

COPY

THE CITY OF SAN DIEGO

BARTELL HOTELS, a Limited Partnership DBA DANA INN & MARINA

Percentage Lease

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and BARTELL HOTELS, a Limited Partnership DBA DANA INN & MARINA, hereinafter called "LESSEE."

SECTION 1: USES

1.1 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" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a hotel and related uses including restaurants, banquet room, cocktail lounge, lobby shop, boat rentals, operation of a marina, boat slip rentals, coffee shop, and related facilities in accordance with the General Development Plan in Section 9.2 hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

The knowing use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

1.3 Related Council Actions. By the granting of this lease, 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 premises. 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 leased premises.

1.4 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 nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 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 to establish and use rights-of-way over, under, along, and across the leased 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.

However, 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 leased premises resulting from CITY 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 CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises 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 a hotel, marina, coffee shop and related activities in a fiscally responsible manner.

SECTION 2: TERM

2.1 Commencement. The term of this agreement shall be fifty (50) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.

2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as 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.

2.3 Surrender of Premises. At termination of this lease for any reason, with the exception of the termination provision delineated in Article 6.15 herein, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3: RENT

3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 12289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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

3.2 Rent

- a. Minimum Rent. The annual minimum rent established for the first three (3) years following the effective date of this lease is Three Hundred Sixty-One Thousand Eight Hundred Six Dollars and Twenty-Seven Cents (\$361,806.27), which is Thirty Thousand One Hundred Fifty Dollars and Fifty-Two Cents (\$30,150.52) on a monthly installment basis. For the remaining term of this agreement, the minimum annual rent shall be adjusted in accordance with Section 3.02b, hereof.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3, Payment Procedure, hereof.

Provided, however, in the event that the combined total percentage rent payments and monthly installments of the minimum rent during any lease year equal or exceed the required annual minimum rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, if in any lease year, minimum rents paid plus percentage rents paid exceed the annual minimum rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the total rent owed shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the fourth lease year of this lease and at the beginning of each three-year period thereafter during the term, the annual minimum rent shall be 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 REQUIREMENT IN EFFECT IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE.

- c. Percentage Rents. Percentage rents 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

Business Activities

Seven Percent (7%)

Of gross income from the rental of rooms and other transient living accommodations. HOWEVER, LESSEE may deduct from said gross income derived from the rental of rooms and other living accommodations before computing the percentage thereof due CITY, any commission or fee paid to a travel agency or other rental agent as a result of procurement or attempted procurement by said agency, or agent of tenants for said rooms, and other living accommodations; provided, however, that such deductions shall not exceed five percent (5%) of such gross income and provided that no deductions shall be made for fees paid to any such agency in which LESSEE has any financial or managerial interest. The percentage rate for this activity will increase to seven and one-half percent (7.5%) at the end of the 10th year of the term; then seven and three quarters percent (7.75%) at the end of the 15th year of the term. After the 20th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Twenty Percent (20%)

Of gross income from the operation and rental of marina boat slips and related boating operations. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Ten Percent (10%)

Of gross income from the operation of a boat rental concession. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Seven Percent (7%)

Of gross income from the operation of any gift or lobby shop. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Three and one-half Percent (3.5%)

Of gross income from mandatory banquet service charges or mandatory gratuities. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Six Percent (6%)

Of gross income from the sale of all alcoholic beverages. The percentage rate for this activity will increase to six and one-half percent (6.5%) at the end of the 10th year of the term. After the 20th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Three Percent (3%)

Of gross income from the sale of all food and non-alcoholic dispensed from the bar. The percentage rate for this activity will increase to five percent (5%) at the end of the 10th year of the term. After the 20th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Three Percent (3%)

Of gross income from the sale of food and nonalcoholic beverages prepared or dispensed on the lease

premises excepted as specified above. The percentage rate for this activity will increase to three and one-half percent (3.5%) at the end of the 10th year of the term. After the 20th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Fifty Percent (50%)

Of LESSEE'S gross income from coin-operated telephones. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Ten Percent (10%)

Of LESSEE'S gross income from all other telephone operations. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Twenty-five Percent (25%)

Of net commission or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game or service machines or devices on the premises, excluding coin-operated telephones which are provided for in subparagraph (12) above, or ten percent (10%) of the gross income of any such coin-operated machines or devices owned, rented or leased by LESSEE or sublessees for use on the premises. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

Fifty Percent (50%)

Of LESSEE'S commissions from in-house movies and pay phones. After the 10th lease year, the percentage rate will be adjusted based upon fair

market value as described in Article 3.2(d) below.

Ten Percent (10%)

Of gross income derived from all other activities permitted on the leased premises. After the 10th lease year, the percentage rate will be adjusted based upon fair market value as described in Article 3.2(d) below.

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 1.2, 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 3.7, Unauthorized Use Charge, hereof.

d. Percentage Rate Adjustment.

- (1) At least six (6) months prior to the end of the tenth year of the term of this agreement and at least six (6) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through percentage rent market appraisal as hereinafter set forth, will adjust the percentage rates for the categories of boat rentals, lobby or gift shop, banquet room and service, coin-operated telephones, movies, game rooms, operation and rental of marina boat slips, and "all other authorized activities" of LESSEE'S gross income to be paid to CITY effective on the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rent to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Article 3.2 e. Percentage Rent Appraisal below. The adjusted rates will not, as a result of the process, be increased by more than one-half of one percentage point (0.5%) for the adjustment occurring in the tenth lease year and one percentage point (1%) for the adjustment occurring in the twentieth lease year. Adjustments occurring at the end of each succeeding ten-year period beginning with the thirtieth lease year shall not have adjustment limits. In no event shall the adjusted percentage rate be less than the percentage rate in existence at the time of the adjustment. In the event that such adjustment is not made by mutual consent prior to three (3) months before the end of said tenth year and subsequent ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

(2) At least six (6) months prior to the end of the twentieth year of the term of this agreement and at least six (6) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through percentage rent market appraisal as hereinafter set forth, will adjust the percentage rates for the categories of rooms and other living accommodations, alcoholic beverages, food and non-alcoholic beverages prepared and dispensed from the bar and the leased premises of LESSEE'S gross income to be paid to CITY effective on the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rent to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Article 3.2e Percentage Rent Appraisal below. The adjusted rates will not, as a result of the process, be increased by more than one-half of one percentage point (0.5%) for the adjustment occurring in the twentieth lease year only. Adjustments occurring at the end of each succeeding ten-year period beginning with the thirtieth lease year shall not have adjustment limits. In no event shall the adjusted percentage rate be less than the percentage rate in existence at the time of the adjustment. In the event that such adjustment is not made by mutual consent prior to three (3) months before the end of said tenth year and subsequent ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- 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 shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by CITY. CITY and LESSEE agree to equally share the cost of the mutually selected appraiser. 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 primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of each applicable ten-year period, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive 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 RATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- f. Construction Period. During the time LESSEE is constructing Phase I of the Development Plan, LESSEE shall not be required to pay percentage rents for a period of six (6) months. LESSEE may extend this grace period for two (2) additional months if the completion of Phase I has been delayed due to no fault of LESSEE. LESSEE shall provide CITY with written notification of any unavoidable delay that extends the grace period.

3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected 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. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year, except during the construction period noted in Section 3.2(f) above.
- b. Total gross receipts for the subject month, 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 rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

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. Physical occupancy date.
- 3. Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

- 3.4 Gross Income. "Gross income" or "gross 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 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.

3.5 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 easily 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 issue 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 sixty (60) 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 3.5a. hereinabove, 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 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%) of the current annual rent, 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 3.6, Delinquent Rent and Audit 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.

- 3.6 Delinquent Rent and Audit 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, 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. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

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.

- 3.7 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. If LESSEE in good faith believes that a use was authorized, and a previous audit of a period in which use existed does not identify such use as unauthorized, and LESSEE paid percentage rent in accordance with its good faith classification of the activity, then the unauthorized use charge shall not apply for the period prior to CITY'S notification of the unauthorized activity.

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 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.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease

shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any future partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.7, Additional Consideration to CITY, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

However, Lessor's consent is not required for an assignment to any current partner of LESSEE or (1) to any partner's lineal ancestors or descendants by birth or adoption, (2) to any partner's siblings, (3) to an individual acting as custodian under any state Uniform Gifts to Minor's Act or Uniform Transfers to Minors Act for any individual described in this paragraph, (4) to the spouse of any individual described in this paragraph, (5) to a trust for the exclusive benefit of a current partner and/or any other individuals described in this paragraph, (6) to a limited liability company or any other entity to which all the members are the LESSEE and/or individuals described herein or trusts described in this paragraph.

CITY acknowledges that CITY'S consent is not needed for a sale of a loan, or any portion thereof, secured by an encumbrance on the premises. Furthermore, CITY acknowledges that CITY may not require that the lease be revised upon any such sale, nor shall the rent due under the lease be adjusted to reflect the then current market rent. CITY shall, upon reasonable request promptly execute and deliver a consent and estoppel in the event of any such sale or assignment of a loan or a portion of a lender's interest in a loan.

