

DUPLICATE



**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

THE CITY OF SAN DIEGO,
a California municipal corporation

AND

MISSION BAY SPORTS CENTER,
a California corporation

DOCUMENT NO. PR-306876

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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 MISSION BAY SPORTS CENTER, a California corporation ("LESSEE"), to be effective as of JUL 21, 2011 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

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") located at 1010 Santa Clara Place, San Diego, California 92109, commonly known as "Mission Bay Sportcenter," and more particularly described in **Exhibit A: Legal Description of Premises**, and **Exhibit B: Aerial Map of the Premises**, attached hereto.
- 1.2 **Allowed Uses.** LESSEE may use the Premises solely to operate and maintain a public water sports center and dock facilities providing: (a) instruction in beginning through intermediate-level sailing, surfing, body boarding, personal water craft, wake boarding, water skiing, windsurfing, kayaking, rowing/paddling, and scuba; (b) youth aquatic sports camps; (c) adult aquatic sports instruction; (d) marine science; (e) sales, rentals, and repair and maintenance of new and used recreational boats and aquatic equipment; (f) charters; and (g) sales of food and non-alcoholic beverages to the general public, and (h) related support activities and aquatic oriented group events, all in accordance with the Development Plan as required by this Lease, and for no other purpose whatsoever without CITY'S prior written consent (the "Allowed Uses"). The types and numbers of boats offered for rent by LESSEE shall be subject to CITY'S prior written approval.
- 1.3 **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 each of the Allowed 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.

- 1.4 Business Objective. LESSEE shall diligently and continuously conduct its business on the Premises to reasonably maximize Gross Revenue.
- 1.5 Licensed Area. CITY hereby grants to LESSEE a non-exclusive license to occupy and use, for the term of this Lease, that portion of the public beach northerly of the Premises, with approximate dimensions 200' (L) x 20' (W), as shown on the attached **Exhibit B: Aerial Map of the Premises** (the "Licensed Area"). The Licensed Area may only be used for storage of small boats used in LESSEE'S instructional programs. The boat storage shall not block or interfere with public access to the beach.
- 1.5.1 License Not a Lease. The Licensed Area is not part of the Premises, and the license to use the Licensed Area is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon sixty (60) days prior written notice to LESSEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of such revocation or the termination of the license. LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of CITY'S revocation or termination of the license.
- 1.5.2 No Holdover. If LESSEE continues to occupy the Licensed Area after the expiration or earlier termination of the license, such occupancy shall neither constitute a renewal or extension of the license, nor give LESSEE any rights in or to the Licensed Area. If LESSEE continues to occupy the Licensed Area after the expiration or earlier termination of the license, CITY may demand and receive from LESSEE rent for the Licensed Area calculated on a per diem basis using up to three (3) times the fair market rental rate to be determined as of the date of the expiration or termination of the license by an appraisal prepared by an appraiser selected by CITY in its sole discretion. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor give LESSEE any rights in or to the Licensed Area.
- 1.5.3 Lease Terms Apply to Licensed Area. All terms and conditions of this Lease that do not conflict with the terms of this section regarding the Licensed Area shall apply to LESSEE'S use and occupancy of the Licensed Area; all references to the "Premises" in this Lease shall include the Licensed Area.
- 1.6 Superior Interests. This Lease and the license of the Licensed Area are 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. Whenever required under this Lease, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"). All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
- 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.
- 1.11 Management. Throughout the term of this Lease, LESSEE shall provide fiscally responsible management of its operations on the Premises to CITY'S reasonable satisfaction.
- 1.12 Parking. LESSEE acknowledges that the parking lot adjacent to the Premises is City-owned. All parking spaces around the Premises shall be open to the general public at all times. LESSEE shall not store any personal property on the parking lot or in any way

that interferes with the general public's ability to park in the parking lot.

SECTION 2: TERM

- 2.1 Term. The term of this Lease ("Term") shall be twenty (20) years, commencing on the Effective Date.
- 2.2 Lease Year. As used in this Lease, "Lease Year" shall mean each twelve-month period during the Term, commencing on the Effective Date.
- 2.3 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 then fair market rent determined by an appraisal prepared by CITY'S Real Estate Assets Department.
- 2.4 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. 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.

SECTION 3: OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. LESSEE shall conduct its business and operate the Premises and associated facilities 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 C: 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 fast food-handling establishments.
- 3.2 Damaged Equipment. LESSEE shall salvage, within twenty-four (24) hours, any property, real or personal, of LESSEE'S declared by any competent authority (including without limitation CITY, as lessor under this Lease) 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 Premises, regardless of ownership. CITY may require that any boats not kept in a clean and operable condition, as determined by CITY in its sole reasonable discretion, be removed from the Premises.

- 3.3 Enforcement of Living on Board Vessels Regulation. LESSEE shall ensure the enforcement of San Diego Municipal Code section 63.25.71(a), and as it may be amended from time to time, in connection with LESSEE'S use and occupancy of the Premises, which currently states:

It is unlawful for any person to remain overnight on board any vessel in Mission Bay Park unless the vessel has a functional, self-contained toilet on board that does not discharge into the waters of the Bay. It is unlawful for any owner of any vessel to occupy it or 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 vessel is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of land in Mission Bay Park are primarily responsible for the enforcement of this subsection, 63.25.71(a), on the water abutting their leased lands.

- 3.4 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.
- 3.5 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.

- 3.6 Boat Rentals. For purposes of this Lease, the term "vessels" includes 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 may rent vessels to the general public subject to CITY'S prior written approval as to the number and type of vessels available for rent. A list of the approved number and type of vessels available for rent is attached hereto as **Exhibit D: Approved Vessels for Rent**. Upon notice to LESSEE, CITY may reasonably change the number and type of vessels LESSEE may rent. 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 all times when LESSEE is renting a vessel or vessels, LESSEE shall have at least one operational chase boat and staff available to operate it on the waters of Mission Bay. Unless otherwise allowed, no rental vessel may be stored on public property outside LESSEE'S leasehold. CITY may immediately terminate any of LESSEE'S rental activities which are not in compliance with this lease or current boating laws and regulations.
- 3.7 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. 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, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type, together with a statement of the month's "Percentage Rent" (defined below). Concurrently with the delivery of such schedule and statement, LESSEE shall pay to CITY the "Percentage Rent," and the "Additional Rent" defined in Section 4.6 and 9.6.1 below. For each Lease Year, LESSEE shall pay to CITY the greater of the Minimum Annual Rent, defined below, and the total Percentage Rent for the Lease Year. If the total Percentage Rent

during a Lease Year is less than the Minimum Annual Rent for that Lease Year, LESSEE shall pay the difference to CITY concurrently with LESSEE'S delivery of the monthly schedule of LESSEE'S Gross Revenue for the last month of the Lease Year.

