



THE CITY OF SAN DIEGO

MAYOR JERRY SANDERS

September 5, 2007

CERTIFIED MAIL # 7002 0510 0003 5548 2536

Mr. Thomas Lochtefeld
Wave House Belmont Park, LLC
3146 Mission Blvd., Suite F
San Diego, CA 92109

CITY OF SAN DIEGO	
REAL ESTATE ASSETS DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON COPY
☐	ORIGINATOR

Dear Mr. Lochtefeld:

Subject: Renewal of Accessory Use Permit – The City of Diego/Wave House Belmont Park, LLC, Beach Area Adjacent to Belmont Park, Document No. RR-293393 in the Office of the City Clerk

Pursuant to Section 2.3, Renewal, of the above-referenced permit, the City agreed to an annual renewal from October 1, 2006, through September 30, 2007, provided permittee complies with the terms and conditions of the permit.

If you are in agreement with the terms of the renewal, please sign, date and return this letter at the address below by September 15, 2007, attention to Gary Jones, Asset Manager. Should you have any questions, please contact Gary Jones at (619) 236-6264.

Sincerely,

James F. Barwick
Director

ACKNOWLEDGED AND ACCEPTED:

Date: Sept. 12 2007

By:

Thomas Lochtefeld

cc: Vladimir Balotsky, Property Agent

Lease File: Wave House Belmont Park LLC/02



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



THE CITY OF SAN DIEGO

July 27, 2006

CERTIFIED MAIL #7005 0390 0004 7280 5619

Mr. Thomas Lochtefeld
Wave House Belmont Park, LLC
3146 Mission Blvd., Suite F
San Diego, CA 92109

Dear Mr. Lochtefeld:

Subject: Renewal of Accessory Use Permit – The City of San Diego/Wave House Belmont Park, LLC, Beach Area Adjacent to Belmont Park, Document No. RR-293393 in the Office of the City Clerk

Pursuant to Section 2.3, Renewal, of the above-referenced permit, the City agreed to an annual renewal from October 1, 2006 through September 30, 2007 provided permittee complies with the terms and conditions of the permit.

If you are in agreement with the terms of the renewal, please sign, date and return this letter at the address below by August 31, 2006, attention to Vladimir Balotsky, Property Agent. Should you have any questions, please contact Vladimir Balotsky at (619) 235-5248.

Sincerely,

James F. Barwick
Director

ACKNOWLEDGED AND ACCEPTED:

Date: Aug 14, 2006

By:
Thomas Lochtefeld

Lease File: Wave House Belmont Park LLC/02

cc: Vladimir Balotsky, Property Agent



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199

Tel (619) 236-6020 Fax (619) 236-6706





THE CITY OF SAN DIEGO

August 1, 2005

VIA CERTIFIED MAIL #7004 1350 0000 7826 5954

Mr. Tom Lochtefeld
Wave House San Diego, LLC
3146 Mission Blvd., Suite F
San Diego, CA 92109

Dear Mr. Lochtefeld:

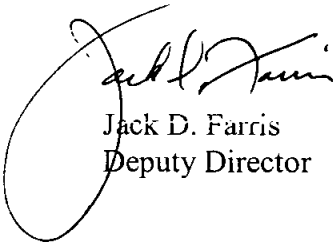
Subject: Renewal of Accessory Use Permit – The City of San Diego/Wave House San Diego, LLC, Beach Area Adjacent to Belmont Park, Document No. RR-293393 in the Office of the City Clerk

Pursuant to Section 2.3, Renewal, of the permit, the City agreed to an annual renewal of the permit from October 1, 2005 through September 30, 2006 provided permittee complies with the terms and conditions of the permit.

If you are in agreement with the terms of the renewal, please sign and return this letter within ten (10) days in the self-addressed envelope.

Should you have any questions, please contact Vladimir Balotsky, at (619) 235-5248.

Sincerely,



Jack D. Farris
Deputy Director

Date:

Aug 3, 2005

VB/cj

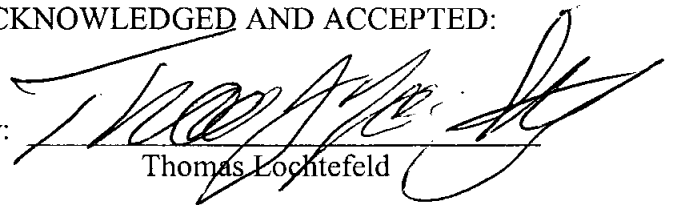
cc: Craig Gibson, Supervising Property Agent
Vladimir Balotsky, Property Agent

Lease File: Wave House San Diego LLC/02

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ACKNOWLEDGED AND ACCEPTED:

By:



Thomas Lochtefeld



Real Estate Assets

202 C Street, MS 9B • San Diego, CA 92101
Tel (619) 236-6144 Fax (619) 236-7003



THE CITY OF SAN DIEGO

August 24, 2004

CERTIFIED MAIL #7004 1350 0000 7826 5329

Mr. Tom Lochtefeld
Wave House San Diego, LLC
3146 Mission Blvd., Suite F
San Diego, CA 92109

Dear Mr. Lochtefeld:

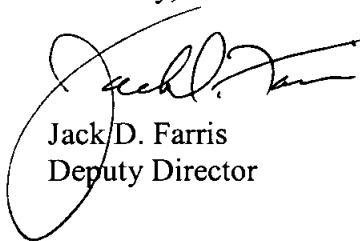
Subject: Renewal of Accessory Use Permit – The City of San Diego/Wave House San Diego, LLC, Beach Area Adjacent to Belmont Park, Document No. RR-293393 in the Office of the City Clerk

Pursuant to Section 2.3, Renewal, of the permit, the City agreed to an annual renewal of the permit from October 1, 2004 through September 30, 2005 provided permittee complies with the terms and conditions of the permit.

