Management
Zip Mail Station 51-A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 0
____ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
____ OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE.

Signature of Declarant or Agent determining tax. Firm Name

QUITCLAIM DEED

(Escrow No.)

By this instrument dated _____, for a valuable consideration,

BELMONT PARK ASSOCIATES, a California Limited Partnership

do.e.s. hereby remise, release and forever quitclaim to the CITY OF SAN DIEGO

the following described Real Property in the State of California, County of San Diego

City of San Diego

SEE ATTACHED LEGAL DESCRIPTION.

BELMONT PARK ASSOCIATES,
a California Limited Partnership

By: PHASE ONE DEVELOPMENT, INC.,
a California Corporation
(Managing General Partner)

By: Gary W. Hollenbeck
GARY W. HOLLENBECK, President
Jon K. Ladd
JON K. LADD, Secretary

STATE OF CALIFORNIA

COUNTY OF San Diego

On July 20, 1988, before me, the undersigned, a Notary Public in and for said
County and State, personally appeared Gary W. Hollenbeck and
Jon K. Ladd

proved to me on the basis of satisfactory evidence to be the person.S. whose
name.S. subscribed to this instrument, and acknowledged
to me that .T.he.Y. executed the same.

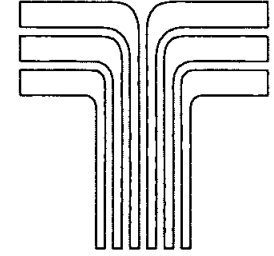
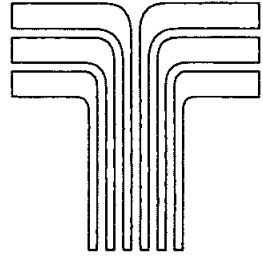
Notary's Signature.

Kristan V. Wollesen



MAIL TAX STATEMENTS AS DIRECTED ABOVE

QUITCLAIM DEED
Transamerica Title
Insurance Company



March 4, 1987

REV. APRIL 16, 1987

LEGAL DESCRIPTION

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DOC. 2091

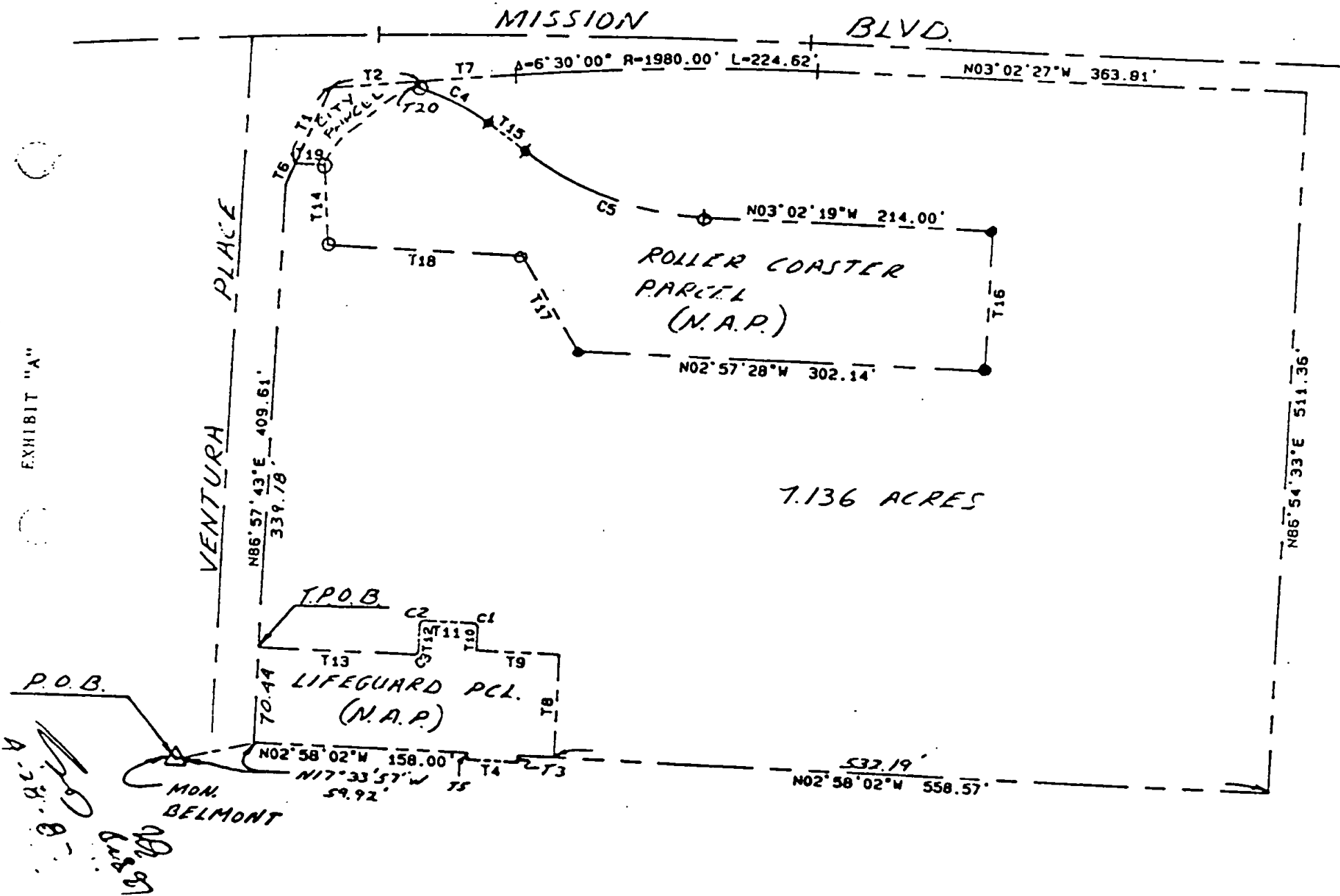
TLS

DR
4-28-87

4-28-87

PLAT TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "A"



NO.	DELTA	RADIUS	LENGTH
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○ INDICATES F.D. 5/8" x 18" I.P.
W/CAP MARKED ACE 27741

● INDICATES F.D. BRASS DISK
AND TACK MARKED ACE
27741

SCALE: 1" = 100'

RECORDING REQUESTED BY:

Jon K. Ladd
Attorney for Belmont Park Associates,
a California limited partnership
9665 Chesapeake Drive, Suite 401
San Diego, CA 92123

WHEN RECORDED RETURN TO:

BELMONT PARK ASSOCIATES
a California limited partnership
9665 Chesapeake Drive, Suite 401
San Diego, CA 92123

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into by and between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and BELMONT PARK ASSOCIATES, a California limited partnership, hereinafter called "LESSEE", to witness that:

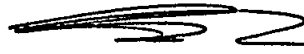
CITY hereby leases to LESSEE for a term of FIFTY (50) years on the terms and conditions set forth in that certain lease by and between CITY and LESSEE, dated and approved by the Assistant City Manager on March 4, 1987 and by the Deputy City Attorney on March 5, 1987 pursuant to approval authority granted by City Council Resolution No. R-266064 dated June 23, 1986, all of that certain real property situated in the City of San Diego, County of San Diego, State of California, commonly known as Belmont Park and being more particularly described on Exhibit "A" attached hereto and by this reference made a part of this Memorandum of Lease. Furthermore, all the terms and conditions of said lease, together with any additions, modifications, or amendments thereto, are made a part hereof as though fully set forth herein.

Executed on the date as set forth below, in the City of San Diego, County of San Diego, State of California.

LESSEE:

BELMONT PARK ASSOCIATES,
a California limited partnership

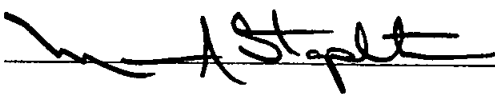
By: PHASE ONE DEVELOPMENT, INC.,
a California corporation
Managing General Partner

By: 

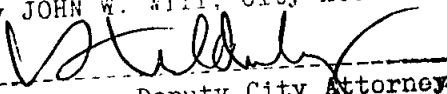
STEVEN L. DAVIS
President

LESSOR:

CITY OF SAN DIEGO

By: 

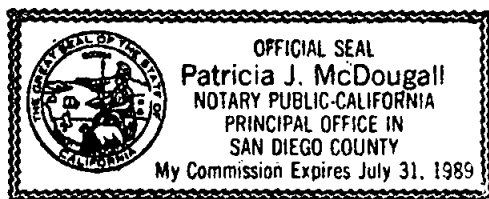
DATED: 12/23/87

APPROVED as
to form by JOHN W. WITT, City Attorney
By: 
Deputy City Attorney

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On December 23, 1987, before me, a Notary Public in and for said County and State, personally appeared STEVEN L. DAVIS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President on behalf of the corporation therein named and acknowledged to me that the corporation executed it on behalf of the partnership therein named and acknowledged to me the partnership executed it.

WITNESS my hand and official seal.

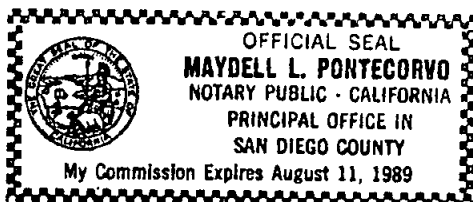


Patricia J. McDougall
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On December 23, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared MAUREEN STAPLETON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Deputy City Manager of the City of San Diego and acknowledged to me that he/she/they executed the within instrument on behalf of the City of San Diego.

WITNESS my hand and official seal.



Maydell L. Pontecorvo
Notary Public in and for
said County and State

#10640B
March 4, 1987
REV. APRIL 16, 1987

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TLS

DR
A-28-87

PLAT TO ACCOMPANY LEGAL DESCRIPTION

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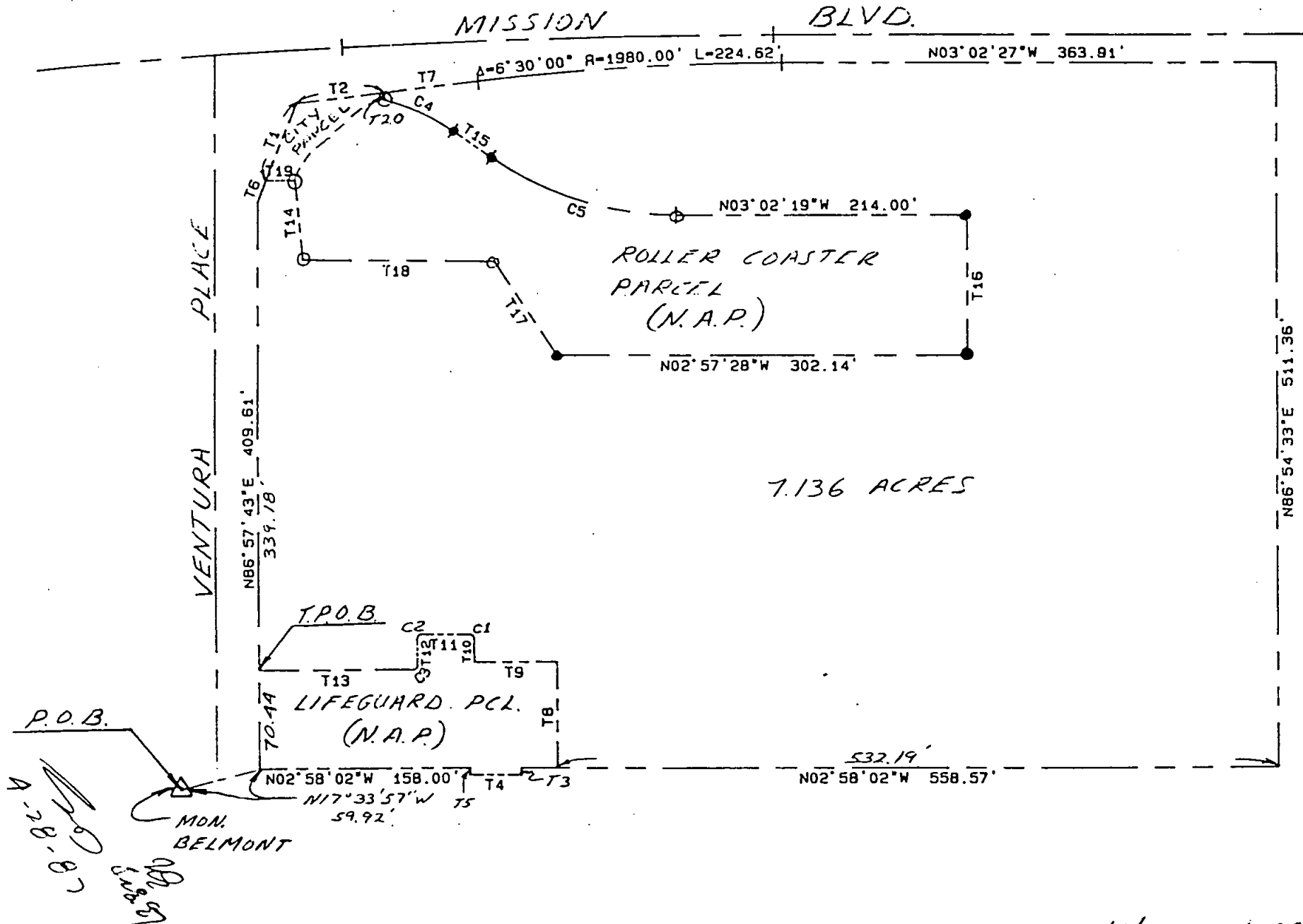
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SCALE: 1" = 100'



SHOLDERS & SANFORD, INC.
Planning Engineering Surveying
3569 Fifth Avenue, San Diego, CA 92103
(619) 299-7272



BELMONT I

OCIATES

~~ORIG~~ SIGN
CITY CLERK

copy

OPTION

DOC#^{RR-}266064

RECEIVED

AUG 11 1986

ECO. DEV./PROP. DEPT.

RECEIVED

FEB 27 1987

ECO. DEV./PROP. DEPT.

THE CITY OF SAN DIEGO

Percentage Lease

6/9/86
REV. 5-29-86

executed 3/5/87
4
DML

LEASE OUTLINE

<u>SECTION</u>	<u>PARAGRAPH</u>	<u>PAGE</u>
SECTION 1:	USES	1
1.01	Premises	1
1.02	Uses	1
1.03	Related Council Actions	2
1.04	Quiet Possession	2
1.05	Easements and Reservations	2
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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT (the "Lease") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and BELMONT PARK ASSOCIATES, a California limited partnership, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises." The Premises shall be free and clear of all encumbrances except as set forth on Exhibit "B" attached hereto.

1.02 Uses. It is expressly agreed that the Premises are leased to LESSEE for park and recreation uses, specifically for the construction, operation and maintenance of a park/visitor-oriented commercial and recreational center, as described in the Development Plan attached as Exhibit "C" hereto (the "Development Plan"), and for such other related or incidental purposes as may be first approved in writing by the City Manager, which approval shall not be unreasonably withheld, and for no other purpose whatsoever.

LESSEE acknowledges that the Premises are part of a dedicated public park and agrees to use the property only for purposes as described above. LESSEE covenants and agrees to use the Premises throughout the term hereof for the above specified purposes and to diligently conduct or cause the business to be conducted thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the Premises for said purposes, or the use of the Premises for purposes not expressly authorized herein, shall constitute a default under the terms hereof.

1.03 Related Council Actions. By the granting of this Lease, neither the CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, coastal approval, building permits, Certificate of Occupancy and any other governmental agency

approvals which may be required for the development and operation of the Premises ("discretionary approvals"). The City Manager agrees to cooperate in processing of applications for discretionary approvals.

- 1.04 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall not be voidable, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises. Any actions in condemnation or contemplation thereof shall be subject to Section 4.05 of this Lease.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

Notwithstanding the foregoing, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY'S exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.06 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a

commercial center and related activities in a fiscally responsible manner.

- 1.07 Hours of Operation. LESSEE shall include in any assignments or subleases a provision requiring that such businesses remain open during usual and customary hours for the similar businesses in San Diego and as reasonably appropriate to service the park visitors.
- 1.08 No Competition. CITY agrees that it will not renew any existing contracts or enter into new contracts during the term of this Lease which contracts would involve sales of goods or services which are available from time to time on the Premises on City-owned property within one hundred (100) yards of the Premises, excluding uses on property over which CITY has no proprietary control.
- 1.09 Parking. LESSEE shall provide and maintain on the Premises no less than three hundred twenty-five (325) parking spaces on site, generally in accordance with the development plan attached hereto, unless precluded by the CITY due to condemnation or other actions instituted or imposed by the CITY or other governmental agencies having the power to change same. LESSEE may, on the east parking lot on the premises subject to the review of the City Council and any other legally required reviews, charge a fee or require validation for parking on the Premises or a portion of said Premises, which revenue shall be subject to the percentage rent described in Section 3.02(c) - All Other Operations.
- 1.10 Swimming Pool. During the entire term of the Lease, LESSEE or its sublessee shall be responsible for the operation and management of an indoor swimming pool on the Premises. The pool operation shall provide for the following:
- a. The pool is to be made available on a regular schedule, with hours of operation subject to prior written approval of the City Manager and LESSEE. The initial schedule of operations is attached hereto as Exhibit C, Development Plan.
 - b. Admission and fees are to be comparable to those established by operators of similar pools in the Southern California area unless it can be demonstrated to the reasonable satisfaction of the City Manager that an economic hardship exists because of the uniqueness of the indoor pool operation, thereby justifying a higher fee.
 - c. The City Manager will approve hours of operation and associated rates prior to implementation. In the event

that the City Manager does not respond to a written request for approval within twenty (20) days of receipt of same, LESSEE may consider said request approved.

- d. Access may be limited at certain times for specific activities such as children's learn-to-swim programs, scuba lessons, and swimming team programs. All programs will be available to the general public on an approved day use fee.

1.11 Community Meeting Room. During entire the term of this lease, LESSEE or its sublessees shall be responsible for management and maintenance of a community meeting room as shown on the Development Plan. The room shall be made available for public use under the following guidelines:

- a. The meeting room shall be made available to the general public on a scheduled basis.
- b. Commercial activities in the room will be preempted for scheduled public service uses, subject to the notice to and approval by LESSEE or its sublessee, which approval shall not be unreasonably withheld.
- c. The LESSEE or its sublessee can charge fees associated with setting up meeting facilities, if any.
- d. Any fees charged will be equivalent to LESSEE'S cost for labor, plus directly related overhead, if any, for the event.

SECTION 2: TERM

- 2.01 Commencement. The effective date of this Lease shall be the date of execution by the City Manager. The term of this Lease shall be fifty (50) years commencing on the first day of the calendar month following the receipt of all discretionary approvals required by governmental authorities having jurisdiction to approve same as described in Section 1.03 ("Commencement Date") or July 1, 1988, whichever date or event first occurs. "Lease year" as used in this Lease shall mean each 12-month period following the Commencement Date. City Manager and LESSEE shall execute and record a Memorandum of Lease in recordable form within thirty (30) days after the Commencement Date which confirms the existence of this Lease term hereof and other provisions reasonably necessary to provide notice of the terms of this Lease to any sublease assignee or mortgagee. Any costs incurred in completing the foregoing, except CITY staff time, shall be borne by LESSEE.

2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this Lease, LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the Premises. Subject to the rights of any mortgagee as set forth in Section 4.03, CITY may record such deed only on the expiration or earlier termination of this Lease, and no conveyance of the reversion or possessory rights shall be deemed to have occurred until recording of said deed. In the event the CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within fifteen (15) days after receiving written demand therefor.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting the LESSEE'S failure to execute this Lease provision and the notice will be conclusive evidence of the termination of this Lease and all LESSEE rights to the Premises.

SECTION 3: RENT

3.01 Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Minimum Rent. The annual minimum rent established for the first five (5) years following the commencement date of this Lease is Seven Hundred Five Thousand Two Hundred Eight Dollars (\$705,208) which is Fifty-Eight Thousand Seven Hundred Sixty-Seven Dollars and 33 Cents (\$58,767.33) on a monthly installment basis (the "Minimum Rent").

Monthly payments of minimum rent shall be reduced by one-twelfth (1/12) of the rent credit, as described in Section 3.03, and may be augmented, or reduced by percentage rent, to the extent percentage rent exceeds the total minimum rent paid within a Lease Year, as described in this Section 3.02. Such computation shall be made on a cumulative basis during each Lease Year as described in Section 3.04.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth Lease year of this Lease and at the beginning of each three (3) year period thereafter during the term, the annual minimum rent shall be adjusted to eighty percent (80%) of the annual average of actual rents paid or accrued during the three (3) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent in effect immediately prior to the adjustment date.

- c. Percentage Rents. "Percentage Rent" will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentages

Three Percent (3%)
Three Percent (3%)
Five Percent (5%)
Five Percent (5%)
Five Percent (5%)

Business Activities

Specialty Shops
Food
Game Rooms
Alcoholic Beverages
Pool Operations, but only
if operated by other than
a qualified nonprofit
corporation under the
Internal Revenue Code.
All Other Operations

Seven Percent (7%)

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.02, Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.07, Unauthorized Use Charge, hereof.

Percentage rent payable each month during a Lease Year shall be reduced by one-twelfth (1/12) of the rent credit, as described in Section 3.03, and minimum rent paid to date during such Lease Year pursuant to Section 3.02a. Such computations shall be made on a cumulative basis during each Lease Year as described in Section 3.04.

- d. Percentage Rate Adjustment. At least four (4) months prior to the end of the fifteenth Lease Year and at least four (4) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY, if appropriate, effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.02e. below. In the event that such adjustment is not made by mutual consent prior to two (2) months before the end of said rent review periods, then the parties hereto will, at the CITY'S sole option, refer the matter to appraisal under the terms hereinafter set forth. If CITY elects not to go to appraisal, then the rent shall remain unchanged.

- e. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, then the adjustment, if any, shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this Lease Agreement from the list of appraisers approved by CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full Lease Term equal to the initial full term of Lease on the open market for the authorized purposes of this Lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations for ground leases primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment, if any, to be made upon the applicable commencement of the succeeding period, LESSEE agrees to continue to pay Percentage Rent in accordance with the then existing

rates and any adjustment, when determined, will be retro-active to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATES.

- 3.03 Rent Credit. LESSEE shall construct the public improvements described on Exhibit D, attached hereto and incorporated by reference herein, (the "Public Improvements") within the time frame as set forth in the Development Plan. In consideration for same, CITY shall provide an annual rent credit ("Rent Credit") in an amount equal to the debt service constant on a loan, or a portion of a loan if the loan amount includes public improvements and private improvements, times the total cost of the public improvements and related indirect costs until such costs have been repaid, together with applicable interest expense. "Indirect Costs" shall be 36.3% of the actual construction costs of public improvements. However, in no event shall LESSEE be given a rent credit for Indirect Costs in excess of \$1,495,886. Any loan shall be arranged by LESSEE at competitive market interest rates. LESSEE shall attempt to negotiate CITY'S right to repay all or a portion of the loan of CITY'S option, without penalty. Ninety percent (90%) of any percentage rent in excess of the minimum rent and rent credit for each Lease Year shall be used to reduce the principal balance of the loan for public improvements and indirect costs. CITY shall hold such funds and apply them annually against the remaining balance of cost for public improvements and indirect costs.

Rent credit shall be based upon the actual cost of construction of the public improvements paid by LESSEE with invoices approved by the City Manager, plus 36.3% of such amount for indirect costs and applicable loan interest expense. In no event shall the total rent credit exceed \$5,617,700. No such improvements for which any rent credit is given shall be removed by LESSEE at any time, without prior written approval of the City Manager, including upon expiration or earlier termination of this Lease. One-twelfth (1/12) of the rent credit shall be applied against monthly installments of minimum rent and/or percentage rent due to CITY until the balance is fully repaid. CITY shall not be liable for any unused rent credit upon expiration or early termination of this Lease. Rent credit shall accrue on the loan commencing as of the completion of construction of each portion of the public improvements and payment therefor by LESSEE or payment by LESSEE of indirect costs.

3.04 Payment Computation and Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to percentage rent was earned, LESSEE shall provide CITY with a correct statement together with a payment of minimum rent, and percentage rent, if any, on all applicable gross receipts, in a form approved by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. The minimum rent due to date in any Lease Year.
- b. Total gross receipts for the subject month and totaled for such Lease Year, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the Premises must be included when a reported category shows gross income to be from more than one business operation.
- c. The percentage rent, if any, computed and totaled for the month and Lease Year.
- d. The accumulated total of all minimum rent and percentage rent paid for the current Lease Year.
- e. Payment in the greater of the two following amounts: minimum rent or percentage rent due to date during such Lease Year reduced by the rent credit accrued to date during such Lease Year. In no event shall the rent actually paid in any Lease Year following the commencement date be less than Seventy Thousand Dollars (\$70,000) per year or Five Thousand Eight Hundred Thirty-Three Dollars and 33 cents (\$5,833.33) per month; provided that, credit shall be given for any monthly payments exceeding Five Thousand Eight Hundred Thirty-Three Dollars and 33 cents (\$5,833.33) during each Lease Year for subsequent months (i.e. the monthly minimum amount shall be computed upon a cumulative basis so that the average is at least equal to said minimum payments..

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this Lease, and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Receipt of all discretionary approvals.

(2) Receipt of all discretionary approvals.

- 3.05 Gross Income. "Gross income or receipts" as used in this Lease, shall include all income resulting from occupancy of the leased Premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by, LESSEE, or any sublessee, permittee, licensee, or their agents to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this Lease.

In the event that LESSEE has exercised all reasonable means to collect percentage rent from a sublessee, permittee, licensee, or their agent, as determined by the City Manager, and is thereafter unable to collect such percentage rent, the City Manager may relieve LESSEE of payment with respect to such percentage rent if, in his sole discretion, he determines such payment would be unfair to LESSEE based upon the actions of collection undertaken by LESSEE.

3.06 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to reasonably determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within ninety (90) days after the end of each Lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.05a. Records will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data reasonably available to LESSEE to enable CITY to fully comply with all requirements of the state or federal government for Lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%), between the rent due as reported and paid by LESSEE pursuant to this Lease and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3 Delinquent Rent and Audit(s) Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

e. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

Notwithstanding the foregoing, LESSEE shall not be deemed in default under the terms hereof, if LESSEE has provided for the foregoing requirements in the respective Lease of any sublessee, licensee, or permittee, or their agent, has exercised reasonable legal means to compel compliance, and thereafter is unable to secure same.

3.07 Delinquent Rent and Audit(s) Fees. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, Five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days after written notice of delinquency is deposited in the mail, addressed to LESSEE in accordance with the notice provision set forth under Paragraph 7.01 hereof, LESSEE shall pay an additional Five percent (5%) [being a total of Ten percent (10%)] which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event CITY audit(s) if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- 3.08 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this Lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this Lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. LESSEE shall not assign this Lease, or any interest therein, or sublet the premises or any part thereof, without the prior written consent of City Manager, which approval shall not be unreasonably withheld.

The following assignments or subletting shall not require the consent of City Manager:

- a. Any user which occupies an area of less than 5,000 square feet who executes a standard Lease form previously approved by City Manager where the described use of the premises has been previously approved in the Development Plan or by the City Manager;
- b. Any subsequent assignment or subletting of a tenant where (i) the use of the premises does not change with such assignment and (ii) the credit worthiness of the assignee or sublessee is equal to or greater than the assignor or the assignor or sublessor is not relieved of liability in connection with such assignment;
- c. Any assignment to any mortgagee by operation of law as with foreclosure, a deed in lieu thereof, or under threat of foreclosure.

When consent is required by City Manager, such consent shall be based upon verification that any assignee or sublessee (i) has financial capability equal to or greater than assignor or assignor is not relieved of liability under the terms thereof and (ii) such assignee possesses or engages management skills equal to or greater than the assignor.

City Manager shall approve or disapprove any requested assignment or sublease, describing the reasons therefor, within twenty (20) days after presentation by LESSEE and, in the event that no response is received during such period, such assignment shall be deemed approved.

Except for the foregoing, any such assignment or subletting without the consent of City Manager shall be void and constitute a default under the terms of this Lease.

- 4.03 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12 Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard

insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such development.

Any subsequent encumbrances upon the Premises or on any permanent improvements thereon must first have the approval, in writing, of City Manager. City Manager's approval shall be based upon a determination that the new loan does not exceed eighty percent (80%) of the appraised value of the leasehold estate and that operating income payable to LESSEE from the Premises are adequate to service any such debt and expenses, including rent under the terms hereof.

In the event any such approved deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Any default, foreclosure, or sale pursuant to said deed of trust, mortgage, or other security instrument shall be invalid with respect to this Lease without prior notice thereof to CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue such cure to completion; or

- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described herein is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE commences curative action within said 30-day period and thereafter diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and

mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.

- (3) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to

constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain other than by the CITY, the interests of the CITY, LESSEE and beneficiary or mortgagee under any mortgage or deed of trust will be as follows:

- a. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if the remainder of the Premises is suitable for continued Lease operation, as determined by LESSEE, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

- d. Award. Subject to the rights of any mortgagee, all monies awarded in any such taking shall belong to CITY to the extent of its reversionary interest in land and improvements. Any diminution in value of the Leasehold shall be awarded to LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer the CITY'S interests in the Premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of its leasehold interest.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.06 Partnership Liability. Each general partner of LESSEE shall jointly and severally perform and be responsible for each and every term, covenant and condition and each general partner is jointly and severally liable for performance under this Lease.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times following the Commencement Date shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the Premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the Premises, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by LESSEE;
- b. Any operation, use or occupation conducted on the Premises;
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or

- d. Any failure by LESSEE to comply or secure compliance with any of the Lease terms or conditions.

Said indemnification by LESSEE to CITY shall not extend to any act, omission or negligence on the part of CITY, its employees, agents, boards and officers.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this Lease following the Commencement Date the following insurance at its sole expense:

- a. Public Liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the Premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the Premises, with a full replacement cost endorsement. Any proceeds from a loss shall be payable jointly to the CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without thirty (30) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY, which approval will not be unreasonably withheld, and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance certificate will remain on file with CITY during the entire term of the Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a

certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.

- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease. Any such amounts shall not exceed the cost of replacement in the case of fire insurance or liability limits increased by the percentage increase in the Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (1967=100), All Items, for the Los Angeles/Long Beach Metropolitan Area ("Consumer Price Index") from the date of commencement of the term hereof.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000), increased by any increase in the Consumer Price Index, worth of property damage or any serious injury to persons on the Premises. This report should contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give thirty (30) days written notice of any failure to obtain insurance and, if not cured, the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this Lease, or fails to provide the proof of insurance, within fifteen (15) days after written notice, CITY has the right to declare this Lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire damage or other damage that may occur on the Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit and to seek to prevent any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner reasonably satisfactory to the CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage, or, at the CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage using for either purpose the insurance proceeds as set forth in Section 5.02 Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the Premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY shall determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Premises are untenable by reason of such damage. City's determination of the amount of the deduction shall be based upon that proportion shall be based upon that portion of the buildings on the Premises which remain tenantable taking into account the condition of sub-tenants premises, reasonable access to such spaces and available parking.

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of Twenty Thousand Dollars (\$20,000) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited with CITY and CITY shall not be liable to LESSEE for any interest

thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

- b. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment, and agree that any or all funds shall be paid to CITY upon demand by CITY.

The financial institution and the form of any instrument pledging the funds must be approved by CITY.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to LESSEE within ninety (90) days following one year after the receipt of a Certificate of Payment with respect to the Premises, of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this Lease. LESSEE further acknowledges that Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises and that LESSEE does not hold CITY responsible for any defects in the Premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said Premises during normal business hours for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises

are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after fifteen (15) days written notice to LESSEE, and LESSEE'S failure to cure same, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said Premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said Premises are not in a decent, safe, healthy and sanitary condition, within fifteen (15) days after written notice to LESSEE, CITY may at its sole option, without additional notice, require LESSEE to file with CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY. Notwithstanding anything set forth hereinabove, CITY shall not commence curative action of any repair or require a bond if LESSEE has commenced to cure the noticed problem within said fifteen (15) day period and diligently pursues any necessary work to completion.

- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12 Development Plan, hereof, and with all applicable laws.

Notwithstanding the foregoing, LESSEE shall not be responsible to repair or replace water, gas, electric, sewer or other public utilities existing or installed by the CITY on the Premises, except for laterals and services which provide utilities to the Premises which would be the usual responsibility of the occupant of such building under the terms of any respective agreement with the provider of such services, and except for repairs necessitated by or resulting from the activities of LESSEE, its sublessees, agents and licensees.

- 6.04 Improvements/Alterations. Except as approved in the Development Plan, no improvements, constructions or installations shall be constructed on the Premises without the prior written consent of City Manager, which approval shall not be unreasonably withheld. City Manager hereby approves any alterations or repairs which do not alter the appearance of the exterior of the buildings as set forth in the Development Plan. Similarly, the City Manager hereby approves any interior improvements which do not alter such approved exterior elevations or affect the structural integrity of the premises.

This provision shall not relieve LESSEE of any obligation under this Lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including the structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges on the Premises in connection with the development and operation of the Premises. All utilities will be installed underground.

6.06 Construction Bond. Whenever there is any construction to be performed related to public improvements on the Premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the public improvement work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY. With regard to the other improvements, LESSEE shall provide to City Manager evidence of adequate financing to assume completion of same and appropriate fund control provisions to insure such funds will be utilized for the completion of said improvements.

6.07 Liens. LESSEE will at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises, and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations or repairs are made to the Premises by LESSEE or by any party other than CITY and a lien or notice of lien is filed, LESSEE shall within ten (10) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

- 6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the Premises including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever, erected, installed or maintained by LESSEE or any sublessee or levied by reason of the business or other LESSEE or sublessee activities related to the Premises, including any licenses or permits. If this Lease creates a possessory interest subject to the payment of taxes levied on such interest, LESSEE shall pay all such possessory interest taxes.

LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due the CITY.

- 6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY which consent shall not unreasonably withheld. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 72 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost. The City Manager agrees to assist LESSEE in obtaining approvals for on and off-site signage.

6.10 Ownership of Improvements

- a. All and any improvements, trade fixtures, structures and installations or additions to the Premises now existing or constructed on the Premises by LESSEE, shall at Lease expiration or termination, be deemed to be part of the Premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this Lease.
- b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installation, and CITY notifies LESSEE 30 days prior to termination or 180 days prior to expiration, LESSEE shall remove all such any commercial improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before Lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration

or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become the CITY'S property free of all claims and liens, or CITY may at its option remove said items at LESSEE'S expense.

- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage, reasonable wear and tear excepted.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, delays resulting from legal actions brought against CITY or LESSEE in connection with the rights or obligation hereunder, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.12 Development Plan. LESSEE agrees to develop the leased premises in accordance with the Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Exhibit C, hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the Development Plan shall constitute a default under the terms hereof.

- 6.13 Failure to Meet Development Schedule. In the event that construction of the improvements described in the Development Plan are not completed within twenty-four (24) months following the Commencement Date, CITY may, at its option, terminate this Lease.
- 6.14 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized State body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit, but if LESSEE is unable to do so within twelve (12) months after the date effective hereof, subject to extension pursuant to Section 6.11, because of the failure of LESSEE to diligently pursue same, this Lease may be terminated by CITY.

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at 3838 Camino del Rio North, Suite 301, San Diego, CA 92108, with a copy to MacHutchin Development, 7458 La Jolla Blvd., La Jolla, CA 92037 and a copy to Paul Thoryk, Inc., 1157 Columbia Street, San Diego, California 92101, or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager, Attention Property Director
City Administration Building
202 C Street, M. S. 9B
San Diego, CA 92101-4155

and to any mortgagee, trustee or beneficiary, as applicable at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

- 7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the Premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition,

LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.03 CITY Approval. The approval or consent of the CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council, which approval shall not be unreasonably withheld.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in the use by LESSEE of the Premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
- 7.05 Equal Opportunity. LESSEE agrees to abide by the Equal Opportunity Program for non-construction contractors doing business with the CITY. A copy of the program effective as of the date of this Lease is on file in the City Clerk's Office as Document RR262633, and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Equal Opportunity Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.07 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the Premises. Notwithstanding the foregoing, LESSEE and CITY agree to execute amendments reasonably requested by any mortgagee which (i) do not impact the amounts payable hereunder and (ii) are reasonably required to provide any such mortgagee with notice of any defaults by LESSEE hereunder and the reasonable opportunity to cure same. Each party has relied on its own examination of the Premises, advice from its own attorneys and the warranties, representations and covenants of the Lease. Each of the parties to this Lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on these actions. No modification, amendment or alteration of this Lease will be valid unless it is in writing and signed by all parties.

- 7.11 Partnership Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said partnership, and that this Lease is binding upon the partnership in accordance with its terms and that the LESSEE is a duly qualified partnership and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the Premises are situated.

- 7.12 Standard of Employees. The LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

- 7.13 Right of First Refusal. Upon the expiration of this Lease, and upon the condition that the LESSEE has fully complied with the terms and conditions of this Lease during the Lease term, or cured any monetary breaches within fifteen (15) days after notice hereof and non-monetary breaches within a reasonable time after notice thereof, CITY agrees that LESSEE shall have the right of first refusal to enter into a new Lease for the Premises upon such terms and conditions as are determined appropriate in the sole discretion of the City Council. The right of first refusal shall be contingent upon a finding by the City Council that it is desirable and in the public's best interest to continue the uses of the property as specified in

this Lease. In the event the CITY determines to utilize the Premises for other uses, the LESSEE shall not have a right of first refusal. If the CITY does determine to continue to Lease the Premises for the uses approved under this Lease, CITY shall advise LESSEE of proposed terms and conditions at least one year prior to the expiration of the initial term hereof. In the event LESSEE and CITY are unable to agree upon terms and conditions within one hundred eighty (180) days after said notice to LESSEE, CITY may Lease the property to another party so long as the Lease contains substantially the same terms and conditions as were rejected by LESSEE. In any event, any and all rights of first refusal shall expire two years following the expiration of this Lease in the event CITY and LESSEE have not entered into a new Lease of the Premises.

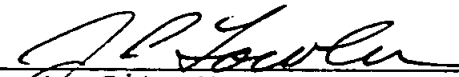
- 7.14 Roller Coaster Lease. CITY acknowledges that the restoration and maintenance of the adjacent Roller Coaster property is necessary for LESSEE to undertake and operate the Premises in a professional and economically feasible manner. LESSEE is aware of the terms of the existing Roller Coaster Lease. CITY agrees to enforce the provisions of the Roller Coaster Lease in a reasonable manner. Upon expiration or earlier termination of the Roller Coaster Lease, LESSEE shall have the right of first refusal to take over the remaining Lease term or enter into a new Lease under the terms as set forth above relating to a right of first refusal of the Premises.

SECTION 8: SIGNATURES

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

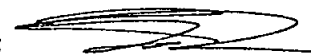
THE CITY OF SAN DIEGO

Date: 3-4-87

By: 
~~Deputy~~ City Manager
Asst

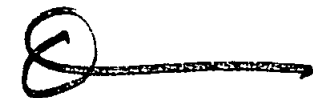
BELMONT PARK ASSOCIATES, a California
limited partnership

PHASE ONE DEVELOPMENT, INC.

By: 
Steven L. Davis, President

SEAPARK ASSOCIATES, a California
limited partnership

MACHUTCHIN DEVELOPMENT, General
Partner

By: 
Graham J. MacHutchin, President

PAUL THORYK, INC.

By: 
Paul Thoryk, President

APPROVED as to form and legality this 5 day of March, 1987.

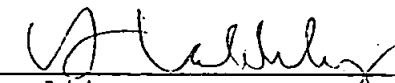
By: 
Deputy City Attorney

EXHIBIT "A"

LEGAL DESCRIPTIONS

PARCEL A:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED IN AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED MARCH 6, 1924 IN BOOK 999, PAGE 64 OF DEEDS, FILED IN SAID COUNTY RECORDER'S OFFICE, WHICH POINT BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWEST CORNER OF BLOCK 96 OF MISSION BEACH AS SHOWN ON SAID MAP NO. 1809, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH LINE OF PRADO WITH SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTHERLY 10.00 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 89°12'00" WEST, 406.00 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE BOARDWALK WHICH LIES 24 FEET EAST OF THE SEAWALL; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID BOARDWALK A DISTANCE OF 550.00 FEET, MORE OR LESS; THENCE LEAVING THE EASTERLY LINE OF SAID BOARDWALK PERPENDICULAR AND EASTERLY 75.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 53.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND EASTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 45.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND WESTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE NORTH 89°12'00" EAST ALONG THE SOUTHERLY LINE OF VENTURA PLACE TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, ABOVE REFERENCED; THENCE SOUTHERLY ALONG SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF THE WEST LINE OF MISSION BOULEVARD AS SAID BOULEVARD IS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940.

ALSO EXCEPTING THEREFROM ANY PORTION, IF ANY LYING BELOW THE MEAN HIGH TIDE OF THE PACIFIC OCEAN.

