



**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**SPORTSMEN'S SEAFOOD COMPANY, INC.,
A CALIFORNIA CORPORATION**

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CITY OF SAN DIEGO PERCENTAGE LEASE

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and SPORTSMEN'S SEAFOOD, INC., a California corporation ("LESSEE"), to be effective as of 11/27/2013 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1: PREMISES; USES

- 1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property (the "Premises"), commonly known as "Sportsmen's Seafood", located at 1617 Quivira Road, San Diego, California 92109, Quivira Basin, Mission Bay Park consisting of approximately 32,862 square feet of land and 20,000 square feet of water, improved with a building, dock, landscaping and parking, and is more particularly described in **Exhibit A** attached hereto.
- 1.2 Allowed Building Uses. LESSEE may use the building located on the Leased Premises solely and exclusively for the purposes of:
 - (a) A full service restaurant serving beer, wine and liquor;
 - (b) Retail and wholesale seafood market and seafood processing facility;
 - (c) Dive shop;
 - (d) Retail or rental store that caters to water oriented recreational activities;
 - (d) Training, classes, or certification of water related recreational activities;
 - (e) Any other lawful use so long as Sportsmen's obtains prior written consent of the City, which consent shall be at the City's sole discretion (the "Allowed Building Uses").
- 1.3 Allowed Dock Uses. LESSEE may use the dock located on the Leased Premises solely and exclusively for the purposes of:
 - (a) Commercial and recreational watercraft subject to City approval in each instance;
 - (b) Rental of boat slips to commercial and recreational watercraft;
 - (c) Loading and unloading of passengers, fish and seafood;
 - (d) All uses in existing subleases that have been previously consented to by City as referenced in Section 5.2.2 below;
 - (e) Any other lawful use so long as Sportsmen's obtains prior written consent of the City, which consent shall be at the City's sole discretion. (the "Allowed Dock Uses").
- 1.4 Operating Plans - Life Guard Division Approval. At least sixty (60) days prior to each anniversary of the Effective Date, LESSEE shall, at its sole cost and expense, submit to CITY a written, annual operating plan describing how LESSEE intends to conduct both the Allowed Building and Allowed Dock Uses. Each such operating plan shall be in

form and content reasonably satisfactory to CITY, and shall be subject to the approval of CITY'S Fire-Rescue Department, Life Guard Division (the "LGD"). Except as required by law, LESSEE shall not make any changes to an existing, LGD-approved operating plan without CITY'S prior written approval in each instance, which may not be unreasonably withheld or delayed. LESSEE shall conduct each Allowed Use in accordance with its most recently LGD-approved operating plan. CITY acknowledges that LESSEE has submitted an operating plan for the first Lease Year, which has been approved by the LGD.

- 1.5 Business Objective. LESSEE shall diligently and continuously conduct its business on the Premises throughout the term of this Lease (the "Term") for both the Allowed Building and Allowed Dock Uses and to diligently conduct business to produce the most gross revenue that can be reasonably expected.
- 1.6 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.7 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
- 1.8 CITY's Consent, Approval. Unless otherwise expressly provided, CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), which shall not be unreasonably withheld or delayed unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.9 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.

1.10 Reservation of Rights.

- 1.10.1 Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 1.10.2 Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- 1.10.3 Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.10.4 Noninterference. CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to Premises or LESSEE's personal property directly caused by CITY's exercising its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.10.5 Public Safety; Homeland Security. CITY reserves the right to install, repair and replace, at its own expense, secured-access video surveillance equipment for the purposes of public safety and homeland security. CITY shall have access to existing roof tops, light poles, existing electrical power and/or other structures on the Premises necessary to support this objective. CITY shall give LESSEE reasonable notice prior to entering upon the Premises for this reserved right. CITY shall pay all costs and expense related to the installation, repair and replacement of such video surveillance equipment.
- 1.11 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

SECTION 2: TERM

- 2.1 Term. The term of this Lease shall be three (3) years, commencing on the Effective Date. If the Effective Date is other than the first day of a calendar month, the partial month after the Effective Date shall be included in the following full calendar month to compose the first month of the Term so that the second month of the Term will start on the first day of a calendar month.