- 4.2 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.

- 4.3 Time and Place of Payment. All rent payments shall be 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.

- 4.4 Minimum Annual Rent. The minimum rent payable for each Lease Year (the "Minimum Annual Rent") for the first five (5) Lease Years shall be Seventy Thousand Dollars (\$70,000).
- 4.5 Minimum Annual Rent Adjustment. Effective as of the first day of the sixth (6th) Lease Year, and as of the first day of each sixth (6th) Lease Year thereafter, the Minimum Annual Rent shall be calculated using eighty percent (80%) of the annual average of the actual rents payable under this Lease for the three (3) Lease Years immediately preceding the adjustment date. In no event shall any such adjustment result in a decrease in the Minimum Annual Rent in effect just prior to the adjustment date. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all

applicable Gross Revenue schedules and Percentage Rent statements. Until such calculations are completed, LESSEE shall continue paying the most recent Minimum Annual Rent. Within thirty (30) days after CITY notifies LESSEE of the new Minimum Annual Rent, LESSEE shall pay to CITY any and all rent deficiencies.

- 4.6 Percentage Rent. Percentage Rent shall consist of the following percentages of Gross Revenue derived from the following business activities:

<u>Percentage of Gross Revenue</u>	<u>Business Activities</u>
Ten Percent (10%)	Instruction; Rental of boats and aquatic equipment.
Three Percent (3%)	Sales of new boats and related accessories.
Four Percent (4%)	Repair and maintenance of boats and aquatic equipment.
Five Percent (5%)	Sales of used boats and related accessories.
Five Percent (5%)	Youth camps (i.e., organized group programs for youth under 18 years of age).
Twenty Percent (20%)	Sales of food and non-alcoholic beverages.
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.
Ten Percent (10%)	Coin-operated vending, game, or service machines or devices on the Premises and owned or rented by LESSEE.
Seventy-Five Percent (75%)	Wireless telecommunication equipment installed or operated on or from the Premises.
Twenty Percent (20%)	All other authorized activities conducted on or from the Premises.

If LESSEE requests uses of the Premises in addition to those allowed on the Effective Date, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to each such use prior to CITY'S approval of the use.

- 4.7 Percentage Rent Adjustment. Upon CITY'S notice to LESSEE at least one hundred eighty (180) days prior to the first day of the eleventh (11th) Lease Year, CITY may adjust the Percentage Rent to reflect the then current fair market rents, as evidenced by

then recent leases for similar premises similarly improved and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. The new Percentage Rent shall be determined by an appraisal performed by a professional appraiser selected by CITY in its sole discretion and named in CITY'S notice to LESSEE. LESSEE shall have fifteen (15) business days after CITY'S notice to object to CITY'S choice of appraiser. If LESSEE objects to CITY'S choice of appraiser, the appraisal shall be performed by an appraiser designated upon CITY'S application to any judge of the Superior Court of San Diego County, downtown branch. CITY shall pay all appraisal costs. CITY may waive its right to adjust the Percentage Rent at any time. If CITY elects to adjust the Percentage Rent, CITY shall so notify LESSEE within thirty (30) days after completion of the appraisal. If an adjustment is made, the new Percentage Rent shall be effective as of the first day of the eleventh (11th) Lease Year, regardless of when the appraisal is completed, and LESSEE shall pay to CITY any and all deficiencies within thirty (30) days after CITY'S notice of the new Percentage Rent.

- 4.8 Unauthorized-Use Charge. LESSEE shall pay to CITY, as additional rent, an unauthorized-use charge equal to one hundred percent (100%) of the gross receipts for any service or use that is not allowed under this Lease. Such payment is subject to the due date provided in this Lease for rental payments and the provisions for delinquent and/or underpaid rent. Neither the existence of such unauthorized-use charge nor the payment of the charge, or any part of it, shall constitute an authorization of the unauthorized use, and shall not be a waiver of any of CITY'S rights under this Lease.
- 4.9 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.
- 4.9.1 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.

4.9.2 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.

4.9.3 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.

4.10 Delinquent Rent. If LESSEE fails to pay rent when due, LESSEE shall pay the delinquent rent plus a late fee equal to five percent (5%) of the delinquent rent. If rent remains unpaid after fifteen (15) days past due, the late fee shall be increased to an amount equal to ten percent (10%) of the delinquent rent, which LESSEE shall pay in

addition to the delinquent rent. The parties agree that such late fees are appropriate to compensate CITY for loss resulting from rental delinquency and the cost of servicing a delinquent account. In no event shall a late fee be less than Twenty-Five Dollars (\$25). All late fees shall be immediately due and payable as and when incurred. Amounts due CITY under this Lease and not paid when due may be referred to the San Diego City Treasurer for collection, in which case LESSEE shall pay a collection-referral fee in the amount of ten percent (10%) of the unpaid amount or Twenty-Five Dollars (\$25), whichever is greater, plus interest on the unpaid amount at the rate of twelve percent (12%) per year. 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 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.

- 4.11 No Waiver. CITY'S acceptance of late-payment charges, or any portion of late or underpaid rent shall neither constitute a waiver of any of LESSEE'S obligations, nor prevent CITY from exercising any of its other rights and remedies under this Lease.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. Subject to CITY'S prior written consent, LESSEE may encumber LESSEE'S leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE'S debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of improving, repairing, or maintaining the Premises. Each such encumbrance shall be subject to all of the terms, covenants, and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants, and conditions of this Lease, and shall be subordinate to CITY'S fee interest in the Premises and any and all CITY encumbrances on that fee interest.
- 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 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 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.