- 4.3 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:

- a. The principal amount of the applicable promissory note or notes shall not exceed eighty (80%) of the value of LESSEE'S interest in the fair market value of the Premises, as determined by an appraisal prepared at LESSEE'S expense by an independent M.A.I. appraiser (or equivalent), reasonably approved by CITY; and,
- b. LESSEE pays additional consideration to CITY as applicable, and as hereinafter set forth in Article 4.7, Additional Consideration to CITY.

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.

Upon prior written approval by CITY, an approved mortgagee or beneficiary may assign this lease. 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. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided that the assignee is of a good character and reputation in the community.

If the Lease is subsequently assigned to an entity other than Bartell Hotels or is not an intra-family assignment to a Bartell Hotels affiliate company, then any encumbrances on the premises are subject to the sole and absolute discretion of the City Manager to approve, disapprove or condition any such proposed encumbrance, including but not limited to amending the lease to provide the current rents and provisions.

4.4 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, and LESSEE shall fail to commence to cure the default(s) within said thirty-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 in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event 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.

Anything herein to the contrary notwithstanding, in the event of default, LESSEE shall be given written notice of default and the opportunity to cure such default as hereinabove provided. This right to notice and cure applies to all defaults under this lease, however denominated and includes lease provisions which gives CITY the right to "terminate the lease", "unilaterally terminate" or any other LESSOR termination rights. The intent of the parties in all circumstances being to notify LESSEE of such defaults and give LESSEE an opportunity to cure.

- b. Remedies of Lender. 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, 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.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) 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, in the opinion of CITY and LESSEE, 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, in the opinion of CITY and LESSEE, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer

of title or possession to the condemning authority, whichever first occurs, 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. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of 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 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, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- 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.

4.6 Control by Specified Individuals or Entities. Richard M. Bartell shall remain the Managing Partner of the limited partnership named herein as LESSEE, and he shall actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that he becomes incapacitated, then the general partners shall select an experienced manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer or divestment of any interest in said partnership by any partners in excess of five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, and Section 4.7, Additional Consideration to CITY, hereof; provided, however, ownership may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.7 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that in the event of an assignment, in

the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY one percent (1%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, one percent (1%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or one percent (1%) of the amount of any increased loan or encumbrance against the property over and above the amount of the then existing balance(s) of the existing encumbrance(s) plus the cost of the improvements pursuant to the Development Plan if not part of the existing encumbrances. The amount upon which the one percent (1%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE 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 LESSEE'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 leasehold or the work and operations to be

performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - a. Public liability and property damage insurance in the amount of not less than Five Million Dollars (\$5,000,000) 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 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 in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to 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 Section 4.3, Encumbrance, 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.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
 - a. 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 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 policy 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.

- b. 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 obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- c. Accident Reports. LESSEE shall report to CITY any accident causing more than Twenty-Five Thousand (\$25,000) worth of property damage or any serious injury to persons on the premises. 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.
- d. 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 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 LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, 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.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur exceeding \$25,000 on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed 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 satisfactory to CITY. If the leased 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 CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises 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.

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 may 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.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 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 the 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 whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right with reasonable notice unless an emergency, but not the obligation, to enter said premises 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 ten (10) days' written notice to LESSEE, to have any necessary maintenance work done 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 CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE 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. 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.
- 6.3 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.

- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. 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 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.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the 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.
- 6.7 Liens. LESSEE shall 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 five (5) 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.

Provided however, in the event that a "notice of lien" is filed by a contractor but there is no default under the contract with such contractor, and the contractor has filed a "notice of lien" merely to give notice of a possible future claim, the provisions of "a" and "b" above shall not apply to that case.

- 6.8 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 levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that 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 CITY.
- 6.9 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. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.
- 6.10 Ownership of Improvements and Personal Property.
- a. Any and all 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, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
 - b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, 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 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.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent 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 said 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, 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. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims 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 General 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 Section 9.2 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, except as limited by Section 6.14 below. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. 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, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

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

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Failure to Meet Development Schedule. Should LESSEE fail to substantially complete construction within twelve (12) months of the date for final completion of improvements in accordance with the schedule of development of the General Development Plan hereof, it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in the amount of Thirty Five Thousand Dollars (\$35,000.00) per year (prorated on a daily basis) thereafter for failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. The liquidated damages set forth herein shall be CITY'S sole and exclusive remedy for LESSEE'S failure to timely complete the development plan. The City Manager, in his sole discretion, may approve an extension to the development schedule of up to one (1) year without further City Council approval.

Notwithstanding the above, if LESSEE begins construction of the Phase II improvements described in the Development Plan and ceases activity on constructing the improvements for more than twelve (12) months, CITY may, at its option, terminate this lease. LESSEE must provide CITY with written notice if construction activity ceases for a thirty (30) day period and if any construction activity subsequently resumes.

- 6.15 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 as described in the General Development Plan. LESSEE will proceed with diligence to obtain such permit, but if unable to do so within 12 months after the effective date of this lease, CITY or LESSEE may terminate this lease by providing written notice to the other party prior to February 1, 2002. If CITY or LESSEE elects to terminate this Lease in accordance with this Section 6.15, the prior Lease between the parties Document RR-724496, shall revive.

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 LESSEE at the leased premises or at such other address designated in writing by LESSEE as follows:

Richard Bartell, General Partner
Bartell Hotels
4875 North Harbor Drive, 5th Floor
San Diego, CA 92106

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

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party. Notice shall be effective on personal service or two days after deposit in the United States mail.

- 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.
- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE 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 lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE 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 LESSEE'S use 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.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program.
 - a. Equal Opportunity Contracting. LESSEE 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. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE 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. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE 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 LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 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.
- 7.7 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 and attorneys' fees.
- 7.8 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.
- 7.9 Captions. The Lease 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 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 with respect to the leased premises. 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 itself. Each of the parties in 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 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The LESSEE'S policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employees assistance programs.
 - d. The penalties that may be imposed upon employees' for drug abuse violations.

- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Partnership Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she 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 LESSEE is 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.

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

- 7.16 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on May 28, 1968 with Dana Marina, Inc., Document RR-724496, as amended, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.17 Transient Slip (or Mooring) Facilities. Five (5) slips (or moorings), depending on the type of facilities offered, or ten percent (10%) of the total number of slips (or moorings) maintained by LESSEE, whichever number is larger, shall be specially marked for use by transient boats. In no event shall these slips (or moorings) designated for transients be rented or occupied by the same person or boat for longer than seventy-two (72) consecutive hours. It is the intent of this condition to provide overnight slips (or moorings) space for boats normally berthing outside the Mission Bay area. Any method of circumventing this provision in violation of the intent herein expressed shall be construed as a breach of this condition and may result in termination of this lease.
- 7.18 Damaged Equipment. LESSEE shall salvage within 24 hours any property, real or personal, of LESSEE'S declared by CITY to be a menace to navigation or a nuisance within Mission Bay and to salvage or cause to be salvaged any sunken vessel or property upon the leased premises, irrespective of ownership. CITY may require that any boats not kept in a clean and operable condition be removed from the leased premises.
- 7.19 Enforcement of Live-Aboard Regulation. LESSEE shall be responsible for the enforcement, both within and in connection with the leased premises, of the following live-aboard regulation:
- No person shall remain overnight on board any watercraft or houseboat in Mission Bay Park unless the watercraft or houseboat has a self-contained toilet on board that does not discharge into the waters of the Bay. No owner of any watercraft or houseboat shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A watercraft or houseboat is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park lands are primarily responsible for the enforcement of this subsection on the water abutting their leased premises.
- The above Live-Aboard Regulation is presently set forth in the San Diego Municipal Code Section 63.25.71 and is subject to amendment or modification by the City Council. LESSEE also agrees to comply or secure compliance with any such amendment or modification.
- 7.20 Trash and Refuse. LESSEE shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated aboard vessels using LESSEE'S docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and

shall be of sufficient size and number to contain the refuse generated aboard all vessels using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.

7.21 Plastic Food Containers.

- a. LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall LESSEE obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the leased premises.
- b. LESSEE'S food packaging for prepared food to be consumed on the premises or for takeout food shall be biodegradable, and LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. LESSEE'S food packaging for prepared food to be consumed off the premises shall be biodegradable unless LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE may limit its use of such packaging to the amount actually available.
- c. For purposes of this lease, the following definitions are applicable:
 - a. "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
 - b. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
 - c. "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

7.22 Boat Rentals. For purposes of this lease, "vessels" include ships of all kinds, motorboats, sailboats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. LESSEE shall be permitted to rent

vessels to the general public subject to prior written approval from the City Manager as to the number and type of vessels available for rent. The City Manager may, upon written notice to LESSEE and with reasonable cause, modify any approval previously given. LESSEE shall carry commercial general liability insurance, the amounts and coverages of which shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All vessels for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All vessels for rent shall be identified by LESSEE through the use of distinctive markings or logos. Each rental vessel shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that LESSEE is renting a vessel or vessels, LESSEE shall have at least one operational chase boat and staff to operate it available on the waters of Mission Bay. No rental vessel may be stored on public property outside the leasehold. LESSEE agrees that the City Manager or his designees shall have the authority to immediately terminate any rental activities which are not in conformance with the stipulations of this lease or current boating regulations.