EXHIBIT A

ALSO EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE WESTERLY LINE OF MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 9°18'00" WEST 88.82, FEET; TO THE TRUE POINT OF BEGINNING; THENCE NORTH 59°45'00" WEST, 12.75 FEET; THENCE SOUTH 14°05'00" WEST, 66.25 FEET; THENCE SOUTH 32°45'00" WEST 5.47 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE SOUTHEAST AND HAS A RADIUS OF 360.00 FEET, MORE OR LESS; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 33°33'00" A DISTANCE OF 210.80 FEET, MORE OR LESS, TO THE END OF SAID CURVE; THENCE SOUTH 00°48'00" EAST, 178.45 FEET; THENCE SOUTH 89°12'00" WEST, 92.50 FEET; THENCE NORTH 00°48'00" WEST, 235.00 FEET; THENCE SOUTH 89°12'00" WEST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 40.00 FEET; THENCE NORTH 44°12'00" EAST, 94.75 FEET; THENCE NORTH 00°48'00" WEST, 25.00 FEET; THENCE NORTH 89°12'00" EAST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 117.00 FEET; THENCE NORTH 89°12'00" EAST, 48.00 FEET; THENCE NORTH 00°48'00" WEST, 23.00 FEET; THENCE NORTH 69°00'00" WEST, 56.54 FEET TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE ALONG SAID SOUTHERLY LINE NORTH 89°12'00" EAST, 105.00 FEET TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 11°00'00" EAST, 90.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH MAP IS FILED AS MISCELLANEOUS MAP NO. 36 IN THE OFFICE OF THE COUNTY RECORDER IN SAID SAN DIEGO COUNTY CALIFORNIA, SAID PORTION OF PUEBLO LOT 1803 BEING SHOWN ON SHEETS 3 AND 4 OF MAP NO. 1809 OF MISSION BEACH ON FILE IN THE OFFICE OF SAID COUNTY RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALSO EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE WESTERLY LINE OF MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 9°18'00" WEST 88.82, FEET; TO THE TRUE POINT OF BEGINNING; THENCE NORTH 59°45'00" WEST, 12.75 FEET; THENCE SOUTH 14°05'00" WEST, 66.25 FEET; THENCE SOUTH 32°45'00" WEST 5.47 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE SOUTHEAST AND HAS A RADIUS OF 360.00 FEET, MORE OR LESS; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 33°33'00" A DISTANCE OF 210.80 FEET, MORE OR LESS, TO THE END OF SAID CURVE; THENCE SOUTH 00°48'00" EAST, 178.45 FEET; THENCE SOUTH 89°12'00" WEST, 92.50 FEET; THENCE NORTH 00°48'00' WEST, 235.00 FEET; THENCE SOUTH 89°12'00" WEST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 40.00 FEET; THENCE NORTH 44°12'00" EAST, 94.75 FEET; THENCE NORTH 00°48'00" WEST, 25.00 FEET; THENCE NORTH 89°12'00" EAST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 117.00 FEET; THENCE NORTH 89°12'00" EAST, 48.00 FEET; THENCE NORTH 00°48'00" WEST, 23.00 FEET; THENCE NORTH 69°00'00" WEST, 56.54 FEET TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE ALONG SAID SOUTHERLY LINE NORTH 89°12'00" EAST, 105.00 FEET TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 11°00'00" EAST, 90.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH MAP IS FILED AS MISCELLANEOUS MAP NO. 36 IN THE OFFICE OF THE COUNTY RECORDER IN SAID SAN DIEGO COUNTY CALIFORNIA, SAID PORTION OF PUEBLO LOT 1803 BEING SHOWN ON SHEETS 3 AND 4 OF MAP NO. 1809 OF MISSION BEACH ON FILE IN THE OFFICE OF SAID COUNTY RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PRADO STREET WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD, A PORTION OF WHICH WAS VACATED AND CLOSED TO PUBLIC USE BY RESOLUTION NO. 76888 OF THE COUNTY OF THE CITY OF SAN DIEGO ADOPTED MAY 12, 1942, SAID POINT OF BEGINNING BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWESTERLY CORNER OF BLOCK 96 OF SAID MISSION BEACH; THENCE NORTH 87°12'00" EAST 16.83 FEET TO A POINT ON THE EAST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE NORTH 02°48'00" WEST ALONG SAID EAST LINE 40.25 FEET TO A POINT OF THE SOUTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION TO THE CITY OF SAN DIEGO, A CERTIFIED COPY OF WHICH WAS RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40 OF OFFICIAL RECORDS; THENCE NORTH 87°12'00" EAST ALONG SAID SOUTHERLY LINE, BEING ALSO THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE STATE OF CALIFORNIA, DATED JULY 5, 1934, AND RECORDED SEPTEMBER 27, 1934 IN BOOK 323, PAGE 340 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, A DISTANCE OF 90.56 FEET (RECORD 92.56 FEET) TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND IN SAID PUEBLO LOT 1803 DESCRIBED IN THE DEED OF THE MISSION BEACH COMPANY, TO THE CITY OF SAN DIEGO: DATED SEPTEMBER 5, 1940 AND RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID WESTERLY LINE BEING THE WESTERLY LINE OF MISSION BOULEVARD AS DEDICATED AND NAMED BY RESOLUTION NO. 72228 OF THE COUNCIL OF SAID CITY ADOPTED SEPTEMBER 10, 1940; THENCE NORTH 02°48'00" WEST ALONG SAID WESTERLY LINE OF MISSION BOULEVARD A DISTANCE OF 282.82 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 09°18'00" WEST, 74.68 FEET TO A POINT; SAID POINT BEING THE INTERSECTION OF SAID COURSE WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED, MARCH 6, 1924 IN BOOK 999, PAGE 64, OF DEEDS FILED IN SAID COUNTY RECORDER'S OFFICE, AND THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 158.92 FEET, THE TANGENT TO SAID CURVE BEARS SOUTH 08°36'00" WEST FROM SAID POINT; THENCE SOUTHWESTERLY ALONG SAID WESTERLY LINE OF SAID WEST DRIVE OF MISSION BOULEVARD, ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 22°55'35", A DISTANCE OF 63.59 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 348.41 FEET AND WHICH IS CONCAVE TO THE SOUTHEAST; THENCE CONTINUING ALONG SAID WESTERLY LINE OF WEST DRIVE, ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 34°19'35" A DISTANCE OF 208.74 FEET; THENCE TANGENT TO SAID CURVE AND CONTINUING ALONG THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD SOUTH 02°48'00" EAST A DISTANCE OF 73.33 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 2 PARCEL OF LAND DESCRIBED IN DEED TO SAN DIEGO ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, ABOVE REFERENCED AND THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40, OF OFFICIAL RECORDS, HERETOFORE REFERRED TO; THENCE SOUTH 02°48'00" EAST ALONG SAID WESTERLY LINE OF WEST DRIVE TO THE POINT OF BEGINNING.

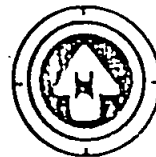
PARCEL C:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED AS FOLLOWS:

ALL THAT PROPERTY SOUTH OF PARCELS A AND B DESCRIBED ABOVE LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF THE WESTERLY RIGHT-OF-WAY OF MISSION BOULEVARD AS DESCRIBED IN DEED RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AND AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940, SAID POINT LYING 764 FEET, MORE OR LESS, SOUTH OF AND PARALLEL TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE SOUTH 89°12'00" WEST TO THE EASTERLY LINE OF THE BOARDWALK.

VENTURA PLACE SOUTHERLY LINE



NO SCALE

EASTERLY LINE OF BOARDWALK

PACIFIC OCEAN

PORTION OF

PARCEL A

NOT A PART

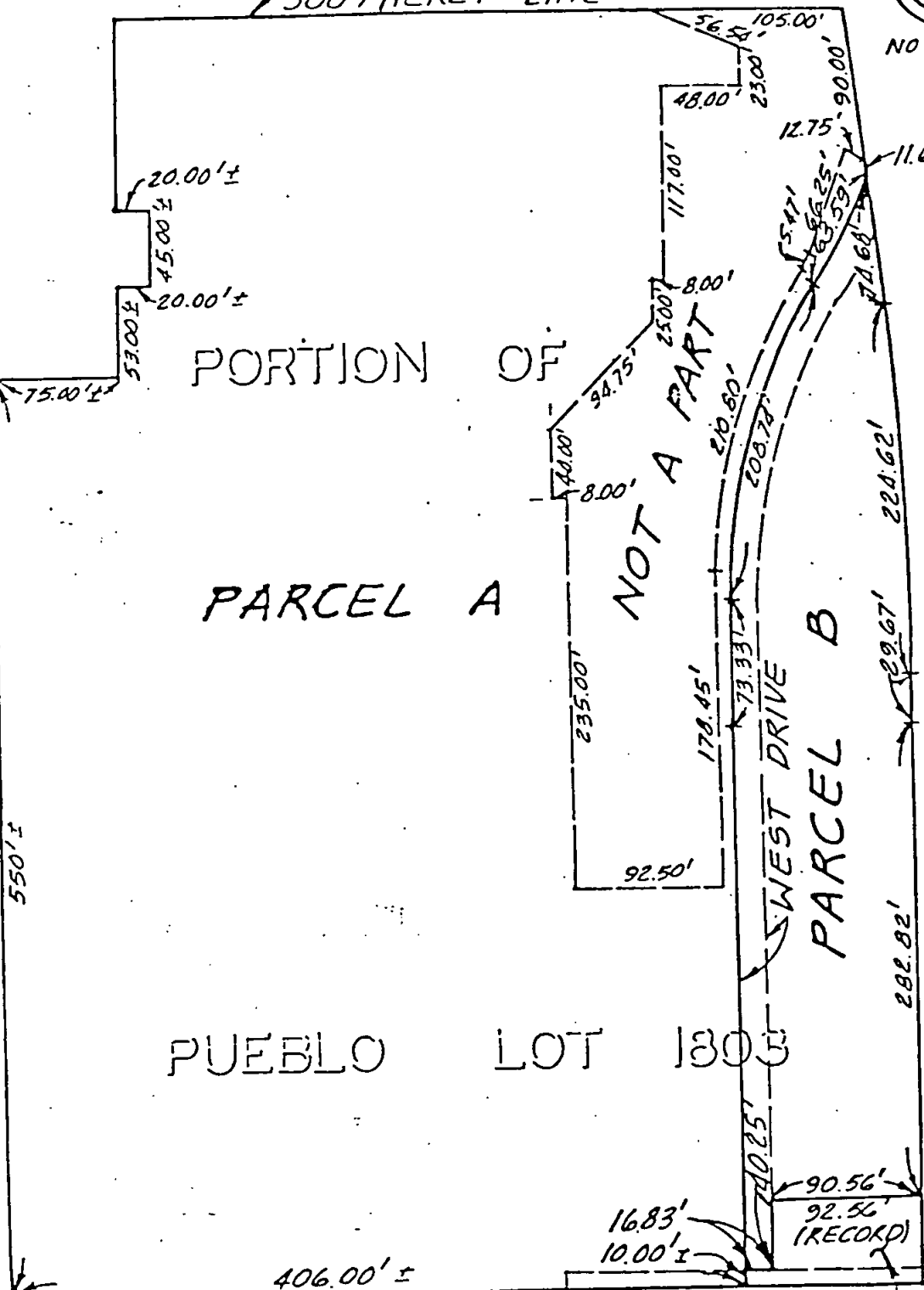
PARCEL B

BLVD.

PUEBLO LOT 130

MISSION

WEST DRIVE



FACE OF CURB @
PARKING LOT

PARCEL C

SUBWAY, PRADO ST.

TOTAL LEASEABLE AREA: 7.4 ac. ±

PLAT ACCOMPANYING
EXHIBIT A

SHOLDERS & SANFORD, INC.
Planning Engineering Surveying
3569 Fifth Avenue, San Diego, CA 92103
(619) 700-7272

EXHIBIT "B"

List of Approved Exceptions (based on Preliminary Title Report by
Transamerica Title Insurance Company, June 17, 1985, Order No. 6002009)

- Item 1- "The lien of Supplemental Taxes".
- Item 2- Reserving only the structure known as the Giant Dipper or Roller Coaster. The roller skating rink is not accepted.
- Item 3- "Rights and easements for commerce navigation, and fishery...".
- Item 4- "Any claim of title adverse to that of the vestee...".
- Item 5- "Any easement, other rights or dedication of title...by the public".
- Item 7- Easement in favor of San Diego Gas & Electric Company.

EXHIBIT B

RECEIVED

MAR 5 1987

ECO. DEV. / PROP. DEPT.

DEVELOPMENT PLAN

BELMONT PARK

SAN DIEGO, CALIFORNIA

FEBRUARY 26, 1987

EXHIBIT C

TABLE OF CONTENTS

1.0	Project Description
2.0	Plans and Elevations
3.0	Anticipated Development Schedule
4.0	Financing Plan
5.0	Pool Operation
6.0	Cost Summary
7.0	Other Terms and Conditions
8.0	Uses Contemplated

1.0 PROJECT DESCRIPTION

1.1 The Plunge Building

The asbestos insulation in the existing Plunge building will be removed and disposed of by a certified contractor. The annexes to the existing indoor swimming pool room and the masonry walls enclosing it, neither of which meet current City code requirements for seismic reinforcing, will be demolished. The structural steel frame of the pool room will be reinforced, and its walls reconstructed to become the exterior envelope of the building. The existing indoor swimming pool will be left in its present configuration except that it will be modified as required by the pool operator and current Health Department standards.

A new annex will be constructed on the south facade of the reconstructed pool building which will house new mechanical equipment, shower and locker rooms, a fitness facility, and a meeting room for community use. Four new buildings will be constructed around the new Plunge facility, separated by a courtyard. These buildings will house restaurants and shops for food and beverages and other recreational and/or visitor-serving commercial uses.

1.2 The Roller Rink Building

The existing roller rink building will be demolished and replaced with three new buildings containing restaurants and shops for food and beverages and other recreational and/or visitor-serving commercial uses.

1.3 Parking and Pedestrian

New paving and lighting will be installed for approximately 350 parking spaces on the site. The two existing parking lots on Bonita Cove east of the park will be resealed and striped to current City code requirements to provide approximately 200 additional parking spaces. A new pedestrian overpass will be constructed over Mission Blvd. to connect to the parking areas on the east side.

1.4 Public Restrooms and Police Patrol Room

The facades of the existing public restroom and lifeguard building will be renovated to relate to the architectural theme of the development. An extension will be constructed to the lifeguard building to include new public restrooms and a room for the San Diego Police Department.

1.5 Landscaping and Park Improvements

The balance of the northern portion of the park will be landscaped and new walks, fountains, benches, plazas and inviting pedestrian spaces will be added to encourage increased public usage and to improve access to the Plunge and the beach.

1.6 Bus Stop Facilities

The bus stop facilities on the north and south sides of West Mission Bay Drive just east of Mission Blvd. will be upgraded in conformance with the standards of the Metropolitan Transit Development Board.

1.7 Historical Features

The architectural style of the development will be compatible with that of the Spanish Colonial Revival theme of the existing Plunge and roller rink buildings as approved by the Planning Department. The buildings have been professionally photographed and sketched to architecturally document them, and a copy of the photos has been submitted to the Planning Department along with a historic report on the Mission Beach Amusement Center.

The important existing architectural features of the Plunge building will be replicated and incorporated into the project. Signage documenting the historical significance of the site will also be located on the project.

2.0 PLANS AND ELEVATIONS

The site plan, landscape plan and elevations have been submitted to the City under separate cover.

3.0 PROJECTED DEVELOPMENT SCHEDULE

City issues building permit to BPA	3/3/87
BPA submits evidence of ability to finance construction costs to City	2/27/87
BPA delivers executed Option/Lease Agreement to City	2/27/87
City delivers executed Option/Lease Agreement to BPA	3/9/87
BPA files construction bond with City	3/20/87
BPA commences construction	3/20/87
BPA completes shell construction	2/28/88
BPA completes interior improvements for initial tenants	5/1/88
Official project opening	5/1/88

4.0 FINANCING PLAN

The interim Financing Plan for the project will include a construction loan for an initial term of 18 to 24 months with extensions to 30 to 36 months. The loan would provide for a fee structure of 2% to 2.5% and be at an interest rate at prime plus 1% to 1.5%. Loan packages have been submitted to First Interstate Bank, Security Pacific Bank, California First Bank and John Burnham Company acting as a mortgage broker in securing such loans. In addition, additional loan inquiries have been made from Home Federal Savings & Loan, Imperial Savings & Loan, and Great Western Savings & Loan. Loan packages will be submitted to such lenders next week.

At such time as the project is between 60% and 75% leased, we will seek a permanent loan commitment. It is anticipated that the permanent loan would involve a loan fee of 1% to 1.5% and be in accordance with competitive interest rates for commercial projects on municipal leases at that time.

If required, prior to funding of the construction loan, financing is available through the standby commitment issued by Pacific Diversified Capital which was submitted as evidence of the ability to finance. Substantial construction could be funded by capital contributions of partners of Belmont Park Associates prior to actually funding an interim loan. Belmont Park Associates would expect, in any event, to fund an interim loan within 180 days from the initiation of construction.

5.0 POOL OPERATION

The pool operation is initially contemplated to be open in accordance with the following schedule:

Monday through Friday	6:30 AM to 11:30 AM 12:00 PM to 10:00 PM
Saturday and Sunday	8:00 AM to 11:30 AM 12:00 PM to 6:00 PM

Access may be limited at certain times for specific activities such as children's learn-to-swim programs, scuba lessons, and high school and collegiate swimming programs. All programs will be open to the public, and fees will be in accordance with the Lease Agreement.

6.0 COST SUMMARY

BELMONT PARK ASSOCIATES

BELMONT PARK COST SUMMARY

SITE IMPROVEMENTS (PUBLIC & PRIVATE)	1,503,549
GROUND RENT BEFORE CONSTRUCTION COMPLETE	50,000
PRIVATE IMPROVEMENTS:	
SHELL (BLDGS 1-7)	4,653,378
TENANT IMPROVEMENTS	800,800
PUBLIC IMPROVEMENTS:	
LOCKER ROOM	597,632
PLUNGE	2,364,590
PLUNGE T.I.'S	100,000
LIFE GUARD STATION ADDITION	251,537
LIFE GUARD REMODEL	76,530
PEDESTRIAN OVERPASS	379,642
REMODEL RESTROOM	77,336
SEAL AND RESTRIPE	141,733
INDIRECT COSTS:	
MARKETING EXPENSE	75,000
LEASE COMMISSIONS-COMMERCIAL	449,000
LEASE COMMISSIONS-PLUNGE	100,000
LOAN FEES (.03)	423,900
OVERHEAD FEES	560,000
ENVIRONMENTAL/ENGINEERING FEES	342,125
LEGAL, ACTG. MISC	115,000
NET INTEREST TO CARRY	1,344,380
CONTINGENCY	523,748
TOTAL	14,930,000

EXHIBIT D

7.0

OTHER TERMS CONDITIONS

Other terms and conditions of the development plan are set forth in the Lease Agreement.

8.0 CONTEMPLATED USES

Uses contemplated for the project shall be visitor-oriented commercial and recreational uses. The following uses have been approved:

- Recreational
- Retail, including, but not limited to, novelty, sporting goods, sports equipment rental, apparel, art, liquor stores, health foods, takeout foods, liquor, bakeries, floral shops, book stores, card shops, and party supplies, provided that such uses shall accommodate the needs of park visitors and shall be operated in a manner to cater to such needs.
- Restaurants, full service and fast foods, including sale of alcoholic beverages, operated in a manner appropriate to serve the desires of park visitors.
- Food stores which include food items used by families on outings, as fresh fruits, delicatessen items, soft drinks, and alcoholic beverages.
- Drug stores which sell suntan lotions and other items normally used in beach activities.
- Travel agents, sports medicine, and other visitor-oriented services, operated in a manner appropriate to serve the desires of park visitors.
- Such other visitor-oriented commercial and recreational uses as many be approved by the City Manager. Any use not disapproved within ten (10) business days after receipt by City Manager shall be deemed approved so long as such use is a valid park use and in conformance with the approved Development Plan.

All uses shall be conducted in a manner so as to conform to all applicable laws.

LIST OF ATTACHMENTS TO EXHIBIT "B"

Item No.	Title and Brief Description
1.	City of San Diego Manager's Report 86-286 dated June 18, 1986, Re: Option and Lease Agreements-Belmont Park Associates-Mission Beach Park (Belmont Park)
2.	City of San Diego Council Resolution 266064 adopted June 23, 1986 - authorized option & lease agreement.
3.	City of San Diego Council Resolution 266410 dated August 18, 1986 - references and reaffirms acceptance of State Lands.
4.	Restriction on Leasehold recorded by California Coastal Commission. This document also contains copies of the a) Option Agreement Between the City and Belmont Park Associates b) Coastal Development Permit #6-86-396 c) Revised Conditions and Findings for Coastal Development Permit #6-86-396.
5.	Memorandum of Understanding Between The City of San Diego and The California Coastal Commission dated March 5, 1987 - as regards a traffic mitigation fund.
6.	Operating Memorandum to Percentage Lease, executed December 23, 1987 - clarified rent credit language and substituted a revised legal description of the premises.
7.	Memorandum of Lease executed on December 23, 1987.
8.	Proposition G - passed by the voters.
9.	Council Resolution No. 270781 adopted on April 18, 1988 - determined that the Belmont Park project had obtained "vested rights" under the Save Mission Beach Park Initiative known as Proposition G., as of November 3, 1987, the effective date of the initiative.
10.	Planning Director Resolution No. 7675 and Comprehensive Sign Plan Permit No. 88-0669 - relates to signage at Belmont Park.
11.	Municipal Code Section 63.50 - restricting the use of Mission Beach Park - believe related to Proposition G.
12.	Council Resolution 274210 adopted on August 7, 1989 - permitted installation of the carousel.
13.	Second Operating Memorandum to Percentage Lease executed December 11, 1990 - clarifies sections of the percentage lease relating to the rent credits and the interest calculations.

14. Letter Between Belmont Park Associates and City dated December 11, 1990 - discusses responsibilities regarding paint deterioration and humidity control in the plunge building.
15. Third Operating Memorandum to Percentage Lease dated February 25, 1991 - substitutes a new legal description for the leasehold.
16. Ground Lease Estoppel and Certification Agreement for benefit of The Nippon Credit Bank, Ltd.
17. Fourth Operating Memorandum to Percentage Lease dated August 12, 1991 - relocation of the Community Room to 3136 Mission Boulevard, Suite G, San Diego, CA.

BELMONT PARK

LEASE AGREEMENT

Lessor: BELMONT PARK ASSOCIATES,
a California Limited Partnership

Lessee: _____

BELMONT PARK
LEASE AGREEMENT
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BELMONT PARK LEASE AGREEMENT

In consideration of the rents and covenants set forth, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the following described Premises upon the terms and conditions described in this lease agreement ("Lease"):

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: _____, 19__

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: _____

Lessee's
Trade Name: _____

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately _____ square feet ("Floor Area") as outlined on Exhibit B.

Permitted
Use: _____

Lease Term: _____

Commencement
Date: _____

Fixturation
Period
(if any): _____

Rental shall
be the greater
of:

A. Minimum _____ Dollars (\$_____) per annum
Annual Rent: payable in twelve (12) equal monthly installments of _____
Dollars (\$_____) per month during each year of the Lease Term.

B. City Rent: _____ Dollars (\$_____) per annum
payable in twelve (12) equal monthly installments of _____
Dollars (\$_____) per month during each year of the Lease Term ("Fixed City Rent"), plus the percentage of
Lessee's Net Sales of various categories as specified in Section 5.1.2.

C. Percentage _____ percent (_____%) of Lessee's Net Sales as defined in Section 5.3.
Rent:

Lessee's
Minimum
Net Sales
Requirement: _____ Dollars (\$_____) per year.

Address for
Notices: To Lessor:
BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
9665 Chesapeake Drive, Suite 401
San Diego, California 92123

To Lessee:

Security
Deposit: _____ Dollars (\$_____).

Marketing Fund Contribution: The greater of (i) _____ Dollars (\$) per annum, payable in twelve (12) equal monthly installments of _____ Dollars (\$) per month during each year of the Lease Term, or (ii) _____ percent (____%) of Lessee's Net Sales for the calendar year to date.

Grand Opening Contribution: _____ Dollars (\$_____)

Real Estate Broker: (if any) _____

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease.

ARTICLE 2 - EXHIBITS

The following are attached hereto as exhibits and made a part of this Lease:

- Exhibit A - Site Plan of the Center.
- Exhibit B - Floor Plan Showing the Premises.
- Exhibit C - Work Letter Agreement.
- Exhibit D - Rules and Regulations.
- Exhibit E - Guarantee of Lease.

ARTICLE 3 - COMMERCIAL/RECREATIONAL CENTER AND PREMISES

3.1 Center. As used herein, the term "Center" shall mean those areas of land and the improvements, landscaping, parking, pedestrian walkways and other features located on the land leased by Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, relocated or expanded from time to time by Lessor in Lessor's discretion and nothing in Exhibit A shall be a warranty or representation as to the future configuration of the Center or location of any improvements thereon. In addition, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor from the City is a part of Mission Beach Park, a dedicated public park. Therefore, the Center must be utilized for park and recreation purposes, including commercial and recreational uses which provide services, activities and facilities to the users of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, the commercial space referred to herein as the "Premises", and described in the Fundamental Lease Provisions and shown on Exhibit B, subject, however, to the provisions of Article 27. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturation Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the the "Commencement Date". The Commencement Date shall be delayed by the number of days provided as the Fixturation Period, if any, provided however that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession, and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to

by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Rent. Lessee agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, in twelve (12) monthly installments during each year, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Lease Term the greater of the amounts specified in Sections 5.1.1, 5.1.2 and 5.1.3 below, based upon year-to-date amounts. Upon execution of the Lease, Lessee shall pay its first months Minimum Annual Rent and Security Deposit. At the end of each calendar year, any excess rent which Lessee paid to Lessor shall be credited to the next monthly installment of rent due (or upon termination of this Lease and subject to offset by Lessor for any amounts due Lessor hereunder, paid directly to Lessee within thirty (30) days of such termination, and any deficiency shall immediately be paid by Lessor to Lessee).

5.1.1 Minimum Annual Rent. The Minimum Annual Rent specified in the Fundamental Lease Provisions as adjusted from time to time as provided below. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum Annual Rent shall never be less than the Minimum Annual Rent payable in the immediately preceding period.

(a) Minimum Annual Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Lease Term to reflect any change in the cost of living. The adjustment shall be calculated by multiplying the Minimum Annual Rent payable during the immediately preceding calendar year by a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items) $\frac{1982-84=100}{1982-84=100}$ as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Annual Rent for each calendar year is determined, Lessor shall give Lessee written notice of the amount thereof. The Minimum Annual Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. If the Index is discontinued or revised during the Lease Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Lessee shall continue to pay the Minimum Annual Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Lessee, concurrently with the next monthly Rent payment, shall pay to Lessor, the difference between the new Minimum Annual Rent, including the cost of living increase, for the period commencing with the first month of such calendar year and the Minimum Annual Rent already paid for such period.

(b) The Minimum Annual Rent shall also be adjusted upward as of the expiration of the third full or partial calendar year, and as of the expiration of every third calendar year thereafter during the Lease Term (i.e., if the Commencement Date is June 1, 1988, the first adjustment under this subparagraph (b) will be on January 1, 1991, the second adjustment will be on January 1, 1994, and so on.) Such adjustment of the Minimum Annual Rent shall produce a new Minimum Annual Rent equal to the greater of (i) the cost of living increase required under Section 5.1.1 (a) above or (ii) eighty percent (80%) of the annual average of the total rent (including Minimum Annual Rent, City Rent and Percentage Rent) paid pursuant to this Section 5.1 by Lessee to Lessor for the preceding three year period (or portion thereof as to the first adjustment).

5.1.2 City Rent. The Fixed City Rent specified in the Fundamental Lease Provisions plus three (3) percent of all Lessee's Net Sales (as defined in Section 5.3) in the food and Specialty Shop Sales category, five (5) percent of all Lessee's Net Sales in the alcoholic beverage sales and game room operations category, and seven (7) percent of all Lessee's Net Sales in the category of all other sales and operations for such month. City Rent shall be computed by Lessee each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee shall pay to Lessor the amount, if any, by which the City Rent amount set forth in the Fundamental Lease provisions exceeds the installments of the greater of the Minimum Annual Rent or City Rent paid by Lessee during such period. Lessee shall pay the City Rent no later than ten (10) days following the close of the preceding month. The classification of Lessee's Net Sales by category ("Net Sales Category") shall be determined at the end of each calendar month by Lessee who shall provide Lessor with a copy of such classification at the same time Net Sales are determined. Lessee shall provide such records as may be required from time to time by the City under the Master Lease.

(a) In the event the Minimum Annual Rent increases, the Fixed City Rent shall increase in the same proportion and at the same time.

(b) "Specialty Shop Sales" shall mean sales of novelty items, sporting goods, sports equipment rental, apparel, art, flowers, books, cards, party supplies, travel services and other services and items normally associated with visitor oriented commercial and recreational uses.

5.1.3 Percentage Rent. The Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Lessee made from or upon the Premises during each calendar month. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee shall pay to Lessor the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's Net Sales during said period exceeds the installments of the greater of Minimum Annual Rent or City Rent paid by Lessee during such period. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month.

5.1.4 Increase in City Rent and Percentage Rent. In the event of an increase in the rate of percentage rent that Lessor is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Lessee pays Lessor pursuant to Section 5.1.2 shall automatically increase at the same time and by the same amount.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee (totaled for calendar year to date) within ten (10) days after the close of each calendar month, and an annual statement of Net Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent, Percentage Rent, and City Rent for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep at the Premises or within the City of San Diego accurate, true and complete records and accounts of all financial transactions in the operation of all business activities conducted on and financial transactions resulting from the use of the Premises, including, without limitation, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee for a period of five (5) years after the close of each calendar year. Said records must be supported by source documents of the original entry such as sales slips or invoices, daily cash register tapes, purchase invoices or other documents as necessary to allow Lessor to determine Lessee's Net Sales and Net Sales Category. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, including Net Sales Categories, sequential transaction counters which are locked in, constantly accumulating and which cannot be reset and contain tapes upon which sale details and sequential transaction numbers are imprinted. Sales totalizer readings shall be made at the beginning and ending of each business day. For admission charges or rentals, Lessee shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets, both issued and unissued. Lessor shall have the right at all reasonable times to examine and audit said records and accounts, without restriction, for the purpose of determining the accuracy thereof, the percentage of Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary.

The receipt by Lessor of any statement of Net Sales or any payment of Minimum Annual Rent, City Rent or Percentage Rent for any period shall not bind Lessor as to the correctness of the statement or the payment. Within five (5) years after receipt of any such statement, Lessor and City, or their agents, at any time shall be entitled to an inspection and audit of the business of Lessee, its agents, sublessees, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for Lessor and City to determine the amounts of Rent due Lessor in compliance with this Lease. At Lessor's request, Lessee shall provide, at Lessee's expense, any necessary data reasonably available to Lessee to enable Lessor and City to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises and Lessee's conduct of business thereon. Such data will include, if required, a detailed breakdown of Lessee's receipts and expenses.

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, City Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less ("Lease Interest Rate"), from the date when said payment should have been made. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional City Rent or Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account. If any of Lessee's statements shall be found to have understated Net Sales by more than five percent (5%), or if Lessee has failed to maintain complete and true records, accounts, and supporting source documents in strict accordance with Article 5, then in addition to any other rights of Lessor under this Lease, Lessor may terminate this Lease. Acceptance of the Understatement Fee or any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to a late payment, or prevent Lessor from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Net Sales. The term "Net Sales" as used herein is hereby defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, from all business conducted upon or from and occupancy of the Premises, from whatever source derived whether received or to become due and whether such sales be evidenced by cash, check, credit, charge account, exchange or otherwise. Net Sales shall include, but not be limited to, the amount received from the sale of goods, wares, and merchandise and for services performed on, at or from the Premises, together with the amount of all orders taken or received at the Premises, whether such orders be filled from the Premises and whether such sales be made by means of merchandise or other vending devices in the Premises. If any one or more departments or other divisions of Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the City Rent and Percentage Rent payable hereunder all the gross sales of such departments or divisions, in the same manner and with the same effect as if the business or sales of such departments and divisions of Lessee's business had been conducted by Lessee itself. Net Sales shall not include (i) sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have

been first included in gross sales and (ii) sales prices of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in Net Sales, or (iii) the amount of any sales, use or gross receipts tax imposed by any federal, state, or municipal authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by Lessee to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net Sales in any event whatever.

All sales originating at or from the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filing of the sale or service order and actual delivery of the merchandise may be made from a place other than the Premises. Net sales shall include any manufacturer's or importer's excise tax included in the price of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Bad debt losses, possessory interest taxes, and other property taxes shall not be deducted from Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, City Rent, Percentage Rent and Additional Rent are collectively referred to in this Lease as "Rent". If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, the Rent specified in this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises, which may arise or become due during the term of or pursuant to this Lease shall be paid by Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) \$100.00 or (ii) ten percent (10%) of the amount due ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that (i) beginning with the first payment of Rent due following the date when such second late payment was due, Rent shall be payable three (3) months in advance and/or (ii) Lessee shall increase the amount of the Security Deposit (defined in Article 32 below) by one hundred percent (100%), which additional Security Deposit shall be retained by Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate, additional Security Deposit, or advance Rent payment, shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

5.6 Address for Payments. All Rent and other payments shall be paid by Lessee to Lessor at its management office in the Center, or at such other place as may from time to time be designated by Lessor in writing at least ten (10) days prior to the next ensuing payment date.

5.7 Returned Checks. Lessee shall further pay, as Additional Rent, a charge of fifty dollars (\$50.00) for each payment of Rent which is returned due to insufficient funds, to reimburse Lessor for Lessor's related costs.

5.8 Lessor's Option to Terminate. Notwithstanding anything in the Lease contained to the contrary, if:

(a) Lessee's Minimum Net Sales in any calendar year are less than the amount set forth in Article 1 as Lessee's Minimum Net Sales Requirement, adjusted as provided for herein,

(b) at any time during the Lease Term the products which Lessee sells, or the services which Lessee provides, on or from the Premises are not, in Lessor's opinion, of the highest quality; or

(c) Lessee substantially or continually fails to observe the Rules and Regulations and policies and directions made or promulgated by Lessor,

Then:

(d) If the condition in subparagraph (a) exists, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice; or

(e) in the case of a default under subparagraph (b) or (c), Lessor may give written notice to Lessee, specifying the default complained of and requiring that it be completely cured within forty-eight (48) hours from the giving of such notice and failing the curing of such default within such period of 48 hours, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice.

If this lease is so terminated, Lessee covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Lessor upon the expiration of the thirty (30) day notice period, and all Rent shall be adjusted as of the expiration of such period and all amounts due and owing by Lessee pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Lessee shall be discharged from its obligations hereunder and under the Lease, and Lessee shall have no recourse against Lessor or those for whom it is in law responsible for damages or otherwise and shall not be entitled to any refund of or any credits for any amounts paid by the Lessee.

The amount of Lessee's Minimum Net Sales Requirement specified in Article 1 shall be adjusted upward, after the expiration of each calendar year of this Lease to reflect any increase in the cost of living. The adjustment, if any, shall be calculated upon the basis of the Index, as defined in Section 5.1.1(a). Lessee's Minimum Net Sales Requirement shall be set by multiplying the amount thereof applicable in the immediately preceding year by a fraction, the numerator of which shall be the Extension Index and the denominator of which shall be the Beginning Index as defined in Section 5.1.1(a). In no event shall Lessee's Minimum Net Sales Requirement be less than that for the previous year.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. No taxes, assessments, fees or charges referred to in this Paragraph shall be considered as Taxes as defined in Article 19.

ARTICLE 7 - POSSESSION AND USE

7.1 Possession. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee shall accept the Premises subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and to all exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee shall not use or permit the Premises to be used for any other use or purposes, and/or under any other trade name whatsoever, or in violation of the Master Lease, without the prior written consent of Lessor, which consent may be withheld for any reason whatsoever. Lessee acknowledges that it may sell, pursuant to the Master Lease, only goods and services determined by the City to be consistent with park/visitor oriented commercial and recreational uses. Lessee shall not, without the prior written notice of Lessor, sell any food (or beverage) as fast food or take out food to be consumed in the Common Areas of the Center unless it is specified to be sold as fast food under Permitted Use in the Fundamental Lease Provisions. If a Permitted Use, restaurants shall be permitted to use one (1) counter window to the exterior of the Premises and a maximum of 1,000 sq. ft. of floor area for the purpose of preparing and selling fast food or take out food. If a Permitted Use, Lessee shall indicate such window and preparation areas clearly on floor plans, to be approved in writing by Lessor prior to the sale of such food. Lessee shall not, without the prior written consent of Lessor sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Lessee further covenants and agrees that it will not use or permit any person to use the Premises, or any part thereof, to conduct therein a secondhand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the state, county and city where the Center is situated, or other lawful authorities, and that during the Lease Term the Premises, and every part thereof, shall be kept by Lessee in a clean and wholesome condition, free of any objectionable noises, odors, or nuisances, and that all health, police, and other legal regulations shall, in all respects and at all times, be fully complied with by Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee agrees to conduct its business in a manner so as to primarily cater to the needs of visitors to Mission Beach Park, as well as adjacent beach areas.

Lessee shall not perform any acts or carry on any practices which may (i) injure the Center or the building in which the Premises is located or (ii) be a nuisance or menace to other lessees in the Center. Lessee will, at its expense, comply with all requirements of insurance underwriters and governmental authorities having jurisdiction over the Premises, including compliance necessary for the maintenance of reasonable fire and extended coverage insurance for the Premises.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to other stores of Lessee, if any, located outside the Center. Lessee shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, tables, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading, and services to the Premises prior to 10:00 a.m. of each day. Lessee shall use its best efforts to cause no delivery trucks or other vehicles servicing the Premises to park or stand in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

7.4 Suitability of Merchandise. Lessee hereby acknowledges that the Center is designed and intended to be patronized by, and acceptable to, families and persons of all ages. Lessor reserves the right to prohibit all merchandise, displays, demonstrations, promotions, or any activity which Lessor, in its sole discretion, determines is obscene, pornographic, illegal, immoral, or disreputable, and Lessee agrees, forthwith upon demand of Lessor, to cease carrying or displaying any merchandise or engaging in any activity which Lessor has so prohibited. Lessee agrees not to carry on any police licensed activity without the prior written consent of Lessor, which consent may be withheld for any reason whatsoever.

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for water, gas, electricity, telephone, sewer and sanitation and any other service or utility used in or upon or furnished to the Premises, irrespective of whether any such fees, deposits and charges are initially paid or advanced by Lessor. In the event the fees, deposits or charges for any such services are not individually metered or billed to Lessee, Lessor shall apportion such charges among lessees in the Center receiving such utilities or services, based upon an equitable apportionment to be determined by Lessor. Lessee shall pay its apportioned share to Lessor as Additional Rent. In determining such equitable apportionment, Lessor may cause surveys of Lessee's usage of such services to be made by an independent consultant selected by Lessor. In no event shall Lessor be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of water, gas, electricity, sewer and sanitation or any other service or utility, nor shall any such interruption, reduction, disruption, curtailment or failure constitute or be deemed to constitute constructive eviction of Lessee or relieve Lessee from its obligations under this Lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor may pay the same, and any amount so paid, with interest thereon at the Lease Interest Rate plus a Late Fee, shall thereupon become due to Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless from any liability whatsoever, on account of any such real or claimed damages or injury and from all liens, claims and demands, including attorney's fees and investigation costs and all other reasonable costs, expenses and liabilities with respect to any claim or demand, arising out of (i) the use condition, operation or occupation of the Premises and its facilities, (ii) any repairs or Alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees and (iv) any failure by Lessee to comply or secure compliance with any of the terms or conditions of this Lease. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Waiver of Subrogation. Lessee for itself, its successors, assigns, and insurance companies insuring Lessee with respect to the Premises, hereby waives any right Lessee may have on account of any loss or damage occasioned by Lessor and insured against under policies carried or required to be carried by Lessee hereunder.

9.3 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A+3A" in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

(a) Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per person and per occurrence, insuring against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof. All such public and property damage liability insurance shall specifically insure the performance by Lessee of the indemnity provisions of Article 9.1 above.

(b) Plate Glass. Full coverage plate glass insurance on the Premises.

(c) Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

(d) Business Interruption Insurance. Business interruption insurance insuring that the Rent will be paid to Lessor for a period of up to two (2) years if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

(e) Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor and City thirty (30) days' notice, in writing, in advance of any cancellation or lapse, or the effective date of any reduction in type or amount of coverage. All policies shall be written as primary policies, not contributing with and not in excess of coverage which Lessor may carry, and shall be revised as to amounts and coverages at any time as required by City under the provisions of the Master Lease.

Lessee's obligations to carry insurance may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.3, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor and City any accident (i) causing property damage of more than Ten Thousand Dollars (\$10,000), increased annually by the increase in the Index, and (ii) involving any serious injury to persons on the Premises.

9.4 Insurance Use Restrictions. Lessee agrees that it will not carry any stock or goods, or do anything in or about the Premises, that will in any way increase the rates for insurance covering the Center, or cause a loss of coverage for the Center. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.5 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City, or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor's insurance broker.

ARTICLE 10 - MASTER LEASE

10.1 Subject to Master Lease. This Lease is subject and subordinate to the Master Lease, and any modification, alteration, or substitution therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee agrees that as to its leasehold estate, it, and all persons in possession or holding under it, will conform to and will not violate any of the terms or provisions of the Master Lease as such Master Lease may be modified, altered, replaced or substituted from time to time. In the event of any conflict between this Lease and the Master Lease, the Master Lease shall prevail. All consents and approvals required under this Lease from City shall be applied for solely by Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations and shall provide a performance and completion bond, from any insurance company acceptable to Lessor, in a sum equal to 125% of the cost of the Alterations, guaranteeing completion free and clear of liens and charges, and in accordance with the approved plans and specifications. All Alterations shall be under

the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such Alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including, without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such Alterations, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of the San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. Notwithstanding the foregoing, all Alterations, structures, installations, or improvements of any kind now existing or hereafter placed on the Premises by Lessee shall, at the option of Lessor, be removed by Lessee upon expiration or termination of this Lease, at Lessee's expense. Lessor may exercise said option as to any or all of the Alterations, structures, installations and improvements, either before or after the expiration or sooner termination of this Lease. If Lessor exercises such option and Lessee fails to remove the designated items within two (2) days after termination of the Lease, Lessor shall have the right to have such items removed at the expense of Lessee. As to any or all alterations, structures, installations or improvements that Lessor does not require to be removed, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Premises, and Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor free and harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor may (but shall not be so required to) pay the said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor's payments.

12.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

12.5 Notice of Nonresponsibility. Lessor or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility, or such other notices which Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee shall not affix or maintain upon the glass panes and supports of the show windows (and within 72 inches of any window) doors, interior of doors as they face open to the outside of the Premises onto the Common Area, and upon the exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, neon tubes, awnings, descriptive material, or any other similar items, without the prior written consent of Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor's architect ("Sign Program"), (ii) approval of the City of the proposed signage, and (iii) architectural conformity of the signage to the architecture, design and colors of the Center in the sole discretion of Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

13.2 Lessor's Control Over Signage. Lessee shall design, construct, install, and maintain Lessee's Identification signs at the Premises, subject to the Sign Program and subject to Lessor's written approval prior to installation of such signs. Lessee shall be responsible for all costs related to any such signs, including the cost of review of the proposed signage by Lessor's architect and/or graphics consultant.

13.3 Removal. Any item or items described in this Article 13, placed in the Center by Lessee without the permission of Lessor and City, shall be considered a violation of this Article 13 and shall be subject to immediate removal by Lessor without notice. Lessee shall immediately reimburse Lessor for the cost of such removal.

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the Lease, Lessee may not remove any trade fixtures or personal property without the immediate replacement thereof with similar trade fixtures and personal property of comparable or better quality, so that Lessee shall continuously conduct the Permitted Use specified in the Fundamental Lease Provisions. All trade fixtures and other personal property installed in or attached to the Premises by Lessee must be new when so installed or attached. Lessee, at its expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures and personal property, and upon the last day of the Lease term or a date of earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris.

ARTICLE 15 - ASSIGNMENT, SUBLETTING, MORTGAGING AND CHANGE IN OWNERSHIP

15.1 Definitions. As used in this Article, the following definitions shall apply:

(a) "Transfer" means any voluntary, or involuntary (a) assignment of Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

(b) "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee's right to use, occupy or possess the Premises, in whole or part, including, without limitation, any mortgage, deed of trust, pledge, hypothecation, lien, franchise, license, concession, or other security arrangement;

(c) "Change of Control" means the transfer by sale, assignment, death or incompetency, mortgage, trust, operation of law, or otherwise, of any shares, voting rights or ownership interests (including partnership interests), which will result in a change in the identity of the person or persons exercising, or who may exercise, effective control of Lessee, unless such change results from the trading of shares listed on a recognized public stock exchange and such trading is not for the purpose of acquiring effective control of Lessee. If Lessee is a private corporation whose stock becomes publicly held with its shares listed on a recognized public stock exchange, the transfer of such stock from private to public ownership shall not be deemed a Change of Control;

(d) "Occupancy Transaction" means any Transfer, Encumbrance, Change of Control, or other arrangement whereby the identity of the person or persons using, occupying or possessing the Premises changes or may change, whether such change be of an immediate, deferred, conditional, exclusive, nonexclusive, permanent or temporary nature;

(e) "Transferee" means the proposed assignee, sublessee, mortgagee, pledgee, or other recipient of Lessee's interest, rights or duties in this Lease or the Premises in an Occupancy Transaction.

15.2 First Two Years. Lessor is entering into this Lease based upon Lessee's representation to Lessor that Lessee has the expertise and ability to produce maximum sales in the operation of the business to be conducted by Lessee on the Premises. It is recognized by the parties that it is of importance to Lessor that Lessee operate the business during the first two (2) years of this Lease, particularly because this is a percentage lease and Lessor is relying on Lessee's merchandising and operating expertise. Lessor would not enter into this Lease if Lessee were permitted to "trade" on the value of the Lease and assign the Lease or sublease the Premises during the first two (2) years of the term hereof.