5.2.3 Additional Consideration to CITY. If this Lease is assigned or a majority of the Premises are subleased, or in the event of a refinancing that encumbers the leasehold, 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 subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease; and (c) in the case of a refinancing, two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan plus, if applicable, the cost of new permanent improvements constructed on the Premises as required or allowed under this Lease. 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, 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 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 assignments and refinancing 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 gross negligence, recklessness, 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:

- (a) Commercial General Liability Insurance, providing coverage 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);
- (b) Automobile Liability Insurance, providing coverage 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 Lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- (c) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, 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 Lease 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 Lease. 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 Lease Use 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 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 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 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 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.6.1 Water Fee. Unless LESSEE sub-meters the Premises for water usage, LESSEE shall pay to CITY a fee ("Water Fee") in the amount of Seven Hundred Thirty-

Two Dollars and Thirty Cents (\$732.30) per month for all water projected to be used in connection with LESSEE'S operation of the Premises. The Water Fee shall be reviewed and adjusted by CITY based upon LESSEE'S actual water usage and as of the first day of each fourth (4th) Lease Year. Notwithstanding the foregoing, CITY may adjust the Water Fee at any time if and when LESSEE'S projected annual water usage exceeds the then-current Water Fee rate by more than ten (10%) percent. The determination of the Water Fee as provided herein shall be in CITY'S sole, reasonable discretion. The Water Fee shall be treated as additional rent ("Additional Rent") under this Lease.

- 9.7 Construction Bond. If LESSEE constructs improvements on the Premises, LESSEE shall in each instance 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.
- 9.8 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 attorney 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 Premises, 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.
- 9.9 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 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 Premises, including without limitation licenses and permits. 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 the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE'S payment of taxes, fees, and assessments shall not reduce any rent due the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE'S possession, use, or occupancy of the Premises.

9.10 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.

9.11 Ownership of Improvements and Personal Property.

9.11.1 Improvements. Upon expiration or termination of this Lease, LESSEE shall remove any and all improvements, fixtures, structures, and installations or additions to the Premises that were constructed or installed on the Premises by LESSEE. LESSEE shall, at LESSEE'S sole cost and expense, remove such items 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 its improvements, structures, and installations as required by this Lease. If LESSEE fails to remove its improvements, structures, and installations as required, CITY may, at its option, remove them at LESSEE'S sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any LESSEE-installed permanent improvements, fixtures, structures, and installations.

9.11.2 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.

9.11.3 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.

9.11.4 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.

9.11.5 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.

9.11.6 Hazardous Substances. LESSEE shall not allow the 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, prior to initiating any operations, obtain all required 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.

9.11.6.1 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. 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 is hereby incorporated into this Lease.

9.11.6.2 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.

9.11.6.3 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.

9.11.6.4 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.

9.11.6.5 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.

9.11.6.6 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; REDEVELOPMENT PLAN

- 10.1 Development Plan. LESSEE shall develop the Premises in accordance with a development plan (the "Development Plan") approved by CITY, in its reasonable discretion as lessor under this Lease. A summary of the Development Plan requirements as of the Effective Date are set forth in **Exhibit E: Development Plan Summary**, attached hereto. CITY, in its sole discretion, may grant an extension of up to one (1) year for completion of the Development Plan. LESSEE shall notify CITY if construction is stopped for thirty (30) days or more, and again when construction resumes.
- 10.2 Redevelopment Plan. Prior to the first (1st) day of the seventh (7th) month of the tenth (10th) Lease Year, LESSEE shall submit to CITY for approval another development plan (the "Redevelopment Plan") for additional capital improvements on the Premises. The Redevelopment Plan shall include detail on proposed improvements, estimated project costs, a project timeline/schedule, a date for completion of construction, and a guaranteed minimum dollar amount that will be allocated for project costs. Furniture, trade fixtures, equipment and other personal property not affixed to the Premises shall not be included as part of LESSEE'S project costs. Upon CITY'S approval of the Redevelopment Plan, which approval may not be unreasonably withheld, LESSEE shall have one (1) year to begin construction of the improvements described in the Redevelopment Plan, subject to reasonable delays caused by any force majeure. LESSEE shall notify CITY if construction is stopped for thirty (30) days or more, and again when construction resumes.

10.3 Failure to Meet Schedules; Termination.

10.3.1 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 of the Development Plan within one (1) year after CITY'S approval thereof;
- (b) LESSEE fails to complete construction within one (1) year after the scheduled completion date for the Development Plan; or
- (c) after commencement of construction, the construction is stopped for more than three (3) months, unless such work stoppage is caused by a force majeure.

10.3.2 Failure of Redevelopment 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 of the Redevelopment Plan within one (1) year after CITY'S approval thereof;
- (b) LESSEE fails to complete construction within one (1) year after the scheduled completion date for the Redevelopment Plan; or
- (c) after commencement of construction, the construction is stopped for more than three (3) months, unless such work stoppage is caused by a force majeure.

10.3.3 Liquidated Damages. The parties agree that the damages to CITY resulting from LESSEE'S failure to complete either the Development Plan or the Redevelopment Plan by their respective scheduled completion dates would be extremely difficult to determine. Therefore, if LESSEE fails to complete either the Development Plan or the Redevelopment Plan as required by this Lease by their respective scheduled completion dates, LESSEE shall pay to CITY liquidated damages in the amount of fifty percent (50%) of the average daily rent for the three (3) Lease Years immediately preceding the scheduled completion date for each day after the applicable scheduled completion date until completion of development or redevelopment. Such liquidated damages shall be deemed additional rent due and payable upon CITY'S demand therefor.

10.3.4 Coastal Commission; Permits. LESSEE shall, at its sole cost and expense, seek and obtain from the California Coastal Commission or other competent authority all necessary development permits for the construction of improvements to be made pursuant to the Development Plan and the Redevelopment Plan.