- 7.23 Pump Out Stations. At the time LESSEE performs any major marina improvements, prior to and as a condition of City approval, LESSEE shall provide one or more holding tank pump out stations for use by the general boating public. These pump out stations shall be maintained by the LESSEE in good working condition and shall be specially marked for use by the general boating public. Pump out stations shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and the general boating public and shall be of sufficient size to at least contain the waste material generated aboard all vessels using LESSEE'S facilities. Pump out stations shall be enclosed, emptied, and serviced regularly enough to prevent them from overflowing or creating unhealthy, unsightly, or unsanitary conditions. The contents of the pump out stations shall be disposed of into the CITY'S sewer system by LESSEE or others acting pursuant to LESSEE'S direction, in a manner as provided under applicable law at the time of disposal.

It is the intent of this provision to provide sufficient opportunity for the general boating public to properly dispose of the waste material generated aboard their vessels.

- 7.24 Local Coastal Program. Should a local coastal program (hereinafter the "Local Coastal Program") ever be adopted for the Mission Bay Park segment of the CITY Local Coastal Program, and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park in order to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements, LESSEE agrees to contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to

such a traffic impact mitigation program; provided that the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park. This section shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-93-75/EL.

7.25 Public Access. LESSEE shall allow the general public access to the perimeter walkways around the entire leased premises at all times unless closure is allowed with the City Manager's prior consent based upon evidence from LESSEE that reasonable safety precautions required limited closure.

7.26 Water Quality - Best Management Practices. Mission Bay Park is a recreational aquatic park in the City of San Diego. The success of area businesses depends on the continued protection of water quality and the promotion of the enjoyment of Mission Bay's water resources by the public. To further these goals, the CITY and LESSEE are committed to the implementation of a program to manage activities in a manner which aids in the protection of water resources. Best Management Practices (BMP) are to be prepared and submitted within six (6) months of the execution of the Lease by LESSEE, in order to control erosion and reduce the amount of pollutants and other sediments discharged from the leased premises into Mission Bay. The BMP will be subject to annual review thereafter by the CITY.

LESSEE will develop a comprehensive BMP plan that includes LESSEE'S existing practices and employing the water quality protection guidelines in this section by the completion of the Phase 2 of the Development Plan, which shall thereafter be subject to annual review by CITY. Once a BMP has been developed by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP. In addition, LESSEE shall include in each temporary or permanent slip rental agreement, the requirement for compliance with Mission Bay Park and marina rules and regulations, as well as BMP for maintenance of land/water quality within the leasehold.

The following are examples of BMP:

LAND

- a. Parking Lots. Cleaning and/or sweeping of parking lots and walkways on a daily basis is recommended. In addition, the use of water for cleaning and/or sweeping shall be minimized. The sweeping program shall include, but not be limited to, the removal of litter, oil, grease and particulate matter before it enters storm drains located on or around the leased premises. Catch basin inserts such as stormceptors or fossil

filters shall be installed at storm drains when any new construction is performed on the leased premises.

- b. Landscaping. To prevent an excess amount of water runoff into Mission Bay, grass filter strips or "fossil filters" shall be utilized at all storm drain inlets that collect runoff from the existing landscaped areas of the parking lots. The use of drip irrigation in lieu of spray irrigation is suggested. The irrigation system shall operate in a manner that ensures vegetation survival. Inspection for damaged sprinkler heads and wear and tear should be performed regularly.

Water-conserving plants and turf should be used whenever feasible. Irrigation parts should be replaced immediately upon detection of failure. Intentional disposal of landscape debris into a storm drain shall not be allowed. Water used for irrigation shall not be allowed to run off the leased premises. Use of pesticides and fungicides that have been banned from manufacture by the U.S. EPA shall be prohibited.

- c. Erosion Control. Vegetation and other appropriate ground cover on all slopes and other open areas shall be maintained to provide adequate long-term soil protections and erosion control to prevent the transport of sediment from the leased premises during rainfall events and irrigation. Any erosion problems caused by rainfall, broken sprinkler heads, or irrigation shall be corrected promptly, and any transported sediment shall be promptly removed before it reaches a storm drain or receiving water.
- d. Storm Drains. Hazardous material or waste, cleaning compounds or detergents (biodegradable or otherwise), run-off from cleaning operations of food containment vessels or transport devices, wash-down or wash-off containing organic matter either manmade or natural, liquid food products or grease, paint or paint cleaning materials, or anything else that is of a questionable nature shall not be discharged or disposed into the storm drain system.

WATER

- e. Sewage Facilities. The discharge of effluent into marina waters shall be expressly forbidden. All vessels with overnight capabilities that are berthed at the marina should be equipped with a marine toilet and holding tank. A portable toilet may be sufficient. Pump-out facilities (portable or permanent installation) should be provided by the marina, at no charge or for a nominal fee, to both marina tenants and the public. Pump-out facilities should be easily accessible to the public. Dye tablets should be provided to marina users by the marina operator.

- f. Annual Inspection. LESSEE should annually inspect each vessel moored at the marina to ensure that it is seaworthy, has dye tablets installed, and complies with all other BMP.
- g. Live-Aboards. LESSEE shall monitor the frequency of visits to each slip in a good-faith effort to prevent live-aboard activity as delineated in Section 7.16, and San Diego Municipal Code Section 63.25.71.
- h. Maintenance/Repairs. Boat cleaning at the marina shall be limited to light wash-down and in-water hull cleaning. Complete washing of vehicles, equipment and boats shall be done in a contained wash rack. Sandblasting, exterior hull painting, or other heavy maintenance is prohibited within the marina. Any boat maintenance task that could cause a toxic discharge shall not be conducted at the marina. Oil changes must be performed at a fuel dock or at a boat yard.
- i. Recyclables/Hazardous Materials. LESSEE will provide trash receptacles and containers for recyclables, that are cleaned on a regular basis and clearly marked and sited so that they are convenient for LESSEE's customers. All hazardous materials shall be disposed of in a safe manner by LESSEE and/or LESSEE's staff. Use of any pesticide that has a high risk of runoff or leaching will be minimized and a suitable alternative utilized. The marina will provide a secure location to store hazardous wastes with each container properly labeled.

SECTION 8: SIGNATURES

8.1 Signature Page.

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 11/27/00

By 
Real Estate Assets Director

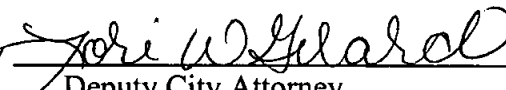
LESSEE: BARTELL HOTELS DBA
DANA INN & MARINA

Date 10/31/00

By 
Richard BARTELL
Its GENERAL PARTNER

APPROVED as to form and legality this 28th day of November, 2000.

CASEY GWINN, CITY ATTORNEY

By 
Deputy City Attorney

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R- 294161

SECTION 9: EXHIBITS

9.1 Legal Description.

(See attached Exhibit "A")

EXHIBIT "A" -Original Parcel

DESCRIPTION

That portion of the tidelands and submerged or filled lands of MISSION BAY (formerly False Bay) and a portion of the PUEBLO LANDS OF SAN DIEGO, according to Map thereof made by James Pascoe in 1870, a copy of which said Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

COMMENCING at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A," Inspiration Heights, according to Map thereof No. 1700, filed in the Office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ}55'56''$ West (Record - South $89^{\circ}59'00''$ West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South $00^{\circ}04'04''$ East 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East 249.70 feet; thence North $05^{\circ}30'02''$ West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" (The Lambert Grid Coordinates, California Zone 6, for said Station "Old Town" are $X=1,712,415.7$ and $Y=213,019.22$) and said Triangulation Station is located at Latitude $32^{\circ}45'02.45''$ North and Longitude $117^{\circ}11'07.200''$ West being also the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 5482.06 feet and West 15,803.76 feet to Mission Bay Coordinates North 5482.06 and West 15,803.78 being the TRUE POINT OF BEGINNING; and being also a point on the arc of a 296.58 foot radius curve; thence Southeasterly along the arc of said curve through a central angle of $14^{\circ}00'09''$ a distance of 72.48 feet to the beginning of a reverse 960.00 foot radius curve; thence Southeasterly along the arc of said curve through a central angle of $18^{\circ}44'32''$ a distance of 314.03 feet; thence tangent to said curve South $70^{\circ}43'10''$ East 457.35 feet; thence North $19^{\circ}16'59''$ East 34.31 feet to the beginning of a tangent 370.00 foot radius curve, concave Westerly, being at Mission Bay Coordinates North 5176.27 and West 15024.44; thence Northerly along the arc of said curve through a central angle of $29^{\circ}27'25''$ a distance of 190.22 feet, being at Mission Bay Coordinates North 5363.81 and West 15009.51; thence tangent to said curve North $10^{\circ}10'35''$ West 122.00 feet, being at Mission Bay Coordinates North 5483.89 and West 15031.07; thence North $19^{\circ}00'33''$ West 375.07 feet, being at Mission Bay Coordinates North 5838.51 and West 15153.23; thence North $63^{\circ}30'00''$ West 205.59 feet, being at Mission Bay Coordinates North 5930.24 and West 15337.22; thence North $28^{\circ}30'02''$ West 300.00 feet, being at Mission Bay Coordinates North 6193.88 and West 15480.37; thence South $61^{\circ}30'01''$ West 63.61 feet to a point on the arc of a non-tangent 350.00 foot radius curve, the center of which bears South $66^{\circ}33'41''$ East from said point, being at Mission Bay Coordinates North 6162.58 and West 15538.03; thence Southerly along the arc of said curve through a central angle of $39^{\circ}03'49''$ a distance of 238.63 feet, being at Mission Bay Coordinates North 5929.36 and West 15553.98; thence South $74^{\circ}22'30''$ West 60.00 feet, being at Mission Bay Coordinates North 5912.93 and West 15611.76; thence South $24^{\circ}01'13''$ West 471.72 feet to the TRUE POINT OF BEGINNING.