- 2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to one hundred twenty-five percent (125%) of the rent in effect upon expiration of the Lease.
- 2.3 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, reasonable wear and tear excepted. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises. The City shall not record the quitclaim deed unless LESSEE vacated the Premises.

SECTION 3: OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Term. A regular schedule of days and hours of operation is established by LESSEE to best serve the public. The schedule is attached as **Exhibit B: Schedule of Days and Hours of Operation**. LESSEE shall not change the schedule without CITY's prior written approval. The LESSEE shall diligently furnish services to the public in a creditable manner. The type and quality of services furnished by LESSEE shall qualify for the conditions and requirements of the "A" Card issued by the California Department of Health to operators of food-handling establishments.
- 3.2 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Such 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 applicable law at the time of collection.
- 3.3 Restriction on Food Containers. LESSEE shall not provide to its customers any prepared food or takeout food in polystyrene foam packaging. LESSEE's food packaging for prepared food and takeout food shall be biodegradable, and LESSEE shall deliver to

CITY upon demand evidence in the form of paid invoices for the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. If biodegradable food packaging materials are not available for purchase in the quantities required by LESSEE, LESSEE shall use biodegradable food packaging materials to the extent such items are available, and to the extent they are not, LESSEE may use other food packaging materials, subject to CITY's prior approval. "Prepared food" means food or beverage prepared on the Premises for immediate consumption. "Takeout food" means food or beverage to be consumed off the Premises. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided to LESSEE's customers.

- 3.4 Local Coastal Program. Should a local coastal program ("Local Coastal Program") ever be adopted for the Mission Bay Park segment of CITY's 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 to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements, LESSEE shall contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program, provided 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.

SECTION 4: RENT

- 4.1 Rent. LESSEE shall pay rent to CITY in the amount of the greater of: (a) a percentage rent (the "Percentage Rent," defined below); and (b) a minimum monthly rent ("Minimum Monthly Rent," defined below). Within thirty (30) days after the end of each month during the Term, LESSEE shall deliver to CITY a schedule of LESSEE's "Gross Revenue" (defined below) for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Concurrently with the delivery of such schedule and statement, LESSEE shall pay to CITY the Minimum Monthly Rent plus the difference, if any, between the Percentage Rent and the Minimum Monthly Rent.

- 4.1.1 Minimum Monthly Rent. The minimum monthly rent shall be Four Thousand Dollars (\$4,000) (the "Minimum Monthly Rent").

If the minimum rent is greater than the percentage rent, on a calendar month basis, then the minimum rent is required to be paid for that month. Minimum rents are

to be paid monthly on or before the last day of the calendar month when rents are due pursuant to Section 4.2.

Provided, however, in the event that the combined total percentage rent payments and monthly minimum rent payments 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 minimum rents and shall continue paying only percentage rents until the beginning of the ensuing lease year. It is the intent of this provision that the LESSEE shall pay a minimum rent as a guarantee against the percentage rent requirement and the greater of the two requirements, minimum or percentage, shall prevail, whichever occurs throughout the term.

- 4.1.2 Percentage Rent. Percentage Rent will be calculated on a calendar month basis and shall be rent in an amount equal to the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

<u>Percentage of Gross Revenue</u>	<u>Business Activities</u>
Fifty Percent (50%)	Sublease revenue.
Fifty Percent (50%)	Commissions or any other compensation to LESSEE for the right to install and operate coin-operated vending, game or service machines or devices on the Premises.
Fifty Percent (50%)	Wireless telecommunication equipment installed or operated on or from the Premises.
Twenty-Five Percent (25%)	Dock/slip fees.
Seven Percent (7%)	Sale of all alcoholic beverages and nonalcoholic beverages prepared or dispensed from the bars; fish processing and canning operations.
Four Percent (4%)	"Off premises" retail sale of fresh or canned seafood; and from the sale of food and nonalcoholic beverages, prepared or dispensed on the lease premises.
One Percent (1%)	Wholesaling of fish to local restaurants.

Ten Percent (10%)

All other authorized activities conducted on or from the Premises.

If LESSEE requests uses of the Premises in addition to the Allowed Uses, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to each such use prior to CITY's approval of the use.