Lessee, therefore, shall not enter into any Occupancy Transaction during the first two (2) years of the term hereof, without first procuring the written consent of Lessor and City, which consent may be given or withheld in Lessor's and City's sole discretion. Any attempted Occupancy Transaction without Lessor's and City's written consent, during the first two (2) years after the execution hereof, shall be void and confer no rights upon any third person.

15.3 Remaining Term.

(a) After the first two (2) years of the term hereof, Lessee shall not enter into any Occupancy Transaction, with respect to any of Lessee's interest in and to the Premises, without first procuring (i) the written consent of Lessor, which shall not be unreasonably withheld and, (ii) if Lessor so elects, the written consent of City. Any attempted Occupancy Transaction without Lessor's and, if required by Lessor, City's, written consent, shall be void and confer no rights upon any third person. Lessor reserves the right to refuse to give such consent unless Lessee remains fully liable during the unexpired term of the Lease. The consent by Lessor or City to any assignment or subletting shall not be construed as relieving Lessee or any Transferee of this lease from complying with the terms of this Article 15 with respect to any further Occupancy Transaction.

(b) By way of example and without limitation, Lessor and Lessee hereby agree that it shall be reasonable for Lessor to withhold its consent if any of the following situations exist or may exist:

(i) The Transferee's proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

(ii) In Lessor's judgment, the Transferee lacks sufficient ability, management and operation skills and expertise to operate a successful business of the type and quality permitted under this Lease;

(iii) In Lessor's judgment, the present net worth of the Transferee is less than the greater of Lessee's net worth at the Commencement Date or Lessee's net worth at the date of Lessee's request for consent to the Occupancy Transaction;

(iv) In Lessor's judgment, the Percentage Rent under Article 5 that Lessor reasonably anticipates receiving from the Transferee will be less than that which Lessor has received or reasonably expects to receive from Lessee;

(v) The Occupancy Transaction would be in violation of the Master Lease or would breach any covenant of Lessor respecting radius, location, use, or exclusivity in any lease, financing agreement, or other agreement relating to the Center;

(vi) Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

(vii) In Lessor's judgment, the quality of the merchandising operation or tenant mix in the Center would or could be adversely affected.

15.4 Procedures.

(a) Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the effective date of any such transaction, and shall provide Lessor with the following:

(i) The full particulars of the proposed transaction, including its nature, all consideration to be paid pursuant to said transaction, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to such proposed transaction;

(ii) A description of the identity, net worth and previous business experience of the Transferee and the persons involved therein, including, without limitation, copies of Transferee's latest income, balance sheet and change-of-financial-positions statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the Transferee, and resumes, business, and financial references of the Transferee and the persons involved therein;

(iii) Any further information relevant to the transaction which Lessor may request;

(iv) A statement that Lessee intends to consummate the transaction if Lessor, and, if required, City, consent thereto.

(b) Subject to Section 15.5 below, within thirty (30) days after receipt by Lessor of the information required by subsection (a) above, Lessor may either:

(i) Consent to the Occupancy Transaction, subject to Section 15.7 below, if, pursuant to Section 15.2 or 15.3 above, Lessor is not entitled to withhold its consent; or

(ii) Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Lessor is entitled to withhold its consent; or

(iii) In any case terminate this Lease on ten (10) days written notice to Lessee unless Lessee rescinds its request for consent within five (5) days following receipt of Lessor's notice of termination.

15.5 City's Consent Required. Lessee and Lessor hereby acknowledge and agree that no Occupancy Transaction may be consented to by Lessor or entered into by Lessee without first obtaining the additional written consent of City when such consent is required.

15.6 Documentation and Expenses. Each Occupancy Transaction to which Lessor has consented shall be evidenced by an instrument made in such written form as is satisfactory to Lessor and City and executed by Lessee and Transferee. By such instrument, Transferee shall assume and promise to perform the terms, covenants and conditions of this Lease which are obligations of Lessee including the payment of all monies due or to become due under this Lease directly to Lessor. Lessee shall remain fully liable to perform all duties and obligations under the Lease following the Occupancy Transaction. Lessee shall, on demand of Lessor, reimburse Lessor for Lessor's reasonable costs, including attorneys' fees, incurred in obtaining advice and preparing documentation for each Occupancy Transaction to which Lessor has consented.

15.7 Consideration to Lessor.

(a) In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease, provided, however:

(i) The Minimum Annual Rent shall be increased on the effective date of such Occupancy Transaction to the highest of:

(A) An amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or

(B) The then fair market annual rent as reasonably determined by Lessor. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

(ii) The Percentage Rent shall be increased on the effective date of such Occupancy Transaction to the Percentage Rent payable by the Transferee to the Lessee if such amount is greater than the Percentage Rent specified in this Lease; and

(iii) Any profit or gain realized by Lessee from any such Occupancy Transaction shall be paid by the Lessee to Lessor within ten (10) days of Lessor's written approval of such Occupancy Transaction.

(b) In no event shall the Minimum Annual Rent, City Rent, and Percentage Rent as adjusted, be less than the Minimum Annual Rent, City Rent and Percentage Rent payable in the period immediately preceding the effective date of the Occupancy Transaction.

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 10:00 a.m. to 9:00 p.m. seven days a week. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall operate one hundred percent (100%) of the Premises during the entire term of this Lease with due diligence and efficiency so as to produce all of the Net Sales which may be produced by such manner of operation. Subject to inability by reason of strikes or labor disputes, Lessee shall carry at all times in the Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce maximum Net Sales. Lessee shall install and maintain at all times displays of merchandise in the display windows (if any) of the Premises. Lessee shall keep the display window and all approved designs, if any, in or on the Premises, well lighted during the hours from sundown to the close of business operations. To keep the Premises suitable for the conduct of Lessee's business, Lessee shall not remove any of its trade fixtures or other personal property, without the immediate replacement thereof with fixtures or property of similar quality.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor and that no trash receptacles shall remain outside the Premises. Garbage must be in a watertight container that does not permit any dripping or any odors to escape, and must be removed to a location designated by Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of \$50.00 per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expenses, and damages that Lessor will incur by reason of such failures by Lessee, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charges shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

Lessee shall, at its sole cost and expense, conform to, abide by, and comply with, all laws, statutes, ordinances, rules and regulations relating to the Premises and the operations herein authorized and shall be subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the City, the County of San Diego, the State of California and the Federal Government and all other governmental agencies. Where permits are required for such operations, the same must be first had and obtained from the regulatory body having jurisdiction thereof before such operation is undertaken. Lessee and all its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

Lessee shall keep the Premises in a safe, clean, wholesome and sanitary condition to the complete satisfaction of Lessor and City who shall have the right to enter upon and inspect the Premises and the business conducted in the Premises. Should Lessor and/or representatives of the City or the County of San Diego determine the Premises are not being maintained in compliance therewith, Lessor shall be entitled to put the Premises in a safe, clean, wholesome and sanitary condition and charge the costs and expenses thereby incurred to Lessee as Additional Rent.

Lessee agrees to accept Bank Americard, Master Charge, Visa and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates this covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing City Rent or Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises and the exterior and interior portions of all doors, windows, plate glass, and show cases in good, safe, decent, healthy, and sanitary condition and repair satisfactory to Lessor and City, including, without limitation, all plumbing and sewage facilities within the Premises, windows, interior walls, floors, ceilings and signs (including repair and painting thereof), and heating and air conditioning equipment. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of Lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of the State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor shall keep in good condition and repair the foundations and exterior walls and roof of the Premises, except for any damage caused by any act or negligence of Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense.

ARTICLE 18 - RECONSTRUCTION

18.1 Insured Casualty. In the event of damage or destruction of the Premises by fire, the elements, acts of God, or any other cause which damage or destruction is covered by any insurance then carried by Lessor with respect to the Center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade.

18.2 Uninsured Casualty. In the event of uninsured damage or destruction of the Premises, Lessor shall have the option (i) to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (ii) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee within ninety (90) days of the event of damage or destruction and this Lease shall thereupon terminate.

18.3 No Abatement of Rent. In the event that Lessor undertakes such repair, Lessee shall continue the operation of its business on the Premises during such repair period, to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

18.4 Waiver and Notice. With respect to any partial or total destruction which Lessor is obligated to restore or may restore under any of the provisions of this Lease, the provisions of Article 1932, Subdivision 2, and Article 1933, Subdivision 4, of the Civil Code of California, are hereby waived by Lessee. Lessee shall give written notice to Lessor and City of any damage or destruction that may occur on the Premises within ten (10) days of such damage or destruction.

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall be deemed to include those portions of the Center and other areas that are designated by Lessor from time to time for the general use, convenience and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas and parking structures, driveways, roadways, sidewalks, service areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, art work, artistic displays, ponds and waterscaping, pedestrian overpasses or underpasses, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees in the Center and other authorized users. Should a portion of the Center and/or adjacent real property be owned, used, or leased under any agreement by Lessor, or by separate legal entities, for the benefit, in Lessor's sole discretion, of the Center, then the Common Areas shall include any portions of the Center and/or adjacent real property under such separate ownership, use, or master lease that may be designated by Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee and its employees and invitees are authorized, empowered, and privileged to use the Common Areas in common with other persons during the term of this Lease, subject to the provisions of this Lease and the Master Lease, reasonable rules and regulations which shall be established from time to time by Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, and other tenants, owners and occupants of the land constituting the Center of which the Premises are a part. The use of the swimming pool and community meeting room shall be subject to the Master Lease and the rights of the public to the use thereof.

19.3 Common Area Expenses. Lessor shall keep, or cause to be kept, the Center and the Common Areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof, but all Common Areas Expenses shall be charged and prorated in the manner hereinafter set forth. The phrase "Common Area Expenses" shall include the total cost and expense incurred in operating, maintaining and managing the Center, and the Common Areas, specifically including, without limitation, (a) gardening, planting and landscaping, (b) public liability and property damage insurance, fire and extended coverage insurance, rental loss insurance, earthquake, flood, sprinkler damage, vandalism, malicious mischief, tidal action, and other insurance required by City or deemed necessary by Lessor or its lender with respect to the Common Areas, Premises, or Lessor's interest therein, (c) roof, building and signage repairs, (d) parking lot resurfacing, line painting, restriping, sweeping and cleaning, (e) lighting, utility systems, all utility charges for the Common Areas and the Center, (f) sanitary control, pest control, janitorial services and removal of trash, rubbish, garbage and other refuse, (g) reasonable reserves for replacements and repairs, (h) bookkeeping, the cost of personnel to implement such Common Area services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the lessees of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined), (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the lessees in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to four percent (4%) of all Rent collected by the property management company. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego. Lessor may cause any or all of said services to be provided by an independent contractor or contractors. The parties hereto agree that Lessor need not itself directly manage or otherwise service all or any part of the Common Areas and Center but may cause such management, maintenance and operation and other services to be performed by Lessor's agent (hereinafter the "Manager of the Center"). Lessor may cause the Manager of the Center to render services to Lessee, other lessees and occupants, required or permitted to be performed by Lessor, pursuant to this Lease, in connection with the maintenance, repair, management and operation of the Common Areas. The expenses described in Section 19.4 below are specifically excluded from Common Areas Expenses.

For purposes of this Lease, "Taxes" shall include each of the following:

(a) Any form of assessment, license fee, license tax, business license tax, commercial rental tax, levy, charge, penalty, possessor interest tax, public charge or tax, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special district thereof, as against any legal or equitable interest of Lessor in the Master Lease, the Premises or the real property of which the Premises constitute a part;

(b) Any tax on Lessor's right to rent or on other income from the Premises or Center or as against Lessor's business of leasing the Premises;

(c) Any assessment, tax, fee, levy or charge in substitution of, or in addition to, partially or totally, any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Lessee and Lessor that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Lessee and Lessor that all such substitute, new, additional and increased assessments, taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of taxes for purposes of this Lease;

(d) Any tax allocable to or measured by the area of the Premises or the Rent payable hereunder, including without limitation, any gross income tax or excise tax levied by the State, any political subdivision thereof, city, or federal government, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, alteration, repair, use or occupancy by Lessee of the Premises, the Center or any portion thereof;

(e) All costs and fees incurred by Lessor to appeal or contest the amount or existence of any such Taxes and any governmental imposition or surcharge imposed or assessed against Lessor, the automobile parking areas and parking structures.

(f) Any tax upon this transaction or any document to which Lessee is a party, creating or transferring an interest or an estate in the Premises, and any and all assessments Lessor must pay pursuant to any covenants, conditions or

restrictions, reciprocal easement agreement, tenancy in common agreements or similar restrictions affecting the Building or Common Areas;

(g) Taxes shall not include Lessor's federal or state income, franchise, inheritance or estate taxes.

19.4 Food Fair Expenses. Notwithstanding anything to the contrary contained herein, all of the costs and expenses specifically and exclusively incurred or attributed by Lessor from time to time as a result of the maintenance and operation of the common fast food resting and/or dining areas and other Common Areas in or adjacent to the Center, which are used by customers of fast food lessees for eating and/or dining ("Food Fair"), which result primarily from the operations of the fast food lessees in the Center (as opposed to the maintenance and operation of such areas as Common Area) ("Food Fair Expenses"), shall be paid only by said fast food lessees to Lessor, monthly, as Additional Rent, in addition to the Common Area Expenses. Each fast food lessee shall pay that proportion of the Food Fair Expenses in the same proportion which the floor area of each fast food lessee bears to the total number of leasable square feet occupied and open for business by all fast food lessees in the Center, or at Lessor's sole discretion, in the same proportion as each fast food lessee's Net Sales in any calendar year is to the total fast food Net Sales of all fast food lessees in the Center.

Restaurant lessees which sell fast food or take-out food which is consumed or disposed of in the Food Fair shall share the costs of the Food Fair expenses as though they were fast food lessees. Lessor shall determine the floor area of each restaurant lessee selling fast food or takeout food for the purpose of determining said restaurant lessee's prorata share of Food Fair Expenses. Said restaurants shall include a separate breakdown of fast food and takeout food Net Sales, as specified in Section 5.2, in the event Lessor prorates the Food Fair Expenses on a Net Sales Basis.

Food Fair Expenses shall include, without limitation: (1) salaries, wages, and benefits, and other costs of bus-boys and other personnel employed for cleaning and servicing the Food Fair; (2) garbage and waste collection and disposal; (3) rental of equipment and signs; (4) the cost of repairs or replacements to, and maintenance and operation of, the furniture, fixtures and furnishings in, or serving, the Food Fair; (5) depreciation or amortization and interest on the cost of any repairs or replacements, the cost of which is not charged in full in the lease year in which it is incurred; (6) the additional cost of securing, policing, and supervising the Food Fair; (7) the cost of cleaning, resealing and/or resurfacing outdoor sitting areas used primarily by Food Fair customers; and (8) a management fee to be initially established to equal four percent (4%) of the Food Fair Expenses. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego.

Lessor shall have the right from time to time to relocate or rearrange the Food Fair and the Center, or either of them, including designating other portions of Common Areas immediately adjacent to the Food Fair as part of the Food Fair and, in such event, the provisions of this Article shall apply. Lessor shall also have the right to designate other portions of the Center as Food Fair and fast food areas and to make Rules and Regulations and policies, standards and directions governing the overall operation of such Food Fair and fast food areas. In addition, Lessor shall have the right to lease space to a fast food restaurant or any other restaurant anywhere in the Center.

Lessee acknowledges and agrees that it is a condition of the Lease that Lessor reserves the right to formulate, determine and enforce such policies, standards and practices for the Food Fair and the Center and for the more efficient and proper operation of the Food Fair and the Center, and to designate the name or names by which the Food Fair is to be referred. Lessee agrees to be bound by, and to comply with, such policies, standards and practices and to refer to the Food Fair only by the name or names designated by Lessor in its advertising and the conduct of its business in the Premises.

Without limitation, fast food lessees shall, at all times during the Lease Term, in operation of their business, abide by all Rules and Regulations and directions of Lessor relating to: (1) the health and sanitary conditions of the Premises, the Food Fair and its employees, (2) standards and quality of merchandise; (3) customer relations and resolution of complaints; (4) such other matters as Lessor determines applicable from time to time with respect to the operation of the Food Fair.

19.5 Method of Payment. Lessee shall pay to Lessor as Additional Rent Lessee's pro rata share of Common Area Expenses in the following manner:

(a) From and after the Commencement Date, Lessee shall pay Lessor, on the first day of each calendar month of the Lease Term, Lessee's pro rata share of Common Area Expenses, as hereinafter defined. Should Lessee fail to make any payment to Lessor of Lessee's pro rata share of Common Area Expenses, including, without limitation, the quarterly or yearly payments required pursuant to subparagraph (b) below, by the tenth day following the date on which such payment becomes due, Lessee shall pay interest thereon at the Lease Interest Rate plus a Late Fee of ten percent (10%) of Lessee's pro rata share of such Expense. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charge shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law. Lessor may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Lessor's experience and reasonably anticipated costs.

(b) Within thirty (30) days following the end of each calendar quarter or, at Lessor's option, each calendar year, Lessor shall furnish Lessee a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total operating costs, the amount of Lessee's pro rata share of Common Area Expenses for such calendar quarter or year, and the payments made by Lessee with respect to such period. If Lessee's pro rata share of Common Area Expenses exceeds Lessee's payments so made, Lessee shall pay Lessor the deficiency within ten (10) days after receipt of such statement. If said payments exceed Lessee's pro rata share of Common Area Expenses,

Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor as set forth in subparagraph (a). Lessee's pro rata share of Common Area Expenses is defined as that proportion of Common Area Expenses which the Floor Area in the Premises bears to the total number of leasable square feet occupied and open for business in the Center, excluding that portion of the Center attributable to the indoor public swimming pool and attached support facilities as determined by Lessor.

19.6 Lessor's Rights to Determine Common Areas. Lessor shall at all times have the right to determine the nature and extent of the Common Areas, and to make such changes therein and thereto from time to time which, in its opinion, are deemed to be desirable and for the best interests of persons who may from time to time be using said Common Areas, including the addition of buildings, the location and relocation of driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, installation of prohibited areas, landscaped areas, and other facilities thereof.

Lessor shall have the right, in connection with any expansion or reconfiguration of the Center, to construct improvements, landscaping, parking, pedestrian walkways and other features on the Common Areas, including, without limitation, any parking area which may exist from time to time, provided that such parking conforms to the requirements of the City and the California Coastal Commission. Any costs or expenses incurred by Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

19.7 Release of Liability. Nothing contained herein shall be deemed to create any liability upon Lessor for any loss of, or damage to, motor vehicles of customers or employees or for loss of property from within such motor vehicles. Lessee acknowledges that if Lessor provides security guards for the Common Areas, Lessor does not represent or guarantee that Lessee will be secure from losses caused by the illegal acts of third parties and does not assume responsibility to prevent any such illegal acts. To induce Lessor to provide such security guards, if any, as Lessor deems reasonable, appropriate and economically feasible, Lessee hereby waives any present or future claim Lessee may have against Lessor, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.8 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor may offer parking free, or at reduced rates for specified periods, to customers of Lessee who present parking tickets validated by Lessee for such periods. Lessee agrees to purchase from Lessor validation stamps (or other evidence of validation issued by Lessor) for such purpose, and agrees to deliver them to customers in consideration for purchases by the customers from Lessee, pursuant to rules and regulations promulgated by Lessor from time to time. Lessor may at any time, and from time to time in its sole discretion, establish non-discriminatory parking areas, rates, hours, validation system, charges for parking and validations, rules and regulations relating thereto, and any other aspect of the parking arrangements. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.9 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized users of the automobile parking areas, and parking structures, the parking spaces thereon, driveways, entrances, and exits, and the sidewalks and pedestrian passageways, and other Common Areas, and may at any time, from time to time during the term hereof, exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons and service suppliers of Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulations established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas and parking structure, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee's operation, and to permit the use of any said areas only for normal parking and ingress and egress by the customers, patrons and service suppliers to and from the building occupied by Lessee and other lessees of Lessor.

If, in the opinion of Lessor, unauthorized persons are using any of said areas by reason of the presence of Lessee in the Premises, Lessee, upon demand of Lessor, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Lessor at any time to remove any such unauthorized persons from said areas or to restrain the use of any said areas by unauthorized persons.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee under any state insolvency law now or hereafter in effect, or the taking or seizing of the Premises or any portion thereof under levy of execution or attachment against Lessee, and the continuance of such filing, assignment, action, appointment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee is a subsidiary, and any Guarantor of this Lease.

It is understood and agreed that neither this Lease, nor any interest herein or hereunder, nor any estate hereby created, in favor of Lessee, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, or any other person without the prior written consent of Lessor and the City. Any transfer in violation of the provisions of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained, including, without limitation, the obligation to maintain the level of Net Sales as required by Section 5.8 and to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

(a) The right of Lessor to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or thereunder.

(b) The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee shall have the right to engage in an Occupancy Transaction in accordance with and subject to the provisions of Article 15, whether or not such Occupancy Transaction occurs during the first two (2) years of the term of this Lease.

(c) The right of Lessor, even though it may have re-entered the Premises, to thereafter elect to terminate this Lease and all of the rights of Lessee in or to the Premises.

Should Lessor have re-entered the Premises under the provisions of subparagraph (b) above, Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee to pay Rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such re-entry or by any action in unlawful detainer, or otherwise, to obtain possession of the Premises, unless Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election to be evidenced by a written notice to Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owner or owners thereof.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, Lessor may recover from Lessee as damages:

(a) The worth, at the time of award, of any unpaid Rent which had been earned at the time of such termination.

(b) The worth, at the time of award, of the amount by which the unpaid Rent, which would have been earned after termination until the time of award exceeds the amount of such Rent loss Lessee proves could have been reasonably avoided.

(c) The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Lessee proves could be reasonably avoided.

(d) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Lessor in maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new tenant, any repairs or alterations to the Premises for such reletting, leasing commissions, or any other costs necessary or appropriate to relet the Premises.

(e) At Lessor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

For purposes of this Article 21, all items of Rent, other than the Minimum Annual Rent, shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period, except that if it becomes necessary to compute such Rent before such a twelve (12) month period has occurred, then on the basis of the average monthly amount thereof accruing during such shorter period.

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor shall have the right to take the exclusive possession of and use same, rent or charge free, until all defaults are cured, or, at its option, at any time during the term of this Lease, to require Lessee to forthwith remove same.

21.4 No Limitation of Remedies. The remedies given to Lessor in this Article shall be in addition and supplemental to all other rights or remedies which Lessor may have under the laws then in force. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of the Premises by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise.

21.5 No Waiver. The waiver by Lessor of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

22.1 No Right of Termination. In the event that Lessee claims that Lessor is in breach of this Lease or that Lessor has failed to perform any of the covenants, provisions or conditions contained in this Lease on its part to be performed, Lessee shall give written notice of such claim of default to Lessor and any lender of Lessor, the identity of which Lessee has written notice. Lessor shall have thirty (30) days after receipt of written notice, or such additional time as may be reasonably required, to cure any such default. Lessor shall not be considered in breach of this Lease unless this procedure has been followed by Lessee.

22.2 Limitation of Liability. In no event shall Lessee have the right to terminate this Lease or set off any claim against Rent payable hereunder as a result of a default by Lessor. Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Lessor:

- (a) The sole and exclusive remedy shall be against the Lessor's interest in the Center;
- (b) No partner of Lessor shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);
- (c) No service of process shall be made against any partner of Lessor (except as may be necessary to secure jurisdiction of the partnership);
- (d) No partner of Lessor shall be required to answer or otherwise plead to any service of process;
- (e) No judgment will be taken against any partner of Lessor;
- (f) Any judgment taken against any partner of Lessor may be vacated and set aside at any time nunc pro tunc;
- (g) No writ of execution will ever be levied against the assets of any partner of Lessor;
- (h) These covenants and agreements are enforceable both by Lessor and also by any partner of Lessor.

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee shall each thereupon be released from any further liability accruing under this Lease.

In the event more than twenty-five percent (25%) of the square footage of Floor Area of the Premises is taken by Condemnation and if the remaining portion of the Premises is not suitable for the conduct of business by Lessee, or if by reason of Condemnation, regardless of the amount so taken, the Master Lease is terminated, in whole or in part, or the remainder of the Premises is not one undivided parcel of property, either Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises, upon giving notice in writing of such election within thirty (30) days after receipt by Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability thereafter accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee shall continue to occupy that portion of the Premises which shall not have been Condemned as herein provided and the parties will proceed as follows: (a) at Lessor's cost and expense and as soon as reasonably possible, Lessor will reasonably restore the Premises (b) the Minimum Annual Rent shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining; and (c) Lessor shall be entitled to receive the total award or compensation in such proceedings. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

23.4 Transfer Under Threat of Taking. For the purposes of this Article only, a voluntary sale or conveyance under threat and in lieu of condemnation shall be deemed an appropriation or taking under the power of eminent domain.

ARTICLE 24 - ATTORNEYS' FEES

24.1 Attorneys' Fees. In the event that at any time during the term of this Lease either Lessor or Lessee shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the actual attorneys' fees and actual costs and disbursements incurred therein by the successful party. The parties agree that the actual attorneys' fees and disbursements so incurred shall be deemed reasonable.

ARTICLE 25 - SALE OF PREMISES BY LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor shall be entirely freed and relieved of all liability under its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Center, Premises or this Lease occurring after the consummation of such sale, transfer or assignment.

ARTICLE 26 - SUBORDINATION, ATTORNMEN AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee will, in writing, subordinate its rights hereunder to the lien of any mortgage, deed of trust, lease or easement, now or hereafter placed upon the land and/or buildings of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

26.2 Attornment. In the event of any foreclosure or exercise of the power of sale under any mortgage or deed of trust made by Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as its special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION AND RELOCATION

27.1 Quiet Possession. Lessor agrees that Lessee, upon paying Rent and performing the covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises during the term hereof or any extension thereof, subject, however, to the provisions of the Master Lease and any mortgages, deeds of trust, agreements and encumbrances to which the Lease is or may become subordinate.

27.2 Relocation. Lessor shall have the right at any time, upon at least one hundred twenty (120) days written notice to Lessee, to relocate Lessee to new space in the Center provided the Premises to which Lessee shall be relocated (the "New Premises") shall have the same approximate Floor Area as is contained in the existing Premises. Lessor's notice shall be accompanied by a floor plan of the New Premises. The New Premises shall be leased to Lessee on the same terms and conditions as herein provided, except that in the event the Floor Area of the New Premises shall be more or less than the Floor Area contained in the existing Premises, there shall be a proportionate adjustment of the Minimum Annual Rent. Lessee shall submit to Lessor, within thirty (30) days following the date Lessee completes renovation and opens for business in the New Premises, an affidavit signed and verified by Lessee setting forth the costs and expenses (accompanied with copies of paid receipts for each item) reasonably incurred by Lessee in connection with the relocation. Within thirty (30) days following Lessor's approval of Lessee's list of expenses, Lessor shall reimburse Lessee for such expenses. Expenses of relocation may include moving expenses, the unamortized cost of Lessee's leasehold improvements to the existing Premises and trade fixtures (to the extent paid for by Lessee and to the extent such leasehold improvements and trade fixtures cannot be used in the New Premises), and the sums expended by Lessee for new leasehold improvements and trade fixtures required solely as a result of such relocation. Except as provided above, Lessor shall not be liable or responsible in any way for any costs, expenses, damages or injuries suffered by Lessee pursuant to a relocation in accordance with the provisions of this Article 27, including, but not limited to, loss of goodwill, business or profits. Lessee agrees that all of the obligations of this Lease, including the payment of Rent, shall continue throughout the period of relocation. Lessee shall, not later than the date specified in Lessor's notice, vacate and surrender the

existing Premises, relocate to the New Premises, and prepare the New Premises for occupancy, all at Lessee's sole cost and expense, subject to the reimbursement provisions set forth above. Lessee agrees to use all reasonable efforts to open for business in the New Premises as quickly as is reasonably possible under the circumstances. Immediately following the date of relocation by Lessee, Lessor and Lessee shall execute a supplemental agreement specifying the location of the New Premises and the new Minimum Annual Rent to be paid pursuant to this Lease. All Additional Rent to be paid pursuant to this Lease shall be adjusted pro rata based upon the differential, if any, in the Floor Area of the existing Premises and the New Premises.

The failure of Lessee to relocate in accordance with the provisions of this Lease shall constitute a default under this Lease.

ARTICLE 28 - GRAND OPENING AND MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor determines, in its sole discretion, will promote the Center. The costs of such advertising or promotional events shall be paid out of marketing charges collected by Lessor from lessees in the Center (the "Marketing Fund").

28.2 Method of Payment. From and after the Commencement Date, Lessee shall pay to Lessor on the first day of each calendar month of the term of this Lease, as Additional Rent, a sum equal to the Marketing Fund Contribution specified in the Fundamental Lease Provisions, which shall be used for the purposes of promoting and advertising the Center.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any, shall be calculated upon the basis of the Index, as defined in Section 5.1.1(a). The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center. Lessor agrees to consider the committee's suggestions but reserves the right to make final determination as to the expenditure of said funds and to terminate any program of promotion or advertising.

Costs and expenses payable out of the Marketing Fund shall include, without limitation, costs and expenses related to a marketing director to be selected by Lessor in Lessor's sole discretion.

28.5 Lessor's Right to Change Marketing Fund Contribution Format. Lessor reserves the right to change Lessee's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Lessee be required to pay in any calendar year an amount that exceeds Lessee's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial calendar year. Lessor shall change the Marketing Fund format to a pro rata format, if at all, only as of the beginning of a calendar year and upon giving Lessee at least three (3) months' advance written notice. Lessor shall notify Lessee in writing of the amount of the Marketing Fund Contribution for each calendar year and of Lessee's pro rata share thereof, and Lessee shall pay Lessor on the first day of each calendar month of the first calendar year that the pro rata share format is in effect. Within thirty (30) days following the end of each calendar year, Lessor shall furnish Lessee a statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total amount of Marketing Fund Contribution payments made by Lessee with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Lessee exceeds the limitations set forth above. If Lessee shall have made any such excess payments, then Lessee shall be entitled to offset the excess against the payment next thereafter to become due Lessor for Marketing Fund Contribution payments as set forth herein. If, however, Lessee's Marketing Fund Contribution payments during the applicable calendar year do not equal Lessee's Marketing Fund Contribution for such calendar year, the shortage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Lessor. There shall be an appropriate adjustment of Lessee's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

28.6 Grand Opening. Lessee shall pay to Lessor, as Additional Rent, a sum equal to the Grand Opening Contribution as set forth in the Fundamental Lease Provisions to defray the promotional and advertising expenses incurred in connection with the Grand Opening of the Center ("Grand Opening"). This sum shall be paid by Lessee within fifteen (15) days of receipt of a bill for same. The use and disbursement of such funds shall be determined by Lessor in Lessor's sole discretion.

28.7 Lessee Advertising. Lessee agrees not to produce any advertising which is not in good taste or which may injure the Center or other lessees within the Center. If, in Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.8 Late Charge. Should Lessee fail to make any payment to Lessor for its share of Marketing Fund Contribution or Grand Opening Contribution as provided above, by the tenth day following the date on which such payment becomes due, then such amount shall bear interest at the Lease Interest Rate and a Late Fee equal to ten percent (10%) of the amount due shall be assessed. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and

damages that Lessor will incur by reason of such failure by Lessee, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charge shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder, or as provided by law.

28.9 No Interest in Marketing Fund. Lessee shall at no time have any right, title or interest in or to the Marketing Fund or any part or portion thereof.

ARTICLE 29 - CAPTIONS AND TERMS; PARTIES; NOTICES

29.1 Reference Only. The captions of Articles of this Lease are for convenience only, are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

29.2 The Term. Except as otherwise specifically stated in this Lease, the "term" shall include the original term and any extension, renewal or holdover thereof.

29.3 Parties. If more than one person or corporation is named as Lessor or Lessee in this Lease and executes the same as such, then and in such event, the words "Lessor" or "Lessee" wherever used in this Lease are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter, as the case may be, and the use of the singular shall include the plural.

29.4 Notices. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to the addresses set forth in the Fundamental Lease Provisions. Either party may change such address by giving written notice by certified or registered mail to the other.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Construction; Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

ARTICLE 31 - CONSENTS AND APPROVALS

31.1 Consents Required. Wherever this Lease provides that Lessee is required to obtain consent or approval, such consent or approval must be obtained in advance and shall not be valid or effective unless consented to or approved expressly in writing in each instance. Any such consent or approval may be given or denied at the sole and absolute discretion of any person having the right to give or deny such consent or approval, except as otherwise provided in this Lease. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

31.2 Reimbursement to Lessor. Lessee agrees to reimburse Lessor for payment made to City for any fees or charges assessed in connection with obtaining and/or processing approvals hereof.

ARTICLE 32 - SECURITY DEPOSIT

32.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this Lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor. In the event that Minimum Annual Rent is increased in accordance with the provisions of this Lease, the Security Deposit shall be increased in the same proportion and at the same time as said increase in Minimum Annual Rent.

32.2 Use and Restoration. If Rent or any other sum payable by Lessee to Lessor shall be overdue and unpaid or should Lessor make payments on behalf of Lessee, or Lessee shall fail to perform any of the terms of this Lease, then Lessor may, at its option and without prejudice to any other remedy which Lessor may have on account thereof, appropriate and apply said entire deposit or so much thereof as may be necessary to compensate Lessor toward the payment of Rent or loss or damage sustained by Lessor due to such breach on the part of Lessee, and Lessee shall forthwith upon demand restore said security to the original sum deposited. Should Lessee comply with all of said terms and promptly pay all Rent as it falls due and all other sums payable by Lessee to Lessor, said deposit shall be returned in full to Lessee within thirty (30) days of the last day of the Lease Term.

32.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Lessee, such security deposit shall be deemed to be applied first to the payment of Rent and other charges due Lessor for all periods prior to the filing of such proceedings.

32.4 Transfer of Security Deposit. Lessor may deliver the funds deposited hereunder by Lessee to the purchaser of Lessor's interest in the Premises in the event that such interest be sold and thereupon Lessor shall be discharged from any further liability with respect to such deposit, and this provision shall also apply to any subsequent transferees.

ARTICLE 33 - MISCELLANEOUS

33.1 Relationship of Parties. It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party.

33.2 Severability. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

33.3 Warranty of Authority. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee to do business in California, all franchise and corporate taxes have been paid to date, and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed or paid when due.

33.4 Entire Agreement. No oral agreements exist between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto (or their agents) or displayed by Lessor to Lessee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

33.5 Right to Lease. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees shall, during the term of this Lease, occupy any space in the Center.

33.6 Governing Law; Forum; Construction. The laws of the State of California shall govern the validity, performance and enforcement of this Lease. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in San Diego County, California. Although the printed provisions of this Lease were drawn by Lessor, this Lease shall not be construed either for or against Lessor or Lessee, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the result intended by the language.

33.7 Force Majeure. Unless the same will cause the other party to be in default under any obligation to any third party (including without limitation the Master Lease), any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (financial inability excepted) shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to Rent and other charges to be paid by Lessee pursuant to this Lease.

33.8 Nondiscrimination and Equal Opportunity. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, national origin or ancestry, age or physical handicap in the use, occupancy or enjoyment of the Premises or in the providing of goods, services, facilities, privileges, advantages and accommodations or in the obtaining and holding of employment.

Lessee agrees to abide by City's Equal Opportunity Program for non-construction contractors doing business with the City. A copy of the program effective as of the date of this Lease is on file in the City Clerk's Office as Document RR282633, and by this reference is part hereof. The goal of the program is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the City for its Equal Opportunity Program each year.

33.9 Seasonal Activities. Lessee will cooperate by appropriate decoration of the Premises and participation in promotional and public relations activities of the Center for holidays such as Christmas, Easter, Valentine's Day, Halloween, and other special days selected by Lessor from time to time.

33.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, will cooperate with activities of City and to comply with all rules and regulations of City applicable to the Center and Premises.

33.11 Shoplifting. Lessee will cooperate in all procedures and programs calculated to discourage shoplifting in the Center.

33.12 Lender Requirements. The parties agree that this Lease shall be modified at the request of Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

33.13 Confidential Shoppers Program. Lessor shall have the right to institute and maintain a Confidential Shoppers Program which is intended to assist Lessee in maintaining the highest quality of its food, beverages, products, and services provided on the Premises.

Lessor may from time to time, and without Lessee's knowledge, send persons to the Premises for the purpose of assessing the quality of Lessee's food, beverages, products and services. At the conclusion of said visit Lessor shall prepare a written report which shall be furnished to Lessee within fifteen (15) days after said visit. Lessee shall promptly make every effort to remedy any deficiency described in such report.

33.14 Rules and Regulations. Lessee and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit D. Lessor may from time to time reasonably amend, delete or modify existing rules and regulations or adopt reasonable new rules and regulations for the use, safety, cleanliness and care of the Premises and the Center and the comfort, quiet and convenience of occupants of the Center. Modifications or additions to the rules and regulations will be effective upon notice to Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, and will, in addition, have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, its employees, agents, visitors or licensees, or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

33.15 Washrooms. The washrooms and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet occupied and open for business by all lessees receiving benefits therefrom.

33.16 Disturbances. Lessee shall not make or permit to be made, any unseemly or disturbing noises, or disturb or interfere with the occupants of neighboring premises, or those having business with them, whether by the use of any musical instrument, amplified sound, noise, whistling, singing, or in any other way. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee shall not do anything or permit anything to be done on or from the Premises which will disturb the quiet enjoyment of any other tenant or its premises.

33.17 Flammables and Toxic Waste. Neither Lessee, nor any of Lessee's servants, employees, agents, visitors or licensees shall at any time bring to or keep on the Premises any flammable, combustible or explosive fluid, chemical or substance or any toxic, hazardous or radioactive matter.

33.18 Canvassing, Soliciting and Peddling. Canvassing, soliciting and peddling in the Center is prohibited and Lessee shall cooperate to prevent the same.

33.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

33.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, covenant or averment of any nature whatsoever concerning the condition of the Premises or the Common Areas, including the physical condition thereof, or any condition which may affect the Center or Premises, including the effect of tidal action, wind storms, flooding, blowing sand, water seepage and the like from the ocean and beach which adjoin the Center and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

33.21 Time Is of Essence; Binding Effect; Assignment. Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any permitted assignees and sublessees of Lessee.

33.22 San Diego Convention and Visitors Bureau. If required by Lessor, Lessee agrees to join and maintain membership in the San Diego Convention and Visitors Bureau during the term of this Lease.

33.23 No Pictorial or Other Representations of Center. Lessee shall not publish or distribute any pictorial or other representation of the Center, or any part thereof, or its name or logo, by postcards, posters, imprints on tee shirts or other clothing, or by any other means, without the prior written consent of Lessor.

33.24 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

33.25 Interior Lighting. Lessee agrees to install permanent interior lighting which will remain on until at least 2:30 a.m. seven (7) days a week. Lighting must be spots or floods with white bulbs only.

33.26 Pest Extermination. Lessee shall use at its cost such pest extermination contractor as Lessor may direct and at such intervals as Lessor may require.

33.27 Operations and Time Period. If Lessor notifies Lessee in writing that the Premises are ready for occupancy and Lessee fails to take possession and open the Premises for business, fully fixtured, stocked and staffed within thirty (30) days, then Lessor shall have, in addition to any and all remedies hereinafter provided, the right to immediately cancel and terminate this Lease.

33.28 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee shall not have or acquire any property right or interest in the name "Belmont Park," the Belmont Park logo, or in any other name or logo of the Center, and shall not use "Belmont Park," the Belmont Park logo, or any other name or logo of the Center as a part of its tradename, service mark or business name.

33.29 Real Estate Broker. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiations and/or execution of this Lease, except the broker(s) listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor harmless from and against any costs, expenses, attorneys fees, or liability for compensation or charges which may be claimed by any unnamed broker or agent by reason of any dealings or actions of Lessee.

33.30 Architectural Significance. Lessee acknowledges that Lessor has a significant interest in the architectural and aesthetic appearance of the Center. To protect Lessor's interest, Lessee agrees that it will not do anything to impair Lessor's interest in the architectural and aesthetic nature of the Center and that Lessor may, in Lessor's sole and absolute discretion, remove any item, at Lessee's sole cost and expense, or prohibit installation of any such item.

ARTICLE 34 - ADDITIONAL PROVISIONS

34.1 Additional Provisions. By insertion of numbers in the following blank, Lessor and Lessee acknowledge that Article(s) _____ is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 34.1, it is conclusive that no additional provisions are a part of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Lease on the day and year first above written.

Lessee:

Lessor:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: Phase One Development, Inc.
a California corporation
(Managing General Partner)

By: _____

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

EXHIBIT "A"

SITE PLAN OF THE CENTER

EXHIBIT B

FLOOR PLAN SHOWING THE PREMISES

EXHIBIT "C"

WORK LETTER AGREEMENT
(Exposed Shell)

Gentlemen:

_____ ("Lessee") and BELMONT PARK ASSOCIATES, a California limited partnership ("Lessor") are executing, simultaneously with this Work Letter Agreement (the "Agreement"), a written lease (the "Lease") covering those certain premises more particularly described in Exhibit "B" to the Lease (the "Premises"), in the commercial recreational center (the "Center") known as "Belmont Park" as depicted on Exhibit "A" to the Lease, located in San Diego, California. To induce Lessee to enter into the Lease (which is hereby incorporated by reference to the extent that the provisions of this Agreement may apply thereto) and in consideration of the mutual covenants hereinafter contained, Lessor and Lessee mutually agree as follows:

General.

1.1 Leasehold Improvement Procedure. Within ten (10) working days of Lessee's receipt of a copy of Lessor's plans and specifications for the work to be performed by Lessor, pursuant to Section 2 of this Exhibit "C", Lessee shall notify Lessor in writing of any request for modification to said plans and specifications, and shall submit architectural working drawings, setting forth in detail said modifications, for Lessor's approval, which may be withheld for any reason. In the event Lessee fails to so notify Lessor within said period of time, Lessee shall be deemed to have approved said plans and specifications. In the event that Lessee requests any modifications to said plans and specifications within said ten (10) days, Lessor may, but shall not be obligated to, furnish and construct the improvements as modified. Within ten (10) days of Lessor's receipt of said notice, Lessor shall, if Lessor elects to construct said modifications, provide Lessee with a written estimate of the cost of such modifications. Within five (5) days of Lessee's receipt of said notice, Lessee shall advise Lessor in writing of its election to either proceed with such modifications (in which event Lessee shall accompany said notice with payment for the costs of said modifications) or its election not to proceed with said modifications. Should Lessor elect not to construct said modifications, Lessor shall, within five (5) days of Lessor's receipt of Lessee's notice, so notify Lessee in writing. Thereafter, Lessee may procure its own contractor to perform said modifications, subject to Lessor's prior written consent of the contractor selected by Lessee (which approval shall not be unreasonably withheld).

1.2 Plans and Specifications of Lessee's Work. Within said ten (10) working days after delivery of Lessor's plans and specifications to Lessee, and/or if the modifications referred to in Section 1.1 and the procedure set forth for resolution of same are satisfied, Lessee shall, at Lessee's expense: (a) retain, subject to Lessor's approval, a licensed architect and/or recognized interior designer; and (b) submit to Lessor for Lessor's approval three (3) sets of preliminary design drawings for the Leasehold Improvements prepared by Lessee's architect or interior designer, which drawings shall indicate Lessee's specific requirements, including, without limitation, fully dimensioned interior partition plans, trade fixture plans, lighting and electrical plans, reflected ceiling plans and plumbing plans, and all other improvements to be performed by Lessee pursuant to Section 3 of this Exhibit "C" ("Lessee's Work"). Lessee shall accompany such submittal with a payment to Lessor in the amount of Five Hundred Dollars (\$500.00), representing the cost to review the preliminary and final plans and specifications. Lessor's Work shall conform to building improvements standards (as hereinafter defined) established by Lessor in Lessor's sole discretion ("Lessee Improvement Standards") which Lessee acknowledges having received a copy of.