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:

MISSION BAY SPORTCENTER
ATTN: Manager
1010 Santa Clara Place
San Diego, CA 92109

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

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

- 11.2 Compliance with Law. LESSEE shall, at its sole cost and expense, comply with all rules, regulations, and laws, and all direction by competent authority, which now or hereafter pertain to LESSEE'S occupancy, use, development, maintenance, and restoration of the Premises.
- 11.3 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 certifies that it will maintain such equal benefits throughout the term of this Lease by submitting a certificate of compliance attached hereto as **Exhibit F: Certificate of Compliance.**
- 11.4 Disabled Access Compliance. LESSEE shall 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 all other applicable municipal, state, and federal laws and regulations hereafter enacted protecting the rights of persons with disabilities. LESSEE shall include language in any and all subleases and license agreement requiring the sublessee/licensee to abide by the foregoing provisions.
- 11.5 Water Quality Assurances. LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater

Code”), and employ “Best Management Practices” including a “Storm Water Pollution Prevention Plan” as those terms are defined by the Stormwater Code (collectively, “Prevention Plan”) and as approved by CITY under its Stormwater Management Program. Within the first thirty (30) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of “Pollutants,” as defined by the Stormwater Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY’S satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.

- 11.6 Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY’S citizens. CITY’S failure to insist upon the strict performance of any of LESSEE’S obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY’S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY’S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY’S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY’S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- 11.7 Cumulative Remedies. 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.
- 11.8 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.9 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.
- 11.10 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.

- 11.11 Legal Proceedings. If any party brings an action or proceeding against another party under this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
- 11.12 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.
- 11.13 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.

MISSION BAY SPORTS CENTER, a California corporation

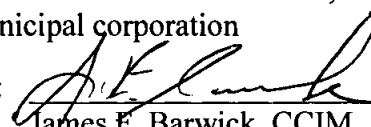
By: 

Name: Jason Roane

Title: PRESIDENT

5/17/2011

THE CITY OF SAN DIEGO, a California municipal corporation

By: 

James F. Barwick, CCIM

Director, Real Estate Assets Department

Date 7/21/11

Approved as to form and legality:

JAN I. GOLDSMITH, CITY ATTORNEY

By: 

Name: Brock Ladewig

Title: Deputy City Attorney

Date 7/21/11

I:\Support Staff Group\WPO\2011\BALOTSKY\PERCENTAGE LEASE - Mission Bay Sports Center2.docx

Exhibit A: Legal Description of Premises

Exhibit B: Aerial Map of the Premises

Exhibit C: Schedule of Days and Hours of Operation

Exhibit D: Approved Vessels for Rent

Exhibit E: Development Plan Summary

Exhibit F: Certificate of Compliance

Exhibit A: Legal Description of Premises

LAND AND WATER LEASE PARCELS
FOR
MISSION BAY SPORT CENTER

ALL THAT PORTION OF THE TIDELANDS AND SUBMERGED LANDS OF MISSION BAY (FORMERLY FALSE BAY) AS GRANTED IN TRUST BY THE STATE OF CALIFORNIA TO THE CITY OF SAN DIEGO BY CHAPTER 142 STATUTES 1945, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LAND LEASE AREA

COMMENCING AT A LEAD AND DISC STAMPED "LS4830" LOCATED IN THE INTERSECTION OF SAN JOSE PLACE AND BAYSIDE LANE OF MISSION BEACH MAP NO. 1809 AS SHOWN ON ROS 14335 AND ROS 16891; THENCE NORTH $81^{\circ}55'24''$ EAST 94.08 FEET TO A LEAD AND DISC STAMPED "LS4324" IN SAN JOSE PLACE PER SAID MAP AND ROS 14335 AND ROS 16891; THENCE ALONG TIE LINE PER ROS 16981 NORTH $85^{\circ}24'58''$ EAST 614.15 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE ALONG THE FOLLOWING COURSES AND IMPROVEMENTS PER ROS 16891; THENCE NORTH $26^{\circ}43'34''$ EAST 9.96 FEET; THENCE NORTH $32^{\circ}11'46''$ EAST 47.44 FEET; THENCE NORTH $52^{\circ}30'50''$ EAST 21.50 FEET; THENCE SOUTH $37^{\circ}33'55''$ EAST 4.54 FEET TO A POINT HEREIN REFERRED TO AS POINT "A"; THENCE NORTH $52^{\circ}30'50''$ EAST 14.00 FEET; THENCE NORTH $37^{\circ}33'55''$ WEST 4.82 FEET; THENCE NORTH $54^{\circ}00'53''$ EAST 22.01 FEET; THENCE SOUTH $35^{\circ}59'07''$ EAST 0.64 FEET; THENCE NORTH $54^{\circ}00'53''$ EAST 20.61 FEET; THENCE NORTH $73^{\circ}02'28''$ EAST 53.58 FEET; THENCE NORTH $89^{\circ}42'57''$ EAST 127.43 FEET; THENCE SOUTH $02^{\circ}48'34''$ EAST 31.18 FEET TO THE BEGINNING OF A 70.55 FOOT RADIUS CURVE CONCAVE TO THE WEST, A RADIAL LINE TO SAID BEGINNING BEARS NORTH $87^{\circ}11'26''$ EAST; THENCE SOUTHERLY ALONG SAID CURVE 11.63 FEET THROUGH A CENTRAL ANGLE OF $09^{\circ}26'41''$; THENCE SOUTH $06^{\circ}38'07''$ WEST 21.38 FEET TO THE BEGINNING OF A 29.43 FOOT RADIUS CURVE CONCAVE TO THE WEST, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH $86^{\circ}06'36''$ EAST; THENCE SOUTHERLY ALONG SAID CURVE 14.84 FEET THROUGH A CENTRAL ANGLE OF $28^{\circ}53'11''$ TO THE BEGINNING OF A NON-TANGENT 44.25 FOOT RADIUS COMPOUND CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH $54^{\circ}50'35''$ EAST; THENCE SOUTHWESTERLY AND WESTERLY 42.99 FEET THROUGH A CENTRAL ANGLE OF $55^{\circ}40'07''$; THENCE NORTH $89^{\circ}10'28''$ WEST 18.08 FEET; THENCE SOUTH $00^{\circ}49'33''$ WEST 0.50 FEET; THENCE NORTH $89^{\circ}29'28''$ WEST 6.14 FEET; THENCE SOUTH $00^{\circ}30'32''$ WEST 38.74 FEET; THENCE NORTH $89^{\circ}29'28''$ WEST 123.12 FEET; THENCE NORTH $00^{\circ}10'47''$ WEST 9.80 FEET TO THE BEGINNING OF A 9.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST, RADIAL LINE TO SAID BEGINNING BEARS NORTH $89^{\circ}49'13''$ EAST; THENCE NORTHERLY, NORTHWESTERLY, AND WESTERLY 15.78 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $100^{\circ}28'30''$ TO THE BEGINNING OF