4.1.3 Gross Revenue. "Gross Revenue" shall mean all revenue derived from all CITY-approved uses of the Premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; or (b) refunds for goods returned for resale on the Premises or refunds of deposits. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

4.2 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to rents was earned, LESSEE will 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.
- 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 more than one business operation.
- c. the percentage rental due the 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 the

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.).

4.3 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

4.4 Time and Place of Payment. All rent payments shall made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

4.5 Records. LESSEE shall, at all times during the Term, keep or cause to be kept true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's 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 (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

4.5.1 Financial Statements. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner, or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

4.5.2 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease. If required by competent legal authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

4.5.3 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference

between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or

- (b) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.5.4 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.

- 4.6 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. LESSEE may not encumber LESSEE's leasehold estate by deed of trust or other security instrument.
- 5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or grant any license

or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders.

- 5.2.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 5.2.2 Approved Subleases. City consents to the existing subleases with Donald Correia, dba H2O Boat Rentals, Ernest and Lisa Prieto dba Chubasco Sportsfishing, Waterhorse and OEX Mission Bay, Inc. Proper records and backup of all revenue received from subtenants shall be maintained for review and audit by City.
- 5.2.3 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.
- 5.2.4 Additional Consideration to CITY. If this Lease is assigned in full or part, or a majority of the Premises is subleased to a single sublessee, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; (b) for majority sublease to a single sublessee, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease;. The amount upon which such two-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, , LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or the source of the refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment shall be paid concurrently with the closing of the proposed transaction. For majority subleases,

such additional consideration shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable two-percent payment required by this section 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 of the individual who is the owner of a controlling interest in LESSEE; or
- (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 6: DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;

- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2(a) and 6.2(b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2(c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- (b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume

and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, 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 the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY 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 the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- 6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 7: EMINENT DOMAIN

- 7.1 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) shall be as follows:

- 7.1.1 Full Taking. If 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.
- 7.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are 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 rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 7.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. 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.
- 7.1.4 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.
- 7.1.5 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.

SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents 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 officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

8.2 Insurance. LESSEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:

- (1) Commercial General Liability Insurance, providing coverage on the Premises for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
- (2) Automobile Liability Insurance, providing coverage on the Premises for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

8.2.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

8.2.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.

8.2.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

8.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

8.2.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30)

days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. LESSEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

8.2.6 Modification. To assure protection from and against the kind and extent of risk existing with the allowed uses of the Premises under this Lease or the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the allowed uses of the Premises under this Lease or the Premises.

8.2.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the allowed uses of the Premises under this Lease or the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

8.2.8 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the allowed uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

SECTION 9: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

9.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time.

9.2 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.

- 9.3 Asbestos Disclosure. Portions of the structural components of the Building may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 9.4 Asbestos. If either CITY or LESSEE makes improvements, alterations or repairs to the Building or the Premises, the party causing such improvements, alterations or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises or the Building made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
- 9.5 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises.
- 9.6 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all major maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. LESSEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service. LESSEE shall be responsible for installation and maintenance of the grease interceptor and connection to basement sewer lines.
- 9.7 Planting Strips. LESSEE shall be responsible, at its sole cost, to landscape and maintain all areas adjoining the leased Premises which are located between said premises and the improved portion of adjacent streets.
- 9.8 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

- 9.9 Utilities. LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 9.10 Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) 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 shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 9.11 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and 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 without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the 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.
- 9.12 Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges 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 that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
- 9.13 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

9.14 Ownership of Improvements and Personal Property.

9.14.1 Improvements. LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

9.14.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

9.14.3 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by competent CITY staff.

9.14.4 CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

9.15 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay

rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

- 9.16 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

9.16.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

9.16.2 Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

9.16.3 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- 9.16.4 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 9.16.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 9.16.6 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any hazardous substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and

regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 10: DEVELOPMENT PLAN

10.1 Development Plan for Improvements. LESSEE shall complete all building improvements, including storefront improvements per the **Storefront Improvement Program Plan (Exhibit C)** and building improvements and dock improvements in accordance with the **Development Plan Summary (Exhibit D)**.