LEGAL DESCRIPTION

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Bay - and a portion of the Pueblo Lands in San Diego, according to map thereof made by James Pascoe in 1870, a copy of which said Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, in the County of San Diego, State of California, and described as a whole as follows:

Commencing at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the Office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ}55'56''$ West (record - South $89^{\circ}59'00''$ West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South $00^{\circ}04'04''$ East 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East 249.70 feet; thence North $05^{\circ}30'02''$ west 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" (The Lambert Grid Coordinates, California Zone 6, for said Station "Old Town" are X equals 1,712,415.7 and Y equals 213,019.22) and said Triangulation Station is located at Latitude $32^{\circ}45'02.45''$ North and Longitude $117^{\circ}11'07.200''$ West being also the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 5,482.06 feet and West 15,803.78 feet to Mission Bay coordinates North 5,482.06 and West 15,803.78, being the TRUE POINT OF BEGINNING; and being also a point on the arc of a 296.58 foot radius curve; concave to the South, a radial to said point bears North $24^{\circ}01'13''$ East; thence Westerly, along said curve, through a central angle of $12^{\circ}30'20''$ an arc distance of 64.73 feet; thence non-tangent to said curve, North $22^{\circ}28'51''$ East, 71.88 feet to the beginning of a non-tangent 268.50 foot radius curve, concave to the East, a radial to said point bears South $51^{\circ}00'24''$ West; thence Northerly, along said curve, through a central angle of $49^{\circ}47'05''$ an arc distance of 233.30 feet; thence non-tangent to said curve, South $80^{\circ}16'09''$ West, 60.88 feet to the beginning of a non-tangent 221.00 foot radius curve, concave to the Southeast, a radial to said point bears South $80^{\circ}16'09''$ West; thence Northeasterly, along said curve, through a central angle of $123^{\circ}16'08''$ an arc distance of 475.47 feet, to the beginning of a non-tangent 430.00 foot radius curve, concave to the East, a radial to said point bears South $89^{\circ}09'08''$ West; thence Southerly, along said curve, through a central angle of $17^{\circ}53'28''$ an arc distance of 134.27 feet to a point on the Westerly line of the Dana Marina, Inc. leasehold estate as described in the document recorded in the office of the County Recorder of San Diego County, October 23, 1968, as Recorder's file number 185950; thence Southerly along said Westerly line and non-tangent to said curve, South $24^{\circ}01'13''$ West, 441.49 feet to the TRUE POINT OF BEGINNING.

Excepting all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefor, as reserved by the State of California in an Act of Legislature approved April 27, 1945, Statutes of California, Chapter 142.

Contains 2.500 acres, more or less.

Lonie K. Cyr

Lonie K. Cyr, PLS 6929

Expiration Date: September 30, 2001



9.2 General Development Plan.

As required by Section 6.12 of the lease, the following General Development Plan is agreed to by CITY and LESSEE as material consideration for this lease.

- A. Site Plan (Attachment A).
- B. Financial Plan (Attachment B)
- C. Development Plan (further detailed in LESSEE'S proposal to City dated October 6, 1999):

Phase 1. Renovation of existing facilities to create a "campus like" resort to include the following:

- 1. Architectural modifications to all buildings;
- 2. A complete renovation of all guestrooms;
- 3. A complete renovation of the existing 4,000 sq. ft. coffee shop;
- 4. The current lobby will be converted into a concierge/business center facility upon completion of Phase 2.
- 5. Plant 200 palm trees and other additional landscaping throughout the leasehold;
- 6. Parking lot renovations and restriping of all parking spaces.

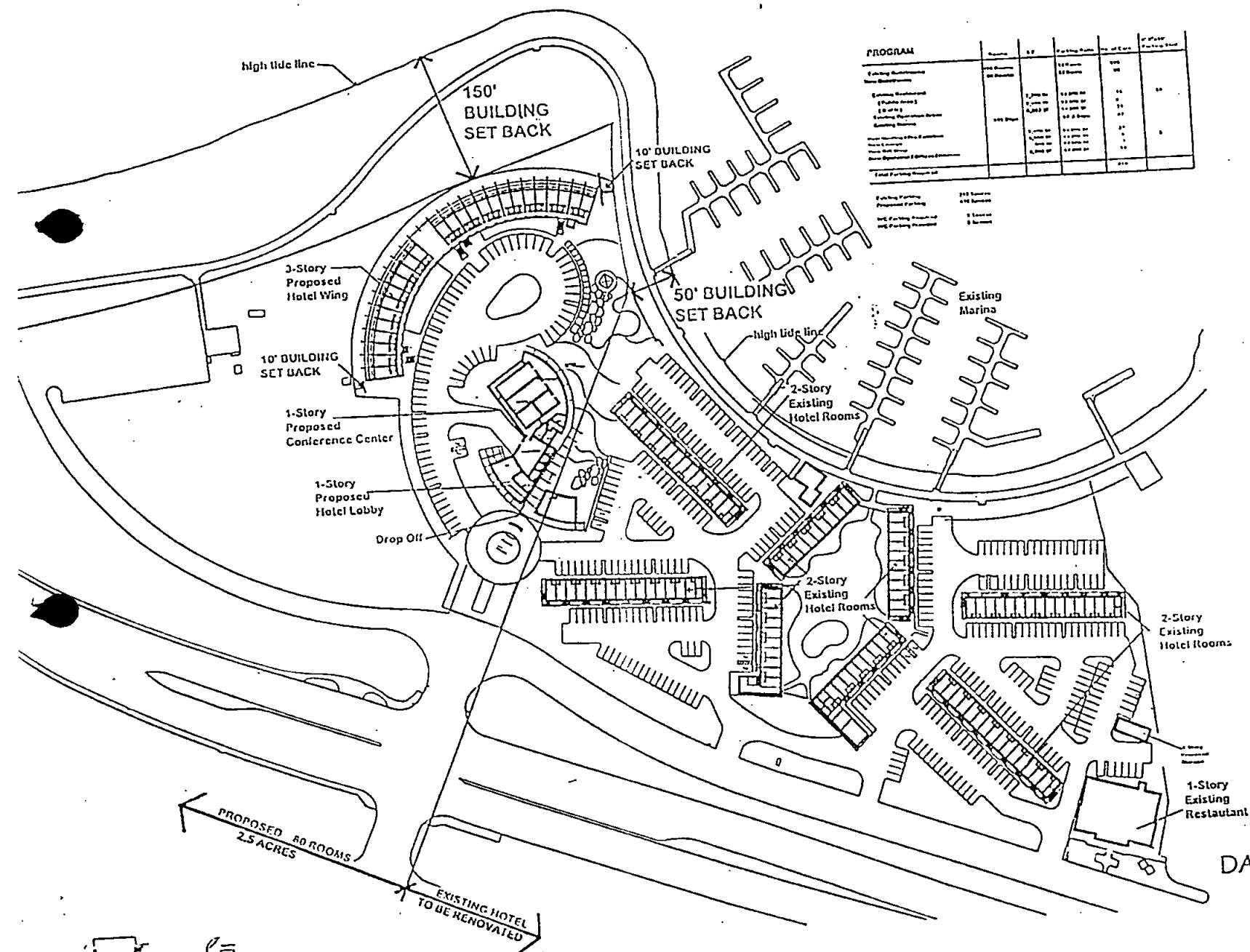
The total cost of the renovations in Phase 2 of the Development Plan is estimated to be \$3,000,000.

Phase 2. Leasehold expansion of 2.5 acres of contiguous parkland to facilitate the addition of 80 guestrooms, a new 5,000 square foot lobby (including gift shop and lounge) a new 6,000 square foot meeting/banquet facility, an additional pool and all required parking for the additional facilities.

The total estimated cost of Phase 2 is approximately \$7,500,000. The total estimated cost of the Development Plan is \$10,500,000.