A 138.93 FOOT RADIUS REVERSE CURVE CONCAVE TO THE NORTH; THENCE WESTERLY ALONG SAID CURVE 57.80 FEET THROUGH A CENTRAL ANGLE OF 23°50'13"; THENCE NORTH 76°49'04" WEST 13.12 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 0.613 ACRES MORE OR LESS.

WATER LEASE AREA

BEGINNING AT POINT "A" PER LAND LEASE DESCRIPTION ABOVE; THENCE NORTH 52°30'50" EAST 14.00 FEET; THENCE NORTH 37°33'55" WEST 22.67 FEET; THENCE NORTH 15°04'08" WEST 7.42 FEET; THENCE NORTH 37°33'55" WEST 61.46 FEET; THENCE NORTH 53°02'33" EAST 127.75 FEET; THENCE NORTH 36°57'27" WEST 10.25 FEET; THENCE SOUTH 53°02'33" WEST 190.75 FEET; THENCE SOUTH 36°57'27" EAST 10.25 FEET; THENCE NORTH 53°02'33" EAST 46.16 FEET; THENCE SOUTH 37°33'55" EAST 91.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.078 ACRES MORE OR LESS

THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION IS THE NAD 83 CALIFORNIA COORDINATE SYSTEM, ZONE 6, PER ROS 14492 AND ROS 16891. ALL DISTANCES ARE GRID DISTANCES. MULTIPLY ALL DISTANCES BY 1.0000063 TO OBTAIN GROUND DISTANCES.

Exhibit B: Aerial Map of the Premises

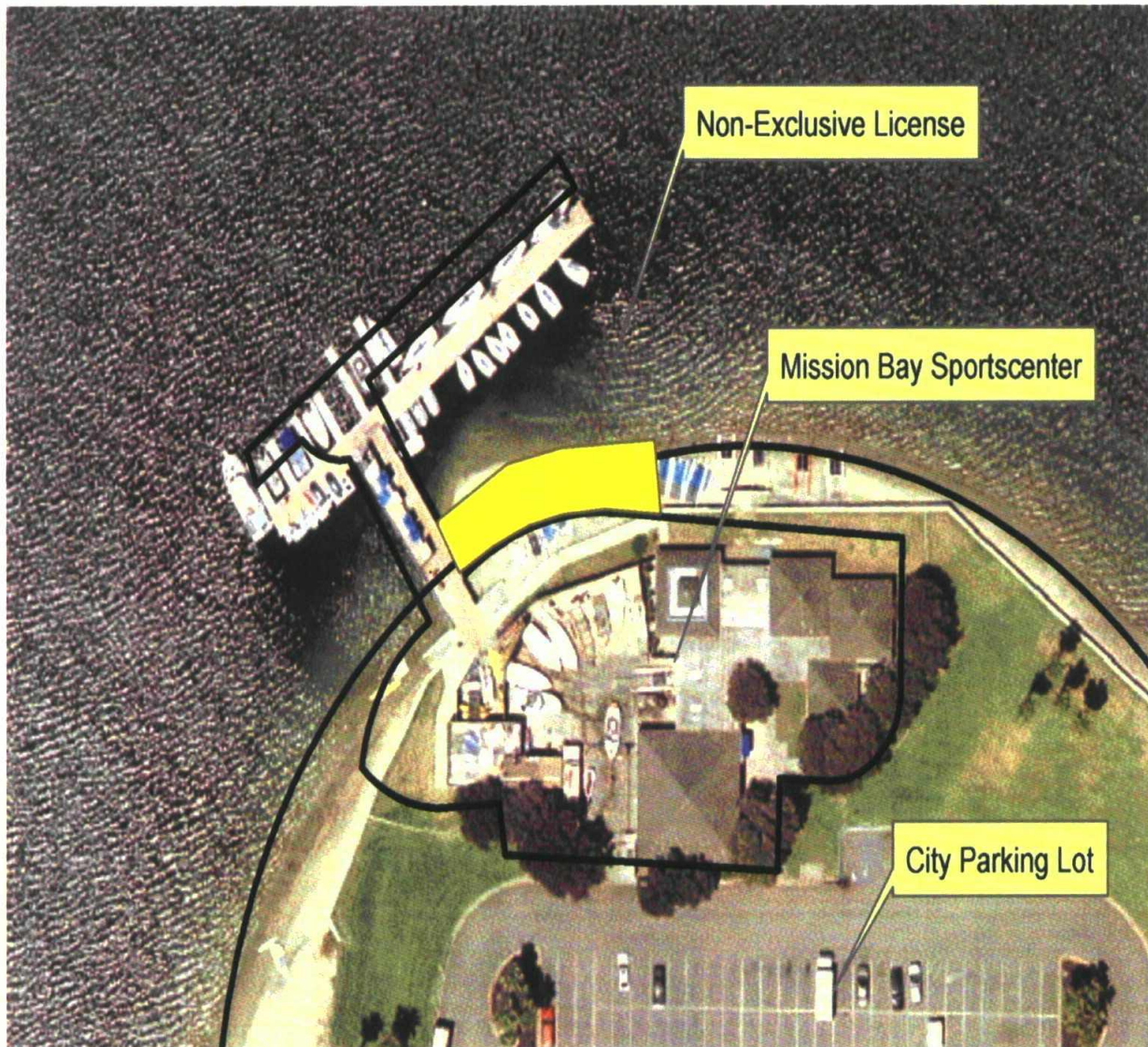


Exhibit C: Schedule of Days and Hours of Operation

SUMMER: May 1st – September 30th, Open 7 days per week, 9AM – 7 PM

FALL, WINTER, & SPRING: October 1st – April 31st, Open 7 days per week, 10AM – 5PM

Exhibit D: Approved Vessels for Rent

Power Boats

Wakeboard/Ski Boats – 3 ea.
18' Runabouts/Bow riders – 6ea.
Pontoon Boats – 4 ea.
Rescue/Chase Boat – 1ea.
Luxury 35-50' Charter Yachts – 3 ea.