10.2 Failure to Meet Schedules; Termination.

10.2.1 Failure of Development Plan. Notwithstanding any provision of this Lease to the contrary, CITY may, in its sole discretion, terminate this Lease if any of the following occurs:

- (a) LESSEE fails to commence construction within two (2) months after the scheduled date of commencement for the improvements identified in the Storefront Improvement Program Plan (Exhibit C) and the Development Plan Summary (Exhibit D); provided, however, that City shall not terminate the Lease if LESSEE's failure to commence construction is the result of LESSEE's inability to secure requisite permits or approvals due to delays caused by approving authorities.
- (b) LESSEE fails to complete construction within two (2) months after the scheduled completion date for the improvements identified in the Storefront Improvement Program Plan (Exhibit C) and the Development Plan Summary (Exhibit D); or
- (c) after commencement of construction for the improvements identified in the Storefront Improvement Program Plan (Exhibit C) and/or the Development Plan Summary (Exhibit D), said construction is stopped for more than three (3) months, unless such work stoppage is caused by a *force majeure*.

10.2.2 Liquidated Damages. The parties agree that the damages to CITY resulting from LESSEE's failure to complete the improvements identified in the Storefront Improvement Program Plan (Exhibit C) and the Development Plan Summary (Exhibit D) by the scheduled completion dates would be extremely difficult to determine. Therefore, if LESSEE fails to complete the Development Plans as required by this Lease by the scheduled completion dates, and CITY does not exercise its right to terminate the lease as provided in Section 10.2.1, above, LESSEE shall pay to CITY liquidated damages in the amount of Two Hundred Eighty-Four Dollars (\$284) for each day after the applicable scheduled completion date until completion of development. Such liquidated damages shall be deemed additional rent due and payable upon CITY's demand therefor.

10.2.3 Permits. LESSEE shall, at its sole cost and expense, seek and obtain all necessary permits for the construction of the improvements pursuant to the Development Plans.

SECTION 11: GENERAL PROVISIONS

11.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

SPORTSMEN'S SEAFOOD COMPANY, INC
ATTN: Joe Busalacci, President
1617 Quivira Road,
San Diego, CA 92106

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

11.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).

11.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

11.4 Equal Opportunity. LESSEE shall 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. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or

place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

11.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

11.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, 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:

11.6.1 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.

11.6.2 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.

LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

11.6.3 Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

a. 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.

- b. 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.

11.7 Schedule of Prices. All prices of merchandise, equipment and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment and services offered in Mission Bay or San Diego Bay. However, LESSEE and its sublessees shall not be required to sell any merchandise at a loss.

11.8 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.

11.9 Enforcement of Live-Aboard Regulation. LESSEE shall be responsible for the enforcement, both within and in connection with the 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 over night in Mission Bay Park for a period of more than 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 lands.

11.10 Drug-free Workplace. LESSEE shall 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:

11.10.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition.

11.10.2 Establish a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace;
- b. LESSEE's policy of maintaining a drug-free workplace;

- c. Any available drug counseling, rehabilitation, and employee assistance programs; and
- d. The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each of its subleases and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its subleases and contractors, shall be individually responsible for their own drug-free workplace program.

- 11.11 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- 11.12 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 11.13 Water Quality- Best Management Practices. The CITY and LESSEE are committed to the implementation of controls known as Best Management Practices (BMP's) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE'S responsibility to identify and implement an effective combination of BMP's so as not to cause pollutant discharges to the storm drain system in violation of the Stormwater Ordinance (San Diego Municipal Code Sections 43.0301 through 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the BMP requirements for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the LESSEE'S responsibility to prevent pollutant discharge to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 11.14 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under

or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

- 11.15 Cumulative Remedies. Except as expressly provided in this Lease, CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 11.16 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.17 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 11.18 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 11.19 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.
- 11.20 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 shall remain in full force and effect.
- 11.21 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

SPORTSMEN'S SEAFOOD COMPANY, INC., a
California corporation

Date: 10/12/13

By: [Signature]
Joe Busalacci
President

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 11/21/13

By: [Signature]
James F. Barwick, CCIM
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: 11/19/2013

By: [Signature]
Name: Martin Blake
Title: Senior Planner

Approved as to form and legality:

JAN I GOLDSMITH, CITY ATTORNEY

Date: 11/27/13

By: [Signature]
Name: Debra Bevier
Title: Deputy City Attorney

Exhibit A: Legal Description of Premises
Exhibit B: Schedule of Days and Hours of Operation
Exhibit C: Storefront Improvement Program Plan
Exhibit D: Development Plan Summary

Exhibit A: Legal Description of Premises

PREMISES: 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 re-subdivision of Blocks 7, 8 & 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°55'56" West (record = mark South 89°59'00" West) 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South 00°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°55'56" East, 249.70 feet; thence North 05°30'02" West, 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town (Lambert Grid Co-ordinates, California Zone 6 for said Station "Old Town" are X=1,712,415 7 and Y=213,819.22) and said Triangulation Station is located at Latitude 32°45'02.45" North and Longitude 117°11'07 200" West being also the point or origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System; thence North 5160.53 feet and West 16030.79 feet, being at Mission Bay Park Co-ordinates; North 5160.53 feet and West 16030.79 feet and being also the TRUE POINT OF BEGINNING; thence South 66°35'46" East, 352.89 feet, being at Mission Bay Park Co-ordinates; North 5020.42 feet and West 150706.89 feet; thence South 40°00'00" West, 69.16 feet, being at Mission Bay Park Co-ordinates; North 4967.44 feet and West 15751.35 feet; thence North 50°00'00" West, 20.00 feet, being at Mission Bay Park Co-ordinates; North 4980.29 feet and West 157666.67 feet; thence South 40°00'00" West, 86.50 feet, being at Mission Bay Park Co-ordinates; North 4914.03 feet and West 15822.27 feet; thence North 50°00'00" West 87.00 feet, being at Mission Bay Park Co-ordinates; North 4969.95 feet and West 15888.92 feet; thence South 40°00'00" West 200.00 feet, being at Mission Bay Park Co-ordinates; North 4316.74 feet and West 16017.48 feet; thence North 50°00'00" West, 100.00 feet, being at Mission Bay Park Co-ordinates; North 4881.02 feet and West 10094.08 feet; thence North 40°00'00" East, 200.00 feet, being at Mission Bay Park Co-ordinates; North 5034.23 feet and West 15965.52 feet; thence North 50°00'00" West 90.60 feet, being at Mission Bay Park Co-ordinates; North 5092.47 feet, and West 16034.92 feet; thence South 81°50'22" West, 16.09 feet, being at Mission Bay Park Co-ordinate; North 5090.18 feet, and West 16050.85 feet; thence North 15°55'11" East, 73.15 feet, to the TRUE POINT OF BEGINNING.

Note: The parcel of land described above is delineated on City of San Diego Engineering Department Drawing No. 4823-D dated January 17, 1958, (revised - February 16, 1968) and being more particularly portions of Lot 4 and 5 and all of Lots 2 and 3, together with portions of those certain unnumbered Lots lying Southwesterly of and adjoining Lot 3 and encompassed with the above description of said parcel as said numbered and unnumbered Lots are shown on said drawing number 4823-D.