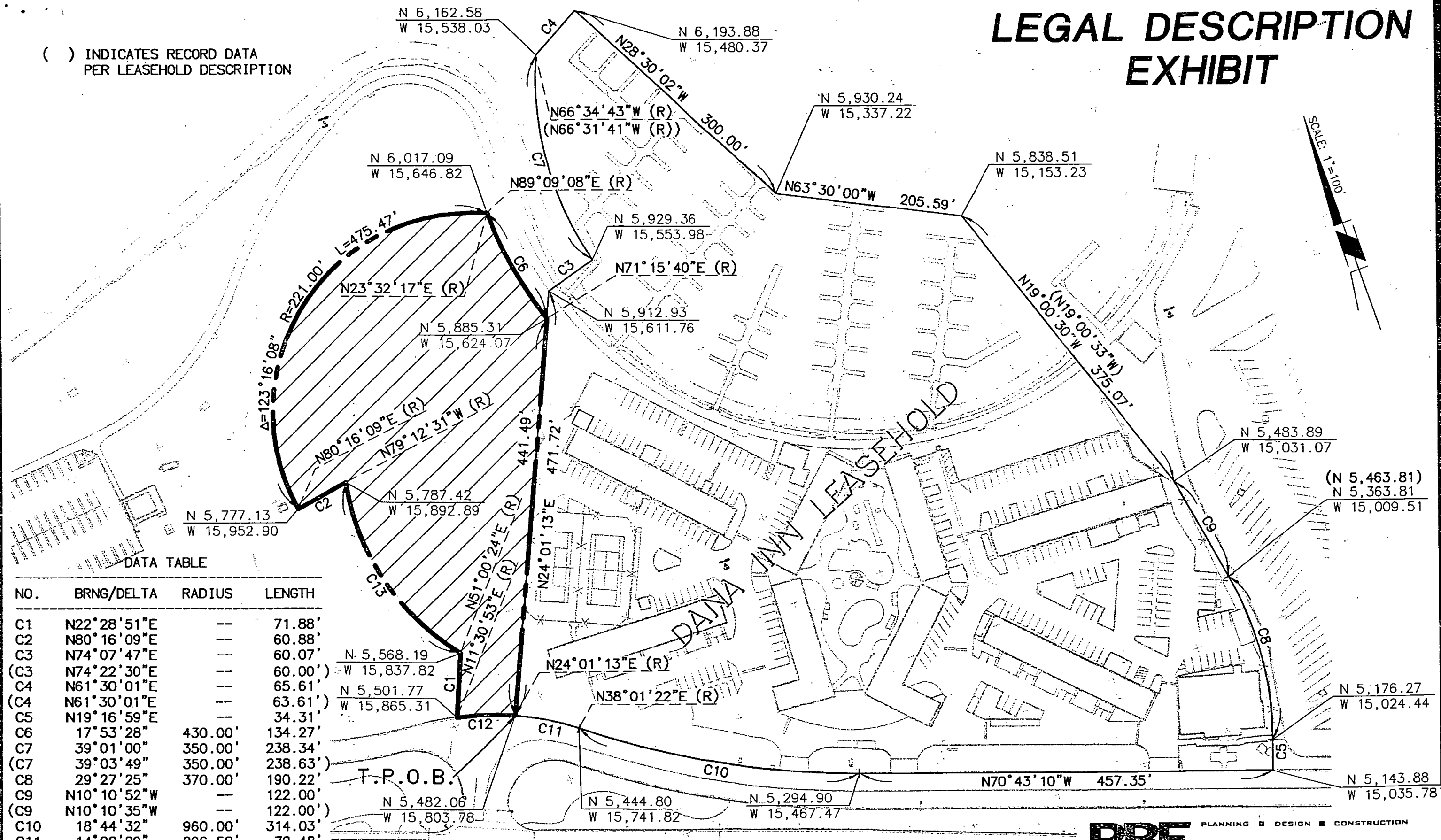
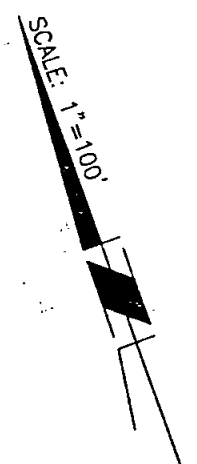
D. Development Schedule:

Construction is to start within 12 months after obtaining a Coastal Development Permit. Phase 1 will be completed on or before December 31, 2003. Phase 2 will be completed on or before December 31, 2006. The CITY will be entitled to damages as CITY sole and exclusive remedy specified in Section 6.14 Failure to Meet Development Schedule of this lease if LESSEE fails to complete the project in accordance with the Development Plan.



LEGAL DESCRIPTION EXHIBIT

() INDICATES RECORD DATA
PER LEASEHOLD DESCRIPTION



DATA TABLE

NO.	BRNG/DELTA	RADIUS	LENGTH
C1	N22°28'51"E	---	71.88'
C2	N80°16'09"E	---	60.88'
C3	N74°07'47"E	---	60.07'
(C3)	N74°22'30"E	---	60.00'
C4	N61°30'01"E	---	65.61'
(C4)	N61°30'01"E	---	63.61'
C5	N19°16'59"E	---	34.31'
C6	17°53'28"	430.00'	134.27'
C7	39°01'00"	350.00'	238.34'
(C7)	39°03'49"	350.00'	238.63'
C8	29°27'25"	370.00'	190.22'
C9	N10°10'52"W	---	122.00'
(C9)	N10°10'35"W	---	122.00'
C10	18°44'32"	960.00'	314.03'
C11	14°00'09"	296.58'	72.48'
C12	12°30'20"	296.58'	64.73'
C13	49°47'05"	268.50'	233.30'

JN: 25-100246
DRAWING: 248x002.dwg
PLOT: 11-09-2000

RESOLUTION NUMBER R- **294161**

ADOPTED ON NOV 14 2000

WHEREAS, the original lease for the Dana Inn and Marina in Mission Bay Park [Lease] commenced in June of 1968 and expires in June of 2018; and

WHEREAS, the current lessee of the Dana Inn and Marina, Bartell Hotels dba Dana Inn and Marina [Bartell Hotels], acquired its interest in the Lease in December of 1986; and

WHEREAS, improvements to the leasehold were completed in 1968 and currently consist of 196 guestrooms, a 4,000 square foot coffee shop, and a 141 boat slip marina, which occupy 7.97 acres of land and 2.43 acres of water; and

WHEREAS, Bartell Hotels desires to complete an \$11 million renovation of the existing hotel and restaurant including an expansion of 80 rooms on 2.5 acres of adjacent land [Project], which would be consistent with the Mission Bay Park Master Plan Update; and

WHEREAS, Bartell Hotels recently received recommendations for approval of the Project from the Mission Bay Park Committee, Design Review Committee, and the Park and Recreation Board; and

WHEREAS, the Project will beautify and improve the leasehold, and it is anticipated that it will provide increased revenue for the City as well as additional transient occupancy taxes; and

WHEREAS, the City and Bartell Hotels have negotiated a 50-year lease at the initial rental rate of \$361,806.27 per year, the fair market rate as determined by City valuation staff;

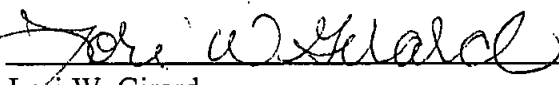
NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is

authorized to execute, for and on behalf of the City, a 50-year lease agreement with Bartell
Hotels for the lease of the Dana Inn and Marina in Mission Bay Park, under the terms and
conditions set forth in that lease agreement on file in the office of the City Clerk as Document
No. RR- 294161.

APPROVED: CASEY GWINN, City Attorney

By


Lori W. Girard

Deputy City Attorney

LWG:cdk
10/31/00
Or.Dept:REA
Aud.Cert:N/A
R-2001-763
Form=leaser.frm

Passed and adopted by the Council of the City of San Diego on November 14, 2000 by the following vote:

YEAS: MATHIS, WEAR, BLAIR, STALLINGS, McCARTY.

NAYS: STEVENS.

NOT PRESENT: KEHOE, VARGAS, MAYOR GOLDING.

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)

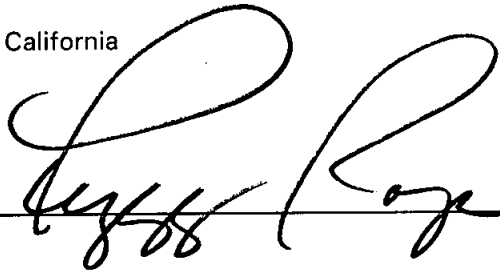
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R- 294161, passed and adopted by the Council of The City of San
Diego, California on November 14, 2000.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

**CALIFORNIA DEPARTMENT OF FISH AND GAME
CERTIFICATE OF FEE EXEMPTION**

*De Minimis Impact Finding or
One Fee Per Project Provision*

Project Title/Location (include county): Dana Inn and Marina Expansion/1710 West Mission Bay Drive between Ingraham Street and Mission Boulevard, immediately southeast of Sunset Point along Mission Bay, in the Mission Beach Community Planning Area., City of San Diego, County of San Diego.

LDR No. 40-0048

SCH NO. 2000051132

Project Applicant: Bartell Hotels
4875 North Harbor Drive, 5th Floor
San Diego, California 92106

Project Description: LEASE AGREEMENT for a 2.5-acre expansion of the existing 10.4-acre facilities at the Dana Inn and Marina on Mission Bay to include the addition of 80 guest rooms (approximately 32,000 square feet) to the existing 196-room Dana Inn for a total of 276 guest rooms, the addition of a new 5,000-square-foot lobby including gift shop and lounge and a new 6,000-square-foot meeting/banquet room, the addition of 145 parking spaces to the existing 265 spaces for a total of 410 parking spaces, the conversion of the existing lobby into a concierge/ business center facility, and the renovation and architectural improvement of all existing guest rooms, buildings and landscaping. No modifications are proposed to the 2.43-acre, 141-slip boat marina (Lot No. 24, Block 10, of Tidelands Map No. 1700).