1.3 Lessor's Preliminary Approval. Lessor shall approve or disapprove Lessee's preliminary design drawings within ten (10) working days after Lessor's receipt thereof. If disapproved, Lessor shall indicate the reasons and/or corrections required for approval.

1.4 Lessee's Final Plans and Specifications. Within twenty (20) working days after Lessor's approval of Lessee's preliminary design drawings, and subject to Lessee's field measurement of the Premises, Lessee shall, at Lessee's expense, submit to Lessor for approval three (3) sets of blueprints and one set of sepia of fully detailed architectural working drawings and specifications of Lessee's work (hereinafter "Lessee's Final Plans") describing improvements to be completed in the Premises prepared by Lessee's architect or interior designer, including, without limitation, interior partition plans, trade fixture plans, lighting and electrical plans, reflected ceiling plans, plumbing fixture plans and such other matters as are referred to in "Description of Lessee's Work" hereinafter set forth in Section 3 of this Exhibit "C". Lessee shall also furnish as-built drawings to Lessor within ten (10) working days after completion of the work described in Lessee's Final Plans.

1.5 Lessor's Approval of Final Plans. Lessor shall have fifteen (15) working days after receipt of same within which to examine and to reasonably approve or disapprove Lessee's Final Plans. Failure of Lessor to approve or disapprove Lessee's Final Plans, in writing, specifying the reasons for disapproval, within said fifteen (15) days shall be deemed an approval thereof. Lessee shall promptly and diligently modify said Final Plans until same have been reasonably approved by Lessor. Construction of the Improvements specified on Lessee's Final Plans shall not commence until Lessee's Final Plans have been so approved.

1.6 Construction of Improvements. The interior of the Premises shall, as soon as practicably possible, be constructed by Lessee at Lessee's expense, in accordance with Lessee's approved Final Plans. Lessor and Lessee agree to pursue the necessary construction work with respect to the Premises diligently to completion, complying with all applicable City, County, State and Federal laws, ordinances, rules, codes and regulations relating thereto.

1.7 Licensed Contractors. Lessee shall use only licensed contractors and subcontractors to perform all work and shall submit the name of each such contractor and subcontractor, as well as a copy of Lessee's contract and budget with each such contractor, to Lessor for approval prior to commencement of any work by such contractor and subcontractor. **A**

1.8 Changes and Additions. Any additional charges, expenses or costs (including architects' fees and attorneys' fees) arising by reason of any subsequent change, modification or alteration of Lessee's Final Plans and Specifications, made at the request of Lessee, shall be at the expense of Lessee. Lessor shall be reimbursed the amount of any such additional expense it may have incurred as a result of any such change, modification or alteration (including architects' fees and attorneys' fees) and no change, modification, or alteration in Lessee's Final Plans and Specifications shall be made without the prior written consent of Lessor.

1.9 Acceptance of Premises. Lessee agrees that Lessee's acceptance of the Premises after completion of Lessor's Work (as hereinafter defined) shall constitute Lessee's approval of same, except as to items for which Lessee has provided Lessor with written notice within five (5) days of the acceptance. Except as described in such notice, Lessee hereby waives any right to a claim or action of any kind albeit direct or indirect, latent or patent, against Lessor, arising out of the condition of the Premises, appurtenances thereto, the improvements thereon or the equipment thereof, and Lessor shall have no liability therefor, provided, however, Lessor shall warrant the Premises against defects in workmanship in connection with "Lessor's Work", for a period of one (1) year from the date of completion thereof. Lessee shall not refuse to accept delivery of the Premises as a result of a "punch list".

1.10 Conflict With Plans or Lease. Where Lessee's Final Plans and Specifications are in conflict with this Exhibit "C", the provisions of this Exhibit "C" shall control. Where the Lease is in conflict with this Exhibit "C", the provisions of the Lease shall control.

1.11 Contractor's Warranty. Lessee shall ensure that each contractor and subcontractor, used by Lessee's contractor to perform work hereunder, shall guarantee that the portion thereof for which he is responsible, or which he performs, shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion of the Leasehold Improvements described in Lessee's Final Plans and shall ensure that each such contractor and subcontractor shall replace or repair, without additional charge, all work for which he is responsible or which he performs which is or becomes defective within one (1) year after completion of the Premises. The correction of such work shall include, without limitation, all expenses and corrections to or in connection with the structure, of which the Premises are a part, or any common area, should such structure or common area be damaged or affected by such defective work or by the repair or replacement of such defective work. All such warranties or guarantees as to materials or workmanship with respect to Lessee's Work shall be contained in Lessee's agreement with each contractor, and Lessee shall require each contractor to include such warranties or guarantees in each subcontract, and all such warranties or guarantees shall be so written so that same shall inure to the benefit of both Lessee and Lessor, as their respective interests may appear, and so that same may be directly enforced by Lessee or Lessor. Lessee hereby covenants to give to Lessor any assignment or other assurance necessary to perfect such right to direct enforcement by Lessor.

1.12 Lessor's Inspection. Lessor's prior inspection and written approval shall be a condition precedent to Lessor's acceptance of Lessee's Work as being complete and in accordance with the approved Final Plans. Said approval shall be based upon the good faith determination of Lessor's architect or engineer and shall be conclusive as to Lessee. Lessee shall give Lessor at least five (5) working days prior written notice of the anticipated completion date of Lessee's Work. Lessee shall be required to settle and/or bond against any mechanic's or materialman's liens, or other similar liens, filed against the Center property as a result of Lessee's Work in accordance with the provisions relating to such liens in the Lease. Lessee shall further reimburse Lessor in full, and indemnify, defend and hold Lessor harmless from and against, any liability, cost or expenses incurred by Lessor in connection therewith.

1.13 Notices of Completion. Lessee shall, within ten (10) working days after completion of Lessee's Work, execute and file a notice of completion with respect thereto, in a form complying with the applicable provisions of the California Civil Code (and in particular specifying the name of Lessee's contractor and the kind of work done and/or materials furnished under the contract), and shall furnish a copy thereof to the Lessor upon recordation. If Lessee so fails to do, Lessee hereby appoints Lessor as Lessee's attorney-in-fact for the purpose of executing and filing same on behalf of Lessee. Said power, being coupled with an interest in the Lease, is irrevocable.

1.14 No Delay. Lessee's Work shall be coordinated under Lessor's direction with all other work being performed or to be performed at or in connection with the Center so that Lessee's Work does not interfere with or delay the completion of such other work and so that such work may be coordinated to the maximum extent possible.

1.15 Material Storage. Each contractor and subcontractor retained by Lessee or by Lessee's contractors or subcontractors shall obtain prior written approval from Lessor to use any space outside of the Premises and within the Center to use for storage, handling, or moving of materials and equipment, as well as for the location of any field office or facilities for personnel. Small construction vehicles shall be prohibited from parking on the Premises.

1.16 Debris Removal. Each contractor and subcontractor retained by Lessee, or by Lessee's contractor, shall remove and dispose of, at least once a week or more frequently as Lessor may direct, or as shall be required by OSHA standards or other applicable laws or regulations, all debris and rubbish caused by, or resulting from, or related to, Lessee's Work, and upon completion of such Work, shall remove all temporary structures, surplus materials, debris and rubbish remaining within the Center, which has been brought in or created by or in connection with such work. If any contractor or subcontractor shall neglect, refuse, or fail to remove any such debris, rubbish, surplus material or temporary structures within five (5) calendar days after notice to Lessee from Lessor, Lessor may remove or cause same to be removed, and Lessee shall bear the expense of removal and hold Lessor harmless therefor.

1.17 Utility Service. Lessee shall obtain and transmit copies to Lessor of all permits and/or approvals with respect to Lessee's Work required or given by any utility service, unless Lessor shall have already done so or elects to supply utility service itself.

1.18 Insurance - OSHA Compliance. In addition to the requirements of the Lease, and without any limitation thereof, each contractor and subcontractor retained by Lessee or by Lessee's contractor shall, with respect to the work to be performed by each such contractor or subcontractor, (1) comply with all governmental rules and regulations, including applicable OSHA standards, and (2) carry workers' and public liability insurance (including property damage), with limits and in a form approved in advance by Lessor and issued by insurance companies approved in advance by Lessor. Lessor, Lessee, and the contractor or subcontractor procuring the insurance, shall be named insured (or named as additional insureds) in each policy of said liability insurance, which policy shall have a cross-liability endorsement or its equivalent. Certificates evidencing all of the foregoing insurance shall be delivered to Lessor before any work is commenced by any such contractor or subcontractor or before his equipment is moved onto the Center.

1.19 Bond. Lessor shall have the right, in Lessor's sole discretion, to require Lessee to furnish a bond or other security, in form satisfactory to Lessor covering the prompt and faithful performance of Lessee's Work.

1.20 Structure. Any alterations, additions or reinforcements to structure in the Center, required to accommodate Lessee's Work shall be Lessee's responsibility and shall be subject to the prior written approval of Lessor's architect.

1.21 Roof. No load shall be placed anywhere on the roof of any structure in the Center without the prior written consent of Lessor. Any load, penetration or installation which is permitted by Lessor shall be at Lessee's expense and engineered and installed in accordance with the approved Final Plans approved in writing by Lessor. Flashing, counter-flashing and roofing repairs shall conform to the project roofing specifications. Such work shall be paid for by Lessee and shall be performed by Lessor's roofing subcontractor.

1.22 Floors. Flooring in storefront entry areas shall be approved in advance, in writing, by Lessor or his designated representative. Carpeting or other quality floor, such as glazed or unglazed pavers or wood parquet shall be used in Lessee's public areas.

1.23 Ceiling. The ceiling shall be approved in advance by Lessor or his designated representative.

1.24 Lessor's Liability. No approval by Lessor of Lessee's drawings, or any work or installation of any character whatever to be made by Lessee shall constitute a warranty or representation by Lessor that Lessee's drawings, work or installations comply with the requirements of any applicable governmental law, rule or regulation, or are safe, sound, merchantable or fit for any purpose. Lessor shall have no liability to Lessee in the event Lessee is required to change its drawings, work or installation, after the approval thereof by Lessor, on account of the failure of such drawings, work or installations to meet applicable governmental requirements or in the event that such drawings, work or installation, directly or indirectly, are defective or cause injury to persons or property.

2. Description of Lessor's Work

The following is a description of the work with respect to the Premises which shall be performed by Lessor at its expense ("Lessor's Work"). Where two or more types of materials or structures are indicated, the option of selection shall be with Lessor. Lessor shall, at all times, have the option, in its sole discretion, of replacing or changing materials or structures, with comparable or like quality or kind, without prior notice to Lessee. All of the foregoing provisions of this Exhibit "C" shall, as applicable, apply in full to the following description of Lessor's Work.

2.1 Structure. Lessor shall construct and complete the structure of which the Premises are a part. Said structure shall be designed by Lessor's architect and shall conform generally to the following requirements.

2.1.1 Foundations, bearing walls, columns, beams and shear walls.

2.1.2 Four-ply built up or single ply rubber type roof system.

2.1.3 Exterior walls, including necessary finish.

2.1.4 Concrete floor slab on grade, except where deleted, to accommodate future plumbing requirements.

2.1.5 Exits complying with governing codes, as designed for shell use.

2.1.6 Doors in exterior walls (where applicable) provided with cylinder locks.

2.1.7 Storefront designed by Lessor's architect, of a design and composition assuring aesthetic continuity throughout the Center. Deviations or variances from the standard storefront provided by Lessor will not be permitted.

2.2 Interior Finishes. The Center's interior finishes shall conform generally to the following requirements.

2.2.1 All floors within the interior of the Premises shall be concrete with smooth cement finish. Floors to be level and on a single plane without deepened sections, depressions or raised areas, except that in certain areas, floors may be "split-level" as deemed appropriate by Lessor's architect.

2.2.2 Party walls between leased areas will be framed to accommodate Lessee's electrical and other requirements in accordance with Lessor's specifications. Interior walls will not be drywalled to accommodate Lessee's electrical, plumbing and/or other requirements in such walls. Any cross partitions shall not be a part of Lessor's Work. Lessee shall be responsible for taping and finishing Lessee's side of party walls as part of its Premises.

2.2.3 Insulation in exterior walls and on or under roof deck to be provided in accordance with Lessor's plans. No thermal or sound insulation shall be provided in the party walls.

2.3 Utilities and Services. The utilities and services in the Center shall conform generally to the following requirements:

2.3.1 Any vent piping and installation required for Lessee installed facilities to be provided by Lessee to Lessor's specifications and, if Lessor so desires, by Lessor's roofing subcontractor.

2.3.2 Exterior fire hydrants to be installed as required by law and fire sprinklers will be stubbed into buildings 4, 5, 6, 7, 8, and 9 of the Center.

2.3.3 Heating, ventilating and air conditioning equipment as designed by Lessor's engineer to be provided, including a cooling tower and two pipe distributors stubbed into the Premises. Fan coil units, duct distribution and final hook-up shall be installed by Lessee.

2.3.4 Lessor shall provide empty telephone conduit from the terminal board to the Premises, unless the Premises abut the service area where the terminal board is located and no conduit is needed from the terminal board to the Premises.

2.3.5 Lessor shall furnish a main electrical panel and socket at the Premises and an empty conduit to the central distribution point in the electrical room in the Building in which the Premises are located. Lessor's obligation with respect to such panel and to electrical service to such panel shall be limited to 110/208 3 phase power.

2.3.6 Water and sewer service shall be brought to the Premises.

2.3.7 An automatic sprinkler service shall be installed in accordance with Lessor's Plans.

2.3.8 Common trash storage area shall be located as set forth on Lessor's plans.

3. Description of Lessee's Work.

The work to be done by Lessor in satisfying its obligation to construct the Premises shall be limited only to that described in the foregoing paragraphs, unless otherwise expressly approved by Lessor in writing. All other items of work shall be performed by Lessee at Lessee's expense in accordance with Lessee's final plans and specifications as approved by Lessor. All of the foregoing provisions of this Exhibit "C" shall, as applicable, apply in full to the following description of Lessee's Work. Lessee's Work shall include, but shall not be limited to, the purchase, installation and performance of the following:

3.1 All interior partitions and curtain walls within the Premises, including drywall on walls.

3.2 All ceilings.

3.3 All interior painting, wallpaper and other finishes.

3.4 All floor covering and floor finishes and preparation of surfaces to receive same, and all special reinforcing, raised areas or depressions in concrete floors.

3.5 All fixtures and accessories, toilets, water heater, water treatment systems and drinking fountains with plumbing thereto connected to facilities provided by Lessor.

3.6 Lessee shall install all plumbing fixtures and rough in plumbing except as provided in Section 2.2.6. Lessee's plumbing contractor shall provide approved receptacles for Lessor's air conditioning condensation drains and water heater overflow. Grease traps will be required for all food preparation areas having pot sinks or other grease producing appliances that discharge into the waste system. Lessee shall maintain said equipment in accordance with applicable law. Grease traps shall be cleaned at least once a month by a qualified service contractor. Lessee shall provide Lessor, within ten (10) days after the Commencement Date, with a copy of Lessee's contract with said service contractor.

3.7 All internal communications and alarm systems.

3.8 All store fixtures and furnishings, including without limitation, plumbing fixtures and rough-in.

3.9 All dumb waiters, chutes, conveyors, pneumatic tubes and their shafts, doors and other components, including the electrical hookup and service, if any, from facilities provided by Lessor.

3.10 All show window finishes and Lessee's signs, interior and exterior.

3.11 In addition to the heating, cooling and ventilating equipment to be provided by Lessor as set forth above, all heating, cooling or ventilating equipment and ducting, including that required by Code or otherwise for show windows, dressing rooms, toilet rooms and stock rooms, in accordance with plans approved by Lessor.

3.12 Telephone conduit, cabinets and outlets within the Premises as required by the telephone company, including wiring from the terminal/board provided by Lessor. All telephone service and equipment, including conduit between the terminal board and the Premises, shall be installed and thereafter maintained and used at the expense of Lessee.

3.13 All electrical work and equipment, including lighting, not expressly stated herein as being provided by Lessor, including separate circuits and time clocks for interior show window and ceiling lighting necessary to provide illumination of show window areas during non-daylight periods.

3.14 All additions and modifications to, or relocation of, the sprinkler system installed by Lessor in accordance with Lessee's approved plans and applicable building code sections.

3.15 Lessee's Work shall be at Lessee's expense, and shall be done diligently and in a first-class manner, and shall not damage the Premises or the Center. The design and installation of Lessee's Work shall be subject to the prior approval of Lessor and shall be in accordance with all applicable City, County, State and Federal ordinances, rules and regulations.

If the foregoing correctly sets forth our understanding, kindly sign where indicated.

Lessee:

Lessor:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: Phase One Development, Inc.
a California corporation
(Managing General Partner)

By: _____

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

EXHIBIT "D"

RULES AND REGULATIONS

1. The Premises is a part of Mission Beach Park, a dedicated public park. The Premises must therefore be utilized for park and recreation purposes and for facilities needed to accommodate park visitors, including visitor oriented commercial and recreational uses. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.
2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. Such projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Lessor. All electrical ceiling fixtures hung in spaces along the perimeter of the buildings in the Center must be fluorescent, of a quality, type, design and bulb color approved by Lessor.
3. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the passageways or other public places in the Center shall not be covered or obstructed by any lessee, nor shall any bottles, parcels or other articles be placed on the window sills.
4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.
5. No lessee shall mark, paint, drill into, or in any way deface any part of its premises, or the buildings in the Center, or elsewhere in the Center. No boring, cutting or stringing of wires, or laying of linoleum or other similar floor coverings, or painting or wood staining of fixtures or equipment, shall be permitted, except with the prior written consent of Lessor, and as Lessor may direct.
6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.
7. No lessee's premises shall be used for manufacturing or for the storage of merchandise, except as such storage may be incidental to the use of the premises as permitted by Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee's premises shall be used for lodging or sleeping, or for any immoral or illegal purposes.
8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.
9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.
10. No lessee shall install any antennas, aerial wires or other such equipment on the roof or exterior walls of any building in the Center or elsewhere in the Center, without, in each and every instance, obtaining the prior approval, in writing, by Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.
11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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EXHIBIT E

GUARANTY OF LEASE

WHEREAS, _____ ("Lessee"), with an address at _____, desires to enter into a Lease, dated of even date herewith ("Lease") of certain premises located in the City of San Diego, County of San Diego, California, commonly known as _____, and described on Exhibit B which is attached hereto and made a part hereof; and

WHEREAS, the undersigned desires and requests that Lessor enter into the Lease with Lessee; and

WHEREAS, Belmont Park Associates, a California limited partnership ("Lessor"), with an address at 9665 Chesapeake Drive, Suite 401, San Diego, California, requires, as a condition to its execution of said Lease, that the undersigned guaranty the Lease in the manner set forth herein;

NOW, THEREFORE, to induce Lessor to enter into said Lease, the undersigned, _____ ("Guarantor"), with an address at _____ hereby agrees to the following:

1. Guarantor unconditionally guaranties to Lessor, and to Lessor's successors and assigns, the payment by Lessee of the rental and all other charges which accrue under the Lease in the manner and at the time prescribed therein, and the full and punctual performance and observance, by Lessee, of all the terms, covenants and conditions contained in the Lease. Guarantor waives notice of any breach or default by Lessee.
2. If Guarantor is more than one person or entity, Guarantor's obligations under this Guaranty of Lease ("Guaranty") are joint and several. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Lessee, or all. Guarantor's obligations under this Guaranty are independent of Lessee's obligations.
3. If Lessee defaults under the Lease, Lessor can proceed immediately against Guarantor or Lessee, or both, or Lessor can enforce against Guarantor or Lessee, or both, any rights that it has under the Lease, or pursuant to applicable laws. If the Lease terminates and Lessor has any rights it can enforce against Lessee after termination, Lessor can enforce those rights against Guarantor without giving previous notice to Lessee or Guarantor, or without making any demand on either of them.
4. This Guaranty shall not be released, extinguished, modified or in any way affected by failure on the part of Lessor to enforce any or all of the rights or remedies of Lessor whether pursuant to the terms of the Lease or in law or equity.
5. This Guaranty is a continuing one and shall terminate only upon payment by Lessee of all rental and other charges which accrue under the Lease and performance by Lessee of each and every term, covenant and condition contained in the Lease.
6. Guarantor's liability hereunder shall not be affected by the following:
 - (a) The release or discharge of Lessee in any creditors, receivership, bankruptcy, or other proceedings.
 - (b) The impairment, limitation, or modification of the liability of Lessee's estate in bankruptcy, or of any remedy for enforcement of Lessee's liability under said Lease, resulting from the operation of any present or future provision of the bankruptcy law or other statute or from the decision in any court.
 - (c) The rejection or disaffirmance of the Lease in any such proceedings.
 - (d) The assignment or transfer of the Lease by Lessee.
 - (e) Any disability or other defense of Lessee.
 - (f) The cessation of Lessee's liability from any cause whatsoever.
7. Until Lessee has completely performed and observed all terms, covenants, and conditions of the Lease, Guarantor shall:
 - (a) Have no right of subrogation against Lessee by reason of any payments or acts of performance by Guarantor in compliance with Guarantor's obligations under the Guaranty.
 - (b) Waive any right to enforce any remedy that Guarantor now or hereafter shall have against Lessee by reason of any payments or acts of performance in compliance with Guarantor's obligations hereunder.
 - (c) Subordinate any liability or indebtedness of Lessee now or hereafter held by Guarantor to Lessee's obligations to Lessor under said Lease.
8. This Guaranty shall apply to the Lease, any extension or renewal thereof, and to any holdover term following the term provided in the Lease or any extension or renewal of such holdover term.

9. This Guaranty may not be changed, modified, discharged, or terminated orally or in any manner except an agreement in writing signed by Guarantor and Lessor.

10. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

11. Lessor, or Lessor's successors or assigns, may waive any term, covenant or condition of said Lease, expressly or by course of conduct, or give consent to any matter relating to said Lease, or grant Lessee extensions of time or other indulgences without prior notice to Guarantor and without releasing Guarantor's duties hereunder.

12. Guarantor's obligations under the Guaranty shall not be released by Lessor's receipt, application, or release of security given for Lessee's performance and observance of the terms, covenants and conditions of said Lease, nor by any amendment to or modification of said Lease. However in the event of such amendment or modification, Guarantor's liability shall be deemed modified in accordance with the terms of any such amendment or modification of the Lease.

13. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and other suretyship formalities, and waives all notices of the existence, creation, or incurring of new or additional obligations hereunder.

14. In the event any portion of this Guaranty shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Guaranty, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Guaranty.

15. The use of the singular herein shall include the plural. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California, and venue for any action under this Guaranty shall be the appropriate court in San Diego, California.

16. Guarantor agrees to pay the reasonable attorneys' fees, and all costs and other expenses incurred by Lessor, or Lessor's successors or assigns, in enforcement of Guarantor's obligations hereunder.

17. Guarantor's obligations under this Guaranty shall be binding on the heirs, successors, assigns, representatives, and administrators of Guarantor and shall not be impaired or affected by the death of Guarantor.

18. This Guaranty may be assigned by Lessor without notice, which assignment shall not affect or impair the obligation of Guarantor hereunder.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed effective the date set forth at the beginning hereof.

GUARANTOR:

GUARANTOR:

OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into on JUN 23 1986 by and between THE CITY OF SAN DIEGO, a municipal corporation, as Optionor ("City"), and BELMONT PARK ASSOCIATES, a California limited partnership ("Optionee"), with reference to the following facts:

RECITALS

- A. City is the owner of real property (the "Premises") located in the City of San Diego, County of San Diego, California, more particularly described in Exhibit "A" attached hereto and made a part hereof; and
- B. Optionee desires to obtain an option granting the exclusive right to lease the premises for construction, operation and maintenance of a park/visitor-oriented commercial land recreational center.
- C. City is willing to enter into an Option Agreement to lease said real property for said purposes and uses.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GRANT OF OPTION

City hereby grants to Optionee the exclusive option to lease the premises on the terms and conditions set forth in the lease which is attached hereto as Exhibit "B" and incorporated herein by reference. During the option period, City agrees that it will not grant any other right or options to lease said premises to any other party.

With the granting of this option, City grants Optionee the right, through its agents, representatives, contractors or employees, to enter said premises for the purposes of site evaluation, planning, design or any other purpose related to the project. Optionee agrees to provide City with copies of all site evaluation information, e.g., soil tests, surveys, etc., at no cost to City. Optionee shall, however, have no vested or possessory interest in said premises during the option period and City retains the right to use and enjoy its possession thereof during the period this Option Agreement is in effect. City agrees not to make any substantial change in the physical condition of the Premises during this option period.

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DOCUMENT NO. JUN 23 1986
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II. TERM OF OPTION

The term of this option shall be eighteen (18) months and shall commence on the first day of the first calendar month following the execution of this Option Agreement by the City and the Optionee. Timely exercise of the option within the 18-month-option period shall be an express condition of this Option Agreement.

III. CONSIDERATION

The purchase price for the option granted herein shall be \$25,000.

Payment shall be due as defined in Section II above. Optionee agrees that payments made shall be retained as consideration for the granting of this Option Agreement and are nonrefundable, whether or not Optionee exercises the option.

IV. EXPRESS CONDITIONS

Optionee agrees that the following requirements are express conditions of this Option Agreement and that the option may not be exercised until said conditions have been performed:

- a. Optionee shall submit to City three (3) copies of a precise plan of development (Development Plan) as required by Section 6.12 of the lease (Exhibit "B"). The Development Plan must conform with the schematic plans which were approved by various City committees and boards and the Planning Commission, and must satisfy requirements of the City's approved Environmental Impact Report and the State of California's Coastal Permit. Approval of said Development Plan by City shall not waive or be construed to waive any federal, state, county or municipal law, code, ordinance or regulation having any jurisdiction over the development of said Premises and the construction of any improvement thereof. Optionee shall secure compliance with all such laws, codes, ordinances and regulations at its sole expense, including but not limited to the payment of all fees, charges and assessments, if any, necessary to develop the Premises in accordance with said Development Plan. All uses shown on the Development Plan shall be park/visitor-oriented commercial and recreational.
- b. Optionee shall submit to City complete architectural, landscape, and engineering working drawings and complete specifications for the development of said Premises. Architectural drawings shall be revised from the Development Plan to more closely replicate the original architecture of the existing plunge and roller rink. Important existing architectural features of the Plunge Building shall be incorporated in the construction of the new project where feasible. The Plans shall provide for castings or models to be made of significant

features which cannot be removed, and replicas manufactured from such castings or models shall be integrated into the new buildings. The Planning Department shall review and approve elevation drawings to insure that adequate consideration has been given to preservation or replication of existing features and reasonable efforts have been made to replicate elements of the original architecture.

- c. Optionee, at its sole expense, shall obtain all permits and permissions necessary for construction to commence, including but not limited to the City of San Diego's Building Permit and the State of California's Coastal Permit. However, if Optionee has completed all other conditions of this Option Agreement and has submitted complete applications for said permits and permissions at least six (6) weeks prior to the expiration date of this Option Agreement or any extension thereof, the time period for exercising this option shall be extended at no additional cost to the Optionee until such permits and permissions have been granted. This extension will be granted only if the above conditions are met and shall not apply to any time period when the Optionee is making required corrections or revisions to the submitted applications.
- d. Optionee shall submit evidence, which is reasonably satisfactory to the City Manager, of Optionee's ability to finance the cost of construction of the improvements as proposed in said Development Plan.
- e. Optionee shall file with City a Construction Bond as required in Section 6.06 of the lease (Exhibit "B").
- f. The existing bus stop facilities on Mission Boulevard just north of West Mission Bay Drive/Ventura Place and on West Mission Bay Drive just east of Mission Boulevard will be upgraded in conformance with the standard of the Metropolitan Transit Development Board.
- g. The architectural style of the development will be compatible with that of the Spanish Colonial Revival theme of the existing plunge and roller rink buildings. The existing plunge and roller rink buildings will be professionally photographed and sketched to architecturally document these structures. This documentation, along with a historic survey report, shall be submitted to the Planning Department for review and approval.

The important existing architectural features of the plunge building will be preserved and used in the reconstruction where feasible. Castings or models will be made of those features which cannot be removed, and replicas manufactured from these castings will be integrated into the new buildings. Signage documenting the historical significance of the site, such as an interpretive kiosk, will be incorporated into the project.

- h. EIR No. 5-0753 does not permit validated parking. If Optionee wishes to implement validated parking on the east parking lot of said Premises, Optionee may prepare an amendment to the EIR, proposing such validation and any proposed mitigation measures for City Council review and approval or disapproval.

Notwithstanding the above requirements, if Optionee wishes to exercise this option and has completed items a, d and h above to the satisfaction of the City Manager, City shall honor Optionee's request to exercise the option and shall execute a lease as stipulated in Section X of this Option Agreement within ten (10) days after receipt of such request. In the event of such early exercise of the option, Optionee shall submit to City all architectural, landscape and engineering working drawings and specifications as have been completed at the date of exercise of this option and the requirements specified in items b, c and e shall subsequently be completed during the construction period of the lease.

V. TRANSFER OR ASSIGNMENT

Optionee has the right to assign its rights under this Agreement to a partnership or corporation in which the existing general partners of Optionee own 50 percent of the partnership interests or the outstanding stock, provided that City is notified in writing of such assignment. Any other attempted transfer or assignment of this Option Agreement or any rights or duties thereunder, whether by operation of law or otherwise, shall be void and no rights conferred thereby, and further, any such attempt or any change in form or ratio of ownership of Optionee (whether Optionee is a corporation, partnership, or other form of business entity) without the prior written consent of City, which consent shall not be unreasonably withheld, shall be void and shall absolutely and conclusively terminate Optionee's rights hereunder without refund or diminution of the purchase price hereof. The personal qualifications of the person or persons controlling Optionee are part of the consideration for granting this option and such person or persons shall maintain active control and supervision of performance of this Option Agreement.

VI. TIME

Time is of the essence in the performance of the parties' obligations hereunder.

VII. AS IS CONDITIONS

Except as provided in the Lease Agreement, Optionee understands and agrees that the optioned premises will be leased in an "as-is" condition with no improvements, grading, fill, dredging or relocation of utility lines to be performed by City.

VIII. HOLD HARMLESS AND INDEMNITY

Optionee agrees to assume the defense of, indemnify, defend and hold City harmless from any liens, claims, suits or judgments for labor and material performed or furnished at the instance of Optionee in connection with any activities permitted by or necessary to carry out the requirements of this option. Optionee

further agrees to indemnify, defend and hold City harmless from claims, suits, liabilities or penalties resulting from injury to person or property resulting from such permitted and/or required actions. Provided, however, that this provision shall not apply to any injury, death or property damage caused by the negligent acts or omissions of City, its officers, employees, or authorized agents.

IX. PUBLIC LIABILITY INSURANCE

Optionee, at its sole cost, shall procure and maintain during the term of this Option Agreement, including any extensions thereof, a policy of comprehensive broad form public liability insurance which insures City and Optionee against claims and liability for personal injury, death, or property damage arising directly or indirectly from the use or occupancy of the Premises by Optionee or its agents. Such insurance shall provide coverage with a combined single limit liability of not less than \$2 million and shall name City as an additional insured.

X. EXERCISE OF OPTION

This option may be exercised by Optionee at any time prior to expiration of the option term provided that Optionee has performed to the reasonable satisfaction of the City Manager, the requirements set forth in Section IV of this option. Optionee shall exercise this option by giving City written notice of its election to do so, accompanied by the written lease agreement (Exhibit "B") executed by Optionee in triplicate. Upon the performance of the conditions herein contained to the reasonable satisfaction of the City Manager, and the exercise by Optionee of this option in the manner provided hereinabove, City Manager shall forthwith, without need for further authorization of the City Council of City, execute for and on behalf of City that Lease Agreement in the form of said attached Exhibit "B", together with a Memorandum of Lease referred to therein.

City's failure to execute the lease prior to the expiration of the term of this option shall not invalidate the lease agreement, nor nullify Optionee's timely notice of its election to exercise this option. Determination of satisfactory performance of any and all of the conditions of this option and all approvals and consents required by City for Optionee's timely performance hereunder shall vest with the City Manager and such determination of satisfaction and such approvals and consents shall not be unreasonably withheld.

XI. CONDITION OF TITLE

City hereby represents and covenants that if Optionee chooses to exercise the option granted herein, City has the full right, power, authority and legal capacity to convey the leasehold interest provided for by the lease, subject to all conditions of title as

set forth in Exhibit "C" attached hereto. From the date hereof until expiration of the option period, including any extension thereof, City shall not assign, mortgage, hypothecate, encumber, lease or otherwise permit the transfer of all or part of its interest in the Property without Optionee's prior written consent.

XII. TERMINATION OF OPTION AGREEMENT

At any time prior to exercise of the option and prior to expiration of the option term, Optionee shall have the right to terminate this Option Agreement by written notice to City. If Optionee fails to fulfill and/or comply with any of the above conditions to the reasonable satisfaction of City within the time limits provided, or in the event Optionee fails to exercise this option as provided in this Agreement, this option shall terminate upon ten days' written notice by City to Optionee without refund or diminution of the purchase price hereof.

In the event of a termination of the Option Agreement, as provided in this Section XIII, neither party shall have any further rights or obligations hereunder.

XIII. NOTICES

Any notice to be given hereunder, including, without limitation, the option notice specified in Section XI shall be in writing and shall be served either personally or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager
 Attention Property Director
 City Administration Building, M.S. 9B
 202 "C" Street
 San Diego, CA 92101-4155

To Optionee: Belmont Park Associates
 3838 Camino del Rio North, Suite 301
 San Diego, CA 92108

with a copy to:

MacHutchin Development
7458 La Jolla Boulevard
La Jolla, CA 92037

Paul Thoryk
1157 Columbia Street
San Diego, CA 92101

Either party may designate a different address by giving written notice as set forth in this Section XIII.

XIV. EXHIBITS

All exhibits referred to herein are attached hereto and by reference made a part of this Option Agreement.

XV. ENTIRE AGREEMENT

This Option Agreement, together with all exhibits hereto, is the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations, statements or premises, oral or written, are superseded.

XVI. MODIFICATION, WAIVER

No modification, waiver, amendment, discharge or change of this Option Agreement shall be valid unless the same is in writing and signed by both parties. Any modification or amendment to this Option Agreement shall require City Council approval except that non-substantive modifications may be approved by the City Manager.

XVII. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties contained herein shall survive execution and delivery of this Option Agreement and shall survive exercise of the option and delivery of possession of the property to Optionee under the terms of the Lease.

XVIII. SEVERABILITY

If any term or provision of this Option Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remainder of this Option Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

XIX. HEADINGS

The section and paragraph headings used in this agreement are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.

XX. GENDER, NUMBER

As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.

XXI. GOVERNING LAW

This Option Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

XXII. ROLLER COASTER LEASE

In the event that during the term of this Option Agreement in the event of termination of the lease for the adjacent roller coaster property with the Save The Coaster Committee, Optionee shall be provided with the right of first refusal as set forth in Paragraph 7.14 of the said Exhibit B Lease.

XXIII. WARRANTY

City warrants and represents that it has the authority to enter into this Option Agreement and the Lease Agreement attached hereto. City will defend and hold Optionee/Lessee harmless against any claims regarding City's authority to enter into such agreements and the rights granted Optionee/Lessee thereunder. Notwithstanding the foregoing, nothing hereunder shall be construed as a guaranty by the City that any use is permissible on the Premises unless such use has been approved by the City in each specific instance as a park/visitor-oriented commercial and/or recreational use. The City Manager shall review any request for approval of use within ten (10) business days after receipt.

XXIV. FORCE MAJEURE

Any prevention or delay resulting from acts of God, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, legal action against Optionee and/or the City with respect to the project contemplated under this Option Agreement, or other causes beyond the control of Optionee, shall excuse the performance by Optionee for a period equal to that resulting from such prevention or delay. This Option Agreement shall be extended for the period of delay or prevention but, in any case, not beyond a period of five (5) years.

IN WITNESS WHEREOF, this OPTION AGREEMENT is executed by CITY acting by and through its City Manager under and pursuant to Resolution C-266064 authorizing such execution and by OPTIONEE acting by and through its authorized officers.

OPTIONOR:

THE CITY OF SAN DIEGO, a municipal corporation

Date JUN 23 1986

By Deputy City Manager

OPTIONEE:

BELMONT PARK ASSOCIATES,
a California limited partnership,
General Partner

Phase One Development, Inc.,
General Partner

Date 5/19/86

By Steven L. Davis, President

MacHutchin Development, General Partner

Date 5/19/86

By Graham MacHutchin, President

Paul Thoryk, Inc., General Partner

Date 5/19/86

By Paul Thoryk, President

APPROVED AS TO FORM AND LEGALITY THIS ____ day of _____, 1986.

JOHN W. WITT, City Attorney

By _____
Deputy

JEH:baa(108-7)
5-8-86

Attachments: Exhibit A - Legal Description of Site
Exhibit B - Ground Lease

EXHIBIT "A"

LEGAL DESCRIPTIONS

PARCEL A:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED IN AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED MARCH 6, 1924 IN BOOK 999, PAGE 64 OF DEEDS, FILED IN SAID COUNTY RECORDER'S OFFICE, WHICH POINT BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWEST CORNER OF BLOCK 96 OF MISSION BEACH AS SHOWN ON SAID MAP NO. 1809, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH LINE OF PRADO WITH SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTHERLY 10.00 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 89°12'00" WEST, 406.00 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE BOARDWALK WHICH LIES 24 FEET EAST OF THE SEAWALL; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID BOARDWALK A DISTANCE OF 550.00 FEET, MORE OR LESS; THENCE LEAVING THE EASTERLY LINE OF SAID BOARDWALK PERPENDICULAR AND EASTERLY 75.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 53.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND EASTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 45.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND WESTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE NORTH 89°12'00" EAST ALONG THE SOUTHERLY LINE OF VENTURA PLACE TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, ABOVE REFERENCED; THENCE SOUTHERLY ALONG SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF THE WEST LINE OF MISSION BOULEVARD AS SAID BOULEVARD IS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940.

ALSO EXCEPTING THEREFROM ANY PORTION, IF ANY LYING BELOW THE MEAN HIGH TIDE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE WESTERLY LINE OF MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 9°18'00" WEST 88.82, FEET; TO THE TRUE POINT OF BEGINNING; THENCE NORTH 59° 45' 00" WEST, 12.75 FEET; THENCE SOUTH 14°05'00" WEST, 66.25 FEET; THENCE SOUTH 32°45'00" WEST 5.47 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE SOUTHEAST AND HAS A RADIUS OF 360.00 FEET, MORE OR LESS; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 33°33'00" A DISTANCE OF 210.80 FEET, MORE OR LESS, TO THE END OF SAID CURVE; THENCE SOUTH 00°48'00" EAST, 178.45 FEET; THENCE SOUTH 89°12'00" WEST, 92.50 FEET; THENCE NORTH 00°48'00" WEST, 235.00 FEET; THENCE SOUTH 89°12'00" WEST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 40.00 FEET; THENCE NORTH 44°12'00" EAST, 94.75 FEET; THENCE NORTH 00°48'00" WEST, 25.00 FEET; THENCE NORTH 89°12'00" EAST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 117.00 FEET; THENCE NORTH 89°12'00" EAST, 48.00 FEET; THENCE NORTH 00°48'00" WEST, 23.00 FEET; THENCE NORTH 69°00'00" WEST, 56.54 FEET TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE ALONG SAID SOUTHERLY LINE NORTH 89°12'00" EAST, 105.00 FEET TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 11°00'00" EAST, 90.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH MAP IS FILED AS MISCELLANEOUS MAP NO. 36 IN THE OFFICE OF THE COUNTY RECORDER IN SAID SAN DIEGO COUNTY CALIFORNIA, SAID PORTION OF PUEBLO LOT 1803 BEING SHOWN ON SHEETS 3 AND 4 OF MAP NO. 1809 OF MISSION BEACH ON FILE IN THE OFFICE OF SAID COUNTY RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE SUBWAY AT PRADO STREET WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD, A PORTION OF WHICH WAS VACATED AND CLOSED TO PUBLIC USE BY RESOLUTION NO. 76888 OF THE COUNTY OF THE CITY OF SAN DIEGO ADOPTED MAY 12, 1942, SAID POINT OF BEGINNING BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWESTERLY CORNER OF BLOCK 96 OF SAID MISSION BEACH; THENCE NORTH 87°12'00" EAST 16.83 FEET TO A POINT ON THE EAST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE NORTH 02°48'00" WEST ALONG SAID EAST LINE 40.25 FEET TO A POINT OF THE SOUTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION TO THE CITY OF SAN DIEGO, A CERTIFIED COPY OF WHICH WAS RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40 OF OFFICIAL RECORDS; THENCE NORTH 87°12'00" EAST ALONG SAID SOUTHERLY LINE, BEING ALSO THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE STATE OF CALIFORNIA, DATED JULY 5, 1934, AND RECORDED SEPTEMBER 27, 1934 IN BOOK 323, PAGE 340 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, A DISTANCE OF 90.56 FEET (RECORD 92.56 FEET) TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND IN SAID PUEBLO LOT 1803 DESCRIBED IN THE DEED OF THE MISSION BEACH COMPANY, TO THE CITY OF SAN DIEGO: DATED SEPTEMBER 5, 1940 AND RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID WESTERLY LINE BEING THE WESTERLY LINE OF MISSION BOULEVARD AS DEDICATED AND NAMED BY RESOLUTION NO. 72228 OF THE COUNCIL OF SAID CITY ADOPTED SEPTEMBER 10, 1940; THENCE NORTH 02°48'00" WEST ALONG SAID WESTERLY LINE OF MISSION BOULEVARD A DISTANCE OF 282.82 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 09°18'00" WEST, 74.68 FEET TO A POINT; SAID POINT BEING THE INTERSECTION OF SAID COURSE WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED, MARCH 6, 1924 IN BOOK 999, PAGE 64, OF DEEDS FILED IN SAID COUNTY RECORDER'S OFFICE, AND THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 158.92 FEET, THE TANGENT TO SAID CURVE BEARS SOUTH 08°36'00" WEST FROM SAID POINT; THENCE SOUTHWESTERLY ALONG SAID WESTERLY LINE OF SAID WEST DRIVE OF MISSION BOULEVARD, ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 22°55'35", A DISTANCE OF 63.59 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 348.41 FEET AND WHICH IS CONCAVE TO THE SOUTHEAST; THENCE CONTINUING ALONG SAID WESTERLY LINE OF WEST DRIVE, ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 34°19'35" A DISTANCE OF 208.74 FEET; THENCE TANGENT TO SAID CURVE AND CONTINUING ALONG THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD SOUTH 02°48'00" EAST A DISTANCE OF 73.33 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 2 PARCEL OF LAND DESCRIBED IN DEED TO SAN DIEGO ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, ABOVE REFERENCED AND THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40, OF OFFICIAL RECORDS, HERETOFORE REFERRED TO; THENCE SOUTH 02°48'00" EAST ALONG SAID WESTERLY LINE OF WEST DRIVE TO THE POINT OF BEGINNING.