$\lambda = 20^{\circ} 43' 39''$
 $R = 2000$
 $T = 365.76^{\circ}$
 $L = 723.52$

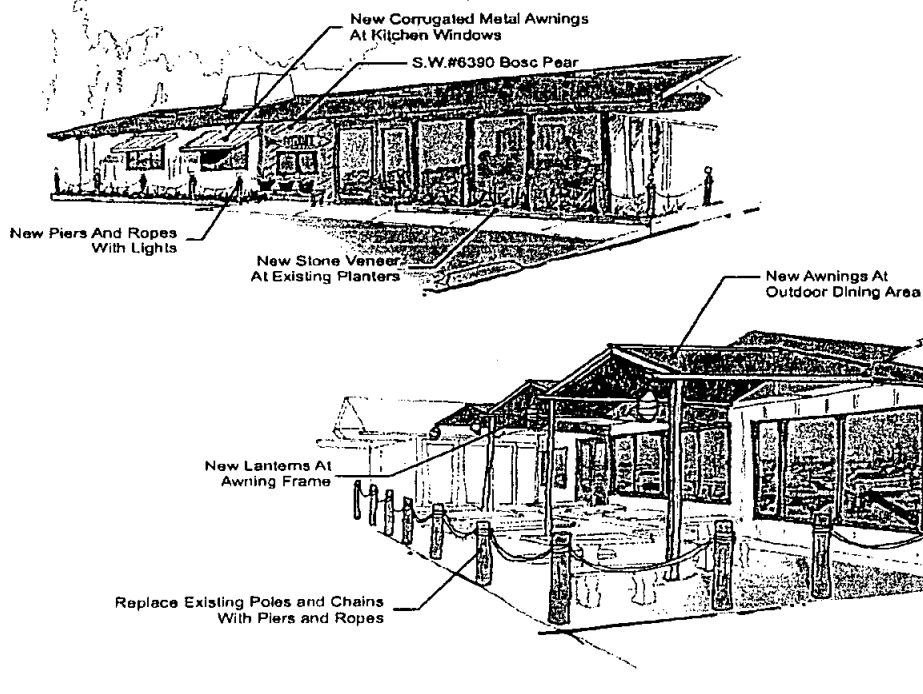
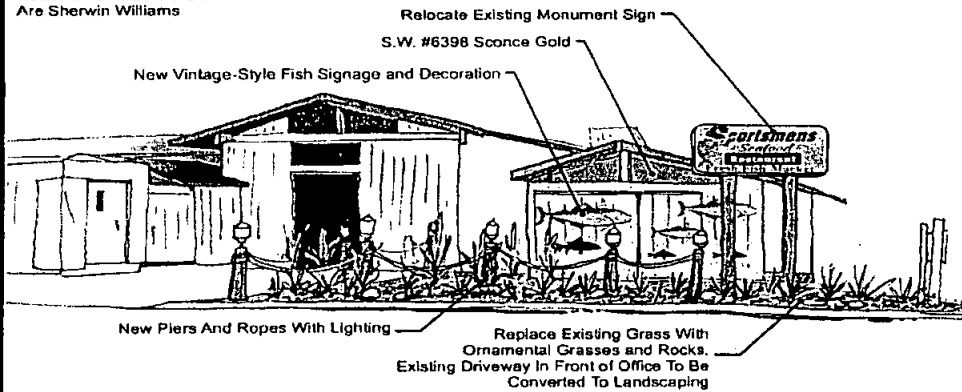


Exhibit B: Schedule of Days and Hours of Operation

Tuesday through Sunday 11:00 a.m. to 8:00 p.m.
Closed on Mondays

Exhibit C: Storefront Improvement Program Plan

Note: All Paint Colors Listed
Are Sherwin Williams



SW-6688 - Main Restaurant Color



SW-6349 - Door Trim Color

SW-6390 - Entry Accent Color



SW-6991 - Window Trim Color

SW-6398 - Accent Color at Roof



SW-6502 - Awning Color



STOREFRONT IMPROVEMENT - SPORTSMENS SEAFOOD

11-10-11

Exhibit D: Development Plan Summary

Improvements estimated in the amount of \$125,000 are to be (or with respect to the Premises bathroom improvements have already been invested) in the following manner:

Building Improvements

Scope of Work: LESSEE shall update all the bathrooms on the Premises. The work shall consist of replacing tile on floors and walls of all bathrooms; painting all bathrooms, installing new stall door in women's bathroom, and replacing fixtures as needed in all bathrooms. Cost of the bathroom update was approximately \$15,000. In addition, the LESSEE shall construct the improvements depicted in the Storefront Improvement Program Plan (see Exhibit C). Estimated cost of the Storefront Improvement Program Plan is \$15,000.

Commencement Date: The parties acknowledge the bathroom improvements have already commenced and been completed. The improvements described on the Storefront Improvement Program Plan shall commence on or before April 1, 2014.

Completion Date: The parties acknowledge the bathroom improvements have already commenced and been completed. The improvements described on the Storefront Improvement Program Plan shall be completed on or before August 1, 2014.

Dock Improvements

Scope of Work: LESSEE shall resurface all the existing dock; resurface the existing ramp; and replace all worn or non-functioning floats. Estimated cost of the Dock Improvements is \$95,000.

Commencement Date: On or before August 1, 2014.

Completion Date: On or before April 1, 2015.