If you are in agreement with the terms of the renewal, please sign and return this letter within ten (10) days in the self-addressed envelope.

Should you have any questions, please contact Vladimir Balotsky, at 619 235-5248.

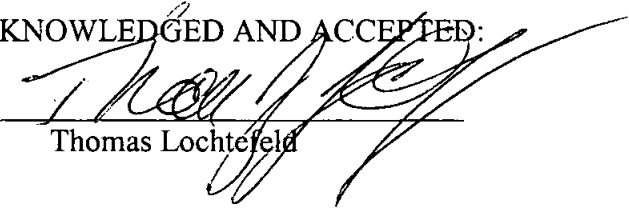
Sincerely,



Jack D. Farris
Deputy Director

Date: Aug 25, 2004

ACKNOWLEDGED AND ACCEPTED:

By: 
Thomas Lochtefeld

Lease File: Wave House San Diego LLC/02

cc: Craig Gibson, Supervising Property Agent
Vladimir Balotsky, Property Agent



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



THE CITY OF SAN DIEGO

August 8, 2003

CERTIFIED MAIL # 7002 1000 0005 0434 2723

Tom Lochtefeld
Wave House San Diego, LLC
3146 Mission Blvd., Suite F
Mission Beach, CA 92109

Subject: Accessory Use Permit Renewal ("Permit") - Wave House San Diego, LLC
("Permittee"), Beach Area Adjacent to Belmont Park

Dear Mr. Lochtefeld:

Pursuant to Section 2.3 Renewal of the Permit, the City agreed for annual renewal of the Permit provided Permittee complies with its terms and conditions at the sole discretion of the City Manager. The renewal will establish a new expiration date of September 30, 2004.

If you are in agreement with the terms of the renewal, please sign and return a duplicate original of this letter within ten (10) days in the enclosed self-addressed envelope. If not, the Permit will automatically terminate and cannot be renewed at a later date.

If you have any questions, please call Vladimir Balotsky, Property Agent at (619) 235-5248.

Sincerely,

Carol A. Chiodo
Deputy Director

VEB/cdj

ACKNOWLEDGED AND ACCEPTED:

Dated: July 5, 2004

By:
Tom Lochtefeld

FILE: LEASES - Wave House San Diego, LLC/02

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Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706



THE CITY OF SAN DIEGO

October 25, 2002

VIA FACSIMILE (858) 228-9350 & CERTIFIED MAIL # 7002 1000 0005 0434 2723

Tom Lochtefeld
Wave House San Diego, LLC
3146 Mission Blvd., Suite F
Mission Beach, CA 92109

Subject: Accessory Use Permit Renewal - Wave House San Diego, LLC/02, Belmont Park

Dear Mr. Lochtefeld:

The above referenced Accessory Use Permit was assigned to Wave House San Diego, LLC on May 21, 2002 from Wave the Planet, LLC. Pursuant to Section 2.3 Renewal of the Permit, the City agreed to consider annual renewal of the Permit provided Lessee complies with its terms and conditions at the sole discretion of the City Manager. The City is offering renewal of the Permit under the same terms and conditions. Provided you are in agreement, the City and Wave House San Diego, LLC agree to renew the permit for one (1) year. This renewal will establish a new expiration date of September 30, 2003.

If you are in agreement with this extension, please sign and return this letter within ten (10) days in the enclosed self-addressed envelope. If you are not in agreement the permit will automatically terminate and cannot be renewed at a later date.

If you have any questions, please call Chris Hargett, Property Agent at (619) 236-6766.

Sincerely,


Tim C. Rothans
Deputy Real Estate Assets Director

TCR/CEH/cdj



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

OK
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Page 2
Mr. Tom Lochtefeld
October 25, 2002

ACKNOWLEDGED AND ACCEPTED:

WAVE HOUSE SAN DIEGO, LLC, a California
Limited Liability Company

By: 

Tom Lochtefeld

FILE: LEASES - Wave House San Diego, LLC/02

IAWPO2002Vtarget\LOCHTEFELD.wpd

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

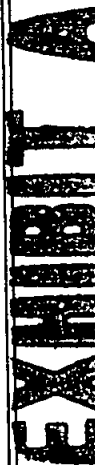
By [Signature]
Deputy City Attorney

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LIST OF EXHIBITS TO
ACCESSORY USE PERMIT

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

INITIAL



BEACH

EXHIBIT 1

PAGE 2 OF 2

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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

C

SOUTH PARKING LOT

NEW DISABLED
PARKING (14X18')

NEW LOADING AREA

NEW TOUR BUS
DROP OFF

NEW DISABLED
PARKING (9X18')

EXISTING PARKING

TOUR BUS DROP OFF

EXIST. BUILDING



A

VALET PARKING AREA



EXIST. BUILDING#6

PROPOSED WAVE LOCK SHOW WALK

EXIST. BUILDING#5

CONCRETE BOARDWALK

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

CONCESSIONS AREA

B

BEACH CONCESSIONS AREA

BEACH