Findings of Exemption:

A Mitigated Negative Declaration and Initial Study have been prepared for the project. The report concludes that the project would result in a de minimis impact to wildlife resources as all of the following apply:

1. No significant biological resources exist on the project site.
2. The project would have no adverse impacts on biological resources located off-site.
3. No biological studies were requested for the project.
4. No mitigation measures are proposed to address impacts to biological resources.
5. No conditions in any discretionary actions associated with the project address biological resource issues.
6. No broader impacts on a habitat (for example - urban runoff effects on wetland) were identified.

Certification:

I hereby certify that the lead agency has made the above findings of fact and that based upon the initial study and hearing record, the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Tina Christiansen, Director
Planning and Development Review Department

By: Paul C. Hellman
Title: Senior Planner
Lead Agency: City of San Diego
Date: 11-1-00

RESOLUTION NUMBER R- 294162

ADOPTED ON NOV 14 2000

BE IT RESOLVED, by the Council of The City of San Diego, that it is hereby certified that Mitigated Negative Declaration No. 40-0048, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of The City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a new lease with Bartell Hotels dba Dana Inn and Marina.

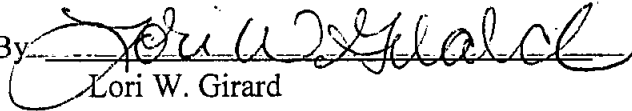
BE IT FURTHER RESOLVED, that the Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is hereby approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to

mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: CASEY GWINN, City Attorney

By



Lori W. Girard
Deputy City Attorney

LWG:cdk

11/1/00

Or.Dept:REA

R-2001-769

Form=mndr.frm

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM COUNCIL APPROVAL OF LEASE AGREEMENT FOR THE DANA INN AND MARINA EXPANSION

LDR NO. 40-0048

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Mitigated Negative Declaration (LDR No. 40-0048) shall be made conditions of the LEASE AGREEMENT FOR THE DANA INN AND MARINA EXPANSION as may be further described below.

Hydrology/Water Quality

1. Prior to the issuance of any grading and/or building permits and in accordance with State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity*, the owner/permittee shall prepare a Storm Water Pollution Prevention Plan (SWPPP), containing all of the following requirements, satisfactory to the City Engineer.
 - A. Comprehensive permanent post-construction Best Management Practices (BMPs) shall be incorporated into the project plans to control erosion and reduce the amount of pollutants (e.g., oil, grease, heavy metals) and other sediments discharged from the project's parking lot and landscape areas into Mission Bay, as shown on Exhibit A, satisfactory to the City Engineer. BMPs shall include the use of grass filter strips in conjunction with "fossil filters" at all storm drain inlets collecting runoff from existing parking and landscape areas. Runoff from new structures and associated walkways will be directed into adjacent landscape planters and flow into a filtered catch basin prior to discharge from the site. A stormceptor device will be installed at the adjacent public parking lot to the west of the project site for the collection and filtration of all remaining surface runoff from the proposed Dana Inn expansion area (e.g., parking lot and private street), as well as from the public parking lot itself.

Equivalent alternative available technologies and BMPs may be approved by the City Engineer.

The SWPPP shall include a permanent maintenance plan, prepared satisfactory to the City Engineer, which defines the owner/permittee as the responsible party for the permanent maintenance of the grass filter strips, "fossil filters", stormceptors, and landscape drainage. The maintenance plan shall include the submittal of annual reports to the City Engineer documenting the maintenance and condition of all permanent BMPs. Spot checks may be made by the City Engineer to ensure proper clean-out and maintenance of all water quality controls.

- B. Prior to the issuance of any grading and/or building permit, concurrent with the preparation of the SWPPP, a complete and accurate Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City Engineer when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City Engineer when received.
- C. Prior to the issuance of any grading and/or building permit, the owner/permittee shall note the following on the construction plans: "The applicant and/or contractor shall post the City- and State-approved SWPPP on the job-site during all construction activities."
- D. Grading will be allowed during the rainy season (November 15 through March 31) upon the approval of special erosion control measures by the City Engineer.
- E. Prior to the issuance of Certificates of Occupancy, the City Engineer shall inspect the permanent, post-construction hydrology and/or water quality controls to ensure the system functions properly. Additional BMPs may be required by the City Engineer based on the field inspection.

General

- 2. Prior to the issuance of any grading and/or building permit, the City Manager shall verify that the owner/permittee has submitted a deposit of \$450.00 to ensure the successful completion of the Mitigation, Monitoring and Reporting Program (MMRP).

4. *Conclusions*—The results of this study indicate that the use of a single, low-dose, short-acting benzodiazepine, such as lorazepam, is an effective and safe method of sedation for the conscious, cooperative, and nonventilated patient with severe head injury. The use of a single, low-dose, short-acting benzodiazepine, such as lorazepam, is an effective and safe method of sedation for the conscious, cooperative, and nonventilated patient with severe head injury.

San Diego, CA 92101

X

State Clearinghouse Number: 2000051132

Project Title: Dana Inn & Marina Expansion

Project Location: 1710 West Mission Bay Drive between Ingraham Street and Mission Boulevard, immediately southeast of Sunset Point along Mission Bay, in the Mission Beach Community Planning Area.

Project Description: LEASE AGREEMENT for a 2.5-acre expansion of the existing 10.4-acre facilities at the Dana Inn and Marina on Mission Bay to include the addition of 80 guest rooms (approximately 32,000 square feet) to the existing 196-room Dana Inn for a total of 276 guest rooms, the addition of a new 5,000-square-foot lobby including gift shop and lounge and a new 6,000-square-foot meeting/banquet room, the addition of 145 parking spaces to the existing 265 spaces for a total of 410 parking spaces, the conversion of the existing lobby into a concierge/ business center facility, and the renovation and architectural improvement of all existing guest rooms, buildings and landscaping. No modifications are proposed to the 2.43-acre, 141-slip boat marina (Lot No. 24, Block 10, of Tidelands Map No. 1700). Applicant: Bartell Hotels

This is to advise that the City of San Diego on November 14, 2000 approved the above described project and made the following determinations:

1. The project in its approved form will, X will not, have a significant effect on the environment.
2. An Environmental Impact Report was considered by the City as a Responsible Agency for this project and certified pursuant to the provisions of CEQA by the Lead Agency, the University of California, San Diego.
- X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
R-294162
- An addendum to _____ 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 X 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 Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Analyst: Jeff Thomas

Telephone: (619) 446-5320

Filed by:

Signature
Peggy Rogers,
Deputy City Clerk
Title



Bartell Hotel
LEGAL side

THE CITY OF SAN DIEGO

January 23, 2001

Mr. Richard Bartell
Bartell Hotels, 5TH Floor
4875 North Harbor Drive
San Diego, CA 92106

Reference: Dana Inn and Marina Lease

Dear Mr. Bartell:

This letter is in response to your request to make a minor correction to Section 6.12 Development Plan of the referenced lease. We agree that the correction is necessary.

Commencing on line 5, the sentence that begins with "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 except as limited by Section 6.14 below. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY" will be deleted in its entirety and replaced with the following:

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. Except as limited by Section 6.14 below, failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY.



Real Estate Assets

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

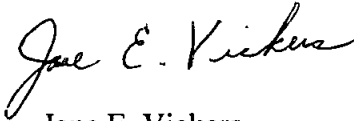
Page 2

Mr. Richard Bartell

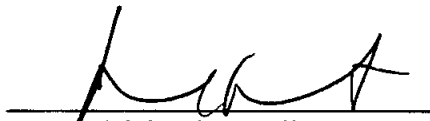
January 23, 2001

If these meet with your approval, please indicate by signing below and returning a copy of this letter to Christy Novins. If you have any questions, please call Christy at (619) 236-6191.

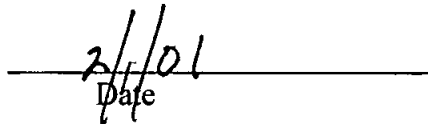
Sincerely,



Jane E. Vickers
Deputy Director



Richard Bartell
Owner Bartell Hotels


Date

cc: Lori W. Girard, Deputy City Attorney
Linda M. Fierro, Supervising Property Agent
Christy A. Novins, Property Agent

christy/danainn&marina/lsecorrections

CONSENT TO LICENSE AGREEMENT

CITY ATTORNEY

Oct 2 1 45 PM '01

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BARTELL HOTELS

(LESSEE) and filed in the Office of the City Clerk as Document No. RR-294161 hereby consents to that certain license agreement, titled "Concession Agreement" between the above LESSEE (LICENSOR) and

ADVENTURE WATER SPORTS

(LICENSEE) (License) dated April 11, 2001, a copy of which is attached hereto as Exhibit A. The License shall be subordinate to the Master Lease in all respects. The CITY is merely approving the LICENSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the License. The CITY is not bound by any term or condition in the License which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