PARCEL C:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED AS FOLLOWS:

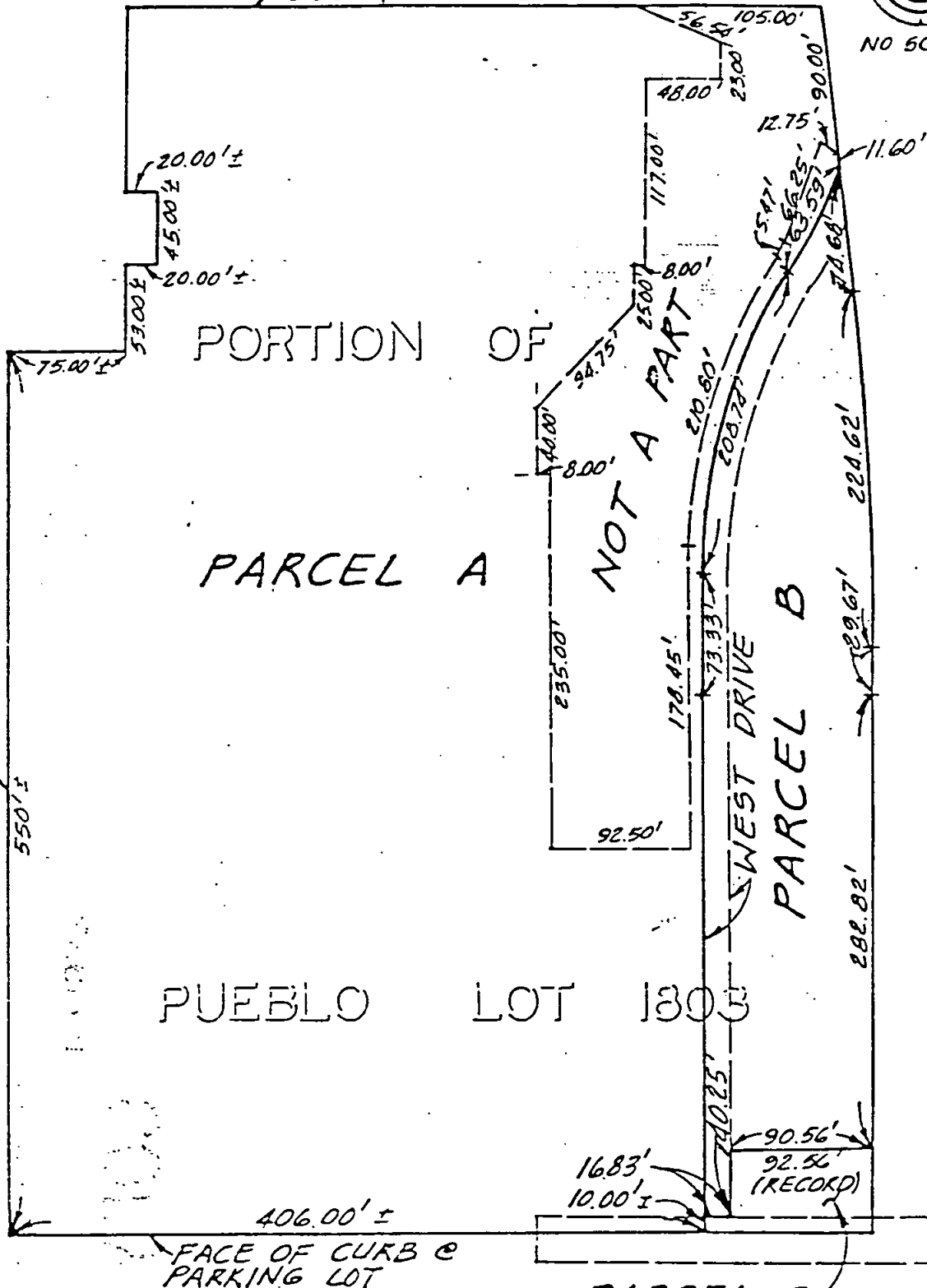
ALL THAT PROPERTY SOUTH OF PARCELS A AND B DESCRIBED ABOVE LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF THE WESTERLY RIGHT-OF-WAY OF MISSION BOULEVARD AS DESCRIBED IN DEED RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AND AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940, SAID POINT LYING 764 FEET, MORE OR LESS, SOUTH OF AND PARALLEL TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE SOUTH 89°12'00" WEST TO THE EASTERLY LINE OF THE BOARDWALK.

PACIFIC OCEAN

EASTERLY LINE OF BOARDWALK

VENTURA PLACE
SOUTHERLY LINE



TOTAL LEASEABLE AREA: 7.4 ac.±

PLAT ACCOMPANYING
EXHIBIT A



SHOLDERS & SANFORD, INC.
Planning Engineering Surveying
3569 Fifth Avenue, San Diego, CA 92103
(619) 594-7272

COPY

① Humer

(R-86-2478 REV.1)

RESOLUTION NUMBER R- 2S6064

ADOPTED ON JUN 23 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an option agreement with BELMONT PARK ASSOCIATES, a California limited partnership, under the terms and conditions set forth in that option agreement on file in the office of the City Clerk as Document No.

RR- 2S6064.

BE IT FURTHER RESOLVED, that upon completion of all terms and conditions of said option agreement, the City Manager is authorized to execute a lease agreement with BELMONT PARK ASSOCIATES for the redevelopment of a portion of Mission Beach Park.

BE IT FURTHER RESOLVED, that a minimum of \$70,000 from the annual rent under the lease shall be placed into a special fund to be utilized for two purposes:

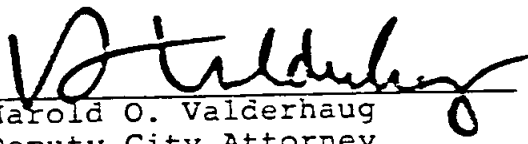
- 1) to ameliorate the traffic problem that exists there now, and
- 2) to further enhance a much broader community landscaping project that will be defined by the community at a later date.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized and directed to establish a special fund, as set forth above, upon receipt of the first annual rents from the lease.

BE IT FURTHER RESOLVED, that this resolution shall not become effective unless and until the pending Local Coastal Program addendum and Mission Beach Precise Plan amendment and the revised Development Plan for Mission Beach Park are approved by the City Council.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/06/86
08/04/86 REV.1
Or.Dept:Prop.
R-86-2478
Form=r.none

Passed and adopted by the Council of The City of San Deigo on JUN 23 1986,
by the following vote:

YEAS: Cleator, Jones, Gotch, McCarty, Martinez,
Deputy Mayor Struiksma.

NAYS: Wolfsheimer.

NOT PRESENT: McColl.

VACANT: Mayor.

AUTHENTICATED BY:

ED STRUIKSMA
Deputy Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct
copy of RESOLUTION NO. R - 286064, passed and adopted by
the Council of The City of San Diego, California on JUN 23 1986.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Maydell L. Pontecorvo, Deputy

(R-86-2479)

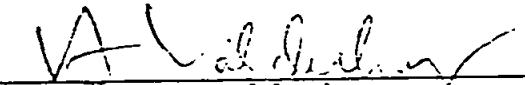
RESOLUTION NUMBER R- 286065

ADOPTED ON JUN 23 1986

BE IT RESOLVED, by the Council of The City of San Diego that it be, and it is hereby certified, that the information contained in ENVIRONMENTAL IMPACT REPORT NO. EIR 85-0753, in connection with the redevelopment of a portion of Mission Beach Park, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Report has been reviewed and considered by this Council.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/06/86
Or.Dept:Prop.
R-86-2479
Form=r.eir

NOTICE OF DETERMINATION

TO: ☒ County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

EQD Number: 85-0753

State Clearinghouse Number: 85112007
(If submitted to Clearinghouse)

Project Title: Mission Beach Park Commercial Development

Project Location: Northern portion of Mission Beach Park on the SW corner of the intersection of Mission Blvd. and West Mission Bay Dr.

Project Description: Development of 6.7 acres in Mission Beach Park. Restore swimming pool room within the Plunge bldg., replace existing shower and locker rooms with modern facilities. Approx. 70,000 sq. ft. of retail commercial and restaurant space to replace other existing bldgs.

This is to advise that The City of San Diego City Council on on the site (Decision-making Body)

June 23, 1986 approved the above described project and made the following (date) determinations:

1. The project in its approved form ☒ will, ___ will not, have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
___ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
- Record of project approval may be examined at the address above.
3. Mitigation measures ☒ were, ___ were not, made a condition of the approval of the project.
4. (EIR only) Findings ☒ were, ___ were not, made pursuant to CEQA Guidelines Section 15091.
5. (EIR only) A Statement of Overriding Considerations ☒ was, ___ was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Environmental Quality Division, Fifth Floor, 202 "C" Street, San Diego, CA 92101.

Date Received for Filing: _____

Michael G. Fokelton
Signature

Deputy City Clerk
Title

(R-86-2283 Rev. 1)

RESOLUTION NUMBER R- 256131

ADOPTED ON JUN 30 1986

BE IT RESOLVED, by the Council of The City of San Diego that it be and it is hereby certified that the information contained in ENVIRONMENTAL IMPACT REPORT EIR-85-0753, in connection with amendment to the MISSION BEACH PRECISE PLAN and LOCAL COASTAL PLAN ADDENDUM (MISSION BEACH PARK), on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto, and that said Report has been reviewed and considered by this Council.

APPROVED: John W. Witt, City Attorney

By

Frederick C. Conrad
Frederick C. Conrad
Chief Deputy City Attorney

FCC:cc:623
05/22/86
08/20/86 Rev. 1
Or.Dept:Plan.
R-86-2283
Form=r.eir&fd

NOTICE OF DETERMINATION

TO: XXXX County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

XXXX Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

EQD Number: EQD-85-0753

State Clearinghouse Number: SCH No. 85112007
(If submitted to Clearinghouse)

Project Title: Mission Beach Park Commercial Development

Project Location: Northern portion of Mission Beach Park on the southwestern corner of the intersection of Mission Boulevard and West Mission Bay Drive in the Mission Beach community.

Project Description: Development of 6.7 acres in Mission Beach Park. The swimming pool within the Plunge building would be restored, and existing shower and locker rooms would be replaced with modern facilities. Approximately 70,000 sq. ft. of retail commercial and restaurant space would replace other existing building on the site. This is to advise that The City of San Diego City Council on
(Decision-making Body)

6-30-86 approved the above described project and made the following
(date)
determinations:

1. The project in its approved form XXXX will, will not, have a significant effect on the environment.
 2. XXXX An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
- Record of project approval may be examined at the address above.
3. Mitigation measures xxx were, were not, made a condition of the approval of the project.
 4. (EIR only) Findings xxx were, were not, made pursuant to CEQA Guidelines Section 15091.
 5. (EIR only) A Statement of Overriding Considerations xxx was, was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Environmental Quality Division, Fifth Floor, 202 "C" Street, San Diego, CA 92101.

Date Received for Filing:


Signature Barbara Baxter
Deputy City Clerk
Title

502
Krupar
(4)
(R-86-2282)

RESOLUTION NUMBER R- 266132

ADOPTED ON JUN 30 1986

WHEREAS, the Planning Commission of The City of San Diego held a public hearing on April 24, 1986, to consider the proposed amendment of the MISSION BEACH PRECISE PLAN AND LOCAL COASTAL PROGRAM ADDENDUM; and

WHEREAS, the Planning Commission approved and recommended to the City Council adoption of the amendment of the MISSION BEACH PRECISE PLAN and LOCAL COASTAL PROGRAM ADDENDUM; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council hereby approves the amendment of that plan entitled "MISSION BEACH PRECISE PLAN AND LOCAL COASTAL PROGRAM ADDENDUM," a copy of which is on file in the office of the City Clerk as Document No. RR- 266132.

APPROVED: John W. Witt, City Attorney

By Frederick C. Conrad
Frederick C. Conrad
Chief Deputy City Attorney

FCC:cc:623
05/22/86
Or.Dept:Plan.
R-86-2282
Form=r.rcomp

(5)
(R-87-77)

RESOLUTION NUMBER R- 266123

ADOPTED ON JUN 30 1986

BE IT RESOLVED, by the Council of The City of San Diego that pursuant to California Public Resources Code, Section 21081, the City Council hereby adopts the findings made with respect to the feasibility of the mitigating measures and project alternatives and the statements of overriding considerations, if any, contained within the ENVIRONMENTAL IMPACT REPORT for the amendment to the MISSION BEACH PRECISE PLAN and LOCAL COASTAL PLAN ADDENDUM (MISSION BEACH PARK), on file in the office of the City Clerk as EIR-85-0753.

APPROVED: John W. Witt, City Attorney

By Frederick C. Conrad
Frederick C. Conrad
Chief Deputy City Attorney

FCC:cc:623
08/20/86
Or.Dept:Clerk
R-87-77
Form=r.eirfd



The City of San Diego

MANAGER'S REPORT

#1

DATE ISSUED: June 18, 1986

REPORT NO. 86-286

ATTENTION: City Council Docket of June 23, 1986

SUBJECT: Option and Lease Agreements - Belmont Park Associates -
Mission Beach Park (Belmont Park)

REFERENCES: Manager's Report No. 85-191 dated April 17, 1985
Manager's Report No. 85-59 dated February 4, 1985
Manager's Report No. 84-329 dated August 15, 1984
Manager's Report No. 84-73 dated February 17, 1984
Manager's Report No. 81-385 dated October 2, 1981
Manager's Report No. 81-299 dated July 13, 1981

SUMMARY

Issue - Should the City Manager be authorized: 1) to enter into an option agreement and 50-year lease with Belmont Park Associates to lease approximately 7.4 acres in Mission Beach Park and, 2) certify Environmental Impact Report, EQD No. 85-0753, for the related development?

Manager's Recommendation - Enter into the option agreement, the provisions of which authorize lease execution and certify Environmental Impact Report, EQD No. 85-0753.

Other Recommendations - Recommendations for approval of the development concept were received from the Park and Recreation Board and Planning Commission. The Mission Bay Committee approved that portion of the development relating to the Bonita Cove parking improvements. Recommendations against conceptual approval were received from the Coastal Area Committee, Mission Beach Precise Planning Committee, and Historic Site Board.

Real Estate Advisory Committee - Committee reviewed the proposal and while not taking any specific action did register various questions related to: a) the ability of the developers to finance the project, b) parking/-traffic, and c) the development as being too large for the Mission Beach area. The Committee suggested a shorter option period based on six-month increments with an additional cost for each phase.

Fiscal Impact - \$25,000 will be received for the option. The lease provides \$705,200 minimum revenue per year, of which \$635,200 would be applied towards financing of \$5,618,000 in public improvements plus

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JUN 19 1986

ECO. DEV. / PROP. DEPT.

interest. A minimum cash return to the City of \$70,000/year is required. Belmont Park Associates will bear all costs for facility construction, operation and maintenance for the lease term.

BACKGROUND

Prior Public Actions

On February 27, 1984, the City Council directed the City Manager to enter into exclusive negotiations with Paul Thoryk and Graham MacHutchin to formulate a development plan for Mission Beach Park based on previously approved development criteria. This decision was reaffirmed by the Council in April 1984. On September 10, 1984, the City Council authorized negotiations for an additional six-month period to permit the developers to explore the possibility of a smaller version of their original proposal for a park/visitor-oriented commercial/recreational center. On January 15, 1985 Thoryk/MacHutchin submitted the proposal presented in this report.

Staff evaluated the proposal, recommended additional time for negotiations, and on May 28, 1985, the City Council authorized the City Manager to continue exclusive negotiations with Belmont Park Associates (BPA-Thoryk, MacHutchin & Davis) for a period of 18 months ending December 1, 1986. During this period the developers were to refine their development plan, negotiate a lease, prepare and process an Environmental Impact Report and obtain the necessary project clearances. This report details those actions.

As directed by Council in May, 1985, an extensive series of public meetings were scheduled to solicit public input. Since that authorization to date, thirteen (13) noticed public meetings were held to review the project. Both day and night meetings were conducted. A mailing list of approximately 90 interested individuals was compiled and used.

DISCUSSION

Proposed Development. Belmont Park Associates (BPA) proposes to redevelop the northerly portion of Mission Beach Park, exclusive of the roller coaster and lifeguard facility areas. The proposal consists of eight new buildings totaling approximately 70,000 square feet. The plunge building would be razed leaving the interior swimming pool room and pool. It would be retained and renovated as a glassed-in facility and restored with new locker rooms, mechanical equipment and boiler room. The developer would operate the pool. Four new buildings would be placed around the pool building. Three new structures would be located on the site of the roller rink building, which would be demolished. Commercial uses would be consistent with park/visitor-oriented recreational activities i.e., restaurants, shops, health club, beach rentals and fast food outlets. Additionally, supplemental features of the project include a community meeting room, new restrooms, a police detention facility and large plaza areas around the pool building with a larger plaza south of the roller coaster extending to Mission Boulevard.

Parking would be provided for 393 cars on-site. The developer would be responsible for resealing and restripping the Bonita Cove parking lots to provide an additional 200 parking spaces at no cost to the City. The developer has requested permission to establish validated parking for 109 spaces in the on-site east parking lot during peak summer months. The Environmental Impact Report did not include validated parking and a Council approved amendment to that document would be necessary if validated parking is to be established. The amendment would require Council approval and would be subjected to full public review. This would occur during the option period. A pedestrian overpass spanning Mission Boulevard would provide access from the Bonita Cove parking lots.

The total development is estimated to cost \$14,400,000. The two-year project schedule estimates a June, 1988, completion date. 500 construction jobs and approximately 250 permanent jobs are expected to be generated by the development. The estimated tax revenue to the City over the first five years is approximately \$4,500,000.

Attachment A is a layout plan of the proposed development plan.

LEASE

It is proposed that the City enter into an option agreement to lease with BPA which contains the following general provisions:

- Lessee: An entity known as "Belmont Park Associates," a limited partnership with Paul Thoryk, Inc., MacHutchin Development and Phase One Development (Steve Davis) as general partners, is proposed. The project would be a joint venture with an institutional partner or a private investor(s) and lender.
- Term: 50 years - December 1, 1987 (effective no later than July 1, 1988) through June 30, 2038.
- Rent: Lessee to pay a minimum annual payment of \$635,200 towards the financing of \$5,618,000 over a 30-year term. An additional minimum cash rent of \$70,000 per year is to be paid by Lessee. Percentage rents are itemized in Attachment B. Lessee will also pay all taxes, assessments, insurance and miscellaneous expenses.
- Insurance: \$2 million Combined Single Limit Liability.
- Parking: 393 parking spaces to be provided by Lessee. (The lessee may propose that 109 of these be subject to validation.)
- Pool: Lessee is responsible for operation, maintenance and management of indoor swimming pool. Hours of operation, admission fees and public access subject to approval of City.

Community Meeting Room: Lessee to manage and maintain a community meeting room.

Assignment: Subject to approval of the City Manager.

Attachment B summarizes the lease document.

Public Improvements. Lease negotiations have defined specific public improvements both on and off-site amounting to approximately \$5,618,000. When last discussed at Council, the cost of public improvements were estimated at \$4,776,000; however, at that meeting additional public improvements were identified and suggested for consideration as part of the refinement of the development plan. The developer is obligated to construct and finance the public improvements for which he will receive an annual rent credit. The rent credit represents a significant amount of the City's portion of the revenue generated by the development. The Council has this opportunity to modify the list of public improvements. This arrangement for rent credits, with a list of each of the proposed public improvements, and an estimated cost of each is:

◦ Indoor Swimming Pool Building Modifications (Building No. 9)	\$2,264,590
◦ Locker Room, Pool Mechanical Equipment & Community Meeting Room (Building No. 8)	597,692
◦ Tenant Improvements	201,928
◦ Remodel Existing Restroom	77,396
◦ Lifeguard Station Additions (New restroom, detention facility)	251,537
◦ Pedestrian Overpass	379,642
◦ Site Improvements	349,029
◦ Indirect Costs	
- Marketing Expense	30,000
- Loan Fees (3.5%)	174,650
- Overhead Fees (4%)	224,650
- Environmental/Engineering Fees	136,850
- Interest - Construction & Leasing .	748,410
- Legal, Accounting, Title	46,000
- Misc. Expense/Contingency	35,976
- Leasing Commission	100,000
	<u>\$1,495,886</u>
	<u>1,495,886</u>
TOTAL PROPOSED RENT CREDITS	\$5,617,700 (5,618,000)

The proposed rent credits are subject to refinement during construction plan review by City staff. As presented, the \$5,618,000 would be repaid over a 30-year period at an approximate annual rate of \$635,200. An 11.0% interest rate is being used for discussion purposes, the prevailing market rate at the time of financing will be used. The annual repayment amount will also be subject to refinement based on the final approved financing plan. On this basis, the realizable income to the City at this time would be a minimum cash payment of \$70,000 per year. The total revenue generated by the leasehold is estimated to be a minimum of \$705,200 per year.

Offsetting financial implications to the City include the present pool's average annual loss of approximately \$192,000. In addition, approximately \$250,000 in major maintenance is required within the next year. The developer would also eliminate the need for City financed park improvements estimated to cost \$2,135,000.

Consultant Analysis. Mr. Larry Williams of Williams-Kuebelbeck & Associates was retained to assist staff in evaluating the financial aspects of the proposal. Williams-Kuebelbeck is a nationally recognized real estate economic, financial and management firm with extensive experience with waterfront oriented developments.

Mr. Williams has participated in reviewing the proposal's economics, prepared a preliminary analysis and assisted staff during lease negotiations. He has indicated that the City percentage rates are fair, the preliminary pro forma is adequate and the City's position related to the public improvements is protected through construction bonding. He has suggested the option agreement approach which will require the developers to perform specific conditions prior to entering into the lease. As a result, Mr. Williams is of the opinion that the proposal, as presented, has successfully responded to the project criteria.

Option Agreement. An 18-month option period would be an extension of the present exclusive negotiations period. The option agreement between the City and the developers would outline conditions and scheduling for compliance. Upon completion of the option agreement conditions, the lease would become effective. It is proposed that the City enter into the agreements which contain the following general provisions:

Option:

1. Grants the exclusive right to lease the premises for construction, operation and maintenance of a park/visitor-oriented commercial and recreation center.
2. Term: 18 months - June 1986 to November 30, 1987.
3. Purchase Price: \$25,000.
4. Conditions to be performed by optionee:
 - a. Submit Development Plan in conformance with the schematic plans previously approved by various City committees and boards, Planning Commission and City Council.

- b. All uses shown on Development Plan shall be park and recreation uses and/or uses needed to service the requirements of park users.
- c. Complete architectural, landscape and engineering working drawings and complete specifications for the development of the Premises shall be submitted to the City for review and approval.
- d. All permits and permissions necessary for commencement of construction including a building permit and California Coastal Permit shall be obtained.
- e. Show ability to finance the cost of construction of the improvements shown on the Development Plan.
- f. File a construction bond with the City.

Attachment C summarizes the Option Agreement.

Conclusion

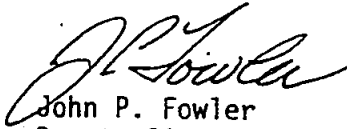
Staff has evaluated the proposal for its conformance with the Council-adopted criteria and is recommending the City Council's approval of the Project. The development plan will retain the indoor swimming pool and offers continuous operation of a unique community resource which will have modern mechanical equipment stressing energy-saving utility systems. Public improvements both on and off-site will provide park and beach users with much needed park facilities. The architectural design will be conceptual preserved and extended to the existing public structures giving the entire park and area a revitalized appearance which will make it a more enjoyable experience for park users.

Attachment D is a complete comparison of the proposal and the Council-adopted criteria.

ALTERNATIVE

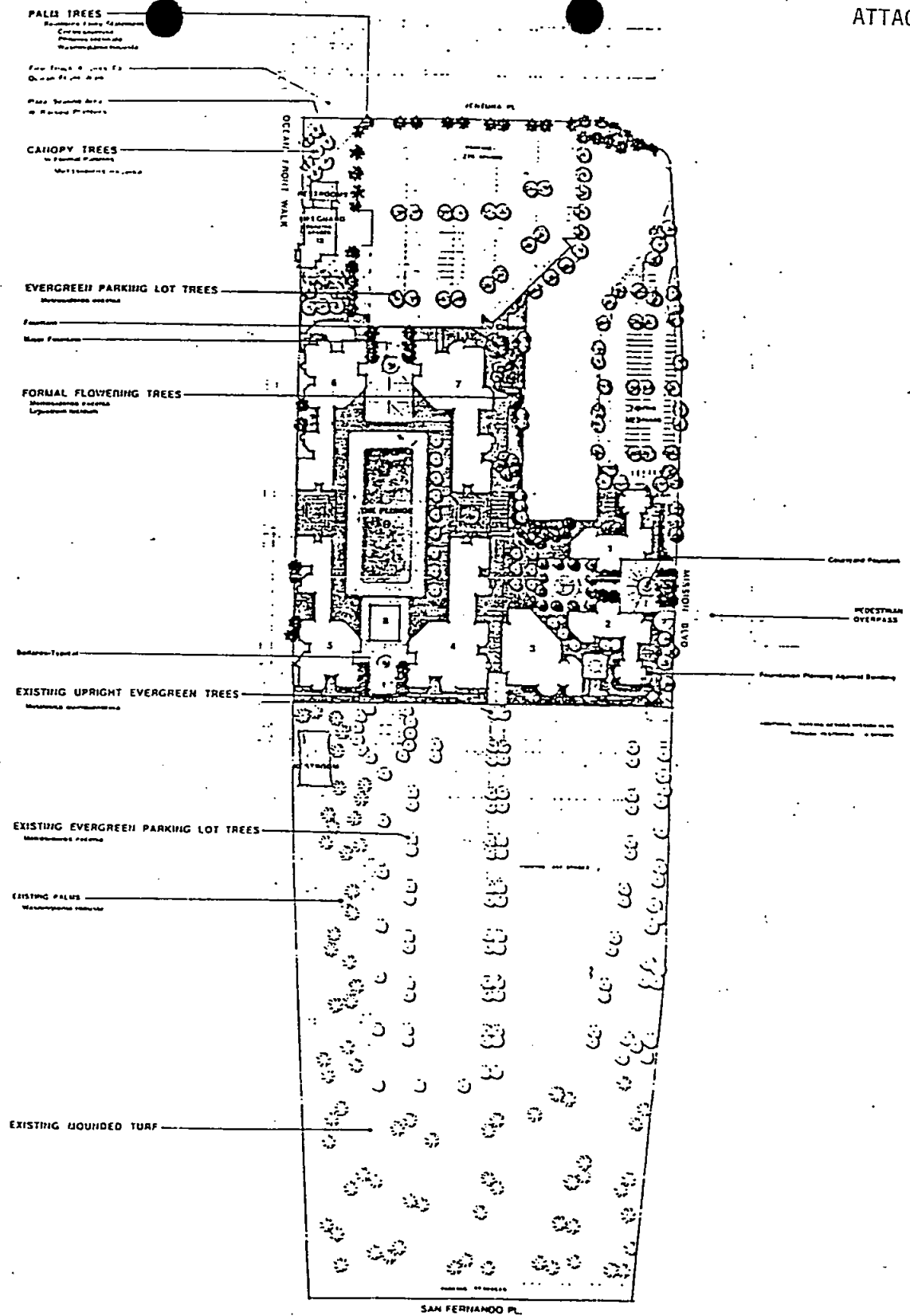
1. Terminate exclusive negotiations with Belmont Park Associates and prepare and issue a RFP based on revised development criteria.
2. Terminate all private development consideration.

Respectfully submitted,


John P. Fowler
Deputy City Manager

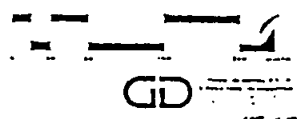
SPOTTS:RSK:b1

Attachment A - Proposed Development Plan
B - Outline - Lease
C - Outline - Option Agreement
D - Comparison - Proposal & Council-adopted Criteria



LANDSCAPE DEVELOPMENT PLAN

Mission Beach Park



MISSION BEACH PARK
BELMONT PARK REDEVELOPMENT

G R O U N D L E A S E S U M M A R Y

1. Uses:

- Leased for the construction, operation and maintenance of a park/visitor-oriented commercial and recreational center.
- The City Manager will cooperate in processing applications for discretionary approvals.
- Lessee shall provide competent management.
- Businesses will remain open during usual and customary hours as reasonably appropriate to service the park visitors.
- City will not renew or enter into competitive contracts within 100 yards of premises.
- Parking for 393 parking spaces on site will be provided by Lessee. At the City's discretion parking fees and/or validation may be applied to all or a portion of the premises.
- Lessee or its sublessee is responsible for operation and management of the indoor swimming pool under following conditions:
 - (1) schedule and hours approved by City Manager.
 - (2) admission and fees comparable to other similar pool operations in Southern California area, unless demonstrated economic hardship exists because of uniqueness of indoor pool.
 - (3) all facilities made available to general public.
- Lessee to manage and maintain community meeting room

2. TERM:

- 50 year lease

3. RENT:

- Minimum cash rent for first 5 years is \$70,000 per year in monthly installments of \$5,833.33, plus an annual minimum payment of \$635,200 for 30 years, to be applied towards financing of public improvements.
- First day of 6th year and each 3 years thereafter the minimum rent shall be 80% of the annual average of actual rents paid the previous 3 years.
- Percentage rents are:

<u>Activity</u>	<u>Percentages</u>
Specialty Shops	3%
Food	3%
Game Rooms	5%
Alcoholic Beverages	5%
Pool Operation (if operated for profit)	5%
All Other Operations	7%
- At end of 15th year by mutual consent or through appraisal the percentage rates will be adjusted.

4. Assignment:

- City Manager approval required.

5. Insurance Risk/Security:

- Lessee shall maintain a \$2,000,000 Combined Single Limit Liability insurance policy.
- A Fire-Extended Coverage policy on all insurable property, with full replacement cost endorsement, shall be maintained.
- A security deposit of \$20,000 shall be paid to the City prior to commencement of lease. The deposit shall be unconditionally available to the City for correcting any default or breach of the lease. Security deposit shall be in the form of either cash or an instrument of credit. To be returned to lessee within one-year after certificated of occupancy approved.

6. Improvements/Alterations/Repairs:

- Lessee accepts premises "as is".
- City reserves right of entry to view condition of the operations conducted on the premises.
- Lessee agrees to assume full responsibility and cost for the, construction, operation and maintenance of the premises.
- Lessee shall provide to the City a construction bond in the amount of 100% of the estimated construction cost of the work to be performed.
- The lease commences upon receipt of all discretionary approvals required, or July 1, 1988, whichever occurs first.
- All proposed signage requires written consent of the City Manager prior to installation.
- Lessee agrees to comply with all applicable laws and regulations at its sole cost.

7. Ownership of Improvements:

- At the expiration or termination of the lease all improvements on the premises will, at the City's option, become City property.
- Development of the premises shall be in accordance with the Development Plan approved by the City Manager.
- If the construction of the improvements shown on the Development Plan are not completed within 24 months the City may, at its option, terminate the lease.
- Lessee shall comply with the California Coastal Act requirements and obtain a permit for the project within 12 months of commencement of the lease.

8. General Provisions:

- Lessee shall have the right of first refusal for the Roller Coaster lease in the event of expiration or early termination.
- Lessee shall construct the public improvements described in lease within the time frame set forth in Development Plan. The City shall provide an annual rent credit in an amount not to exceed \$635,200.

- ° Lessee agrees to pay all taxes, assessments and fees assessed or levied upon Lessee or land.

MISSION BEACH PARK
(BELMONT PARK REDEVELOPMENT)

OPTION AGREEMENT SUMMARY

- ° Grants the exclusive right to lease the premises for construction, operation and maintenance of a park/visitor-oriented commercial and recreational center.
- ° Term: 18 months June 1986 to December 1, 1987
- ° Purchase Price: \$25,000 ;
- ° Conditions to be performed by optionee:
 1. Submit Development Plan in conformance with the schematic plans previously approved by various City committees and boards, Planning Commission and City Council.
 2. All uses shown as Development Plan shall be park and recreation uses and/or uses needed to service the requirements of park users.
 3. Complete architectural, landscape and engineering working drawings and complete specifications for the development of the Premises shall be submitted to the City for review and approval.
 4. All permits and permissions necessary for commencement of construction including a Building Permit and California Coastal Permit shall be obtained.
 5. Show ability to finance the cost of construction of the improvements shown on the Development Plan.
 6. File a construction bond with the City.
- ° Right of assignment to a partnership or corporation in which existing general partners own 50% of partnership or stock requires notification to City.
- ° Time is of the essence.
- ° Premises accepted "as is."
- ° Agrees to indemnify and hold City harmless.
- ° Provide public liability insurance of \$2,000,000.
- ° Option may be exercised once optionee has performed, to City's satisfaction, the requirements of this agreement and City Manager may then execute, on behalf of the City, the Lease Agreement.
- ° City represents it has full right to convey the leasehold interest.
- ° Optionee has right to terminate without refund of purchase price, with 10 days notice to City.

- ° Substantive changes to this agreement require City Council approval, non-substantive modifications may be approved by the City Manager.

COMPARISON OF CRITERIA AND PROPOSAL (Dated April, 1986)

Negotiating Criteria

Submitted Proposal

1. Public Park Improvements

- | | |
|--|---|
| <ul style="list-style-type: none"> ° Developer would be required to construct proposed public park improvements as identified in the adopted Mission Beach Park Improvement Plan. Park and Recreation Department approval required. | <ul style="list-style-type: none"> ° Partial conformance - adopted park plan emphasized landscaped areas with less parking. Proposal provides more plaza and walkways plus additional parking. |
| <ul style="list-style-type: none"> ° Approved plan for 9-acre site affected 6.7 acres. About 3 acres would be landscaped. Plan would: | <ul style="list-style-type: none"> ° Development Plan would: |
| <ul style="list-style-type: none"> ° Raze the roller rink building (replace with landscaping). | <ul style="list-style-type: none"> ° Partial conformance - Roller Rink building razed, some landscaping, commercial shops and plaza area in place. |
| <ul style="list-style-type: none"> ° Eliminate the parking lot between roller coaster and Mission Blvd. (replace with landscaping) | <ul style="list-style-type: none"> ° Non-conforming - parking lot to remain but would be improved and landscaped around perimeter. |
| <ul style="list-style-type: none"> ° Resurface north parking lot. Retain 135 parking spaces, new landscaping lighting and large pave walkways. | <ul style="list-style-type: none"> ° Conforms - north parking lot to remain, expanded capacity and landscaped. |

2. Parking/Traffic

- | | |
|---|--|
| <ul style="list-style-type: none"> ° Add 300 parking spaces in addition to 585 spaces in park plan (Phase 1 - 450 spaces; Phase 2 - 135) | <ul style="list-style-type: none"> ° Conforms - proposed on-site parking spaces will total 839 (393 proposed and 446 existing). Additionally 200 spaces will be created off-site. |
| <ul style="list-style-type: none"> ° No loss of parking in north lot. | <ul style="list-style-type: none"> ° Conforms - will add parking spaces |
| <ul style="list-style-type: none"> ° Traffic projections for 1st, 5th and 10th year of operation. | <ul style="list-style-type: none"> ° Conforms - traffic/parking study completed. |

3. Commercial Development

- | | |
|---|---|
| <ul style="list-style-type: none"> ° Existing capacity of north parking lot not to be reduced. | <ul style="list-style-type: none"> ° Conforms. |
|---|---|

Comparison of Criteria and Proposal
April 1986

Negotiating Criteria

Submitted Proposal

3. Commercial Development (Continued)
 - ° Renovate plunge building, raze surrounding building, but retain pool or build new structure around pool.
 - ° Retain operational pool.
4. Public Access
 - ° Development shall emphasize open, accessible parklike setting - minimize visual restrictions and facilitate movement of site visitors.
5. Return to the City
 - ° Sets % for gross income.
 - ° Minimum rent.
 - ° Adjustment requirements.
6. Rent Credits
 - ° May consider credit for appropriate and off-site public improvements.
7. Architectural Concept
 - ° Preserve historic design of existing structure and compatible with community.
8. Landscaping
 - ° Approval of plan by Park and Recreation Department required.
9. Financial Information

Developer to submit following:

 - ° A current detailed financial statement.

- ° Partial conformance-pool room and pool retained - change endorsed in May, 1985.
- ° Conforms.
- ° Conforms - emphasizes public access, plazas, interconnecting walkways, and pedestrian over-crossing.
- ° Conforms.
- ° Conforms.
- ° Conforms.
- ° Rent credit plan to pay for public improvements negotiated.
- ° Conforms - Final design subject to City approval.
- ° Conforms - approved by Park and Recreation Board.
- ° Conforms.

Comparison of Criteria and Proposal
April 1986

Negotiating Criteria

Submitted Proposal

9. Financial Information (Continued)

- | | |
|--|--|
| ° A detailed proposed method for financing. | ° Non-conforming in that financing specifics will commence upon City approval of lease/development plan. |
| ° A detailed schedule of development. | ° Conforms. |
| ° A detailed construction cost estimate for development - with individual cost breakdown of components - separate private versus public improvement costs. | ° Conforms - preliminary cost estimates and list of public improvement costs provided. |
| ° A detailed estimate of gross receipts for each use - 10 years - anticipated patronage. | ° Conforms. |
| ° A cash flow analysis - 10 years demonstrating ability of proposal to succeed. | ° Conforms. |

*File - Belmont Park
Assoc.
(Legal)*

(R-87-199)

RESOLUTION NUMBER R- 266410

ADOPTED ON AUG 18 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Council hereby certifies that the interest in real property conveyed to the City by the State of California by Chapter 1054 of the 1939 Statutes of the State of California, approved by the Governor on July 24, 1939, filed with the Secretary of State July 25, 1939, and which was also conveyed by Chapter 119 of the 1943 Statutes approved by the Governor April 13, 1943, and filed with the Secretary of State April 13, 1943, a copy of which Statutes is attached hereto and by this reference incorporated herein, is hereby again accepted by the order of the City Council of the City of San Diego.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to cause a copy of this resolution, with attachments, to be recorded in the office of the County Recorder.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

86 385271

HOV:ps
7/29/86
Or.Dept:Atty
R-87-199
Form=r.none

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1986 SEP -3 AM 11:45

VERA L. LYLE
COUNTY RECORDER
NO FEE

The Processed Foodstuff Marketing of 1937, is hereby repealed.

'ER 1053.

of the Code of Civil Procedure,
Justices' courts.

1939. Filed with Secretary of State
5. 1939.]

ifornia do enact as follows:

f the Code of Civil Procedure is
llows:

court in any city or town of the
and three-fourths and third
every city justice's court in any
and one-half class where there is a
court organized under the city
and every city justice's court in
and one-half class where there
erior court organized under the
rk and two deputy clerks. Said
ppointed by the justice of the
o the approval of the board of
id shall hold office during the
clerks and deputy clerks shall
of five thousand dollars with at
roved by the mayor or, if the
county, to be approved as pro-
ditioned for the faithful dis-
office. They shall keep a record
rt and issue all process ordered

The clerk of said court or a of the justice of the peace, shall y treasury, or into the county clerk is paid by the county, all l into said court, and shall ren- uncil or county board of super- clerk is paid by the county an

exact account under oath of all fines, forfeitures and fees paid and collected. Said clerks and deputy clerks shall prepare bonds, justify bail when the amount has been fixed by the court or justice and may administer and certify oaths, and shall remain in the courtrooms of said court during court hours and during such reasonable times thereafter as may be necessary for the proper performance of their duty. The clerk of the court shall have custody of all records and papers of said justice's court. Every clerk of the justice's court in any city or town of the second and one-fourth class shall receive a salary of one thousand six hundred dollars per annum. Every clerk of the justice's court in any city or town of the second and one-half class, where there is a police court or other inferior court organized under the city charter, shall receive an annual salary of two thousand one hundred dollars. Every clerk of the justice's court in any city or town of the second and one-half class where there is no police court or other inferior court organized under the city charter, shall receive an annual salary of two thousand seven hundred dollars, and the deputy clerks of said city or town shall each receive an annual salary of one thousand eight hundred dollars. Every clerk of the justice's court in any city or town of the second and three-fourths class shall receive an annual salary of one thousand five hundred dollars. Every clerk of the justice's court of any city or town of the third class shall receive an annual salary of one thousand eight hundred dollars; said salaries shall respectively be payable in equal monthly installments by warrants drawn each month upon the salary fund, or if there be no salary fund, then upon the general fund, of such city or county as the case may be, such warrants to be audited and paid as salaries of any other city or county officials respectively, and said salaries shall be the full compensation for all services rendered by the clerks of said courts.

CHAPTER 1054.

An act granting to the city of San Diego certain parcels of the state-owned lands in Mission Bay State Park upon certain trusts and conditions.

[Approved by Governor July 24, 1939. Filed with Secretary of State In effect
July 25, 1939.] - September
18, 1939.

The people of the State of California do enact as follows:

SECTION 1. There is hereby granted to the city of San Diego all of the right, title and interest of the State of California in and to those certain parcels of land described in section 2 of this act owned by it in Mission Bay State Park, subject to any and all existing easements, leases, conditions, reservations or rights which may now exist in or to said lands

or any part thereof in favor of any person, firm or corporation.

Conditions: All of said real property hereby granted shall be forever held by the city of San Diego and by its successors in trust for the uses and purposes and upon the express conditions following:

Public park. Said real property shall be used solely for the purposes of a public park and boulevard, to which the public at all times shall have free access, and the city of San Diego shall not at any time grant, convey, lease, give, or alien said real property or any part thereof to any individual, firm, or corporation whatever. //

Fishing. There is also reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay, with the right of convenient access to such waters over the real property hereby granted for the purpose of fishing. There is also reserved to the State of California all the deposits of minerals, including oil and gas, in the real property hereby granted and there is reserved to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from the real property granted and to occupy and use so much of the surface as may be required therefor.

Description. Sec. 2. The lands granted by this act consist of the following tracts or parcels of land in the city of San Diego, county of San Diego, State of California, more particularly described as follows:

PARCEL NO. 1.

Parcel 1. Beginning at a point (at the intersection of the south line of Prado with the west line of the West Drive—also known as West Way of Mission Boulevard), which bears south 22° 18' 30" east a distance of 910.25 feet from the southwest corner of Block 96, Mission Beach, California, according to Map No. 1809, filed in the County Recorder's Office, San Diego County, California, as the true point of beginning; thence from the true point of beginning south 87° 12' west 446.33 feet to the westerly side of the seawall; and thence continuing to the mean high tide line; thence northerly along the mean high tide line to the point of intersection with the southerly line of Ventura Place produced westerly; thence north 87° 12' east along the said southerly line of Ventura Place produced westerly and the southerly line of Ventura Place to its intersection with the west line of the West Drive of Mission Boulevard; thence in a southerly direction along said west line of the West Drive of Mission Boulevard to the true point of beginning.

TOGETHER WITH any and all buildings and improvements thereon (except the Giant Dipper or Roller Coaster and structures thereunder, and except the Roller Skating Rink Building), and all furniture, fixtures, machinery and equip-

ment situated therein, and which is owned by the Mission Beach Company, and the appurtenances thereto, and the reversion and reversions, remainder and remainders, rents, issues, incomes and profits thereof.

SUBJECT, however, to all leases, conditions and reservations contained in that certain conveyance executed by Mission Beach Company, a corporation, to the State of California, dated July 5, 1934, and recorded in Book 323 of Deeds, at page 340 et seq., Official Records of San Diego County, California.

PARCEL NO. 2.

Beginning at the intersection of the north line of the subway with the west line of the West Drive (known also as West Way) of Mission Boulevard which point bears south 23° 40' 05" east a distance of 852.23 feet from the southwest corner of Block 96, Mission Beach, California, according to Map No. 1809, filed in the County Recorder's Office, San Diego County, California, as the true point of beginning; thence from the true point of beginning north 87° 12' east 16.83 feet to a point on the east line of the West Drive of Mission Boulevard; thence north 2° 48' west along the said east line of the West Drive of Mission Boulevard 40.25 feet to a point; thence north 87° 12' east 92.56 feet to a point; thence south 73° 8' east 35.92 feet to a point; thence north 87° 12' east 37.20 feet to a point; thence south 2° 48' east 28.83 feet to a point; thence north 87° 12' east 131.85 feet to the intersection with the mean high tide line, as shown on Miscellaneous Map No. 72, filed in the County Recorder's Office, San Diego County, California; thence along the said mean high tide line south 10° 57' east 27.74 feet to a point; thence south 87° 12' west 158.70 feet to a point; thence south 8° 32' west 9.25 feet to a point on the easterly line of the East Ramp; thence along the easterly line of the East Ramp south 2° 48' east 189.75 feet to the southeast corner of the said East Ramp; thence south 87° 12' west 138 feet to a point on the east line of the West Drive of Mission Boulevard; thence along the said east line of the West Drive of Mission Boulevard north 2° 48' west 198.9 feet to an intersection of the south line of the subway with the east line of the West Drive of Mission Boulevard; thence south 87° 12' west 16.83 feet to an intersection of the west line of the West Drive of Mission Boulevard with the south line of Subway; thence north 2° 48' west 27.20 feet to the true point of beginning.

TOGETHER WITH any and all buildings and improvements thereon not hereafter specifically excepted, and except machinery in the substation owned by San Diego Consolidated Gas and Electric Company.

EXCEPTING THEREFROM, that portion of the above described property lying within the 35-foot strip of land shown on Map No. 1651 of Mission Beach on file in the office of the County

Recorder of said County as "Right of Way of Bay Shore Railroad Company (Private Property)," said 35-foot strip now including the operative right of way of the San Diego Electric Railway Company, the center line of said 35-foot strip being the center line of the San Diego Electric Railway Company's double track as now located and further described as being parallel to and midway between the east and west drives of Mission Boulevard.

EXCEPTING, also, the street railway tracks, side tracks, poles and overhead construction of San Diego Electric Railway Company as now existing situated on said conveyed premises, together with the perpetual right and easement of San Diego Electric Railway Company hereafter to maintain said reserved operative street railway property and all necessary replacements and renewals thereof on said premises and to operate its street railway thereon; and excepting and reserving an easement to the general public for access to the street railway waiting platform in the same manner as such access at present exists.

PARCEL NO. 3.

Parcel 3.

A portion of Pueblo Lot 1803 of the Pueblo Lands of San Diego, California, according to map thereof made by James Pascoe in the year 1870, a copy of which is filed in the office of the County Recorder of San Diego County, California, more particularly described as follows, to wit: Beginning at the intersection of the southerly line of Ventura Place and the westerly line of Ocean Front Walk as shown on Map 1809 of Mission Beach, California, filed in the office of the County Recorder of San Diego County, California; thence northerly along the westerly line of Ocean Front Walk and its northerly prolongation to the northerly line of an unnamed Alley lying northerly of Blocks 247 and 248 of said Mission Beach, said northerly line of said unnamed Alley being also the southerly boundary line of Block 389 of Pacific Beach, as shown on said Map 1809; thence westerly along the westerly prolongation of the northerly line of said unnamed Alley to the mean high tide line; thence southerly along the mean high tide line to its intersection with the westerly prolongation of the southerly line of Ventura Place; thence easterly along the westerly prolongation of the southerly line of Ventura Place to the point of beginning.

EXCEPTING from the foregoing described parcel of land that portion granted to the City of San Diego for seawall construction and described in Deed to the said City of San Diego, dated October 9, 1926, and recorded in Book 1221 of Deeds, at page 475 of the Records of San Diego County, California.

CH4

*An act to amend sections
sections 3197a, 3197b a:
ing to trade-marks.*

[Approved by Governor July

The people of the State of

SECTION 1. Section 31: amended to read as follows: 3197. Any person, firm or corporation, desiring to register any trade-mark or design, shall file with the Secretary of the Interior copies and description of the first date of such use of the class of merchandise or goods in such class to which such trade-mark or design is affixed to the goods, with a statement of the mode of use of such trade-mark, and an officer authorized to take evidence setting forth that the applicant is the owner of such trade-mark. The Secretary shall determine the classes of merchandise for the purpose of registration and shall determine the goods comprised in each class. No trade-mark or design shall be registered at the option of the applicant unless the trade-mark or design has actually been used in connection with the sale of merchandise, provided that the trade-mark or design may be stated.

SEC. 2. Section 3197a Code, to read as follows:

3197a. The Secretary trade-mark which consists of a heraldic device or coat of arms or other simulation thereof, or of a foreign nation, or which is a picture that has been adopted by such fraternal organization as its emblem, unless it is registered as a trade-mark by the Secretary of State title is derived from whom title is derived. No trade-mark shall be registered if it resembles a trade-mark already registered in connection with merchandise of the same description, or if it so resembles a trade-mark as to be likely to cause

Article IV of the Constitution of the State of California and as such shall take effect immediately. The following is a statement of the facts constituting such necessity:

Crates used for the transportation and sale of carrots as well as containers used in the handling of other fruits and vegetables, are made from lumber which is a material vital to the war effort.

Because of the scarcity of box lumber and the burden of orders for war material shipping containers, the box shook factories are having great difficulty in accumulating any amount of shook suitable for the construction of the "heads" (ends) of vegetable crates previously used for carrots. Material suitable for the construction of the heads for vegetable crates required in container 45B (17½ inches wide) proposed as standard for carrots in this act, is accumulated by the factories in the manufacture of box shook for other fruits and vegetables and, therefore, is more readily obtainable during the present scarcity of box lumber. Carrots are now being harvested and shipped in several parts of the State and producers and packers are unable to obtain the proper size crate as now required by law, for the transportation and sale of this product, for which reason it is necessary that this act take immediate effect.

CHAPTER 119

An act amending Section 1 of "An act granting to the City of San Diego certain parcels of the State-owned lands in Mission Bay State Park upon certain trusts and conditions," approved July 24, 1939, relating to tidelands in Mission Bay State Park.

[Approved by Governor April 13, 1943. Filed with Secretary of State April 13, 1943]

The people of the State of California do enact as follows:

SECTION 1. Section 1 of the act cited in the title hereof is amended to read:

Section 1. There is hereby granted to the City of San Diego all of the right, title and interest of the State of California in and to those certain parcels of land described in Section 2 of this act owned by it in Mission Bay State Park.

All of said real property hereby granted shall be held by the City of San Diego as a part of its city park system, and administered by said city in accordance with the provisions of its charter.

There is hereby reserved to the people of the State of California the absolute right to fish in the waters of Mission Bay with the right of convenient access to such waters over the real property hereby granted, for the purpose of fishing.

There is also reserved to the State of California all the deposits of minerals, including oil and gas, in the real property hereby granted, and there is reserved to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from the real property granted and to occupy and use so much of the surface as may be required therefor.

CHAPTER 120

An act to amend Section 1550 of the Probate Code, relating to inventory and appraisement.

[Approved by Governor April 13, 1943. Filed with Secretary of State April 13, 1943]

In effect August 4, 1943

The people of the State of California do enact as follows:

SECTION 1. Section 1550 of the Probate Code is amended to read:

1550. Within three months after his appointment, or within such further time as the court or judge for a reasonable cause may allow, the guardian must file with the clerk of the court an inventory and appraisement of the estate of his ward, together with a copy of the same which copy shall be delivered by the clerk to the county assessor. The guardian must make oath to the inventory, and the property therein described must be appraised, by an appraiser or appraisers appointed by the court or judge, in the manner provided for the inventory and appraisement of estates of decedents. Whenever any ward is or has been during the guardianship confined in a State hospital in this State the guardian must deliver or mail a copy of the inventory to the Director of Institutions or the Attorney General. Whenever any property of the ward is discovered which was not included in the inventory, and whenever any other property has been inherited or acquired by the ward, other than by purchase by the guardian, like proceedings must be had for the inventory and appraisement thereof and the delivery or mailing of a copy thereof as are herein provided in relation to the first inventory.

CHAPTER 121

An act to add Section 189.5 to the Code of Civil Procedure, relating to vouchers filed in court proceedings.

[Approved by Governor April 13, 1943. Filed with Secretary of State April 13, 1943]

In effect August 4, 1943

The people of the State of California do enact as follows:

SECTION 1. Section 189.5 is added to the Code of Civil Procedure, to read:

189.5. Two years after judgment in any civil action or proceeding has become final the court may order any vouchers

New section

Vouchers: Delivery

Passed and adopted by the Council of The City of San Deigo on AUG 18 1986,
by the following vote:

YEAS: Wolfsheimer, Cleator, McColl, Jones, Struiksma, Gotch,
McCarty, Martinez, Mayor O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct
copy of RESOLUTION NO. R- 266410, passed and adopted by
the Council of The City of San Diego, California on AUG 18 1986.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Maydell L. Pontecorvo, Deputy

F - 2,502

DOCUMENT NO. RR-266410

FILED AUG 18 1986

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Certified copy of RESOLUTION NO. R-266410

accepting again interest in real property conveyed
to City by 1939 statutes.

This is a true certified copy of the record
if it bears the seal, imprinted in purple ink,
of the Recorder.

SEP - 3 1986
Theresa L. Lytle
Recorder
San Diego County, California



RECORDED BY
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CALIF.

1997 JAN 21 PM 2:30

VERA L. LYLE
COUNTY RECORDER

RF	48
AR	46
MG	1

1 RECORDING REQUESTED BY AND
2 WHEN RECORDED MAIL TO:
3 State of California
4 California Coastal Commission
5 631 Howard Street, Fourth Floor
6 San Francisco, California 94105

RESTRICTION ON LEASEHOLD

7 I. WHEREAS, THE CITY OF SAN DIEGO, hereinafter referred to
8 as Owner, is the record owner of real property located in the
9 County of San Diego, described in attached Exhibit A, hereby
10 incorporated by reference, and hereinafter referred to as the
11 "Subject Property"; and

12 II. WHEREAS, Owner has granted an option to lease the
13 Subject Property to BELMONT PARK ASSOCIATES, a California limited
14 partnership, pursuant to the Option Agreement and Lease attached
15 hereto as Exhibit B, hereby incorporated by reference; and

16 III. WHEREAS, the California Coastal Commission ("Commis-
17 sion") is acting on behalf of the people of the State of
18 California; and

19 IV. WHEREAS, the Subject Property is located within the
20 coastal zone as defined in Section 30103 of the California Public
21 Resources Code (hereinafter referred to as the California Coastal
22 Act); and

23 V. WHEREAS, pursuant to the California Coastal Act of
24 1976, BELMONT PARK ASSOCIATES, a California limited partnership,
25 ("Applicant") applied to the Commission for a coastal development
26 permit for the development on the Subject Property described
27 above; and

28 VI. WHEREAS, a coastal development permit No. 6-86-396 was

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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1 granted on September 10, 1986, by the Commission based on the
2 findings adopted by the Commission attached in Exhibit C, hereby
3 incorporated by reference; and

4 VII. WHEREAS, coastal development permit No. 6-86-396 was
5 subject to terms and conditions including but not limited to the
6 following condition:

7 "7. Applicant's Assumption of Risk. Prior to the
8 transmittal of a coastal development permit, the applicant
9 as lessee shall execute and record an agreement, in a form
10 and content acceptable to the Executive Director, which
11 shall provide: (a) that the applicant understands that the
12 site may be subject to extraordinary hazard from waves
13 during storms, and the applicant assumes the liability from
14 such hazards; and (b) that the applicant unconditionally
15 waives any claim of liability on the part of the Commission
16 and agrees to indemnify and hold harmless the Commission and
17 its advisors relative to the Commission's approval of the
18 project for any damage due to natural hazards. The document
19 shall run with the land, binding all successors and assigns,
20 and shall be recorded free of prior liens and encumbrances
21 which the Executive Director determines may affect the
22 interest being conveyed."

23 VIII. WHEREAS, the Commission found that but for the imposi-
24 tion of the above condition the proposed development could not be
25 found consistent with the provisions of the California Coastal
26 Act of 1976 and that a permit could, therefore, not have been
27 granted; and

28 IX. WHEREAS, it is intended that this Restriction on

1 Leasehold is irrevocable and shall constitute enforceable
2 restrictions; and

3 X. WHEREAS, Applicant has elected to comply with the
4 condition imposed by Permit No. 6-86-396 so as to enable
5 Applicant to undertake the development authorized by the permit.

6 NOW, THEREFORE, in consideration of the granting of Permit
7 No. 6-86-396 to the Applicant by the Commission, the Applicant
8 hereby irrevocably covenants with the California Coastal
9 Commission that there be and hereby is created the following
10 restrictions on the use and enjoyment of said Subject Property,
11 to be attached to and become a part of the deed to the property.
12 The undersigned Applicant, for itself and for its heirs, assigns,
13 and successors in interest, covenants and agrees that:

14 1. The Applicant understands that the site may be subject
15 to extraordinary hazard from waves during storms, and the
16 Applicant assumes the liability from such hazards.

17 2. The Applicant unconditionally waives any claim of
18 liability on the part of the Commission and agrees to indemnify
19 and hold harmless the Commission and its advisors relative to the
20 Commission's approval of the project for any damage due to
21 natural hazards.

22 3. This Restriction on Leasehold shall remain in full
23 force and effect during the period that said permit, or any
24 modification or amendment thereof, remains effective, and during
25 the period that the development authorized by said permit, or any
26 modification of said development, remains in existence in or upon
27 any part of, and thereby confers benefit upon, the Subject
28 Property described herein.

1 4. This Restriction on Leasehold shall be binding upon and
2 inure to the benefit of the successors and assigns of the parties
3 hereto.

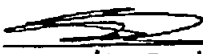
4 5. This Restriction on Leasehold shall be construed and
5 enforced in accordance with the laws of the State of California.
6 Should any action be brought in a court of competent
7 jurisdiction, the prevailing party in such action shall be
8 entitled to recover reasonable attorneys' fees, court costs and
9 necessary disbursements in connection with such litigation.

10 6. Applicant agrees to record this Restriction on
11 Leasehold in the Recorder's Office for the County of San Diego as
12 soon as possible after the date of execution.

13 DATED: January 8, 1987

BELMONT PARK ASSOCIATES,
a California limited partnership

By: PHASE ONE DEVELOPMENT, INC.,
managing general partner

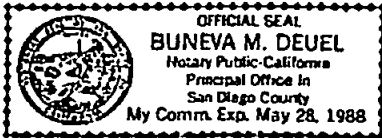
16 By: 
17 Steven L. Davis, President

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1 STATE OF CALIFORNIA)
) ss.
 2 COUNTY OF SAN DIEGO)

3 On January 8, 1987 before me, the undersigned, a Notary
 4 Public in and for said State, personally appeared Alexander L. Navia
 personally known to me or proved to me
 5 on the basis of satisfactory evidence to be the person who
 executed the within instrument, on behalf of the partnership and
 6 acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.



9 Buneva M. Deuel
 3828 Camino del Rio North, Ste. 301, San Diego, CA
 92108

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. HILE, RECORDER

This is to certify that the Restriction on Leasehold set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 6-86-396 on September 10, 1986, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: Jan. 13, 1987

Charles Damm
California Coastal Commission
Assistant District Director

STATE OF CALIFORNIA)

COUNTY OF San Diego) ss.

On January 13, 1987 before me, the undersigned, a Notary Public in and for said State, personally appeared Charles Damm personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed this instrument as Asst. Dist. Dir. (Title), an authorized representative of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.
Witness my hand and official seal.

Milton Phegley



LEGAL DESCRIPTIONS

PARCEL A:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED IN AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED MARCH 6, 1924 IN BOOK 999, PAGE 64 OF DEEDS, FILED IN SAID COUNTY RECORDER'S OFFICE, WHICH POINT BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWEST CORNER OF BLOCK 96 OF MISSION BEACH AS SHOWN ON SAID MAP NO. 1809, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH LINE OF PRADO WITH SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTHERLY 10.00 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 89°12'00" WEST, 406.00 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE BOARDWALK WHICH LIES 24 FEET EAST OF THE SEAWALL; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID BOARDWALK A DISTANCE OF 550.00 FEET, MORE OR LESS; THENCE LEAVING THE EASTERLY LINE OF SAID BOARDWALK PERPENDICULAR AND EASTERLY 75.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 53.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND EASTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY 45.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND WESTERLY 20.00 FEET, MORE OR LESS; THENCE PERPENDICULAR AND NORTHERLY TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE NORTH 89°12'00" EAST ALONG THE SOUTHERLY LINE OF VENTURA PLACE TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD, ABOVE REFERENCED; THENCE SOUTHERLY ALONG SAID WEST LINE OF WEST DRIVE OF MISSION BOULEVARD TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF THE WEST LINE OF MISSION BOULEVARD AS SAID BOULEVARD IS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940.

ALSO EXCEPTING THEREFROM ANY PORTION, IF ANY LYING BELOW THE MEAN HIGH TIDE OF THE PACIFIC OCEAN.

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EXHIBIT A

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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ALSO EXCEPTING THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE WESTERLY LINE OF MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 9°18'00" WEST 88.82 FEET; TO THE TRUE POINT OF BEGINNING; THENCE NORTH 59°45'00" WEST, 12.75 FEET; THENCE SOUTH 14°05'00" WEST, 66.25 FEET; THENCE SOUTH 32°45'00" WEST 5.47 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE SOUTHEAST AND HAS A RADIUS OF 360.00 FEET, MORE OR LESS; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 33°33'00" A DISTANCE OF 210.80 FEET, MORE OR LESS, TO THE END OF SAID CURVE; THENCE SOUTH 00°48'00" EAST, 178.45 FEET; THENCE SOUTH 89°12'00" WEST, 92.50 FEET; THENCE NORTH 00°48'00" WEST, 235.00 FEET; THENCE SOUTH 89°12'00" WEST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 40.00 FEET; THENCE NORTH 44°12'00" EAST, 94.75 FEET; THENCE NORTH 00°48'00" WEST, 25.00 FEET; THENCE NORTH 89°12'00" EAST, 8.00 FEET; THENCE NORTH 00°48'00" WEST, 117.00 FEET; THENCE NORTH 89°12'00" EAST, 48.00 FEET; THENCE NORTH 00°48'00" WEST, 23.00 FEET; THENCE NORTH 69°00'00" WEST, 56.54 FEET TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE ALONG SAID SOUTHERLY LINE NORTH 89°12'00" EAST, 105.00 FEET TO THE INTERSECTION OF SAID COURSE WITH THE WEST LINE OF WEST DRIVE OF MISSION BOULEVARD; THENCE SOUTH 11°00'00" EAST, 90.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH MAP IS FILED AS MISCELLANEOUS MAP NO. 36 IN THE OFFICE OF THE COUNTY RECORDER IN SAID SAN DIEGO COUNTY CALIFORNIA, SAID PORTION OF PUEBLO LOT 1803 BEING SHOWN ON SHEETS 3 AND 4 OF MAP NO. 1809 OF MISSION BEACH ON FILE IN THE OFFICE OF SAID COUNTY RECORDER, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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EXHIBIT A

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE SUBWAY AT PRADO STREET WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD, A PORTION OF WHICH WAS VACATED AND CLOSED TO PUBLIC USE BY RESOLUTION NO. 76888 OF THE COUNTY OF THE CITY OF SAN DIEGO ADOPTED MAY 12, 1942, SAID POINT OF BEGINNING BEARS SOUTH 23°40'05" EAST A DISTANCE OF 852.23 FEET FROM THE SOUTHWESTERLY CORNER OF BLOCK 96 OF SAID MISSION BEACH; THENCE NORTH 87°12'00" EAST 16.83 FEET TO A POINT ON THE EAST LINE OF SAID WEST DRIVE OF MISSION BOULEVARD; THENCE NORTH 02°48'00" WEST ALONG SAID EAST LINE 40.25 FEET TO A POINT OF THE SOUTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION TO THE CITY OF SAN DIEGO, A CERTIFIED COPY OF WHICH WAS RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40 OF OFFICIAL RECORDS; THENCE NORTH 87°12'00" EAST ALONG SAID SOUTHERLY LINE, BEING ALSO THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE STATE OF CALIFORNIA, DATED JULY 5, 1934, AND RECORDED SEPTEMBER 27, 1934 IN BOOK 323, PAGE 340 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, A DISTANCE OF 90.56 FEET (RECORD 92.56 FEET) TO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND IN SAID PUEBLO LOT 1803 DESCRIBED IN THE DEED OF THE MISSION BEACH COMPANY, TO THE CITY OF SAN DIEGO: DATED SEPTEMBER 5, 1940 AND RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID WESTERLY LINE BEING THE WESTERLY LINE OF MISSION BOULEVARD AS DEDICATED AND NAMED BY RESOLUTION NO. 72228 OF THE COUNCIL OF SAID CITY ADOPTED SEPTEMBER 10, 1940; THENCE NORTH 02°48'00" WEST ALONG SAID WESTERLY LINE OF MISSION BOULEVARD A DISTANCE OF 282.82 FEET, MORE OR LESS, TO THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE DEED FROM THE MISSION BEACH COMPANY, TO THE SAN DIEGO ELECTRIC RAILWAY COMPANY, DATED FEBRUARY 14, 1942, AND RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID MISSION BOULEVARD NORTH 02°48'00" WEST, 29.67 FEET TO THE BEGINNING OF A CURVE TO THE LEFT WHICH IS CONCAVE TO THE WEST AND HAS A RADIUS OF 1980.00 FEET; THENCE TANGENT TO SAID LAST DESCRIBED COURSE ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 06°30'00" A DISTANCE OF 224.62 FEET TO THE END OF SAID CURVE; THENCE CONTINUING ALONG SAID WESTERLY LINE OF MISSION BOULEVARD AND TANGENT TO SAID LAST CURVE, NORTH 09°18'00" WEST, 74.68 FEET TO A POINT; SAID POINT BEING THE INTERSECTION OF SAID COURSE WITH THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD AS DESCRIBED IN DEED FROM MISSION BEACH COMPANY TO THE CITY OF SAN DIEGO RECORDED, MARCH 6, 1924 IN BOOK 999, PAGE 64, OF DEEDS FILED IN SAID COUNTY RECORDER'S OFFICE, AND THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST WITH A RADIUS OF 158.92 FEET, THE TANGENT TO SAID CURVE BEARS SOUTH 08°36'00" WEST FROM SAID POINT; THENCE SOUTHWESTERLY ALONG SAID WESTERLY LINE OF SAID WEST DRIVE OF MISSION BOULEVARD, ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 22°55'35", A DISTANCE OF 63.59 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 348.41 FEET AND WHICH IS CONCAVE TO THE SOUTHEAST; THENCE CONTINUING ALONG SAID WESTERLY LINE OF WEST DRIVE, ALONG THE ARC OF SAID CURVE THROUGH AN ANGLE OF 34°19'35" A DISTANCE OF 208.74 FEET; THENCE TANGENT TO SAID CURVE AND CONTINUING ALONG THE WESTERLY LINE OF WEST DRIVE OF MISSION BOULEVARD SOUTH 02°48'00" EAST A DISTANCE OF 73.33 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 2 PARCEL OF LAND DESCRIBED IN DEED TO SAN DIEGO ELECTRIC RAILWAY COMPANY RECORDED FEBRUARY 20, 1942 IN BOOK 1301, PAGE 478 OF OFFICIAL RECORDS, ABOVE REFERENCED AND THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED OCTOBER 15, 1947 IN BOOK 2522, PAGE 40, OF OFFICIAL RECORDS, HERETOFORE REFERRED TO; THENCE SOUTH 02°48'00" EAST ALONG SAID WESTERLY LINE OF WEST DRIVE TO THE POINT OF BEGINNING.

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EXHIBIT A

PARCEL C:

THAT CERTAIN REAL PROPERTY IN PUEBLO LOT 1803 OF THE PUEBLO LANDS OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1809 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 13, 1924, BEING A PORTION OF THE UNNUMBERED TRACT LYING BETWEEN THE NORTHERLY LINE OF SAN FERNANDO PLACE AND THE SOUTHERLY LINE OF VENTURA PLACE, AS SHOWN ON SAID MAP, DESCRIBED AS FOLLOWS:

ALL THAT PROPERTY SOUTH OF PARCELS A AND B DESCRIBED ABOVE LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF THE WESTERLY RIGHT-OF-WAY OF MISSION BOULEVARD AS DESCRIBED IN DEED RECORDED SEPTEMBER 13, 1940 IN BOOK 1077, PAGE 116 OF OFFICIAL RECORDS AND AS NAMED AND DEDICATED BY RESOLUTION NO. 72228 OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO AND ADOPTED SEPTEMBER 10, 1940, SAID POINT LYING 764 FEET, MORE OR LESS, SOUTH OF AND PARALLEL TO THE SOUTHERLY LINE OF VENTURA PLACE; THENCE SOUTH 89°12'00" WEST TO THE EASTERLY LINE OF THE BOARDWALK.

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EXHIBIT A

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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COPY

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SLW copy
REV 2.2.86

OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into on JUN 23 1986 by and between
THE CITY OF SAN DIEGO, a municipal corporation, as Optionor ("City"), and
BELMONT PARK ASSOCIATES, a California limited partnership ("Optionee"),
with reference to the following facts:

RECITALS

- A. City is the owner of real property (the "Premises") located in the City of San Diego, County of San Diego, California, more particularly described in Exhibit "A" attached hereto and made a part hereof; and
- B. Optionee desires to obtain an option granting the exclusive right to lease the premises for construction, operation and maintenance of a park/visitor-oriented commercial land recreational center.
- C. City is willing to enter into an Option Agreement to lease said real property for said purposes and uses.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. GRANT OF OPTION

City hereby grants to Optionee the exclusive option to lease the premises on the terms and conditions set forth in the lease which is attached hereto as Exhibit "B" and incorporated herein by reference. During the option period, City agrees that it will not grant any other right or options to lease said premises to any other party.

With the granting of this option, City grants Optionee the right, through its agents, representatives, contractors or employees, to enter said premises for the purposes of site evaluation, planning, design or any other purpose related to the project. Optionee agrees to provide City with copies of all site evaluation information, e.g., soil tests, surveys, etc., at no cost to City. Optionee shall, however, have no vested or possessory interest in said premises during the option period and City retains the right to use and enjoy its possession thereof during the period this Option Agreement is in effect. City agrees not to make any substantial change in the physical condition of the Premises during this option period.

EXHIBIT B

DOCUMENT NO.

RR-266064

FILED

JUN 23 1986

OFFICE OF THE CITY CLERK
SAN DIEGO CALIFORNIA

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. IYLE, RECORDER

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II. TERM OF OPTION

The term of this option shall be eighteen (18) months and shall commence on the first day of the first calendar month following the execution of this Option Agreement by the City and the Optionee. Timely exercise of the option within the 18-month-option period shall be an express condition of this Option Agreement.

III. CONSIDERATION

The purchase price for the option granted herein shall be \$25,000.

Payment shall be due as defined in Section II above. Optionee agrees that payments made shall be retained as consideration for the granting of this Option Agreement and are nonrefundable, whether or not Optionee exercises the option.

IV. EXPRESS CONDITIONS

Optionee agrees that the following requirements are express conditions of this Option Agreement and that the option may not be exercised until said conditions have been performed:

- a. Optionee shall submit to City three (3) copies of a precise plan of development (Development Plan) as required by Section 6.12 of the lease (Exhibit "B"). The Development Plan must conform with the schematic plans which were approved by various City committees and boards and the Planning Commission, and must satisfy requirements of the City's approved Environmental Impact Report and the State of California's Coastal Permit. Approval of said Development Plan by City shall not waive or be construed to waive any federal, state, county or municipal law, code, ordinance or regulation having any jurisdiction over the development of said Premises and the construction of any improvement thereof. Optionee shall secure compliance with all such laws, codes, ordinances and regulations at its sole expense, including but not limited to the payment of all fees, charges and assessments, if any, necessary to develop the Premises in accordance with said Development Plan. All uses shown on the Development Plan shall be park/visitor-oriented commercial and recreational.
- b. Optionee shall submit to City complete architectural, landscape, and engineering working drawings and complete specifications for the development of said Premises. Architectural drawings shall be revised from the Development Plan to more closely replicate the original architecture of the existing plunge and roller rink. Important existing architectural features of the Plunge Building shall be incorporated in the construction of the new project where feasible. The Plans shall provide for castings or models to be made of significant

EXHIBIT B

features which cannot be removed, and replicas manufactured from such castings or models shall be integrated into the new buildings. The Planning Department shall review and approve elevation drawings to insure that adequate consideration has been given to preservation or replication of existing features and reasonable efforts have been made to replicate elements of the original architecture.

- c. Optionee, at its sole expense, shall obtain all permits and permissions necessary for construction to commence, including but not limited to the City of San Diego's Building Permit and the State of California's Coastal Permit. However, if Optionee has completed all other conditions of this Option Agreement and has submitted complete applications for said permits and permissions at least six (6) weeks prior to the expiration date of this Option Agreement or any extension thereof, the time period for exercising this option shall be extended at no additional cost to the Optionee until such permits and permissions have been granted. This extension will be granted only if the above conditions are met and shall not apply to any time period when the Optionee is making required corrections or revisions to the submitted applications.
- d. Optionee shall submit evidence, which is reasonably satisfactory to the City Manager, of Optionee's ability to finance the cost of construction of the improvements as proposed in said Development Plan.
- e. Optionee shall file with City a Construction Bond as required in Section 6.06 of the lease (Exhibit "B").
- f. The existing bus stop facilities on Mission Boulevard just north of West Mission Bay Drive/Ventura Place and on West Mission Bay Drive just east of Mission Boulevard will be upgraded in conformance with the standard of the Metropolitan Transit Development Board.
- g. The architectural style of the development will be compatible with that of the Spanish Colonial Revival theme of the existing plunge and roller rink buildings. The existing plunge and roller rink buildings will be professionally photographed and sketched to architecturally document these structures. This documentation, along with a historic survey report, shall be submitted to the Planning Department for review and approval.

The important existing architectural features of the plunge building will be preserved and used in the reconstruction where feasible. Castings or models will be made of those features which cannot be removed, and replicas manufactured from these castings will be integrated into the new buildings. Signage documenting the historical significance of the site, such as an interpretive kiosk, will be incorporated into the project.

EXHIBIT B

- h. EIR No. 85-0753 does not permit validated parking. If Optionee wishes to implement validated parking on the parking lot of said Premises, Optionee may prepare an amendment to the EIR, proposing such validation and any proposed mitigation measures for City Council review and approval or disapproval.

Notwithstanding the above requirements, if Optionee wishes to exercise this option and has completed items a, d and h above to the satisfaction of the City Manager, City shall honor Optionee's request to exercise the option and shall execute a lease as stipulated in Section X of this Option Agreement within ten (10) days after receipt of such request. In the event of such early exercise of the option, Optionee shall submit to City all architectural, landscape and engineering working drawings and specifications as have been completed at the date of exercise of this option and the requirements specified in items b, c and e shall subsequently be completed during the construction period of the lease.

V. TRANSFER OR ASSIGNMENT

Optionee has the right to assign its rights under this Agreement to a partnership or corporation in which the existing general partners of Optionee own 50 percent of the partnership interests or the outstanding stock, provided that City is notified in writing of such assignment. Any other attempted transfer or assignment of this Option Agreement or any rights or duties thereunder, whether by operation of law or otherwise, shall be void and no rights conferred thereby, and further, any such attempt or any change in form or ratio of ownership of Optionee (whether Optionee is a corporation, partnership, or other form of business entity) without the prior written consent of City, which consent shall not be unreasonably withheld, shall be void and shall absolutely and conclusively terminate Optionee's rights hereunder without refund or diminution of the purchase price hereof. The personal qualifications of the person or persons controlling Optionee are part of the consideration for granting this option and such person or persons shall maintain active control and supervision of performance of this Option Agreement.

VI. TIME

Time is of the essence in the performance of the parties' obligations hereunder.

VII. AS IS CONDITIONS

Except as provided in the Lease Agreement, Optionee understands and agrees that the optioned premises will be leased in an "as-is" condition with no improvements, grading, fill, dredging or relocation of utility lines to be performed by City.

VIII. HOLD HARMLESS AND INDEMNITY

Optionee agrees to assume the defense of, indemnify, defend and hold City harmless from any liens, claims, suits or judgments for labor and material performed or furnished at the instance of Optionee in connection with any activities permitted by or necessary to carry out the requirements of this option. Optionee

EXHIBIT B

further agrees to indemnify, defend and hold City harmless from claims, suits, liabilities or penalties resulting from injury to person or property resulting from such permitted and/or required actions. Provided, however, that this provision shall not apply to any injury, death or property damage caused by the negligent acts or omissions of City, its officers, employees, or authorized agents.

IX. PUBLIC LIABILITY INSURANCE

Optionee, at its sole cost, shall procure and maintain during the term of this Option Agreement, including any extensions thereof, a policy of comprehensive broad form public liability insurance which insures City and Optionee against claims and liability for personal injury, death, or property damage arising directly or indirectly from the use or occupancy of the Premises by Optionee or its agents. Such insurance shall provide coverage with a combined single limit liability of not less than \$2 million and shall name City as an additional insured.

X. EXERCISE OF OPTION

This option may be exercised by Optionee at any time prior to expiration of the option term provided that Optionee has performed to the reasonable satisfaction of the City Manager, the requirements set forth in Section IV of this option. Optionee shall exercise this option by giving City written notice of its election to do so, accompanied by the written lease agreement (Exhibit "B") executed by Optionee in triplicate. Upon the performance of the conditions herein contained to the reasonable satisfaction of the City Manager, and the exercise by Optionee of this option in the manner provided hereinabove, City Manager shall forthwith, without need for further authorization of the City Council of City, execute for and on behalf of City that Lease Agreement in the form of said attached Exhibit "B", together with a Memorandum of Lease referred to therein.

City's failure to execute the lease prior to the expiration of the term of this option shall not invalidate the lease agreement, nor nullify Optionee's timely notice of its election to exercise this option. Determination of satisfactory performance of any and all of the conditions of this option and all approvals and consents required by City for Optionee's timely performance hereunder shall vest with the City Manager and such determination of satisfaction and such approvals and consents shall not be unreasonably withheld.

XI. CONDITION OF TITLE

City hereby represents and covenants that if Optionee chooses to exercise the option granted herein, City has the full right, power, authority and legal capacity to convey the leasehold interest provided for by the lease, subject to all conditions of title as

EXHIBIT B

set forth in Exhibit "C" attached hereto. From the date hereof until expiration of the option period, including any extension thereof, City shall not assign, mortgage, hypothecate, encumber, lease or otherwise permit the transfer of all or part of its interest in the Property without Optionee's prior written consent.

XII. TERMINATION OF OPTION AGREEMENT

At any time prior to exercise of the option and prior to expiration of the option term, Optionee shall have the right to terminate this Option Agreement by written notice to City. If Optionee fails to fulfill and/or comply with any of the above conditions to the reasonable satisfaction of City within the time limits provided, or in the event Optionee fails to exercise this option as provided in this Agreement, this option shall terminate upon ten days' written notice by City to Optionee without refund or diminution of the purchase price hereof.

In the event of a termination of the Option Agreement, as provided in this Section XIII, neither party shall have any further rights or obligations hereunder.

XIII. NOTICES

Any notice to be given hereunder, including, without limitation, the option notice specified in Section XI shall be in writing and shall be served either personally or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager
Attention Property Director
City Administration Building, M.S. 98
202 "C" Street
San Diego, CA 92101-4155

To Optionee: Belmont Park Associates
3838 Camino del Rio North, Suite 301
San Diego, CA 92108

with a copy to:

MacHutchin Development
7458 La Jolla Boulevard
La Jolla, CA 92037

Paul Thoryk
1157 Columbia Street
San Diego, CA 92101

Either party may designate a different address by giving written notice as set forth in this Section XIII.

EXHIBIT B

XIV. EXHIBITS

All exhibits referred to herein are attached hereto and by reference made a part of this Option Agreement.

XV. ENTIRE AGREEMENT

This Option Agreement, together with all exhibits hereto, is the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations, statements or premises, oral or written, are superseded.

XVI. MODIFICATION, WAIVER

No modification, waiver, amendment, discharge or change of this Option Agreement shall be valid unless the same is in writing and signed by both parties. Any modification or amendment to this Option Agreement shall require City Council approval except that non-substantive modifications may be approved by the City Manager.

XVII. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties contained herein shall survive execution and delivery of this Option Agreement and shall survive exercise of the option and delivery of possession of the property to Optionee under the terms of the Lease.

XVIII. SEVERABILITY

If any term or provision of this Option Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remainder of this Option Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

XIX. HEADINGS

The section and paragraph headings used in this agreement are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.

XX. GENDER, NUMBER

As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.

EXHIBIT B

XXI. GOVERNING LAW

This Option Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

XXII. ROLLER COASTER LEASE

In the event that during the term of this Option Agreement in the event of termination of the lease for the adjacent roller coaster property with the Save The Coaster Committee, Optionee shall be provided with the right of first refusal as set forth in Paragraph 7.14 of the said Exhibit B Lease.

XXIII. WARRANTY

City warrants and represents that it has the authority to enter into this Option Agreement and the Lease Agreement attached hereto. City will defend and hold Optionee/Lessee harmless against any claims regarding City's authority to enter into such agreements and the rights granted Optionee/Lessee thereunder. Notwithstanding the foregoing, nothing hereunder shall be construed as a guaranty by the City that any use is permissible on the Premises unless such use has been approved by the City in each specific instance as a park/visitor-oriented commercial and/or recreational use. The City Manager shall review any request for approval of use within ten (10) business days after receipt.

XXIV. FORCE MAJEURE

Any prevention or delay resulting from acts of God, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, legal action against Optionee and/or the City with respect to the project contemplated under this Option Agreement, or other causes beyond the control of Optionee, shall excuse the performance by Optionee for a period equal to that resulting from such prevention or delay. This Option Agreement shall be extended for the period of delay or prevention but, in any case, not beyond a period of five (5) years.

EXHIBIT B

IN WITNESS WHEREOF, this OPTION AGREEMENT is executed by CITY acting by and through its City Manager under and pursuant to Resolution R-266064 authorizing such execution and by OPTIONEE acting by and through its authorized officers.

OPTIONOR:

THE CITY OF SAN DIEGO, a municipal corporation

Date JUN 23 1986

By *David Thompson*
ASSISTANT TO THE CITY MANAGER

OPTIONEE:

BELMONT PARK ASSOCIATES,
a California limited partnership,
General Partner

Phase One Development, Inc.,
General Partner

Date 5/19/86

By *Steven L. Davis*
Steven L. Davis, President

MacHutchin Development, General Partner

Date 5/19/86

By *Graham MacHutchin*
Graham MacHutchin, President

Paul Thoryk, Inc., General Partner

Date 5/19/86

By *Paul Thoryk*
Paul Thoryk, President

EXHIBIT B

R-266064

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

APPROVED AS TO FORM AND LEGALITY THIS 13 day of August, 1986.

JOHN W. WITT, City Attorney

By V. Stahelberg
Deputy

JEW:baa(108-7)
5-8-86

Attachments: Exhibit A - Legal Description of Site (not included)
Exhibit B - Ground Lease

EXHIBIT B

-10-

OFFICIAL RECORDS. SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740



TO: Commissioners and
Interested Persons

DATE: November 10, 1986

FROM: Staff

FILE NO: 6-86-396

SUBJECT: Changes to the Revised Conditions and Findings for
Coastal Development Permit #6-86-396

Staff recommends the Revised Conditions and Findings for the Belmont Park Associates project, dated October 22, 1986, be revised to reflect several minor corrections and points of clarification. The staff report, through the Parking Provisions portion of Finding #3, follows, with the corrections summarized below.

Page 1 - (face page of staff report) corrections in description;

Pages 2 and 3 - corrections to first paragraph of Special Condition #2;

Page 3 - corrections to second paragraph of Special Condition #3;

Pages 7 and 8 - corrections to fourth paragraph of the Parking Provisions portion of Finding #3.

All remaining portions of the October 22, 1986 staff report are unchanged.

(2056A)

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-2520
(619) 297-9740

Staff: EL-50
Staff Report: October 22, 1986
Hearing Date: November 12-14, 1986

REVISED CONDITIONS AND FINDINGS

Application No.: 6-86-396

Applicant: Belmont Park Associates Agent: Graham MacHutchin

Description: Demolition of roller rink building and annexes to Mission Beach Plunge, reconstruction of indoor swimming pool room, construction of an approximately 12,000 sq.ft. annex building housing locker rooms, showers, mechanical equipment, athletic facilities, and a community meeting room, and construction of seven (7) new commercial retail buildings, totalling 70,000 sq.ft. of floor area, restaurants, food and beverage concessions and retail shops. Also, renovation of existing restroom and lifeguard facilities and construction of additional public restrooms and police shore patrol room, and construction of associated parking and landscaping improvements. Offsite improvements include construction of a pedestrian overpass over Mission Boulevard, resealing and restriping the Bonita Cove parking lots, and upgrading existing bus stops on Mission Boulevard and West Mission Bay Drive.

Lot Area	322,344 sq. ft.
Building Coverage	94,600 sq. ft. (29%)
Pavement Coverage	102,300 sq. ft. (32%)
Landscape Coverage	125,444 sq. ft. (39%)
Parking Spaces	566 (200 off-site within Bonita Cove)
Zoning	Commercial
Plan Designation	Public Park
Ht abv fin grade	45 feet (existing); 30 feet (new)

Site: Northern portion of Mission Beach Park, southwest corner of Mission Boulevard and Ventura Place, Mission Beach, San Diego, San Diego County.

Date of Commission Action: September 10, 1986

Commissioners Voting "Yes:" Contreras, Glickfeld, King, MacElvaine, Malcolm, McInnis, McMurray, Warren, Wright, Wornum

Commissioners Voting "No:" None

Substantive File Documents: Certified Mission Beach Precise Plan and Mission Beach Planned District Ordinance

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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City Council Resolutions 266131, 266132 and 266133, certifying the EIR and adopting the amendment and findings for the Mission Beach Precise Plan & Local Coastal Program Addendum Environmental Impact Report (EQD #85-0753) Staff Recommendation on City of San Diego/Mission Beach Park General Development Plan Resubmittal CCC File #6-82-543
City of San Diego Planning Report Nos. 86-135, 86-236, and 86-369
Historical Site Board Report No. 86-240
Staff Report on City of San Diego resubmitted Land Use Plans and implementing ordinances, written March 8, 1984

FINDINGS:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. Prior to transmittal of the coastal development permit, the applicant shall submit final, detailed building plans for all on-site and off-site improvements. Said plans shall be in substantial conformance with the preliminary plans herein approved. The plans shall be submitted to, reviewed and approved in writing by the Executive Director.

2. Parking Provisions. Prior to transmittal of the coastal development permit, the applicant shall submit final plans for all proposed parking. On-site parking must be maintained at the following ratios: 1 parking space for every 200 sq.ft. (gross floor area) of restaurant use (this includes all sit-down eating facilities regardless of size, plus any outdoor eating decks, courts or patios), and 1 parking space for every 400 sq.ft. (gross floor area) of all other commercial retail uses; the Plunge building, Building B (the

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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Plunge annex housing the showers, lockers, mechanical equipment and meeting room) and the interior areas exclusively used for utility hookups and metering purposes for the commercial structures are excluded from parking requirements. In addition to the parking required for all new uses, the 135 public beach parking spaces previously approved for this portion of Mission Beach Park (ref. Coastal Development Permit #6-82-543) shall be provided across Mission Boulevard in the Bonita Cove parking area. The applicant shall construct a pedestrian overpass across Mission Boulevard and restripe the Bonita Cove parking area to provide such spaces.

All proposed parking lots must conform to City of San Diego standards for size of spaces, standard/compact mix, and configuration; the plans must be stamped/signed by the City of San Diego Traffic & Engineering Department prior to submittal for the review and approval in writing of the Executive Director. Before any improvements to the Bonita Cove public parking lots occur, the exact number and location of existing parking spaces and landscaping improvements within, and surrounding, those parking lots shall be documented. Such documentation shall be submitted to the Executive Director along with the proposed new plans.

All parking spaces shall be maintained free of charge and open to both beach visitors and development patrons alike, on a first-come, first-serve basis. Any modifications to this provision (fee parking, exclusive parking areas, etc.) must receive prior review and approval from the California Coastal Commission or its successor in interest.

3. Traffic Mitigation. Prior to transmittal of the coastal development permit, the applicant shall submit documentation, in a form and content acceptable to the Executive Director, agreeing to provide a minimum of \$70,000 annually for the amelioration of traffic problems in the Mission Beach/Mission Bay community. Said documentation specifically allocating \$70,000 to traffic improvements in the Mission Beach/Mission Bay community shall be submitted to, reviewed and approved in writing by the Executive Director.

This money may be in the form of the \$70,000 minimum annual rents paid by the developer to the City of San Diego, provided that the City of San Diego (lessor), and the California Coastal Commission (permitting agency), or its successor in interest, shall enter into a memorandum of understanding to that effect. Any rents in excess of \$70,000 may be allocated to either traffic or landscaping improvements in the Mission Beach/Mission Bay community, as previously agreed upon by the San Diego City Council.

4. Landscaping Plan. Prior to the transmittal of the coastal development permit, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system, and other landscape features. Drought tolerant plant materials shall be utilized to the maximum extent feasible. Emphasis shall be placed on breaking up large parking areas and enhancing the boardwalk and Mission Boulevard frontages. Said plan shall be submitted to, reviewed by, and approved in writing by the Executive Director.

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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5. Sign Program. Prior to the erection of any signs for the approved development, the applicant shall submit a comprehensive sign program, documenting that only one monument sign, not to exceed 8 feet in height, and/or facade signs are proposed. No tall or free-standing pole signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director.

6. State Lands Commission Review. Prior to the transmittal of the coastal development permit, the applicant shall obtain a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or,
- b. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or,
- c. State lands may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

7. Applicant's Assumption of Risk. Prior to the transmittal of a coastal development permit, the applicant as lessee shall execute and record an agreement, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Site and Plan Area History. Mission Beach Park was originally developed in 1925 by John D. Spreckels. Approximately 10 acres of the total 18.7 acre site was once the "Belmont Amusement Park" site. Three structures remain from that earlier development: the Plunge building, the roller rink building, and the roller coaster. Over the years the site has come into City ownership as four separate parcels; the parcel most pertinent to the subject development is Parcel 1, granted to the City by the State Park System in 1939, after having been deeded to the State in 1934. That parcel is restricted to park uses only.

In February, 1983, the Coastal Commission approved with suggested modifications the resubmitted Mission Beach Park General Development Plan. That plan called for retention of the entire Plunge building and also

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. STANLEY, CLERK

addressed retention of the roller rink building. The swimming pool portion of the Plunge building has remained operational throughout the years, but the roller rink building is not in use at this time. The remainder of the site (excluding the roller coaster which has been leased to the Save the Coaster Committee and is currently being restored) was designated for landscaping, parking, restrooms, lifeguard services, etc. The plan did allow for limited commercial uses within the existing Plunge building.

On November 15, 1984, the Coastal Commission approved with suggested modifications the resubmitted (for the third time) Mission Beach Precise Plan and Planned District Ordinance. The previous approval of the Mission Beach Park General Development Plan was not altered in that action. The Mission Beach Precise Plan (Land Use Plan) has now been resubmitted; the only changes deal with the Mission Beach Park site itself.

2. Project Description. The applicant, as lessee, proposes to demolish portions of the existing Plunge building (all outer annexes) and the entire roller rink building. Redevelopment will include renovation of the Plunge poolroom itself, and construction of eight (8) new buildings, with a total of 70,000 sq.ft. of retail commercial floor space. Building No. 8 will house a community meeting room, lockers and showers, and is proposed to be immediately south of the main entrance to the Plunge. The seven remaining new structures will house a variety of commercial uses, including restaurants, a farmer's market, convenience food stores, fast food establishments, and retail outlets. Although the plans are still very preliminary, it is expected that approximately 25,000-30,000 sq.ft. of the proposed 70,000 sq.ft. of commercial area will be restaurant space, both enclosed areas and outdoor dining.

Because of the preliminary nature of the submitted plans, Special Condition #1 requires submittal of final building plans before the coastal development permit can be transmitted to the applicant. Those plans must be in substantial conformance with the plans approved herein. The applicant is advised that the final plans and/or future revisions could require amendments to this permit, or, in the case of radical changes, a new application and Commission review.

There will be 366 parking spaces on-site and landscaping throughout the development. The restroom and lifeguard buildings already existing will be refurbished to match the Spanish motif of the new development, and new public restrooms and facilities for use by the Shore Patrol are included in the proposal.

In addition, the applicant proposes several off-site improvements. First among these is construction of a pedestrian overpass crossing Mission Boulevard; this is proposed about one block south of the intersection of Mission Blvd. and Ventura Place. Also, the public parking areas at Bonita Cove (east of the subject site across Mission Blvd.) will be restriped to gain approximately 200 additional spaces. Improvements will be made to the existing bus stops on Mission Blvd. and West Mission Bay Drive.

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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3. Parking/Public Access/Traffic Circulation. The following Coastal Act policies address the issue of public access to the shoreline:

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

Section 30604(c).

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Mission Beach is one of the most heavily used public beach areas in San Diego County. The community includes a large percentage of beach cottages, and many community residents are short-term vacationers. Besides the permanent and temporary residents, many of whom come from out of state, the area is also a popular day-use destination point for San Diego County residents. Because people come from both within and without the community, and much of the local population is somewhat transient, all forms of access (pedestrian, private auto and public transit) must be considered in this project.

Pedestrian Access:

The subject site is the northern half of Mission Beach Park, a dedicated public parkland belonging to the City of San Diego. It is located between Mission Boulevard and the Pacific Ocean. An existing boardwalk runs along the entire western boundary of the site, providing lateral pedestrian access to Mission Beach itself. Vertical pedestrian access from Mission Blvd. to the beach is currently available to the north at Ventura Place and to the south

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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through the landscaped park area and across a paved walkway running east-west just south of the existing buildings. Upon project completion, there will also be pedestrian access through the development to the boardwalk and beach, and through the roller coaster property as well. In addition, the proposed pedestrian overpass will link Bonita Cove with the project site, making the public parking areas east of Mission Blvd. more safely accessible to foot traffic. The Commission therefore finds that adequate pedestrian access now exists throughout the Mission Beach Park site, and that the project, as conditioned, will not adversely affect, but will, with the overpass from Bonita Cove and open walk-through nature of the development, actually enhance pedestrian access to the shoreline.

Parking Provisions:

At the time the Coastal Commission reviewed and certified the Mission Beach Precise Plan (land use plan), this site was proposed for landscaping and parking, with retention of the Plunge and roller rink buildings. The Commission determined that parking standards for retail commercial uses, including restaurants, were unnecessary, due to the pedestrian-oriented nature of the Mission Beach community and the low level of development then contemplated on the subject site. The existing Plunge building contains approximately 55,000 sq.ft. of commercial lease area, on the ground floor and a balcony level; although this would lend well to fast food, beach rental, souvenir shops and the like, the existing lease area is not conducive to full-service restaurants.

Because of the intense commercial development now proposed, the Commission has applied the Beach Impact Area (BIA) parking standards certified in the land use plans for the surrounding beach communities. Those standards require 1 parking space for every 200 sq.ft. of restaurant space and 1 parking space for every 400 sq.ft. of retail commercial and similar uses; all parking ratios are based on gross floor area. These parking ratios, especially the restaurant ratio, are far less restrictive than standards adopted by most local governments, and represent a compromise position between the Coastal Commission and the City of San Diego.

The Commission had historically applied a parking ratio of 1 space per every 100 sq.ft. of gross floor area for restaurants, and that ratio was also proposed by the City of San Diego in its earlier land use plan submittals. The 1 space per 200 sq.ft. for restaurants was proposed by the City when land use plans for North City, Pacific Beach, Ocean Beach and the Peninsula segments were resubmitted to the Commission in early 1984. At that time, as a compromise to facilitate resolving the remaining differences between the City and Commission, the Commission did adopt the 1:200 ratio, based on gross floor area of all restaurant uses.

The applicant is proposing a total of 566 parking spaces as part of this development, with 366 spaces proposed on-site. Special Condition #2 addresses the Commission's concern that adequate parking be provided. The condition requires that final plans for all parking areas be submitted for Executive

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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Director review and approval. These plans must meet the parking requirements outlined above, namely 1 space for every 200 sq.ft. of restaurant use and 1 space for every 400 sq.ft. for all new retail floor space. The applicant is not required to provide parking for the existing Plunge pool room, which occupies approximately 21,000 sq.ft. of floor area, or the approximately 12,000 to 14,000 sq.ft. pool annex structure (Building 8). Since the individual lease spaces have not yet been designed, it is unknown just how much lease area will eventually be devoted to restaurant use. Therefore, the special condition allows for refining and modifying of plans, as long as the final lease areas meet the parking ratio requirements. All ratios are applied to gross floor area, and the restaurant designation covers all leaseholds that provide sit-down eating service, as well as all outdoor eating areas (decks, patios, courts, etc.).

Before the parking lot plans can be submitted for Executive Director approval, they must be reviewed by the City of San Diego's Traffic & Engineering Department, to assure that all spaces meet city requirements as to size and type (compact, regular and handicapped). Furthermore, the City must verify that the layout of all parking areas meets city standards for adequate ingress, egress and turnaround space.

In addition to the parking outlined above, the applicant must also maintain the 135 public beach parking spaces proposed in the previous landscaping and parking plan approved by the Commission as Coastal Development Permit 6-82-543. Special Condition #2, as approved by the Commission, allows these spaces to be provided within the restriping project to occur at the Bonita Cove public parking lots in conjunction with this development (details below). All on-site parking spaces are to be maintained free of charge and are to be available to either project patrons or the beach-going public on a first-come, first-serve basis. If the applicant should wish to implement fee parking in the future, or establish separate project and public parking areas, the special condition provides that such changes would require an amendment to this permit.

The applicant further proposes adding approximately 200 off-site parking spaces through the restriping of the public parking lots at Bonita Cove, just east of Mission Blvd. The Commission is reluctant to count such mitigation towards the parking actually needed for private development, since these are public lots and restriping to gain additional spaces is an option the City can exercise at any time. While the applicant can provide the necessary parking for its development, it will involve the displacement of a minimum 135 spaces. In this case, the provision of a larger number of spaces across the street (Mission Boulevard) has been credited to the developer as partial mitigation, along with all other mitigating factors, for this displacement and for the traffic impacts discussed in detail on the following pages. Furthermore, Special Condition #2 requires that the applicant document the number of parking spaces actually existing now on the Bonita Cove lots, and the existing configurations as well. This is to insure that the new parking spaces will not be acquired at the expense of existing landscaping in, or surrounding, those parking areas.

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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The Commission finds that Special Condition #2 will assure the provision of adequate on-site parking facilities to serve the new development, and provides for the retention of the public spaces approved in Coastal Development Permit 6-82-543 within the immediate area as well. The project, as conditioned, can be found consistent with the parking policies of the Coastal Act.

(2052A)

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. IYEE, RECORDER

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

Staff: EL-SD
Staff Report: October 22, 1986
Hearing Date: November 12-14, 1986

REVISED CONDITIONS AND FINDINGS

Application No.: 6-86-396

Applicant: Belmont Park Associates Agent: Graham MacHutchin

Description: Demolition of roller rink building and annexes to Mission Beach Plunge, reconstruction of indoor swimming pool room, and construction of eight (8) new buildings, totalling 70,000 sq.ft. of floor area, housing locker rooms, showers, mechanical equipment, athletic facilities, community meeting room, restaurants, food and beverage concessions and retail shops. Also, renovation of existing restroom and lifeguard facilities and construction of additional public restrooms and police shore patrol room, and construction of associated parking and landscaping improvements. Offsite improvements include construction of a pedestrian overpass over Mission Boulevard, resealing and restriping the Bonita Cove parking lots, and upgrading existing bus stops on Mission Boulevard and West Mission Bay Drive.

Lot Area	322,344 sq. ft.
Building Coverage	94,600 sq. ft. (29%)
Pavement Coverage	102,300 sq. ft. (32%)
Landscape Coverage	125,444 sq. ft. (39%)
Parking Spaces	566 (200 off-site within Bonita Cove)
Zoning	Commercial
Plan Designation	Public Park
Ht abv fin grade	45 feet (existing); 30 feet (new)

Site: Northern portion of Mission Beach Park, southwest corner of Mission Boulevard and Ventura Place, Mission Beach, San Diego, San Diego County.

Date of Commission Action: September 10, 1986

Commissioners Voting "Yes:" Contreras, Glickfeld, King, MacElvaine, Malcolm, McInnis, McMurray, Warren, Wright, Wornum

Commissioners Voting "No:" None

Substantive File Documents: Certified Mission Beach Precise Plan and Mission Beach Planned District Ordinance
City Council Resolutions 266131, 266132 and 266133, certifying the EIR and adopting the amendment and findings for the Mission Beach

EXHIBIT C

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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Precise Plan & Local Coastal Program Addendum
Environmental Impact Report (EQD #85-0753)
Staff Recommendation on City of San Diego/Mission
Beach Park General Development Plan Resubmittal
CCC File #6-82-543
City of San Diego Planning Report Nos. 86-135,
86-236, and 86-369
Historical Site Board Report No. 86-240
Staff Report on City of San Diego resubmitted
Land Use Plans and implementing ordinances,
written March 8, 1984

FINDINGS:**I. Approval with Conditions.**

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. Prior to transmittal of the coastal development permit, the applicant shall submit final, detailed building plans for all on-site and off-site improvements. Said plans shall be in substantial conformance with the preliminary plans herein approved. The plans shall be submitted to, reviewed and approved in writing by the Executive Director.

2. Parking Provisions. Prior to transmittal of the coastal development permit, the applicant shall submit final plans for all proposed parking. On-site parking must be maintained at the following ratios: 1 parking space for every 200 sq.ft. (gross floor area) of restaurant use (this includes all sit-down eating facilities regardless of size, plus any outdoor eating decks, courts or patios), and 1 parking space for every 400 sq.ft. (gross floor area) of all other uses (this includes all commercial retail spaces, and excludes the community meeting room). In addition to the parking required for all new uses, the 135 public beach parking spaces previously approved for this portion of Mission Beach Park (ref. 6-82-543) shall be provided across Mission

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Boulevard in the Bonita Cove parking area. The applicant shall construct a pedestrian overpass across Mission Boulevard and restripe the Bonita Cove parking area to provide such spaces.

All proposed parking lots must conform to City of San Diego standards for size of spaces, standard/compact mix, and configuration; the plans must be stamped/signed by the City of San Diego Traffic & Engineering Department prior to submittal for the review and approval in writing of the Executive Director. Before any improvements to the Bonita Cove public parking lots occur, the exact number and location of existing parking spaces and landscaping improvements within, and surrounding, those parking lots shall be documented. Such documentation shall be submitted to the Executive Director along with the proposed new plans.

All parking spaces shall be maintained free of charge and open to both beach visitors and development patrons alike, on a first-come, first-serve basis. Any modifications to this provision (fee parking, exclusive parking areas, etc.) must receive prior review and approval from the California Coastal Commission or its successor in interest.

3. Traffic Mitigation. Prior to transmittal of the coastal development permit, the applicant shall submit documentation, in a form and content acceptable to the Executive Director, agreeing to provide a minimum of \$70,000 annually for the amelioration of traffic problems in the Mission Beach/Mission Bay community. Said documentation specifically allocating \$70,000 to traffic improvements in the Mission Beach/Mission Bay community shall be submitted to, reviewed and approved in writing by the Executive Director.

This money may be in the form of the \$70,000 minimum annual rents paid by the developer to the City of San Diego, provided that the applicant (lessee), or its successor in interest, the City of San Diego (lessor), and the California Coastal Commission (permitting agency), or its successor in interest, shall enter into a legally-binding agreement to that effect. Any rents in excess of \$70,000 may be allocated to either traffic or landscaping improvements in the Mission Beach/Mission Bay community, as previously agreed upon by the San Diego City Council.

4. Landscaping Plan. Prior to the transmittal of the coastal development permit, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system, and other landscape features. Drought tolerant plant materials shall be utilized to the maximum extent feasible. Emphasis shall be placed on breaking up large parking areas and enhancing the boardwalk and Mission Boulevard frontages. Said plan shall be submitted to, reviewed by, and approved in writing by the Executive Director.

5. Sign Program. Prior to the erection of any signs for the approved development, the applicant shall submit a comprehensive sign program, documenting that only one monument sign, not to exceed 8 feet in height, and/or facade signs are proposed. No tall or free-standing pole signs shall be allowed. Said plans shall be subject to the review and written approval of

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the Executive Director.

6. State Lands Commission Review. Prior to the transmittal of the coastal development permit, the applicant shall obtain a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or,
- b. State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or,
- c. State lands may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

7. Applicant's Assumption of Risk. Prior to the transmittal of a coastal development permit, the applicant as lessee shall execute and record an agreement, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Site and Plan Area History. Mission Beach Park was originally developed in 1925 by John O. Spreckels. Approximately 10 acres of the total 18.7 acre site was once the "Belmont Amusement Park" site. Three structures remain from that earlier development: the Plunge building, the roller rink building, and the roller coaster. Over the years the site has come into City ownership as four separate parcels; the parcel most pertinent to the subject development is Parcel 1, granted to the City by the State Park System in 1939, after having been deeded to the State in 1934. That parcel is restricted to park uses only.

In February, 1983, the Coastal Commission approved with suggested modifications the resubmitted Mission Beach Park General Development Plan. That plan called for retention of the entire Plunge building and also addressed retention of the roller rink building. The swimming pool portion of the Plunge building has remained operational throughout the years, but the roller rink building is not in use at this time. The remainder of the site (excluding the roller coaster which has been leased to the Save the Coaster Committee and is currently being restored) was designated for landscaping.

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parking, restrooms, lifeguard services, etc. The plan did allow for limited commercial uses within the existing Plunge building.

On November 15, 1984, the Coastal Commission approved with suggested modifications the resubmitted (for the third time) Mission Beach Precise Plan and Planned District Ordinance. The previous approval of the Mission Beach Park General Development Plan was not altered in that action. The Mission Beach Precise Plan (Land Use Plan) has now been resubmitted; the only changes deal with the Mission Beach Park site itself.

2. Project Description. The applicant, as lessee, proposes to demolish portions of the existing Plunge building (all outer annexes) and the entire roller rink building. Redevelopment will include renovation of the Plunge poolroom itself, and construction of eight (8) new buildings, with a total of 70,000 sq.ft. of retail commercial floor space. Building No. 8 will house a community meeting room, lockers and showers, and is proposed to be immediately south of the main entrance to the Plunge. The seven remaining new structures will house a variety of commercial uses, including restaurants, a farmer's market, convenience food stores, fast food establishments, and retail outlets. Although the plans are still very preliminary, it is expected that approximately 25,000-30,000 sq.ft. of the proposed 70,000 sq.ft. of commercial area will be restaurant space, both enclosed areas and outdoor dining.

Because of the preliminary nature of the submitted plans, Special Condition #1 requires submittal of final building plans before the coastal development permit can be transmitted to the applicant. Those plans must be in substantial conformance with the plans approved herein. The applicant is advised that the final plans and/or future revisions could require amendments to this permit, or, in the case of radical changes, a new application and Commission review.

There will be 366 parking spaces on-site and landscaping throughout the development. The restroom and lifeguard buildings already existing will be refurbished to match the Spanish motif of the new development, and new public restrooms and facilities for use by the Shore Patrol are included in the proposal.

In addition, the applicant proposes several off-site improvements. First among these is construction of a pedestrian overpass crossing Mission Boulevard; this is proposed about one block south of the intersection of Mission Blvd. and Ventura Place. Also, the public parking areas at Bonita Cove (east of the subject site across Mission Blvd.) will be restriped to gain approximately 200 additional spaces. Improvements will be made to the existing bus stops on Mission Blvd. and West Mission Bay Drive.

3. Parking/Public Access/Traffic Circulation. The following Coastal Act policies address the issue of public access to the shoreline:

Section 30212.

- (a) Public access from the nearest public roadway to

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the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

Section 30604(c).

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Mission Beach is one of the most heavily used public beach areas in San Diego County. The community includes a large percentage of beach cottages, and many community residents are short-term vacationers. Besides the permanent and temporary residents, many of whom come from out of state, the area is also a popular day-use destination point for San Diego County residents. Because people come from both within and without the community, and much of the local population is somewhat transient, all forms of access (pedestrian, private auto and public transit) must be considered in this project.

Pedestrian Access:

The subject site is the northern half of Mission Beach Park, a dedicated public parkland belonging to the City of San Diego. It is located between Mission Boulevard and the Pacific Ocean. An existing boardwalk runs along the entire western boundary of the site, providing lateral pedestrian access to Mission Beach itself. Vertical pedestrian access from Mission Blvd. to the beach is currently available to the north at Ventura Place and to the south through the landscaped park area and across a paved walkway running east-west just south of the existing buildings. Upon project completion, there will also be pedestrian access through the development to the boardwalk and beach, and through the roller coaster property as well. In addition, the proposed pedestrian overpass will link Bonita Cove with the project site, making the public parking areas east of Mission Blvd. more safely accessible to foot

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traffic. The Commission therefore finds that adequate pedestrian access now exists throughout the Mission Beach Park site, and that the project, as conditioned, will not adversely affect, but will, with the overpass from Bonita Cove and open walk-through nature of the development, actually enhance pedestrian access to the shoreline.

Parking Provisions:

At the time the Coastal Commission reviewed and certified the Mission Beach Precise Plan (land use plan), this site was proposed for landscaping and parking, with retention of the Plunge and roller rink buildings. The Commission determined that parking standards for retail commercial uses, including restaurants, were unnecessary, due to the pedestrian-oriented nature of the Mission Beach community and the low level of development then contemplated on the subject site. The existing Plunge building contains approximately 55,000 sq.ft. of commercial lease area, on the ground floor and a balcony level; although this would lend well to fast food, beach rental, souvenir shops and the like, the existing lease area is not conducive to full-service restaurants.

Because of the intense commercial development now proposed, the Commission has applied the Beach Impact Area (BIA) parking standards certified in the land use plans for the surrounding beach communities. Those standards require 1 parking space for every 200 sq.ft. of restaurant space and 1 parking space for every 400 sq.ft. of retail commercial and similar uses; all parking ratios are based on gross floor area. These parking ratios, especially the restaurant ratio, are far less restrictive than standards adopted by most local governments, and represent a compromise position between the Coastal Commission and the City of San Diego.

The Commission had historically applied a parking ratio of 1 space per every 100 sq.ft. of gross floor area for restaurants, and that ratio was also proposed by the City of San Diego in its earlier land use plan submittals. The 1 space per 200 sq.ft. for restaurants was proposed by the City when land use plans for North City, Pacific Beach, Ocean Beach and the Peninsula segments were resubmitted to the Commission in early 1984. At that time, as a compromise to facilitate resolving the remaining differences between the City and Commission, the Commission did adopt the 1:200 ratio, based on gross floor area of all restaurant uses.

The applicant is proposing a total of 566 parking spaces as part of this development, with 366 spaces proposed on-site. Special Condition #2 addresses the Commission's concern that adequate parking be provided. The condition requires that final plans for all parking areas be submitted for Executive Director review and approval. These plans must meet the parking requirements outlined above, namely 1 space for every 200 sq.ft. of restaurant use and 1 space for every 400 sq.ft. for all new retail floor space. The applicant is not required to provide parking for the existing Plunge pool room, which occupies approximately 30,000 sq.ft. of floor area, or the approximately 6,000 sq.ft. community meeting room. Since the individual lease spaces have not yet

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been designed, it is unknown just how much lease area will eventually be devoted to restaurant use. Therefore, the special condition allows for refining and modifying of plans, as long as the final lease areas meet the parking ratio requirements. All ratios are applied to gross floor area, and the restaurant designation covers all leaseholds that provide sit-down eating service, as well as all outdoor eating areas (decks, patios, courts, etc.).

Before the parking lot plans can be submitted for Executive Director approval, they must be reviewed by the City of San Diego's Traffic & Engineering Department, to assure that all spaces meet city requirements as to size and type (compact, regular and handicapped). Furthermore, the City must verify that the layout of all parking areas meets city standards for adequate ingress, egress and turnaround space.

In addition to the parking outlined above, the applicant must also maintain the 135 public beach parking spaces proposed in the previous landscaping and parking plan approved by the Commission as Coastal Development Permit 6-82-543. Special Condition #2, as approved by the Commission, allows these spaces to be provided within the restriping project to occur at the Bonita Cove public parking lots in conjunction with this development (details below). All on-site parking spaces are to be maintained free of charge and are to be available to either project patrons or the beach-going public on a first-come, first-serve basis. If the applicant should wish to implement fee parking in the future, or establish separate project and public parking areas, the special condition provides that such changes would require an amendment to this permit.

The applicant further proposes adding approximately 200 off-site parking spaces through the restriping of the public parking lots at Bonita Cove, just east of Mission Blvd. The Commission is reluctant to count such mitigation towards the parking actually needed for private development, since these are public lots and restriping to gain additional spaces is an option the City can exercise at any time. While the applicant can provide the necessary parking for its development, it will involve the displacement of a minimum 135 spaces. In this case, the provision of a larger number of spaces across the street (Mission Boulevard) has been credited to the developer as partial mitigation, along with all other mitigating factors, for this displacement and for the traffic impacts discussed in detail on the following pages. Furthermore, Special Condition #2 requires that the applicant document the number of parking spaces actually existing now on the Bonita Cove lots, and the existing configurations as well. This is to insure that the new parking spaces will not be acquired at the expense of existing landscaping in, or surrounding, those parking areas.

The Commission finds that Special Condition #2 will assure the provision of adequate on-site parking facilities to serve the new development, and provides for the retention of the public spaces approved in Coastal Development Permit 6-82-543 within the immediate area as well. The project, as conditioned, can be found consistent with the parking policies of the Coastal Act.

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Traffic Circulation:

Mission Beach is a narrow strip of land extending south as a peninsula to the entrance of Mission Bay. The community is accessed from Pacific Beach, located just north of Mission Beach, and by West Mission Bay Drive, which enters the community from Mission Bay Park to the east. There is only one major north-south road, Mission Blvd., and one major intersection, Mission Blvd. and West Mission Bay Drive (A note of clarification: east of Mission Blvd., the road is named West Mission Bay Drive; the one-block extension of that same street west of Mission Blvd., ending at the boardwalk, is named Ventura place.). The subject site is at the southwest corner of that intersection.

Traffic circulation in the Mission Beach community has been at critical levels for the past several summers, with the police having to close down access to the South Mission Beach (Mission Boulevard south of Ventura Place/West Mission Bay Drive) area by mid-to-late-morning some weekends and holidays. Once all available public parking is taken, vehicles are turned away from the community. The entire intersection of Mission Boulevard/West Mission Bay Drive/Ventura Place was closed this July 4th from 9:30 a.m. until 4:00 p.m. No practical solutions to this situation have been devised as yet.

The certified EIR for the subject proposal verifies that existing traffic conditions in the area are at or near capacity (Level of Service "E" or "F") during peak periods. The EIR further states that this project is expected to generate additional daily traffic of 3,100 vehicular trip ends on weekdays and 4,500 vehicular trip ends on weekends. Of the 3,100 trips each weekday, only 300 of them are anticipated to be associated with the Plunge and meeting room; the remaining 2,800 will be generated by the commercial development. Of this total, the EIR indicates that the restaurants are expected to be the main attraction to persons coming from outside the immediate community and for many Mission Beach residents as well. However, the EIR adopted the position that competition between beach visitors and restaurant patrons would be at a minimum as most restaurants would only operate during the evening hours.

Although the expected hours of restaurant operation will minimize, to some extent, the project's impacts on traffic circulation, the Commission finds that further mitigation is essential in light of the already existing critical traffic situation. The Commission understands that the City of San Diego is seeking long-range solutions to the traffic circulation problems of its beach communities, especially the Mission Beach, Pacific Beach, Mission Bay Park area. This particular private development project will provide a minimum of \$70,000 annual rental income to the City, and the City has earmarked that income for traffic and/or landscaping improvements within the Mission Beach/Mission Bay area.

The Commission has concerns that this policy could allow the entire income to be used for landscaping maintenance projects, with no improvements made to traffic problems. Therefore, Special Condition #3, as adopted by the Commission on September 10, 1986, requires an agreement between the applicant, the City and the Commission, guaranteeing that the first \$70,000 in annual

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rents will be applied to traffic solutions only. Although the enhancement of landscaping throughout the beach communities is important, the need for traffic improvements far outweighs that need at this time. Rents in excess of \$70,000 may be applied to either traffic or landscaping, at the City's discretion.

The applicant has proposed several off-site improvements as further mitigation for parking and traffic-related impacts; these include the pedestrian overpass, restriping of Bonita Cove parking lots to gain additional parking spaces, and improvements to existing transit facilities. While the Commission recognizes the applicant's good intent in upgrading existing bus stops that serve the project site, it also recognizes that this is not likely to increase transit ridership in any appreciable way. Also, it is not anticipated that the pedestrian overpass and increased public parking spaces in the Bonita Cove parking lots will decrease congestion at the intersection of Mission Blvd. and West Mission Bay Drive. Project patrons are still likely to seek parking within the development first, and utilize the eastern lots only if the development lots are full. This would require two trips through the critical intersection, rather than one, for persons approaching the project from the north or east.

The Commission finds that the existing traffic situation, compounded by the project herein approved, justifies Special Condition #3. Protecting and enhancing the public's right of access to all public recreation areas of Mission Beach is a primary goal of the Coastal Act. Special Condition #3 can offer some assurance that money will be available to fund traffic improvements. The \$70,000 annual rents would more than cover the existing SunRunner (beach shuttle) operation, which has been subsidized by the City for the past couple years at approximately \$30,000 annually. The existing shuttle service, however, operates a curtailed route, offering only limited service to the Pacific Beach and Mission Beach communities with no connection to Mission Bay Park. The Commission is interested in seeing the extension of that service to remote parking lots throughout Mission Bay, as was originally attempted several years ago, and this new source of funding might provide the means to do that. Beyond expanded shuttle service, the City may devise other programs of traffic improvements, which could be funded by the monies provided in the required agreement.

In summary, the Commission finds that this proposal will have serious and unmitigated impacts on public access without the inclusion of Special Conditions #2 and #3. Only as conditioned can the project be found consistent with Sections 30212 and 30252 of the Coastal Act, as well as with all other public access and recreation policies, as specifically required in Section 30604(e) and detailed in the following finding.

4. Land Use/Coastal Recreation. The issue of appropriate use for oceanfront property is addressed as follows:

Section 30220.

Coastal areas suited for water-oriented recreational

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activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221.

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223.

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

This project involves the leasing of publicly-owned parkland to a private commercial interest. The leased portion is slightly less than half the total park site. The commercial development will use approximately 10% of the park's land, with the Plunge, community meeting room, showers, lockers, lifeguard and police facilities also present on the leased area. The City's share of revenue generated by this development is intended for maintenance and improvements to the rest of Mission Beach Park, and for other public areas within the Mission Beach community.

This northern "half" of Mission Beach Park is the former site of Belmont Amusement Park, and, as such, the land has historically been used for commercial-recreation purposes. Although the proposed restaurant and retail project offers a different form of commercial development than an amusement park, dining and shopping are legitimately recognized as recreational activities. In addition, the existing beach support facilities - the lifeguard tower and public restrooms - will be upgraded and expanded through this proposal. Also, the Plunge will remain in operation for public recreational swimming. Therefore, the Commission finds the project, as proposed and conditioned, consistent with Sections 30220, 30221 and 30223 of the Act.

5. Visual Impacts/Historic Structures. The Coastal Act addresses the issue of visual amenities as follows:

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly

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scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

This site is in a visually prominent setting, located at the very heart of Mission Beach, within a City-owned public park. The boardwalk fronting the beach runs along the entire western boundary of the site, and the roller coaster (not a part of this project, but a landmark for visitors) is at the northeast corner of the park. This corner is basically the entrance to the whole park complex. All these factors contribute to the importance of sensitive design and adequate landscaping in the proposed commercial development.

The City is requiring that all structures be designed to coordinate with the architectural style of the existing Plunge building. Although final building plans have not yet been prepared, the preliminary plans appear to be consistent with this requirement. In addition, the City is requiring that, to the extent feasible, all architectural embellishments on portions of structures that will be demolished shall be preserved and used in the new buildings. Where that cannot be done, castings of those features will be taken and new moldings used in building decoration. However, specific design features are not generally a Coastal Act issue, except as they relate to the conformity of new development with the surrounding neighborhood. In this case, the new structures will be compatible with the style of the existing buildings and with the scale (height) of surrounding residential development as well.

What is more rightly a Coastal Act concern is that the site be properly landscaped and that limitations be placed on the size and type of signage allowed. Special Conditions #4 and #5 address these concerns. The applicant has preliminarily proposed some perimeter landscaping and parking lot trees. Landscaping within the commercial area will consist primarily of planter boxes and low-growing plants against the building facades. Most, if not all, of the leased portion of Mission Beach Park will be paved, with patio, terrace and walkway areas throughout. It is expected that the final landscaping plans will be similar to that described above. Although a coordinated sign plan has not yet been prepared, the requirements of Special Condition #5 are in accord with the requirements of City of San Diego Zoning Administration regarding the types of signage that are allowed.

A matter of much community concern is the possible historic significance of the entire Plunge building and the roller rink building, and an effort has been made to have these structures placed on the National Register of Historic Places. However, although the roller coaster is on that list, neither the Plunge nor the roller rink has been so designated. Furthermore, the question of historic values is not addressed in the Coastal Act. The Act does contain one policy (Section 30244) dealing with archeological and paleontological sites, but that could not be applied in this instance where the structures only date from the 1920's. Therefore, the issue of historic significance cannot be addressed by the Coastal Commission.

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Another concern raised in Section 30251 is the preservation of public views from major coastal access roads and designated viewpoints. In this particular case, the existing Plunge building attains a height of 45 feet, 15 feet more than any of the proposed new structures. In addition, public views from Mission Boulevard, the major north-south coastal access road, are already severely impaired by the Plunge building and roller coaster, both of which will remain after project completion. Therefore, the Commission finds the project, as conditioned, consistent with Section 30251 of the Act.

6. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act.

This site is designated as public parkland in the Mission Beach Precise Plan and Planned District Ordinance. According to the Mission Beach Land Use Plan (Precise Plan), where the City finds it appropriate, commercial-recreation uses can be found consistent with a park designation, as evidenced by the former amusement park; this position was supported by the Commission's findings on the Mission Beach Park site in February, 1983, where limited commercial uses in a renovated Plunge were found consistent with Coastal Act policy for public oceanfront areas. However, the previously-certified Mission Beach Precise Plan called for retention of the entire Plunge building and also proposed retention of the roller rink building. That land use plan was resubmitted with the modifications required to allow this development to occur; that resubmittal was reviewed and approved by the Commission concurrent with this permit approval. This project required no changes in the Mission Beach Planned District Ordinance, and the Commission's permit decision is adequate to carry out the adopted zoning ordinances, as well as the Chapter 3 policies of the Coastal Act.

As mentioned, the subject development was reviewed concurrent with an LUP segment resubmittal for the Mission Beach Park area. The Commission's findings on that resubmittal dealt with the appropriateness of using dedicated public parkland for private, albeit visitor-serving, commercial development and allowing demolition of portions of the Plunge building and the entire roller rink building. The issue of public beach access was also addressed in detail; the Commission hereby incorporates those findings by reference and finds the subject permit application, as conditioned, consistent with the LUP segment, as certified.

Finally, the last two Special Conditions, #6 and #7, are fairly standard conditions in any oceanfront development. Because it is often hard to determine exact boundaries and land ownership, the condition for State Lands Commission review is attached. Then, because this is private development, albeit on leased public land, the Commission is requiring the applicant to record an agreement assuming all risks inherent in development along the coastline. With these last two conditions, and all previously described special conditions, the Commission can find the project consistent with the certified land use plan and planned district ordinance, as well as with all

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applicable policies of the Coastal Act. Therefore, project approval, as conditioned, should not prejudice the ability of the City of San Diego to complete a fully certifiable LCP for the Mission Beach community.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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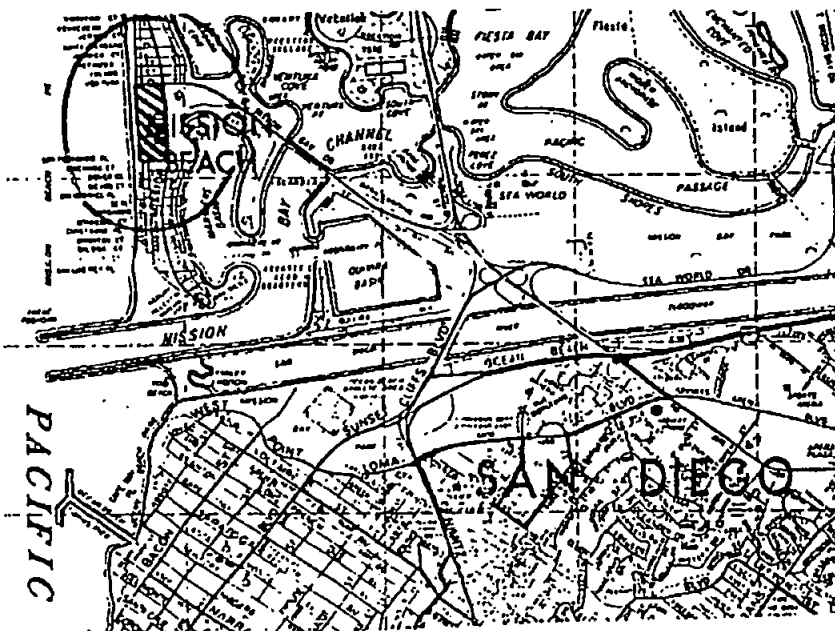
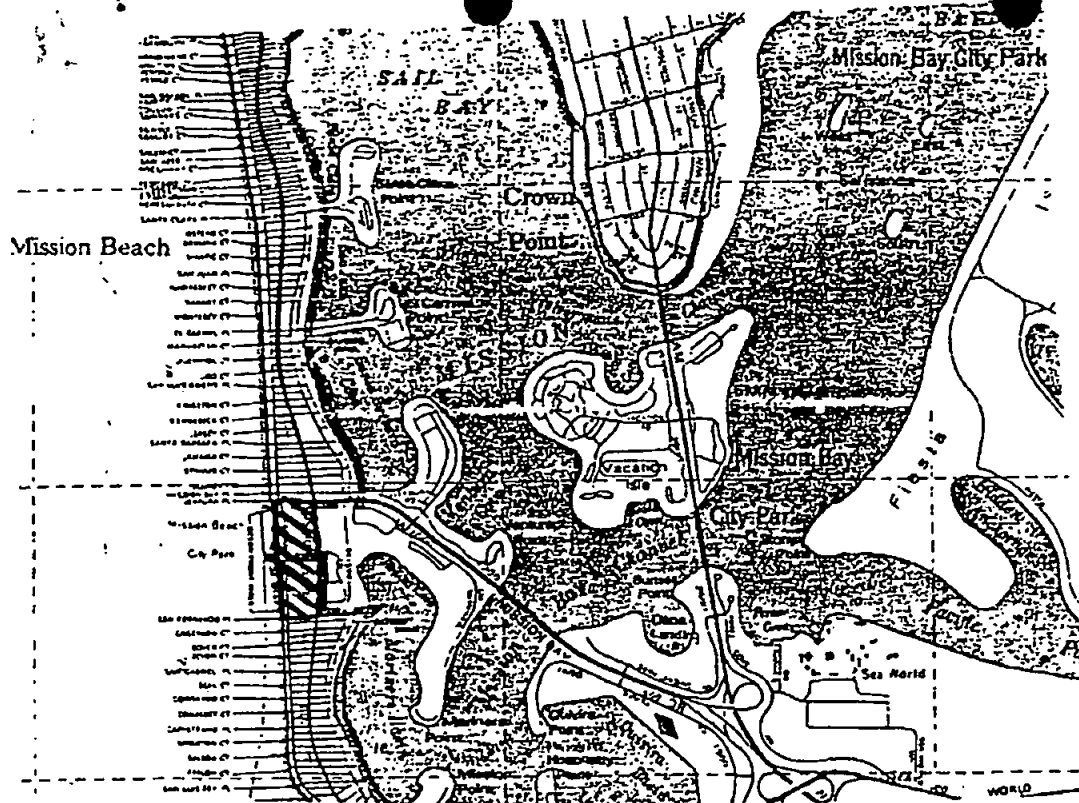


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EXHIBIT NO. 1
APPLICATION NO. 6-86-396
Location Maps
California Coastal Commission

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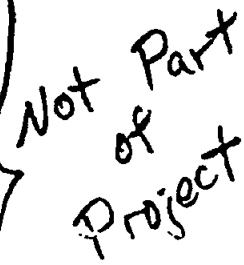


EXHIBIT NO. 2
APPLICATION NO. 6-86-396
Site Plan

#5

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SAN DIEGO
AND
THE CALIFORNIA COASTAL COMMISSION

THIS MEMORANDUM OF UNDERSTANDING, dated March 5, 1987, is entered into by and between The City of San Diego ("City") and the California Coastal Commission ("Commission") pursuant to the authorities, policies and regulations of said organizations.

WHEREAS, on June 30, 1986, the City Council authorized the City Manager to enter into an Option Agreement ("Agreement") with Belmont Park Associates and, upon satisfaction of certain conditions, execute a lease agreement with that organization;

WHEREAS, the Agreement provides for a minimum annual rent of \$705,200 of which \$635,200 would be applied towards financing of \$5.6 Million in public improvements. The remaining \$70,000 will be paid annually in cash. The authorizing Resolution No. 266064 provides that an amount equal to the minimum cash rent be placed in a special fund to be utilized for two purposes:

"1. To ameliorate the traffic problems that exist there now; and

2. To further enhance a much broader community landscaping project that will be defined by the community at a later date."

WHEREAS, the City Auditor and Comptroller has established a special fund for such purposes;

WHEREAS, pursuant to the California Coastal Act of 1976, Belmont Park Associates ("Applicant") applied to the Commission for a coastal development permit;

WHEREAS, Commission, pursuant to the California Coastal Act of 1976, approved Coastal Development Permit No. 6-86-396 on September 10, 1986;

WHEREAS, Coastal Development Permit No. 6-86-396 was subject to terms and conditions including, but not limited to, the following Special Condition:

"3. Traffic Mitigation. Prior to transmittal of the coastal development permit, the applicant shall submit documentation, in a form and content acceptable to the Executive Director, agreeing to provide a minimum of \$70,000 annually for the amelioration of traffic problems in the Mission Beach/Mission Bay community. Said documentation

specifically allocating \$70,000 to traffic improvements in the Mission Beach/Mission Bay community shall be submitted to, reviewed and approved in writing by the Executive Director.

This money may be in the form of the \$70,000 minimum annual rents paid by the developer to the City of San Diego, provided that the applicant (lessee), or its successor in interest, the City of San Diego (lessor), and the California Coastal Commission (permitting agency), or its successor in interest, shall enter into a legally-binding agreement to that effect. Any rents in excess of \$70,000 may be allocated to either traffic or landscaping improvements in the Mission Beach/Mission Bay community, as previously agreed upon by the San Diego City Council."

WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976, and that a permit could, therefore, not have been granted; and

WHEREAS, it is intended that this Memorandum of Understanding shall satisfy Special Condition No. 3 of Coastal Development Permit No. 6-86-396.