Personal Water Craft

Three Person Yamaha Wave runner VX110's – 12 ea.
Three Person Yamaha Wave runner FX140's – 4 ea.

Electric Power Boats

Four Person Electric Sun Lounger – 2 ea.
Two Person Electric Fun Boats – 8 ea.

Sailboats

Hobie Wave Catamarans – 4 ea.
Hobie Getaway Catamarans – 12 ea.
Hobie 1 Youth Trainers – 10 ea.
Capri 14.2' Sloops – 2 ea.
Capri 16.5' Sloops – 10 ea.
Capri 22' Sloops – 10 ea.
Capri 25' Sloops – 1ea.
Luxury 48' Charter Sailboat – 1 ea.

Miscellaneous

One Person Kayaks – 50 ea.
Two Person Kayaks – 40 ea.
Windsurfers – 8 ea.
Stand Up Paddle Boards -30 ea.
Soft Surfboards – 50 ea.
Soft Body Boards – 60 ea.
2 Person Pedal Boats -10 ea.
4 Person Pedal Boats – 8 ea.

Exhibit E: Development Plan Summary

- Site Plan/Architectural Plans.-[See Attachment 2,]
- Financial Plan: Approximately \$795,000 in construction costs to be paid in cash (provided by LESSEE) and any shortfalls are expected to be financed through a loan from Sundance Mortgage Company at market rate interest repayable over 5 years and secured by LESSEE's interest in the leasehold and other collateral of LESSEE'S principals as may be required by lender. (Subject to City approval per Lease.)
- Development Plan:
 - Development Plan Description and Schedule: See Attachment #1 (3 pages)
 - Architectural Renderings: See Attachment #2 (2 pages)
 - Development Plan Costs: See Attachment #3 (1 page)

All improvements to be consistent with the original building design by Don Goldman AIA.

Development Teams:

<i>David Reed Landscape Architects</i> License #'s 1962, 5254	Landscape Architect General Design
<i>Rex Plummer, Project Design</i> License # 6641	Civil Engineering
<i>Donn Reese, Living Green Inc.</i> License # 696061	Photovoltaic and Electrical Engineering and Construction
<i>Victor Manire, Building Services Inc.</i> License # 624798	Design Construction Contractor

- Development Schedule: Construction ("Construction Period") is to start within six (6) months after CITY'S approval of the Development Plan, and is scheduled to be completed within eighteen (18) months after commencement of construction.

Attachment #1 to Development Plan Summary

Development Plan Item Description and Schedule

All projects associated with the development of the Premises are expected to start within six (6) months after CITY'S approval of the Development Plan, and are scheduled to be completed within eighteen (18) months after commencement of construction.

a. **Boat Dock Removal and Replacement.**

LESSEE will complete removal of the existing dock and the installation of a new dock designed to withstand the rigors of current water conditions of Mission Bay and the berthing of the fleet currently in operation by LESSEE.

The new dock will be constructed of seamless polyethylene floats, galvanized and stainless steel hardware, treated 30-year timbers, and environmentally friendly decking. In addition, the dock will be outfitted with proper infrastructure to support available utilities and amenities.

A new dock security gate will be installed with radio frequency keyed access. The radio frequency keyed access will allow the tracking of tenant use, security system alert with automatic reports of open gates to assure public safety during non-operational hours, and generate traffic reports by entry to determine accurate and appropriate billing to optimize revenue return to both LESSEE and CITY.

b. **Renewable Energy Photovoltaic Power Generating System.**

LESSEE will install a photovoltaic power generating system. The proposed solar system will be located and housed on the roof of the existing building located on the Premises. The solar panels will be mounted on the roof with no visual impact or changes to the architecture of the building. The design will utilize one of the most efficient solar panels on the market, which have a service life of 30 years. Also included along with the energy system will be additional items such as energy conditioners that help to not only reduce the necessary amount of solar panels needed, but to also optimize the inverters that convert the solar electricity into usable energy. There will also be a thermal solar hot-water system installed.

c. **Utility Upgrade.**

LESSEE will remove and replace and perform a complete upgrade to existing electrical and telecommunication utilities.

The telecommunication upgrade will consist of the complete removal and replacement of all telecommunication lines from the point of entry located to the building and installed in existing underground conduit.

The electrical upgrade will involve the removal of the San Diego Gas & Electric service panel and meter installed at the Premises and the installation of a sub-metered panel equipped to handle the solar photovoltaic renewable energy system scheduled for installation in 2011. In addition, the new dock structure will be equipped with enhanced utility service.

d. Restroom Remodel.

LESSEE will remodel the existing staff and public restrooms to include ADA requirements and amenities. Existing showers, stalls, toilets, and sink basins will be removed and replaced with accessible fixtures that are water-conservation compliant.

e. Perimeter Fence.

LESSEE will remove and replace the entire perimeter fence of the Premises boat yard and replace it with new vinyl coated material. All components of the fencing system will be replaced. The components include line posts, terminal posts, access gates, and chain-link wire mesh. In addition, the fencing will be wrapped with an aesthetically pleasing windscreen.

f. Runoff Waste Water Collection System.

LESSEE will add a wastewater collection system, which will collect all water runoff, generated from boat yard activities and safely deliver it to the city sewer system.

The collection system will be comprised of a recessed collection gutter system that encompasses the boat yard and deposits runoff into a collection sump, which is then pumped into the municipal system for treatment. Construction of this proposed project will be performed at the same time as the perimeter fence replacement due to the partial demolition and reforming of the concrete boat yard to accommodate the collection gutter system.

g. General Building Upgrade, New Windows and Improvements.