- I. In consideration of CITY'S consent, LESSEE shall pay to CITY percentage rent calculated on a calendar month basis and consisting of ten percent (10%) of the gross income resulting from the rental of Motor Boats, Ski Boats, Fishing Boats, Pedal Boats, Aqua Cycles, Sail Boats, Kayaks, Personal Watercraft, Bicycles, Roller Blades, and Scooters, as delineated in Section 3.2 Rent of the Master Lease.
- II. LICENSEE'S operation shall be professionally maintained and staffed during all operating hours and shall be properly equipped to operate legally within any public operating areas or as otherwise required by Mission Bay Park rules. The LICENSEE shall at all times comply with all applicable laws, statutes, ordinances, regulations or "special notices" of the City of San Diego, United States Coast Guard or any other regulatory agency issued under their authority and at the LICENSEE'S sole cost and expense.
- III. LICENSEE shall not assign the license or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego, hereinafter, "CITY". An assignment by operation of law shall automatically terminate this Consent.
- IV. LICENSEE shall defend, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of LICENSEE, his agents and invitees; provided, however, LICENSEE'S duty to indemnify and hold harmless shall not include any claims or liability

arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- V. LICENSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be Two Million (\$2,000,000) Dollars COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.
- VI. Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Consent or the License, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

THE CITY OF SAN DIEGO

Dated 6-7-01

By Paul J. Crawford
Supervising Property Agent, Real Estate
Assets Department for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 10/29/01

By Russell Dwyer
Deputy City Attorney

LESSEE: Bartell Hotels

Dated 6/18/01

By [Signature]

Licensee: Adventure Water Sports

Dated 6-21-01

By Jim McLaughlin

CAN/jmj-n

06/07/01

I:\WPO\2001\Novins\CSA-ADVENTURE WATER SPORTS.wpd

Concession Agreement

This Agreement made and is effective this 11th day of April 2001, by and between Dana Inn and Marina and Adventure Water Sports, a Delaware Limited Liability Company (hereinafter called "Concessionaire").

Witnesseth

Whereas, Dana Inn and Marina leases from the city of ^fSan Diego certain real property located at 1710 W Mission Bay Drive, San Diego California 92109, referred to herein as Dana Inn and Marina.

Whereas, Concessionaire is desirous of obtaining the concession for renting of Motor Boats, Ski Boats, Fishing Boats, Pedal Boats, Aqua Cycles, Sail Boats, Kayaks, Personal Watercraft, Bicycles, Roller Blades, and Scooters at the Dana Inn and Marina.

Now, Therefore, it is here by covenanted and agreed by the parties as follows:

1. Nature of Agreement

This agreement confers a license on the Concessionaire to use a portion of the Dana Inn and Marina property as is described herein for the purposes of this agreement. This agreement does not constitute a lease of premises.

2. Grant Of License

During the term hereof Dana Inn and Marina grants to concessionaire a license to operate the business of renting, but not limited to Motor Boats, Ski Boats, Fishing Boats, Sail Boats, Personal Watercraft, Kayaks, Aqua Cycles, Pedal Boats, Bicycles, Roller Blades, and Scooters at the Dana Inn and Marina within the area designated in Exhibit "A". This area is subject to temporary and permanent change both during and after the hotel remodel.

3. Maintenance of Improvements

Dana Inn and Marina shall, at its sole cost and expense, maintain all structures and other improvements, which have been constructed for concessionaire to conduct business. The maintenance includes but is not limited to painting, repairing and generally maintaining the improvements and surrounding areas. Concessionaire shall be responsible for minor repairs as well as keeping the designated area clean and free of any safety hazards.

4. Term

The term of this agreement will be for a period of five (5) years commencing on the 11th day of April 2001.

5. Providing of Service

Concessionaire shall at all time during the term of this agreement, at its cost, adequately furnish, stock and equip the designated area with the proper equipment and supplies so as to meet the demand for the rental thereof. Such equipment shall include but not be limited to Motor Boats, Ski Boats, Fishing Boat, Sail Boats, Personal Watercraft, kayaks, Pedal Boats, Aqua Cycles, Bicycles, Scooters, and Roller Blades. Concessionaire agrees to make regular safety checks of the equipment to ensure that it is in proper working order. Dana Inn and Marina shall be responsible for all power and water bills related to the operation of the rental office. This does not include the charging of electric vehicles. Concessionaire shall be responsible for the payment of all costs of the telephone including service and use fees.

Concessionaire shall pay all salaries, wages, workmen's compensation insurance, payroll taxes, social security taxes and similar taxes and other compensation. All such employees and personnel shall be employees of concessionaire and shall be required by concessionaire to wear approved uniforms conforming to Dana Inn and Marina standards, the cost of acquiring, furnishing and maintaining such uniforms shall be borne by concessionaire. Concessionaire hereby agrees to hold harmless and indemnify Dana Inn and Marina, and their respective officers, directors, shareholders, partners, employees, agents and attorneys from any claims for wages or compensation, workmen's compensation insurance payment, and payroll taxes of and connection with the operation of the concession contemplated hereby.

6. Hours of Operation

Concessionaire shall remain open for operation and stand ready, willing and able to rent equipment during the days and times shown below:

Summer hours M – F 9:30 – 5:00

S – S 9:00 – 6:00

Winter Hours M – F 10:00 – 4:00

S - S 10:00 – 4:00

Closed from Thanksgiving to New Years Day

Concessionaire shall not be required to remain open for operation during times of rain, or similar severely adverse weather conditions.

7. Permits and licenses

Other than the consent of the city of San Diego to this agreement, which Dana Inn and Marina shall obtain, solely in its capacity as lessor under the ground lease for Dana Inn and Marina, concessionaire shall obtain and maintain at its sole cost during the term hereof all necessary permits and licenses to conduct the concession.

8. Compliance with the Law

Concessionaire will not conduct nor permit to be conducted any unlawful business, occupation or activity in the designated area and shall at all times comply with all City, County, State and Federal laws, ordinances, rules and regulations.

9. Payment of Concession Fee

Concessionaire shall pay to Dana Inn and Marina a sum equal to fifteen percent (15%) of its gross rental receipts made in, upon or from the concession, adjusted on a monthly basis. The Dana Inn is responsible for all fees paid to the city specified in their lease. If the city increases the percentage rent for the concessionaire or and activities conducted by the concessionaire of the sublease, concessionaire shall be responsible for such increase. Concessionaire shall present to Dana Inn and Marina a statement certified by concessionaire to be true and correct and showing the gross rentals on the tenth day of the following month as herein and set forth. Payment shall be made within 10 days after the end of each month during the term of this agreement.

10. Insurance

Concessionaire shall take out and maintain at all time during the term of this agreement public liability and property damage insurance in the amount not less than one million dollars (\$1,000,000.00) combined single limit liability with an occurrence claims form. The policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failure to act by city of San Diego or Dana Inn and Marina or by authorized representatives of the city of San Diego or the Dana Inn and Marina on or in connection with the use or operation of the premises. All insurance policies will name the city of San Diego and Dana Inn and Marina as additional insured, protect the city of San Diego and Dana Inn and Marina against legal costs in defending claims, and will not terminate with out sixty (60) days prior written notice the Dana Inn and Marina.

11.Acts of god

Neither party hereto shall be responsible or be deemed in default by reason of and inability to perform its obligations hereto due to acts of god, or the public enemy; epidemics or insurrections or riots; fire, floods, explosions, earthquakes or serious accidents, epidemics or quarantine restriction.

12.Attorneys Fees

In the event of any proceedings by either party hereto to enforce the terms and provisions of this agreement, whether or not suit is instituted in connection therewith, the prevailing party shall be entitled, in addition to all other relief granted or awarded in any action or proceedings, to a reasonable sum for attorney's fees and costs incurred in connection therewith.

13.General Provisions

- (a) If any term, provision, covenant or condition of this agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- (b) The laws of the State or California shall govern the validity, construction and effect of this agreement.
- (c) It is expressly agreed that there are no oral representations, understandings, stipulations, agreements or promises pertaining to this agreement not incorporated in writing herein, shall be of no force or affect; and it is agreed that this agreement shall not be altered, waived, or amended.
- (d) The signers of this agreement represent and warrant that they have the authority to enter into this agreement on behalf of the respective parties.

14.Indemnity

Concessionaire agrees to defend, indemnify, protect and hold Dana Inn and Marina, its agents, officers and employees harmless from and against any and all claims asserted or liability established for damage or injuries to any person or property, including injury to Dana Inn and marina employees, invitees, guests, agents, and officers, which arise out of or are in any manner directly or indirectly connected with the operation of the concession, and all expenses of investigating and defending (including attorney fees with counsel of Dana Inn and Marinas choice) against same.

15. Assignment/ Early Termination

Dana Inn and Marina is relying on the experience and goodwill of Jim McCoy and Richard Hannay, principals of Concessionaire, in entering into this Agreement. In the event that either Mr. McCoy or Mr. Hannay are no longer actively managing the day to day operations of Concessionaire at the Dana Inn and Marina, the Dana Inn and Marina may, at its sole option, terminate this Agreement. Furthermore, Concessionaire may not assign this Agreement without the written approval of the Dana Inn and Marina, approval of which shall be its sole discretion.

Executed at San Diego, California on the date below written.

Dana Inn and Marina

By: Wayne Blum GM

Name: WAYNE BLUM

Date Signed: 4/11/01

**Adventure Water Sports,
A Delaware Limited Liability Company**

By: Jim McCoy member

Name: Jim McCoy member

Date Signed: 4/11/01



15 MINUTE WALK
TO SEA WORLD

TO MARINA
LAUNCHING RAMP

Rental Slips

MARINA RENTALS

PAY PHONE

SHUFFLEBOARD

PING PONG

PING PONG

POOL BAR

HOT SPA

POOL

EXECUTIVE OFFICES

LOBBY

HOUSEKEEPING

ICE - VENDING MACHINE

ICE
GUEST LAUNDRY

ICE - PAY PHONE

VENDING MACHINE
SOFT DRINKS

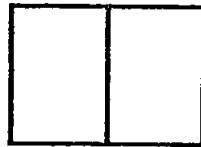
ICE
SOFT DRINKS

BOAT TRAILER PARKING

RESTAURANT



Exhibit "A"



TENNIS COURTS

UPSTAIRS - ODD NUMBERED / DOWNSTAIRS - EVEN NUMBERED

TO BEACHES

YOU
ARE
HERE

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627	626
625	624
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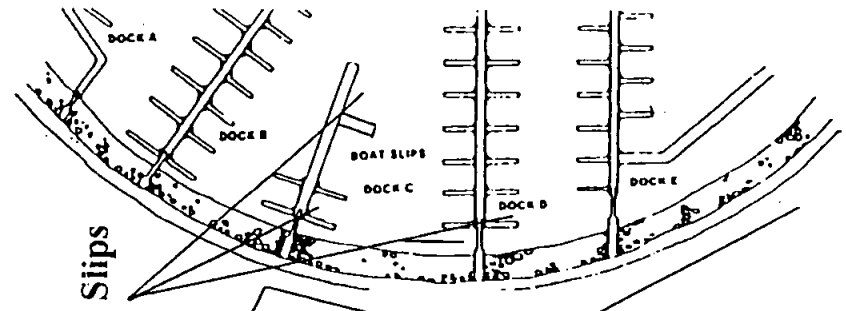
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CONSENT TO CONCESSION AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement ("Master Lease") entered into with

BARTELL HOTELS, a Limited Partnership d/b/a DANA INN & MARINA

("LESSEE") and filed in the Office of the City Clerk as Document RR 294161 on November 14, 2000, consents to that certain Concession Agreement between the above LESSEE and

KATHLEEN CULORA

("CONCESSIONAIRE") dated July 1, 2004. The Concession Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the CONCESSIONAIRE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Concession Agreement. The CITY is not bound by any term or condition in the Concession Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: CONCESSIONAIRE shall not assign the Concession Agreement, the license granted to Concessionaire, or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: CONCESSIONAIRE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the licensed premises, the condition of the premises or from any act or omission of CONCESSIONAIRE, his agents and invitees; provided, however, CONCESSIONAIRES'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: CONCESSIONAIRE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the licensed premises. Minimum coverage shall be two million dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent or fees, to recover possession or enforce any other provision of

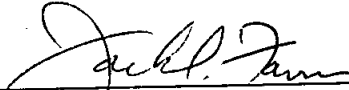
this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

ASSUMPTION OF RIGHTS AND OBLIGATIONS: CONCESSIONAIRE agrees to assume the rights and obligations of the Master Lease pursuant to the Concession Agreement and to perform all contracts, conditions and provisions of the Master Lessee applicable to the rights acquired.

THE CITY OF SAN DIEGO

Date _____

By



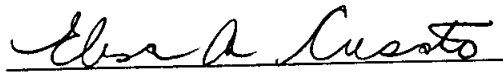
Jack D. Farris, Deputy Director,
for the City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 1/11/05

By



Deputy City Attorney

Date 12/29/04

By



Kathleen Culora

JB/cj

12/16/04

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Concession Agreement

This Agreement made and is effective this 1st day of July 2004, by and between the Dana on Mission Bay ("the Dana") and Kathleen Culora ("Concessionaire").

Witnesseth

Whereas, the Dana leases from the City of San Diego certain real property located at 1710 West Mission Bay Drive, San Diego California 92109, referred to herein as the Dana on Mission Bay ("the Dana").

Whereas, Concessionaire is desirous of obtaining the concession for selling of goods at the gift shop located at the Dana

Now, Therefore, it is here by covenanted and agreed by the parties as follows:

1. Nature of Agreement

This agreement confers a license on the Concessionaire to use a portion of the Dana property as is described herein for the purposes of this agreement. This agreement does not constitute a lease of premises.

2. Grant of License

During the term of hereof the Dana grants to concessionaire a license to operate the business of selling goods at the Dana gift shop within the area designated in Exhibit "A". This area is subject to temporary and permanent change both during and after the hotel remodel.

3. Maintenance of Improvements

The Dana shall, at its sole cost and expense, maintain all structures and other improvements, which have been constructed for concessionaire to conduct business. The maintenance includes but is not limited to painting, repairing and generally maintaining the improvements and surrounding areas. Concessionaire shall be responsible for keeping the designated area clean and free of any safety hazards.

4. Term

The term of this agreement will be for a period of five (5) years commencing on the 1st day of July 2004.

5. Providing of Service

Concessionaire shall operate a first-class hotel gift shop and, at its cost, adequately furnish, stock and equip the designated area with the proper equipment and supplies so as to meet the demand of the Gift Shop thereof. Concessionaire agrees to make regular safety checks of the equipment to ensure that it is in proper working order. The Dana shall be responsible for all power and water bills related to the operation of the gift shop. Concessionaire shall be responsible for the payment of all costs of the telephone including service and use fees.

Concessionaire shall be solely responsible for all salaries, wages, workmen's compensation insurance, payroll taxes, social security taxes and similar taxes and other compensation. All such employees and personnel shall be employees of concessionaire and shall be required by concessionaire to wear Dana approved uniforms conforming to the Dana standards; the cost of acquiring, furnishing and maintaining such uniforms shall be borne by concessionaire.

6. Hours of Operation

Concessionaire shall remain open for a minimum of 7:00am to 4:00pm, seven days a week and longer hours in the concessionaire sole discretion based on hotel occupancy, events on property and groups in house.

7. Permits and licenses.

Other than the consent of the City of San Diego to this agreement, which the Dana use its best efforts to obtain, solely in its capacity as lessor under the ground lease for the Dana, concessionaire shall obtain and maintain at its sole cost during the term hereof all necessary permits and licensees to conduct the concession.

8. Compliance with the Law

Concessionaire will not conduct nor permit to be conducted any unlawful business, occupation or activity in the designated area and shall at all times comply with all City, County, State and Federal laws, ordinances, rules and regulations.

9. Payment of Concession Fee

Concessionaire shall pay to the Dana on a monthly basis in amount equal to 7% of all gift shop items sold and 3% of all food items sold. Concessionaire shall also pay to the Dana on Mission Bay a sum equal to one percent (1%) of its gross sales receipts after \$5000.00 made in, upon or from the concession, adjusted on monthly basis and two percent (2%) after \$15000.00. If the City of San Diego increases the percentage rent for the Concessionaire or and activities conducted by the Concessionaire of the sublease, Concessionaire shall be responsible for such increase. Concessionaire shall

present to the Dana on Mission Bay a statement certified by concessionaire to be true and correct and showing the gross sales on the tenth day of the following month as herein and set forth. Payment shall be made within 10 days after the end of each month during the term of this agreement.

10. Insurance

Concessionaire shall take out and maintain at all time during the term of this agreement \$500,000 general liability and workers compensation insurance coverage. All insurance policies will name the City of San Diego and the Dana on Mission Bay as additional insured which will not terminate without sixty (60) days prior written notice the Dana on Mission Bay.

11. Acts of God

Neither party hereto shall be responsible or be deemed in default by reason of and inability to perform its obligations hereto due to acts of god, or the public enemy; epidemics or insurrections or riots; fire, floods, explosions, earthquakes or serious accidents, epidemics or quarantine restriction.

12. Attorneys Fees

In the event of any proceedings by either party hereto to enforce the terms and provisions of this agreement, whether or not suit is instituted in connection therewith, the prevailing party shall be entitled, in addition to all other relief granted or awarded, in any action or proceedings, to a reasonable sum for attorney's fees and costs incurred in connection therewith.

13. General Provision

- (a) If any term, provision, covenant or condition of this agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- (b) The laws of the State of California shall govern the validity, construction and effect of this agreement.
- (c) It is expressly agreed that there are no oral representations, understandings, stipulations, agreements or promises pertaining to this agreement not incorporated in written herein, shall be of no force or affect; and it is agreed that this agreement shall not be altered, waived, or amended.
- (d) The signers of this agreement represent and warrant that they have the authority to enter into this agreement on behalf of the respective.

14. Indemnity

Both Concessionaire and the Dana agree to indemnify, defend, and hold harmless each other from all claims, demands, action, liabilities and expenses (including attorney's fees) arising out of the insuring party's negligence or willful misconduct.

15. Assignment/ Early Termination

The Dana on Mission Bay is relying on the experience and goodwill of Kathleen Culora, principals of Concessionaire, in entering into this Agreement. In the event that Ms Culora is no longer actively managing the day to day operations of Concessionaire at the Dana on Mission Bay, the Dana on Mission Bay may, as its sole option, terminate this Agreement. Furthermore, Concessionaire may not assign this Agreement without the written approval of the Dana on Mission Bay, approval of which shall be its sole discretion.

Executed at San Diego, California on the date below written.

The Dana on Mission Bay

By: _____

Name: _____

Date Signed: _____

Kathleen Culora

By: _____

Name: _____

Date Signed: _____