NOW, THEREFORE, City and Commission hereby agree to the following:

Section 1. The Option Agreement between City and Belmont Park Associates provides for a minimum annual rent of \$705,200 of which \$635,200 be applied towards financing of \$5.6 Million in public improvements. The remaining \$70,000 will be paid annually in cash. The authorizing resolution provides that the amount equal to the minimum cash rent will be placed in a special fund to be utilized for two purposes:

"1. To ameliorate the traffic problems that exist there now; and

2. To further enhance a much broader community landscaping project that will be defined by the community at a later date."

Section 2. The City Auditor and Comptroller has established the special fund referred to in Section 1 hereof.

Section 3. A condition of the approval of Coastal Development Permit No. 6-86-396 is that at least \$70,000 annually, the same amount of the minimum cash rent, be spent on traffic amelioration issues in the Mission Beach/Mission Bay community. City agrees to commit the \$70,000, referred to in Section 1 hereof, to traffic amelioration in the Mission Beach/Mission Bay community.

Section 4. City shall notify Commission prior to any change in the commitment stated in Section 3 hereof.

Section 5. Control and administration of this Memorandum of Understanding is under the jurisdiction of the City Manager of City and the Executive Director of Commission. Any communication relative to the terms or conditions or any changes thereto, or any notice or notices provided for by this Memorandum of Understanding or by law required to be given or served upon City shall be addressed to:

CITY OF SAN DIEGO
City Manager
202 C Street, 9th Floor
San Diego, California 92101

Any notice or notices provided for by this Memorandum of Understanding or by law required to be given or served upon Commission may be given or served by certified letter, deposited in the United States Mail, postage pre-paid, and addressed to:

CALIFORNIA COASTAL COMMISSION
Executive Director
1333 Camino del Rio South
Suite 125
San Diego, California 92108

Section 6. This Memorandum of Understanding may be amended in writing by the mutual consent of the parties.

THE CITY OF SAN DIEGO

CALIFORNIA COASTAL COMMISSION

By *J. P. Fowler*
City Manager

By *Charles Damm*
Executive Director
Assistant District Director

I HEREBY APPROVE the form and legality of the foregoing agreement this 5 day of March, 1987.

THE CITY OF SAN DIEGO

CALIFORNIA COASTAL COMMISSION

By

John W. Witt, City Attorney

By

General Counsel

#6

OPERATING MEMORANDUM TO PERCENTAGE LEASE

This Operating Memorandum to Percentage Lease by and between the City of San Diego (the "City") and Belmont Park Associates, a California limited partnership ("Lessee"), is entered into as of this 23 day of DECEMBER, 1987, with reference to the following facts:

- A. City and Lessee entered into a Percentage Lease dated March 4, 1987, with respect to certain real property described therein.
- B. Section 3.03 is ambiguous and the parties desire to clarify such provision.
- C. The agreed legal description attached to said Percentage Lease conflicts with the legal description contained in the lease executed between the City and Save The Coaster Committee. The parties desire to resolve such conflict.

NOW, THEREFORE, the parties agree as follows:

- 1. On Page 9, Section 3.03, the following sentence is included: "In no event shall the total rent credit exceed \$5,617,700." This provision shall be interpreted as follows:

"In no event shall the total rent credit exceed \$5,617,700, plus interest expense."

- 2. Exhibit "A" to said Percentage Lease shall be deleted and Exhibit "A" attached hereto shall be substituted therefor and be defined as the Premises therein. For the purpose of (i) interpretation of the property vested under Proposition "G", and (ii) defining areas available to Lessee for the operation and maintenance of park/visitor oriented commercial and recreational uses, the legal description originally attached to said Ground Lease shall govern.

THE CITY OF SAN DIEGO

By: [Signature]
DEP City Manager

BELMONT PARK ASSOCIATES,
a California limited partnership

PHASE ONE DEVELOPMENT, INC.

By: [Signature]
Steven L. Davis, President

APPROVED as to form and legality this 22 day of December,
1987.

By: [Signature]
Deputy City Attorney

March 4, 1987

REV. APRIL 16, 1987

LEGAL DESCRIPTION

BELMONT PARK BOUNDARY:

BASIS OF BEARINGS: Being the centerline of Strandway adjacent to Block 100, Parcel Map No. 8978, recorded July 27, 1979, F/P No. 79-315081 O.R.; in the City of San Diego, County of San Diego, State of California; i.e. North 2°48'00" West.

Beginning at City survey monument "Belmont" at the intersection of Ventura Place and Ocean Front Walk; thence South 17°33'57" East 59.92 feet; thence North 86°57'43" East 70.44 feet to the TRUE POINT OF BEGINNING; thence continuing along said line North 86°57'43" East 339.18 feet to the Southwesterly curb line of Ventura Place; thence along said curblines South 71°07'05" East 17.05 feet; thence leaving said curb line South 3°02'17" East 21.14 feet to a point with an iron pin with cap marked RCE 27741; thence South 81°10'03" West 57.96 feet to a point with an iron pin with cap marked RCE 27741; thence South 2°26'48" East 144.33 feet to a point with an iron pin with cap marked RCE 27741; thence South 52°40'55" West 81.33 feet to a point with a disk marked RCE 27741; thence South 2°57'28" East 302.14 feet to a point with a disk marked RCE 27741; thence North 86°57'41" East 100.77 feet to a point with a disk marked RCE 27741; thence North 3°02'19" West 214.00 feet to the beginning of a 240.13 foot radius curve, concave Easterly to a point with an iron pin with cap marked RCE 27741; thence along said curve through a central angle of 34°27'47" a distance of 144.44 feet to a point with a disk marked RCE 27741; thence North 31°25'28" East 34.51 feet to the beginning of a 158.47 foot radius curve, concave Northwesterly to a point with a disk marked RCE 27741; thence along said curve through a central angle of 20°44'09" a distance of 57.35 feet, to a point with an iron pin with cap marked RCE 27741 a radial bearing to the center of said curve bears North 79°18'41" West; thence non-tangent to said curve North 80°27'33" East 5.20 feet to the Westerly right-of-way line of the West lane of Mission Boulevard per Miscellaneous Map No. 148; thence along said Westerly line South 9°32'27" East 71.87 feet to the beginning of a 1980.00 foot radius curve, concave Westerly; thence along said curve through a central angle of 6°30'00" a distance of 224.62 feet; thence South 3°02'27" East 363.91 feet; thence leaving aforementioned Westerly line South 86°54'33" West 511.36 feet; thence North 2°58'02" West 532.19 feet; thence North 87°01'58" East 76.27 feet; thence North 3°02'17" West 60.98 feet; thence North 86°57'43" East 17.00 feet to the beginning of 3.00 foot radius curve, concave Northwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 36.50 feet to the beginning of 3.00 foot radius curve, concave Southwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence South 86°57'43" West 19.56 feet to the beginning of a 3.00 foot radius curve, concave Northeasterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 116.00 feet to the TRUE POINT OF BEGINNING.

Contains 7.136 Acres (More or Less)

DR
A-28-87

RECORDING REQUESTED BY:

Jon K. Ladd
Attorney for Belmont Park Associates,
a California limited partnership
9665 Chesapeake Drive, Suite 401
San Diego, CA 92123

1987 DEC 30 PM 3:58

VERA L. LYLE
COUNTY RECORDER

WHEN RECORDED RETURN TO:

BELMONT PARK ASSOCIATES
a California limited partnership
9665 Chesapeake Drive, Suite 401
San Diego, CA 92123

6008604

RF
AR
MG
UF
OC
TXPD

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into by and between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and BELMONT PARK ASSOCIATES, a California limited partnership, hereinafter called "LESSEE", to witness that:

CITY hereby leases to LESSEE for a term of FIFTY (50) years on the terms and conditions set forth in that certain lease by and between CITY and LESSEE, dated and approved by the Assistant City Manager on March 4, 1987 and by the Deputy City Attorney on March 5, 1987 pursuant to approval authority granted by City Council Resolution No. R-266064 dated June 23, 1986, all of that certain real property situated in the City of San Diego, County of San Diego, State of California, commonly known as Belmont Park and being more particularly described on Exhibit "A" attached hereto and by this reference made a part of this Memorandum of Lease. Furthermore, all the terms and conditions of said lease, together with any additions, modifications, or amendments thereto, are made a part hereof as though fully set forth herein.

Executed on the date as set forth below, in the City of San Diego, County of San Diego, State of California.

LESSEE:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: PHASE ONE DEVELOPMENT, INC.,
a California corporation
Managing General Partner

By:

STEVEN L. DAVIS
President

LESSOR:

CITY OF SAN DIEGO

By:

DATED:

12/23/87

APPROVED &
to form by J. City Attorney

By:

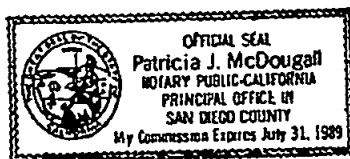
Deputy City Attorney

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On December 23, 1987, before me, a Notary Public in and for said County and State, personally appeared STEVEN L. DAVIS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President on behalf of the corporation therein named and acknowledged to me that the corporation executed it on behalf of the partnership therein named and acknowledged to me the partnership executed it.

WITNESS my hand and official seal.

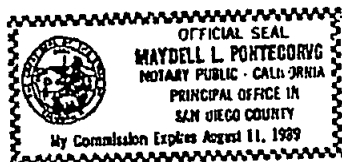


Patricia J. McDougall
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On December 23, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared MAUREEN STEVENSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Deputy City Manager of the City of San Diego and acknowledged to me that he/she/they executed the within instrument on behalf of the City of San Diego.

WITNESS my hand and official seal.



Maydell L. Portegorvig
Notary Public in and for
said County and State

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

844

#106408
March 4, 1987
REV. APRIL 16, 1987

LEGAL DESCRIPTION

BELMONT PARK BOUNDARY:

BASIS OF BEARINGS: Being the centerline of Strandway adjacent to Block 100, Parcel Map No. 8978, recorded July 27, 1979, F/P No. 79-315081 O.R.; in the City of San Diego, County of San Diego, State of California; i.e. North 2°48'00" West.

Beginning at City survey monument "Belmont" at the intersection of Ventura Place and Ocean Front Walk; thence South 17°33'57" East 59.92 feet; thence North 86°57'43" East 70.44 feet to the TRUE POINT OF BEGINNING; thence continuing along said line North 86°57'43" East 339.18 feet to the Southwesterly curb line of Ventura Place; thence along said curbline South 71°07'05" East 17.05 feet; thence leaving said curb line South 3°02'17" East 21.14 feet to a point with an iron pin with cap marked RCE 27741; thence South 81°10'03" West 57.96 feet to a point with an iron pin with cap marked RCE 27741; thence South 2°26'48" East 144.33 feet to a point with an iron pin with cap marked RCE 27741; thence South 52°40'55" West 81.33 feet to a point with a disk marked RCE 27741; thence South 2°57'28" East 302.14 feet to a point with a disk marked RCE 27741; thence North 86°57'41" East 100.77 feet to a point with a disk marked RCE 27741; thence North 3°02'19" West 214.00 feet to the beginning of a 240.13 foot radius curve, concave Easterly to a point with an iron pin with cap marked RCE 27741; thence along said curve through a central angle of 34°27'47" a distance of 144.44 feet to a point with a disk marked RCE 27741; thence North 31°25'28" East 34.51 feet to the beginning of a 158.47 foot radius curve, concave Northwesterly to a point with a disk marked RCE 27741; thence along said curve through a central angle of 20°44'09" a distance of 57.35 feet, to a point with an iron pin with cap marked RCE 27741 a radial bearing to the center of said curve bears North 79°18'41" West; thence non-tangent to said curve North 80°27'33" East 5.20 feet to the Westerly right-of-way line of the West lane of Mission Boulevard per Miscellaneous Map No. 148; thence along said Westerly line South 9°32'27" East 71.87 feet to the beginning of a 1980.00 foot radius curve, concave Westerly; thence along said curve through a central angle of 6°30'00" a distance of 224.62 feet; thence South 3°02'27" East 363.91 feet; thence leaving aforementioned Westerly line South 86°54'33" West 511.36 feet; thence North 2°58'02" West 532.19 feet; thence North 87°01'53" East 76.27 feet; thence North 3°02'17" West 60.98 feet; thence North 86°57'43" East 17.00 feet to the beginning of 3.00 foot radius curve, concave Northwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 36.50 feet to the beginning of 3.00 foot radius curve, concave Southwesterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence South 86°57'43" West 19.56 feet to the beginning of a 3.00 foot radius curve, concave Northeasterly; thence along said curve through a central angle of 90°00'00" a distance of 4.71 feet; thence North 3°02'17" West 116.00 feet to the TRUE POINT OF BEGINNING.

Contains 7.136 Acres (More or Less)

VOL. 1000

DOC. 2091

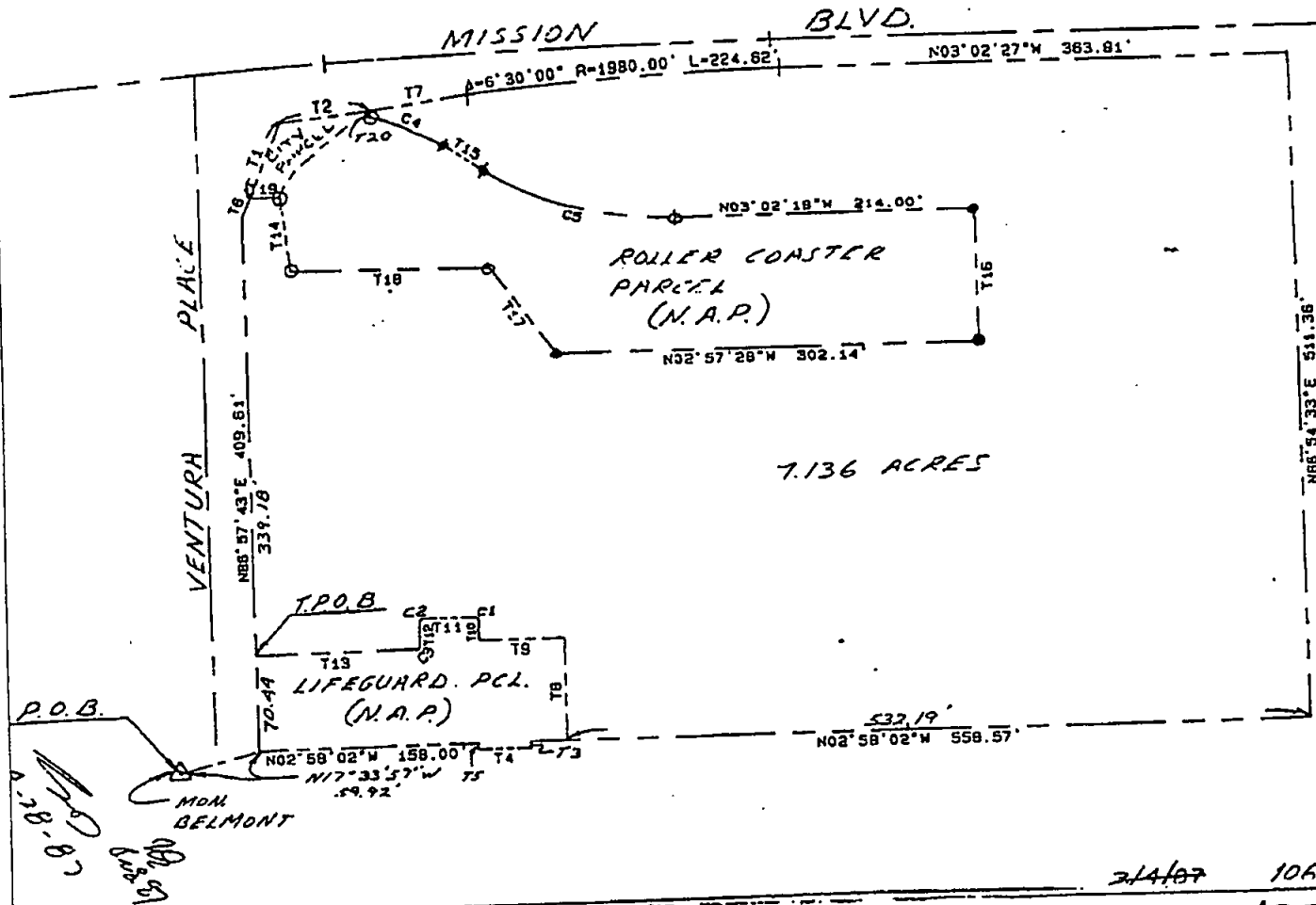
TIS

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

AD-87
A-18-87

PLAT TO ACCOMPANY LEGAL DESCRIPTION

NO.	DELTA	RADIUS	LENGTH
C1	90°00'00"	3.00'	4.71'
C2	90°00'00"	3.00'	4.71'
C3	90°00'00"	3.00'	4.71'
C4	20°44'09"	158.47'	57.35'
C5	34°27'47"	240.13'	144.44'



NO.	BEARING	DISTANCE
T1	N71°07'05"W	61.06'
T2	N09°32'27"W	65.91'
T3	N87°01'58"E	5.00'
T4	N02°58'02"W	38.00'
T5	N87°01'58"E	5.00'
T6	N71°07'05"W	17.05'
T7	N09°32'27"W	71.87'
T8	N87°01'58"E	76.27'
T9	N03°02'17"W	60.88'
T10	N86°57'43"E	17.00'
T11	N03°02'17"W	36.50'
T12	N86°57'43"E	18.56'
T13	N03°02'17"W	118.00'
T14	N81°10'03"E	57.88'
T15	N31°25'28"E	34.51'
T16	N86°57'41"E	100.77'
T17	N52°40'55"E	81.33'
T18	N02°26'48"W	144.33'
T19	N03°02'17"W	21.14'
T20	N80°27'33"E	5.20'

- INDICATES F.D. 5/8" X 1/8" I.P. W/CAP MARKED ACE 27741
- INDICATES F.D. BRASS DICK AND TACK MARKED ACE 27741

SCALE: 1" = 100'



SHOLDERS & SANFORD, INC.
 Planning Engineering Surveying
 3545 Fifth Avenue, San Diego, CA 92103
 (619) 299-7177

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

#8

CITY OF SAN DIEGO

Proposition G

(This proposition will appear on the ballot in the following form.)

G CITY OF SAN DIEGO INITIATIVE MEASURE. AMENDS THE SAN DIEGO MUNICIPAL CODE. Shall the Mission Beach Park property owned by The City of San Diego be restricted to the following uses:

(a) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.

(b) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building and Roller Coaster where economically feasible.

(c) Incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature?

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY ADDING THE FOLLOWING SECTIONS RELATING TO RESTRICTING THE USE OF MISSION BEACH PARK

BE IT ORDAINED, by the People of The City of San Diego, as follows:

Section 1. From and after the effective date of this measure, the Mission Beach Park property owned by the City of San Diego shall be restricted to the following uses:

(a) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.

(b) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building and Roller Coaster where economically feasible.

(c) Incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature.

Section 2. Immediately following the effective date of this measure, the City Council shall initiate a program to carry out the provisions of this measure by amending the appropriate planning and zoning documents applicable to the Mission Beach Park property so that they are consistent with this measure. This program shall include, as necessary, amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, and all applicable City Zoning Ordinances.

Section 3. Definitions. For purposes of this Initiative measure, the following words and phrases shall have the following meanings:

(a) "Mission Beach Park" shall mean that real property together with fixtures and appurtenances owned by the City of San Diego and generally described as follows: Pueblo lands - Portion of lot 1803 West of Mission Boulevard, South of Ventura Place, North of San Fernando Place and East of Ocean Front Walk.

(b) "effective date" means the date upon which this measure is enacted by the City Council, or the date upon which it is approved by the voters, whichever occurs first.

Section 4. Implementation. The City Council, City Planning Commission, and City staff are hereby directed to take any and all actions necessary under this Initiative measure, including but not limited to adoption and implementation of any amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, all applicable City Zoning Ordinances, or City Code, reasonably necessary to carry out the intent and purpose of this Initiative measure. Said actions shall be carried out forthwith.

Section 5. Guidelines. The City Council may adopt reasonable guidelines to implement this Initiative measure following notice and public hearing, provided that any such guidelines shall be consistent with the intent and purpose of this measure.

Section 6. Exemptions for Certain Projects. This measure shall apply to all proposed development or redevelopment of Mission Beach Park except a development or redevelopment proposal which has obtained a "vested right" as of the effective date of this measure. For purposes of this measure, a "vested right" shall have been obtained only if each of the following criteria is met:

(a) The project has received its final discretionary approval; and

(b) Substantial expenditures have been incurred in good faith reliance on the final discretionary approval; and

(c) Substantial construction has been performed on the property in good faith reliance on the final discretionary approval.

The "substantiality" of the expenditures incurred and of construction performed and the question of whether or not such expenditures and construction were in "good faith" are questions of fact to be determined on a case by case basis by the City Council following application by the landowner or developer and upon notice to the interested public, and following public hearing.

Section 7. Amendment or Repeal. This measure may be amended or repealed only by a majority of the voters voting at an election thereon.

Section 8. Severability. If a section, subsection, sentence, phrase, clause, or portion of this Initiative is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. It is hereby declared that this Initiative and each section, subsection, sentence, clause, phrase, part, or portion thereof would have been adopted or passed irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portion be declared invalid or unconstitutional.

ARGUMENT IN FAVOR OF PROPOSITION G

Your public parkland is being turned into a shopping center. Commercial development in Mission Beach Park must be limited to truly recreational and visitor-serving parkland uses, and the historical remnants of the Mission Beach Amusement Center (Belmont Park) must be preserved.

The City has allowed demolition of the Plunge Building. However, passage of this proposition will:

- limit park uses to public parking and recreational open space;
- help protect the National Landmark roller coaster; and,
- make a clear statement that voters MUST NOT be ignored on critical issues important to all San Diegans.

The people of San Diego do not need a 70,000 sq. ft. shopping center at the park. The park is heavily used as oceanfront access and parking is already inadequate. This development will add to existing traffic congestion and is encroaching on existing beach parking.

Thoryk/MacHutchin/Davis have first option on the roller coaster site if the City does not extend the Coaster lease in December. These are the same developers who demolished the historic Plunge Building. A YES vote will help save the Coaster, not endanger it.

The Thoryk/MacHutchin/Davis project should be stopped before another valuable and irreplaceable park is destroyed forever. Will Balboa Park be next? The people of San Diego must send a message to the City Council about our public parks. We must protect and preserve our parklands.

DO NOT BE MISLED! THE PROPOSITION IS NOT FLAWED. THE COURTS MUST DECIDE THAT DEVELOPMENT HAS NOT PROCEEDED "IN GOOD FAITH" AND THEREFORE, MAY NOT BE EXEMPT FROM THIS MEASURE.

Vote YES on PROPOSITION G

MAYOR MAUREEN O'CONNOR

DAN ALLEN, Past Chair
Coastal Area Committee
Park & Recreation Board

JUDY SWINK
Coaster Supporter

HELEN DUFFY, President, for
Mission Beach Town Council

CATHY SCOTT, Treasurer
Save Mission Beach Park
Committee

ARGUMENT AGAINST PROPOSITION G

SAVE THE HISTORIC ROLLER COASTER VOTE NO ON "G"

The intended goal of Proposition G was commendable: protect our parkland from commercial development and restore the historic roller coaster. But the measure was poorly drafted and filed too late. It will accomplish precisely the opposite result from that intended.

If Proposition G Passes:

- * It will be impossible to operate the roller coaster and economically unfeasible to restore it.
- * The commercial redevelopment now under construction at Mission Beach Park is exempt from the restrictions of the measure and will not be affected whether it passes or not.

If you agree that there should be no further commercial development in Mission Bay Park, but want to protect the Belmont Park roller coaster from demolition, there is a much better alternative on the ballot. Proposition D prohibits further commercial development in Mission Bay Park without endangering renovation of the roller coaster. We urge its adoption.

Remember -

- * a YES vote on Proposition G will NOT stop the redevelopment project at Mission Beach Park, but it WILL endanger the restoration of the historic roller coaster.
- * a NO vote helps ensure preservation of the roller coaster.

Vote NO on Proposition G

CAROL LINDEMULDER.

PHIL KLAUBER, Past President
San Diego Historical Society

CHUCK GREEN, Former President
Mission Beach Town Council

KATHRYN CAPUTO, Past President
Mission Beach Precise
Planning Group

MARIE BURKE LIA
Historic Properties Attorney

CITY OF
P

(This proposition will appear on the ballot)

H CITY OF SAN DIEGO
CITY OF SAN DIEGO
PLAN. Shall the City
Plan be amended to impose
facilities burning 500 tons or more
per day of solid waste?
1. No such facility shall be built
a. increase existing levels of
as those levels are determined by
agencies; or
b. be located within a three mile
school, or child care center or
a governmental entity; or
c. make additional demands on
system within the City.
2. Any such facility built shall include
methods whereby major sources of
not limited to plastics, metal
removed from the solid waste

ADDS TO THE CITY OF SAN
AN AMENDMENT TO READ AS FOLLOWS:

AN AMENDMENT OF THE CITY OF
ADD SOLID WASTE INCINERATION
ELEMENT GUIDELINES AND STANDARDS.

In order to protect the public health
to foster a physical environment in
human development, the following shall
will burn 500 tons or more per day of solid waste:

1. No such facility shall be built
a. increase existing levels of solid waste
determined by Federal, State or San Diego
b. be located within a three mile
care center or nursing home for the elderly
c. make additional demands on the City.

2. Any such facility built shall include
sources of toxic air pollutants, including
wastes, and coatings, are removed from the

DATE:

880418

(R-88-2199)

RESOLUTION NUMBER R-270781
ADOPTED ON APRIL 18, 1988

#9

WHEREAS, the City, in June 1986, entered into an option to lease certain property in Mission Beach Park and the option was exercised and the lease was entered into with Belmont Park Associates on March 5, 1987; and

WHEREAS, pursuant to the terms and conditions of the lease, Belmont Park Associates proceeded with the development of improvements on the Mission Beach Park site and expended approximately \$5 million for such improvements on or before November 3, 1987; and

WHEREAS, the Save Mission Beach Park (Belmont Park) Initiative was approved by the voters at the election of November 3, 1987, which initiative established limitations with regard to retail or commercial use of the property; and

WHEREAS, Section 6. of the initiative reads as follows:

Section 6. Exemptions for Certain
Projects. This measure shall apply to all

DATE:

proposed development or redevelopment of Mission Beach Park except a development or redevelopment proposal which has obtained a "vested right" as of the effective date of this measure. For purposes of this measure, a "vested right" shall have been obtained only if each of the following criteria is met:

(a) The project has received its final discretionary approval; and

(b) Substantial expenditures have been incurred in good faith reliance on the final discretionary approval; and

(c) Substantial construction has been performed on the property in good faith reliance on the final discretionary approval.

The "substantiality" of the expenditures incurred and of construction performed and the question of whether or not such expenditures and construction were in "good faith" are questions of fact to be determined on a case by case basis by the City Council following application by the landowner or developer and

and
WHEREAS, Belmont Park Associates requested that the City Council determine that Belmont Park Associates had obtained a "vested right" as of the effective date of the initiative; and

WHEREAS, written evidence, including the administrative record summarizing the history of the project was submitted to the City Council and lodged with the City Clerk prior to March 21, 1988; and

WHEREAS, hearings were held on March 21, 1988, and April 18, 1988, on the subject of whether or not such "vested right" had in fact been obtained; and

WHEREAS, testimony was given to the Council on said dates with regard to those activities which Belmont Park Associates performed prior to November 3, 1987, which it asserts met the criteria contained in Section 6. of the initiative; and

WHEREAS, said testimony indicated that the Belmont Park project had, in fact, received its final discretionary approval; that substantial expenditures had been incurred in good faith reliance on the final discretionary approval; and that substantial construction had been performed on the property in

good faith reliance on the final discretionary approval; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Council hereby determines that the Belmont Park Associates project at Mission Beach Park, as described above, had obtained a "vested right" under the Save Mission Beach Park (Belmont Park) Initiative, also known as Proposition G, as of November 3, 1987, the effective date of said initiative, based on all of the testimony presented and based on the following Findings of Fact:

1. Belmont Park Associates received its final discretionary approval in connection with the project when it received demolition and building permits on March 5, 1987.

2. Substantial expenditures were incurred by Belmont Park Associates in good faith reliance upon the final discretionary approval in that as of the effective date of Proposition G, Belmont Park Associates had expended in excess of \$5 million in connection with the project.

3. Belmont Park Associates performed substantial construction on the project in good faith reliance on its final discretionary approval in that on the effective date of Proposition G the project was about 40% complete including

good faith reliance on the final discretionary approval; NOW,

RANK 1 OF 1, PAGE 5 OF 5, DB RAO , DOCUMENT 17641
construction of nine buildings, restoration of the plunge,
underground utilities and on and off site public improvements.

APPROVED: JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:fs

06/16/88

Or.Dept:Clerk

R-88-2199

Form=r.none

--DOCUMENT-END--

RANK 1 OF 1, PAGE 5 OF 5, DB RAO , DOCUMENT 17641
construction of nine buildings, restoration of the plunge,

#10

PLANNING DIRECTOR RESOLUTION NO. 7675

GRANTING COMPREHENSIVE SIGN PLAN PERMIT NO. 88-0669

WHEREAS, BELMONT PARK ASSOCIATES, a limited partnership, Owner/Permittee, filed an application for a Comprehensive Sign Plan Permit to allow Permittee, one project identification sign and interior store front signage as described herein, located on the west side of Mission Boulevard between Ventura Place and San Fernando Place, described as Parcels 1, 2, 3, and 4, Mission Beach Park, Map No. 432, in the CS Zone; and

WHEREAS, on October 14, 1988, the Planning Director of the City of San Diego considered Comprehensive Sign Plan Permit No. 88-0669 pursuant to Section 101.1123 of the Municipal Code of the City of San Diego and; NOW, THEREFORE,

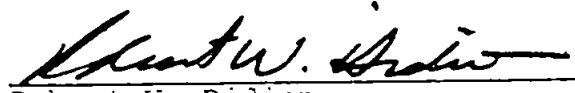
BE IT RESOLVED, by the Planning Director of the City of San Diego, as follows:

- a. The proposed comprehensive signage plan will fulfill an individual and/or community need and will not adversely affect the General Plan or the Community Plan.
- b. The proposed comprehensive signage plan, because of conditions that have been applied to it, will not be detrimental to the health, safety, and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity.
- c. The proposed use will comply with the relevant regulations in the Municipal Code. Signage under this Comprehensive Sign Plan will result in an improved relationship among the various signs and building facades covered by the plan.

2. That said Findings are supported by maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that based on the Findings hereinbefore adopted by the Planning Director, the application of Comprehensive Sign Plan Permit No. 88-0669, is hereby granted to Owner/Permittee in the form and with the terms and conditions as set forth in Comprehensive Sign Plan Permit No. 88-0669, a copy of which is attached hereto and made a part hereof.


Lee Okeson
Deputy Planning Director


Robert W. Didion
Senior Planner

COMPREHENSIVE SIGN PLAN PERMIT NO. 88-0669
PLANNING DIRECTOR

This Comprehensive Sign Plan Permit No. 88-0669 is granted by the Planning Director of the City of San Diego to BELMONT PARK ASSOCIATES, a limited partnership, Owner/Permittee, under the conditions in Section 101.1123 of the Municipal Code of the City of San Diego.

1. Permission is granted to Owner/Permittee to use ground and wall signage for the Belmont Park Development as described herein, located on the west side of Mission Boulevard between Ventura Place and San Fernando Place, described as Parcels 1, 2, 3, and 4, Mission Beach Park, Map No. 432, in the CS Zone.
2. The Comprehensive Sign Plan shall consist of the following:
 - a. Signage serving the Belmont Park Shopping Complex;
 - b. Three sign types to include the following are acceptable:
 - 1) Perimeter signs (viewed from the boardwalk and north, east and south perimeter of buildings); perimeter signs shall consist of tenant identification wall signs, which would conform to the City Sign Ordinance and the Coastal Regulations of the C Zone. Signs shall not exceed one square foot of sign face per one linear foot of building. Note: Refer to Exhibit "A," dated October 14, 1988, for example of linear foot measurements; two free standing entry canopies are also proposed for Buildings 5 and 6. Lettering and signage on these canopies shall appear on front canopy face only.
 - 2) One project identity sign, to be located at the southwest corner of Mission Boulevard and Ventura Place. The sign shall be a monument ground sign not to exceed six feet in height mounted on a base not exceed 10 feet in length.
 - 3) Interior store front signs as opposed to perimeter signs, shall not be visible from the public right-of-way. These signs shall consist of a maximum of one entrance sign over each entry door, and one tenant identification sign which shall conform to Exhibit "A," Tenant Design Manual.
 - c. Signage for the roller coaster is not a part of this permit; and

- d. Signage is not permitted to be attached, hang from or be part of any of the "tri-arches" which are considered to be historic.

3. No permit for any signage shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to the Planning Department;
- b. The Comprehensive Sign Plan Permit is recorded in the office of the County Recorder.

If the signed permit is not received by the Planning Department within 90 days of the Planning Director decision or within 30 days of a Planning Commission or City Council decision, the permit shall be void.

4. Before issuance of any sign permits, complete sign plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A", dated October 14, 1988, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

5. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.

6. This Comprehensive Sign Plan Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0500 of the Municipal Code.

7. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

8. After establishment of the project, signage shall not be modified for any purpose unless:

- a. Authorized by the Planning Director; or
- b. The proposed use meets every requirement of the comprehensive sign plan existing for the property at the time of conversion; or
- c. The permit has been revoked by the City.

9. This Comprehensive Sign Plan Permit is a covenant running with the lands and shall be binding upon the Permittee and any

successor or successors, and the interests of any successor shall be subject to each and every condition set out.

Passed and adopted by the Planning Director on October 14, 1988.

AUTHENTICATED BY:

Robert W. Didion
 ROBERT W. DIDION, SENIOR PLANNER
 PLANNING DEPARTMENT

Lee Okeson
 LEE OKESON, DEPUTY PLANNING DIRECTOR
 PLANNING DEPARTMENT

STATE OF CALIFORNIA,)
 COUNTY OF SAN DIEGO,) SS.

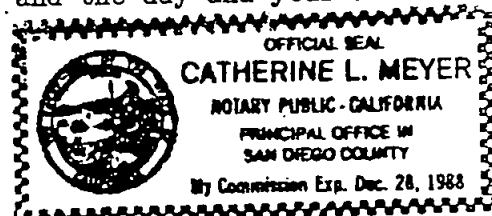
On this 22nd day of November in the year 1988,
 before me, Catherine L. Meyer, a Notary Public in and for said county
 and state, personally appeared ROBERT W. DIDION, personally
 known to me (or proved to me on the basis of satisfactory evidence) to be
 the person who executed this instrument as Senior Planner of the City
 Planning Department, and Lee Okeson, personally known to me (or proved to me
 on the basis of satisfactory evidence) to be the person who executed this
 instrument as Deputy Planning Director of the City of San Diego, and
 acknowledged to me that the City of San Diego executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the
 County of San Diego, State of California, and the day and year in this
 certificate first above written.

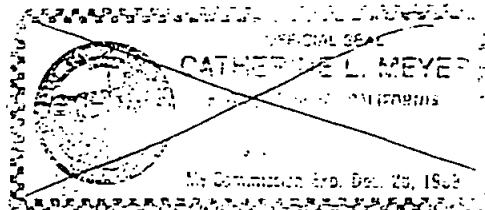
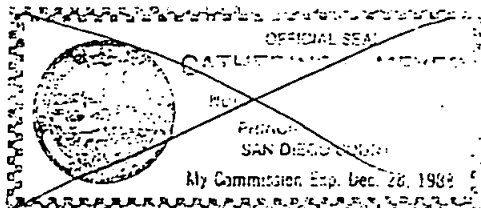
NAME CATHERINE L. MEYER
 (typed or printed)

SIGNATURE

Catherine Meyer



NOTARY STAMP



RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

88 DEC 22 AM 8:14

VERA L. LYLE
COUNTY RECORDER

ACKNOWLEDGED:

The undersigned "Owner/Permittee" by execution hereof agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

BELMONT PARK ASSOCIATES, a Limited Partnership, "Owner/Permittee",

BY

Gary Hollenbeck

RF 8
AR 6
MG 1



State of California,)
County of San Diego.) ss.

On this 30th day of November, in the year 1988, before me, KRISTAN V. WOLLESEN, a Notary Public in and for said county and state, personally appeared GARY HOLLENBECK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument, on behalf of the partnership and acknowledged to me that the partnership executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

Name

KRISTAN V. WOLLESEN

(typed or printed)

NOTARY STAMP

Signature

Kristan V. Wollesen

State of California,) ss.
County of San Diego.)

On this _____ day of _____, in the year _____, before me, _____, a Notary Public in and for said county and state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument; on behalf of the partnership and acknowledged to me that the partnership executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, in the County of San Diego, State of California, the day and year in this certificate first above written.

Name

(typed or printed)

NOTARY STAMP

Signature

651 and shall include motorized and non-motorized craft, including wind surfers, but shall exclude surf boards and paddle boards.

b. Except as provided herein, no person shall operate a vessel or boat at a speed in excess of 5 nautical miles per hour within any area marked by buoys or markers which are moored along the perimeter, or as close thereto as is practicable, or adjacent to that portion of the San Diego — La Jolla Park Ecological Reserve as shown on Document No. O-16857 on file in the office of the City Clerk, which is hereby designated a restricted area pursuant to Harbors and Navigation Code section 660 and described as follows:

Beginning at Point "97" on Alligator Head Point thence 1939.69 feet N 20 degrees 18' 47.0" E, more or less, to Point "42" (Lambert Coordinates: N 252,279.844, E 1,686,757.560; Geodetic Coordinates 32 degrees 51' 21.0" North Latitude, 117 degrees 16' 12.0" West Longitude), thence 2662.27 feet S 88 degrees 08' 12.2" E, more or less, to Point "43" (Lambert Coordinates N 252,193.281, E 1,689,418.425; Geodetic Coordinates 32 degrees 51' 20.4" North Latitude, 117 degrees 15' 40.8" West Longitude), thence 125 feet N 30 degrees 0' 00" E, more or less, to Point "44" (Lambert Coordinates N 252,301.534, E 1,689,480.925; Geodetic Coordinates 32 degrees 51' 21.47" North Latitude, 117 degrees 15' 40.08" West Longitude), thence 3028.48 feet N 10 degrees 24' 55.6" E, more or less, to Point "45" (Lambert Coordinates N 255,280.115 E 1,690,028.427; Geodetic Coordinates 32 degrees 51' 51.0" North Latitude, 117 degrees 15' 34.0" West Longitude), thence 1741.11 feet S 81 degrees 24' 29.1" E, more or less, to Point "82" (Lambert Coordinates N 255,020.000 E 1,691,750.000; Geodetic Coordinates 32 degrees 51' 48.59" North Latitude, 117 degrees 15' 13.78" West Longitude), thence generally southerly and westerly following the Mean High Tide Line to point of beginning.

c. Except as provided herein, no person shall use or operate a vessel or boat within an area marked by buoys or markers which are moored within that portion of the San Diego — La Jolla Park Ecological Reserve, or as close thereto as is practicable, as shown on Document No. OO-16857 on file in the office of the City Clerk, which is hereby designated a special use area pursuant to Harbors and Navigation Code section 660 and described as follows:

Beginning at Point "97" on Alligator Head Point, thence 2771.67 feet N 59 degrees 29' 31.1" E, more or less, to Point "90" (Lambert Coordinates: N 251,867.843 E 1,688,472.153; Geodetic Coordinates: 32 degrees 51' 17.09" North Latitude, 117 degrees 15' 51.85" West Longitude), thence 400 feet S 30 degrees 30' 28.9" E, more or less, to Point "91" (Lambert Coordinates: N 251,523.220 E 1,688,675.217; Geodetic Coordinates: 32 degrees 51' 13.70" North Latitude, 117 degrees 15' 49.43" West Longitude), thence 2450 feet S 59 degrees 29' 31.1" W, more or less, to Point "99" (Lambert Coordinates: N 250,279.455 E 1,686,564.399; Geodetic Coordinates: 32 degrees 51'

01.2" North Latitude, 117 degrees 16' 14.0" West Longitude), thence generally southerly and westerly following the Mean High Tide Line to point of beginning.

d. The provisions of subsections (b) or (c) shall not apply to any vessel or boat used or operated by or under the authority of any governmental agency nor during emergency use or operation affecting life or property.

e. The City Manager may promulgate any additional rules and regulations necessary and consistent with these provisions regulating or limiting the use of boats, vessels, surf boards or paddle boards within the San Diego — La Jolla Underwater Park Ecological Reserve designated herein.

f. The City Manager shall cause appropriate buoys or markers to be moored to mark the perimeters of the special use and restricted areas hereby designated, or as close thereto as shall be practicable. Between October 1st and April 30th of each year, the City Manager is further authorized to reduce the size of the boating prohibited zone established in subsection c by removing buoys or markers as may be appropriate to accommodate seasonal demands.

(Amended 10-2-89 by O-17350 N.S.)

§ 63.50 Restricting The Use Of Mission Beach Park

1. From and after the effective date of this measure, the Mission Beach Park property owned by the City of San Diego shall be restricted to the following uses:

(a) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.

(b) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building and Roller Coaster where economically feasible.

(c) Incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature.

2. Immediately following the effective date of this measure, the City Council shall initiate a program to carry out the provisions of this measure by amending the appropriate planning and zoning documents applicable to the Mission Beach Park property so that they are consistent with this measure. This program shall include, as necessary, amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, and all applicable City Zoning Ordinances.

3. Definitions. For purposes of this Initiative measure, the following words and phrases shall have the following meanings:

(a) "Mission Beach Park" shall mean that real property together with fixtures and appurtenances owned by the City of San Diego and generally described as follows:

Pueblo lands — Portion of lot 1803 West of Mission Boulevard, South of Ventura Place, North of San Fernando Place and East of Ocean Front Walk.

(b) "Effective date" means the date upon which this measure is enacted by the City Council, or the date upon which it is approved by the voters, whichever occurs first.

4. Implementation. The City Council, City Planning Commission, and City staff are hereby directed to take any and all actions necessary under this Initiative measure, including but not limited to adoption and implementation of any amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, all applicable City Zoning Ordinances, or City Code, reasonably necessary to carry out the intent and purpose of this Initiative measure. Said actions shall be carried out forthwith.

5. Guidelines. The City Council may adopt reasonable guidelines to implement this Initiative measure following notice and public hearing, provided that any such guidelines shall be consistent with the intent and purpose of this measure.

6. Exemptions for Certain Projects. This measure shall apply to all proposed development or redevelopment of Mission Beach Park except a development or redevelopment proposal which has obtained a "vested right" as of the effective date of this measure. For purposes of this measure, a "vested right" shall have been obtained only if each of the following criteria is met:

(a) The project has received its final discretionary approval; and

(b) Substantial expenditures have been incurred in good faith reliance on the final discretionary approval; and

(c) Substantial construction has been performed on the property in good faith reliance on the final discretionary approval.

The "substantiality" of the expenditures incurred and of construction performed and the question of whether or not such expenditures and construction were in "good faith" are questions of fact to be determined on a case by case basis by the City Council following application by the landowner or developer and upon notice to the interested public, and following public hearing.

7. Amendment or Repeal. This measure may be amended or repealed only by a majority of the voters voting at an election thereon.

8. Severability. If a section, subsection, sentence, phrase, clause, or portion of this Initiative is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative. It is hereby declared that this Initiative and each section, subsection, sentence, clause,

phrase, part, or portion thereof would have been adopted or passed irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portion be declared invalid or unconstitutional.

(Addition of SEC. 63.50 approved on 7-28-87 by O-16914 N.S. and voter approved 11-3-87.)