Improvements will include the addition of display windows in the newly remodeled southeast showroom, flooring, paint, electrical fixtures, natural lighting through sky light replacement, and any other components required to complete the facility.

h. Mission Bay Park City Parking Lot and Roadway Repaving.

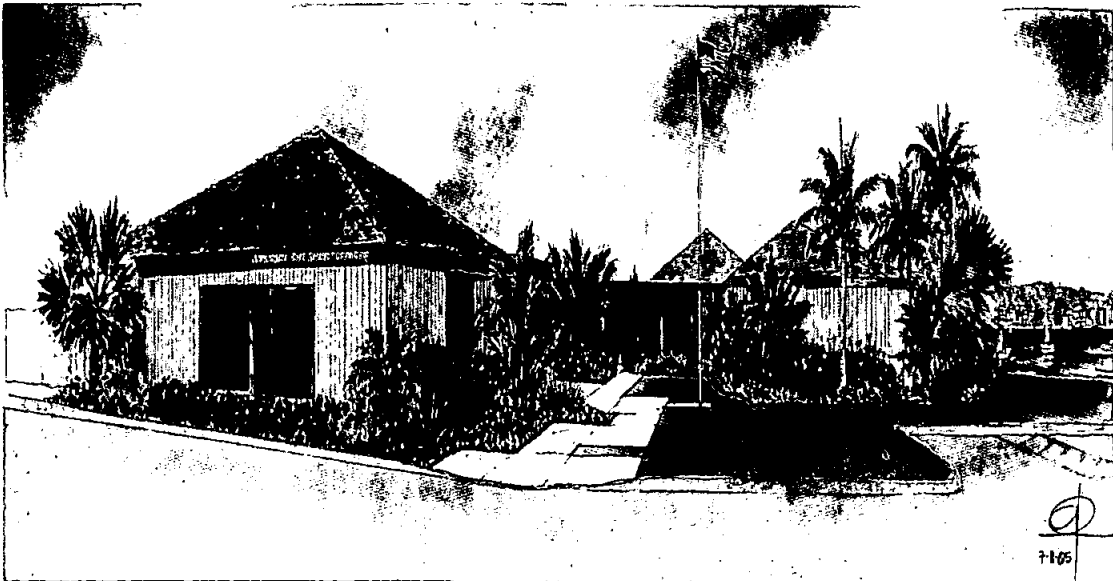
LESSEE is proposing to make repairs to the existing parking lot and repave the entire city parking lot and roadway entrance to North Santa Clara Point. Repairs and repaving will consist of raising all utility vaults 1" higher, power cleaning all surfaces to be repaved, and removing and repairing 420 square feet of damaged asphalt due to tree root damage and water erosion. Once preparations have been completed, the entire parking lot and roadway, consisting of 50,480 square feet, will be repaved and the parking stall stripes repainted. The existing layout will be reused unless otherwise directed by city staff. Additionally all curbs

will have their paint scraped and be repainted with current markings enhancing public awareness and safety considerations.

Attachment #2 to Development Plan Summary

Architectural Rendering

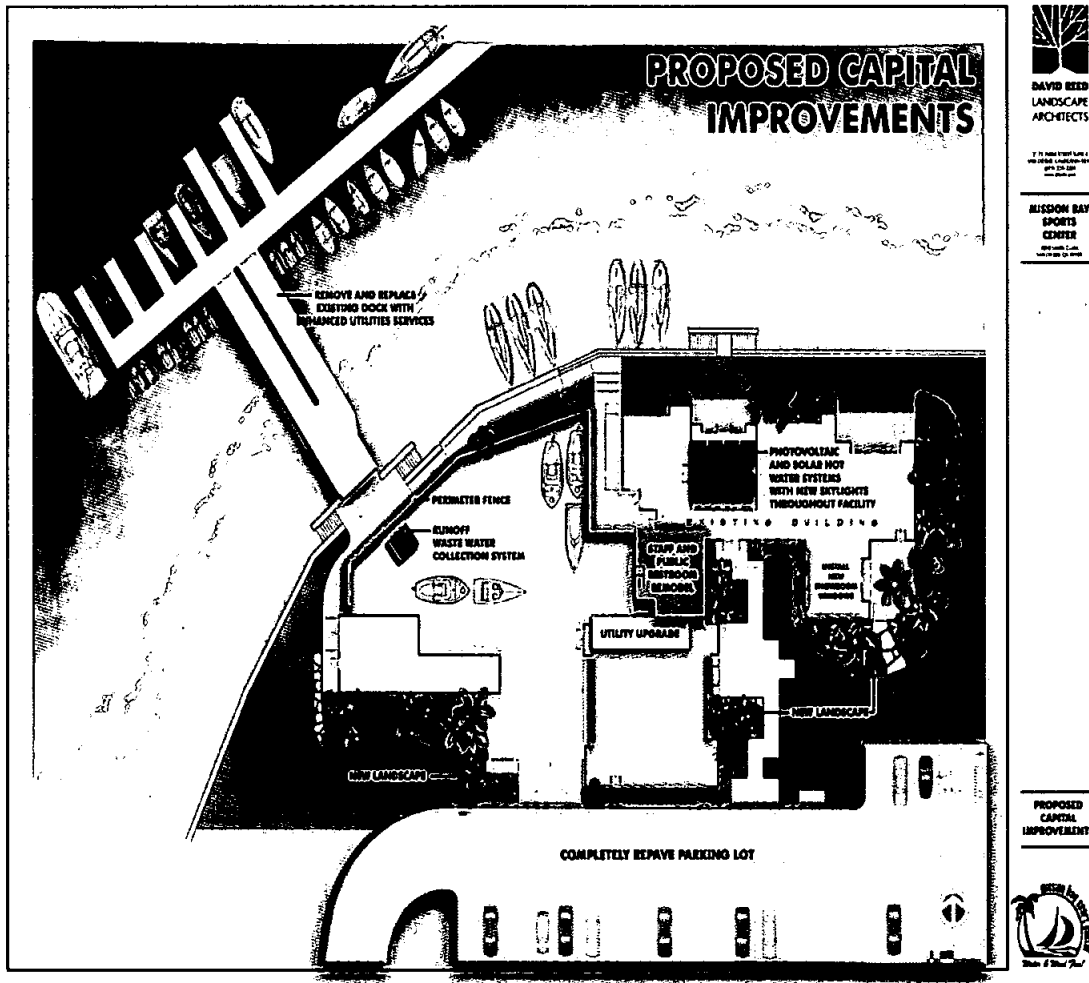
View of the Mission Bay Sportcenter
(Page 1)



Attachment #2 to Development Plan Summary

Architectural Rendering

View of the Proposed Capital Improvements (Page 2)



Attachment #3 to Development Plan Summary

Development Plan Costs

<u>Development Items:</u>	<u>Cost</u>
Renewable Energy Photovoltaic Power Generating System:	\$205,000
Landscape Redevelopment:	\$ 50,000
Boat Dock Removal and Replacement:	\$250,000
Utility Upgrade:	\$ 50,000
Restroom Remodel:	\$ 45,000
Runoff Waste Water Collection:	\$ 40,000
Perimeter Fence Replacement:	\$ 20,000
General Building Upgrade:	\$ 75,000
City Parking Lot and Roadway Repaving:	\$ 60,000
Total Estimated Associated Costs:	\$795,000

Exhibit F: Certificate of Compliance

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:

CITY OF SAN DIEGO

EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101

Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION	
Company Name: <u>MISSION BAY SPORTS CENTER, INC.</u>	Contact Name: <u>JASON BOONE</u>
Company Address: <u>1010 SANTA CLARA PLACE, SAN DIEGO, CA 92109</u>	Contact Phone: <u>658-488-1004</u>
Contact Email: <u>JASON@MISSIONBAYSportsCenter.com</u>	
CONTRACT INFORMATION	
Contract Title: <u>CITY OF SAN DIEGO PERCENTAGE LEASE - MISSION BAY SPORTS CENTER</u>	Start Date: _____
Contract Number (if no number, state location): <u>1010 SANTA CLARA PLACE, SAN DIEGO, CA 92109</u>	End Date: _____
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS	
The Equal Benefits Ordinance (EBO) requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply: ■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners. ▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit. ▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner. ■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods. ■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements. ■ Contractor shall submit EBO Certification of Compliance, signed under penalty of perjury, prior to award of contract. NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.	
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION	
Please indicate your firm's compliance status with the EBO. The City may request supporting documentation. ☒ I affirm compliance with the EBO because my firm (contractor must select one reason): ☐ Provides equal benefits to spouses and domestic partners. ☒ Provides no benefits to spouses or domestic partners. ☐ Has no employees. ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired. ☐ I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners. It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)] Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.	
<u>JASON BOONE/PRESIDENT</u> Name/Title of Signatory	<u>[Signature]</u> Signature
	<u>3/21/2011</u> Date
FOR OFFICIAL CITY USE ONLY	
Receipt Date: <u>3/22/11</u>	EBO Analyst: <u>10/15</u>
Approved ☒ Not Approved ☐ Reason: _____	

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RESOLUTION NUMBER R- **306876**

DATE OF FINAL PASSAGE **JUN 27 2011**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE LEASING OF CITY-
OWNED REAL PROPERTY AT 1010 SANTA CLARA PLACE
IN MISSION BAY PARK TO MISSION BAY SPORTS
CENTER FOR THE OPERATION AND MAINTENANCE OF A
PUBLIC WATER SPORTS CENTER AND DOCK FACILITIES.

WHEREAS, in 1980 Richard Gleason and Debra Gleason, doing business as "Mission Bay Sports Center" (Lessee), leased certain City-owned real property located at 1010 Santa Clara Place in Mission Bay Park (Property) to provide individual and group lessons in water sports activities; youth camps; kayak, sailboat, jet ski, windsurfing, and powerboat rentals; charter dive boat rentals; boat sales; boat service and storage; and rowing activities; and

WHEREAS, the Property is un-zoned, with a Mission Bay Park Master Plan land-use designation of "aquatic/sailing center"; and

WHEREAS, in 1995, the Gleasons' lease was renewed for an additional 10 year term, which expired in October 2005, and is on a month-to-month tenancy; and

WHEREAS, City staff have negotiated a new 20-year lease with Mission Bay Sports Center, a California corporation created by the Gleasons; NOW, THEREFORE,

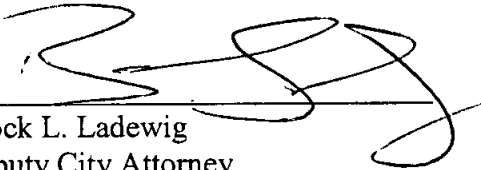
BE IT RESOLVED, by the San Diego City Council, that the Mayor or his designee is authorized to execute and deliver the Lease Agreement with Mission Bay Sports Center, a

California corporation, on file in the Office of the City Clerk as Document No.

RR- 306876, for the operation and maintenance of a public water sports center and dock facilities at 1010 Santa Clara Place in Mission Bay Park.

APPROVED: JAN I. GOLDSMITH, City Attorney

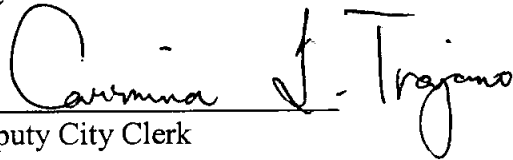
By


Brock L. Ladewig
Deputy City Attorney

BLL:mcm
05/03/2011
Or.Dept: Real Estate Assets Dept.
PL#2010-02090

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 21 2011

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6.27.11

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on June 21, 2011, by the following vote:

YEAS: **LIGHTNER, GLORIA, YOUNG, DEMAIIO, FRYE, EMERALD, & HUESO.**

NAYS: **NONE.**

NOT PRESENT: **FAULCONER.**

RECUSED: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **GIL SANCHEZ**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-306876**, approved by the Mayor of The City of San Diego,
California on **June 27, 2011**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy