

CITY OF SAN DIEGO

and

RICHARD J. GEORGE D/B/A

CITY CAFE

**Concourse Deli
Lease Agreement**

**CITY OF SAN DIEGO
LEASE AGREEMENT**

This Lease Agreement ("Lease") is entered into between the CITY OF SAN DIEGO, a municipal corporation ("CITY") and Richard J. George, d/b/a City Café ("LESSEE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date").

SECTION 1: EXHIBITS

1.1 Exhibits.

This Lease contains Exhibits 13.1 through 13.2, all of which are attached and made a part of this Lease, identified as follows:

Exhibit 13.1	<u>Premises</u>
Exhibit 13.2	<u>Schedule of Rates and Charges</u>

SECTION 2: PREMISES

2.1 Premises.

CITY leases to LESSEE and LESSEE leases from CITY certain space within the City-owned Concourse, located at 202 "C" Street, situated in the City of San Diego, County of San Diego, State of California, for use as a deli, consisting of approximately 600 square feet, which includes a food preparation and storage area, counter space and customer seating, as more specifically described in Exhibit 13.1 (the "Premises").

2.2 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable, in its sole discretion, for the public good.

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

2.3 Eminent Domain.

If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. 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.
- b. If a partial taking of the Premises, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. If a partial taking of the Premises, and in the opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.

- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

2.4 Related Council Actions.

By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall diligently seek all entitlements and actions, from both CITY and other governmental agencies with jurisdiction over the Premises, as are necessary to develop and operate the use contemplated by this Lease, all at no cost to CITY.

2.5 Quiet Possession.

LESSEE, paying the rent and 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 CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Lease term, or if during the term of the Lease, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated in writing by the Mayor of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

2.6 Rates and Charges.

All charges for merchandise and services or facilities on the Premises shall be in accordance with the schedule set forth in Exhibit 13.2. LESSEE shall provide the Mayor or his authorized representative prior written notification of any changes in the schedule.

2.7 Political Activities.

LESSEE may make the Premises available for political activities only to contracted users on a non-discriminatory basis at standard rental rates, terms and conditions.

SECTION 3: TERM

3.1 Commencement.

The term of this Lease shall be three (3) years ("Lease Term"). "Lease Year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the Effective Date of the lease. The Commencement Date of this lease will be the "Effective Date". If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full term, so that the Term shall expire on the last day of a calendar month.

3.2 Early Termination.

This Lease may be terminated by CITY at any time with ninety (90) days prior written notice to LESSEE. Except for the return of a pro-rata share of any prepaid rent, it is mutually agreed that CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE resulting from termination of this Lease. LESSEE understands and agrees that it shall not be entitled to any relocation payments whatsoever from CITY during the term of this Lease, or upon termination of this Lease for any reason.

3.3 Holdover.

Any holding over by LESSEE after Lease expiration or Lease termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, at the sole discretion of the Mayor, CITY shall have the right to increase the rent to bring the rent to a minimum of one hundred twenty-five percent (125.0%) of fair market value and to terminate the holdover tenancy at will with thirty (30) days prior written notice.

3.4 Quitclaim and Surrender of LESSEE'S Interest.

- a. On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record such deed only on the expiration or earlier termination of this Lease. If CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand from CITY. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be

conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

- b. At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution of this Lease, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified Lease Term, any liens and encumbrances must be approved in writing by the Mayor.

3.5 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

SECTION 4: USES

4.1 Sole Permitted Uses.

The Premises are leased to LESSEE solely and exclusively for the purposes of its management and operation as a deli and for other related purposes or incidental purposes as may be first approved in writing at the sole discretion of Mayor and for no other purpose whatsoever.

The use of the Premises for any unauthorized, illegal or unpermitted purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY. If LESSEE is reasonably in doubt as to the propriety of any particular use, LESSEE may request the written determination of the CITY'S Lease Administrator that the use is permitted or is not permitted. The determination will be at the sole discretion of the CITY'S Lease Administrator.

4.2 Failure to Use Premises.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue the purposes throughout the term of this Lease. Failure to continuously use the Premises for the purposes permitted under this Lease, or the use of the Premises for purposes not expressly authorized herein, shall be grounds for termination by CITY.

4.3 Competent Management.

Throughout the Lease Term, LESSEE shall provide competent management of the Premises for the intended uses to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a public assembly venue and related activities in a fiscally responsible manner.

SECTION 5: RENT

5.1 Time and Place of Payment.

All rents required by this Lease must be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 122289
San Diego, California 92112-4165

or hand delivered to:

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

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

5.2 Rent.

If the Commencement Date is not the first day of a calendar month, then the accrued rent for the partial month at the beginning of the Term shall be prorated on a per diem basis, and paid in conjunction with the rent for the first full month of the term.

- a. Minimum Rent. The annual minimum rent established following the Effective Date is Ten Thousand Four Hundred and Forty Dollars

(\$10,440), which is Eight Hundred and Seventy Dollars (\$870) on a monthly installment basis.

If the minimum rent is greater than the percentage rent on a calendar month basis, then 1/12 of the annual minimum rent is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 5.1.

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

- b. Percentage Rent. Percentage rent will be calculated on a calendar month basis and will consist of Seven percent (7%) of all Gross Income (as defined in Section 5.4) resulting from the use of the Premises. If the term of the Lease is extended, the percentage rent shall increase to Seven and one quarter percent (7.25%) in the first one-year extension and shall increase to Seven and one half percent (7.5%) in the second one-year extension.

The Mayor, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 4.1, as may be approved in writing by the Mayor prior to commencement of the other service(s) or operation(s). Provided, however, any activity conducted on the Premises without prior approval by the Mayor shall be subject to the requirements of Section 5.7.

5.3 Payment Procedure.

- a. On or before the last day of the calendar month following the calendar month in which the Gross Income subject to rents was earned, LESSEE shall provide to CITY a statement signed by LESSEE or its authorized agent attesting to its accuracy, which shall be legally binding upon LESSEE, and which will include the following:

 - 1. One-twelfth of the annual minimum rent until the full annual rent is achieved in any Lease Year.
 - 2. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the Premises must be included when a reported category shows gross income to be from more than one business operation.
 - 3. The percentage rental due CITY, computed and totaled.
 - 4. The accumulated total of all rents previously paid for the current Lease Year.
- b. Together with the statements, LESSEE shall provide payment in the greater of the two following amounts:

 - 1. One-twelfth of the annual minimum rent; or
 - 2. The total percentage rent due CITY computed as described in this section.
- c. Any rents due CITY from sublease activities or operations shall be calculated based upon the earliest of the following dates (whether or not prior approval was given by CITY as required by this Lease and whether or not a separate percentage rent was established by CITY):

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

5.4 Gross Income.

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

5.5 Security Deposit.

- a. LESSEE shall pay to CITY a security deposit in the sum of \$1,740 on or before the Effective Date. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this Lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants, and conditions of this Lease.
- b. The security deposit shall take one of the forms set out below:
 1. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from the deposit or redeposit shall be and remain the property of CITY.
 2. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial

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

- c. LESSEE will maintain the required security deposit throughout the Lease Term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this Lease. This provision shall survive termination of this Lease.
- d. If CITY uses all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security deposit or any unused portion will be returned to LESSEE within one hundred and twenty (120) days following expiration or termination of this Lease, provided LESSEE has faithfully complied with all terms, covenants, and conditions of this Lease.

CITY may, at its option, require LESSEE to increase the security deposit proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days prior written notice from CITY of the required increase.

5.6 Inspection of Records.

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

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

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

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

b. Financial Statements. Within sixty (60) days after the end of each Lease Year as previously established in this Lease, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the Premises. The statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 5.6(a), will be kept for at least three (3) years and made available to CITY in one location within the City of San Diego. The books and records shall be maintained separate from all other accounts not relating to the Premises. The CITY, at its discretion and upon twenty-four hours notice provided to LESSEE, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the Premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises. The data will include, if requested by CITY, a detailed breakdown of LESSEE'S receipts and expenses and other lease information or reports concerning the Premises and LESSEE'S operations conducted on the Premises.

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

1. The audit(s) reveal an underpayment of more than five percent (5%) or more than Ten Thousand Dollars (\$10,000), whichever is less, between the rent due as reported and paid by LESSEE pursuant to this Lease and rent due as determined by the audit(s);
or

2. LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section of this Lease.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 5.6 and 5.7, within thirty (30) days of notice by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the Mayor of the audit(s) findings.

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

5.7 Delinquent Rent.

- a. Late Payment. If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)], which is agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).
- b. Audit Deficiency. If a CITY audit(s), as applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described in this Lease. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default

with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

5.8 Unauthorized Use Charge.

LESSEE shall pay CITY one hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for rental payments and the provision for delinquent rent. The existence of the one hundred percent (100%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.

SECTION 6: ASSIGNMENT

6.1 Encumbrance.

LESSEE shall not encumber this Lease or any interest in this Lease.

6.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest and shall not sublet the Premises or any part, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises, or any part, without the prior written consent of the Mayor in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the Mayor.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The Mayor may require, as a condition to approval of any sublease of the majority

portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 6.3, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, which is incorporated into this Lease by reference, the Mayor must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The Mayor's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

6.3 Additional Consideration to CITY.

LESSEE and CITY agree that in the event of an assignment or in the event of a subletting of the majority portion of the leasehold of this Lease, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, or two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee or sublessee as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment or a sublease. Any assignment or subletting in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

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

SECTION 7: DEFAULTS AND REMEDIES

7.1 Defaults and Remedies.

a. Default. Each of the following shall constitute an event of default under this Lease:

- 1. LESSEE fails to make any payments required under this Lease when due;**
- 2. LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY; or if any default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty (30) day period and diligently pursue cure to completion;**
- 3. LESSEE voluntarily files or has involuntary filed against it any petition under any bankruptcy or insolvency act or law;**
- 4. LESSEE is adjudicated a bankrupt;**
- 5. LESSEE uses the Premises for any unauthorized purpose;**
- 6. LESSEE makes a general assignment for the benefit of creditors.**

b. Remedies.

Upon default by LESSEE, CITY may, at its option, give LESSEE or any person claiming rights through LESSEE a written three (3)-Day Notice to Pay or Quit, if said default is based upon Section 7.1a(1) or CITY may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession thereof, and CITY may enter and take possession of the Premises (provided, however, in the event that any default described in Section 7.1a(2)-(6) is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues such cure to completion, and may recover from LESSEE the sum of:

- 1. the worth of at the time of award of any unpaid sums that had been due at the time of termination.**

2. the worth at the time of award of the amount by which (i) the unpaid sum that would have been earned after termination until the time of award exceeds (ii) the amount of rental loss, if any, and LESSEE affirmatively proves could have been reasonably avoided.
 3. the worth at the time of award of the amount by which (i) the unpaid rent or amounts due for the balance of the term after the time of the award exceeds (ii) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
 4. any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
 5. all other amounts in addition to or in lieu of those previously stated may be permitted from time to time by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, 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 base rent, percentage rent and any other payments required by LESSEE.
- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Mayor in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of CITY and that any failure by the Mayor or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to

require the cure of any default when and as the defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after the default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

SECTION 8: INSURANCE RISKS/SECURITY

8.1 Insurance.

- a. Prior to approval of this Lease by CITY, LESSEE shall deliver to CITY a current certificate of insurance for Commercial General Liability policy 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 FOUR MILLION DOLLARS (\$4,000,000).
- b. 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.
- c. Insurance policy(ies) shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policy(ies) shall be kept in force for the duration of the Lease and any extended use. The certificate of insurance shall be filed with CITY upon execution of this Lease.
- d. 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.
- e. 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.
- f. Notwithstanding the preceding provisions of this Subsection (3), if LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of a default.

8.2 Hold Harmless.

LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly related to the granting of this Lease to LESSEE, the use and operation of the Premises, or the operations to be performed under this Lease, and all costs and expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees.

8.3 Waste, Damage or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage worth more than Five Thousand Dollars (\$5,000) that may occur on the Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 8.2, Insurance.

LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises within thirty (30) days, and shall complete the required repairs, restoration, or replacement within a reasonable time. CITY may determine an equitable deduction in the rent requirement for the period or periods that the Premises are untenable by reason of the damage.

SECTION 9: IMPROVEMENTS/ALTERATIONS/REPAIRS

9.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations

necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on independent inspection, tests, investigations, and observations in entering into this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.

9.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

9.3 Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Lease Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

9.4 Improvements/Alterations.

LESSEE may not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without prior written approval by the Mayor. LESSEE may not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without prior written approval by the Mayor and that approval shall not be

unreasonably withheld. LESSEE shall notify Mayor or his designee of improvement projects on the Premises and shall complete an Ownership Disclosure when obtaining building permits that informs the permitting authority that the Premises is City-owned property. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

9.5 Liens.

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

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

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

9.6 Taxes.

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 any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE further agrees that payment for taxes, fees and assessments will not reduce any rent due CITY.

9.7 Signs.

LESSEE shall not permanently affix to the Premises any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any unauthorized item(s) or item(s) unacceptable to the Mayor are found on the Premises, LESSEE agrees to remove

the item at its expense within twenty-four (24) hours notice by CITY, or CITY may remove the item at LESSEE'S cost.

9.8 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or Lease termination be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to Lease Termination or one hundred eighty (180) days prior to Lease expiration, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or Lease termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or termination of this Lease. Any items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all damage.
- e. For any necessary removal by either CITY or LESSEE which takes place beyond the Lease expiration or Lease termination, LESSEE shall pay rent to CITY at the rate in effect immediately prior to the Lease expiration or Lease termination.
- f. Notwithstanding any of the foregoing, if LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon Lease expiration or Lease termination, then CITY shall have the first right to acquire or purchase the personal property.

9.9 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent pursuant to this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of the claimed delay.

9.10 Hazardous/Toxic Waste.

- a. LESSEE shall not allow the release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated in this Lease.
- b. If any release of a hazardous substance occurs, LESSEE shall be responsible for all costs of remediation and removal of the substances in accordance with all applicable rules and regulations of governmental authorities.
- c. LESSEE shall defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- d. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the Mayor within ten (10) days of receipt of the knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the Mayor immediately upon receipt of this knowledge or belief and shall take

all actions necessary to alleviate the danger. LESSEE shall notify the Mayor immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the Premises without the prior written consent of CITY.

9.11 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of asbestos in accordance with Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.

SECTION 10: CITY POLICY IMPLEMENTATION PROVISIONS

10.1 Compliance with Law.

LESSEE shall at all times in the maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

10.2 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor unless otherwise specified, without need for further resolution by the City Council.

10.3 Nondiscrimination.

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

10.4 Compliance with CITY'S Equal Opportunity Contracting Program.

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

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

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

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

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

10.5 CITY Employee Participation Policy.

This Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the LESSEE. These provisions do not apply to members of the City Council.

10.6 Drug-free Workplace.

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

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace.
 2. The LESSEE'S policy of maintaining a drug-free workplace.
 3. Any available drug counseling, rehabilitation, and employees assistance programs.
 4. The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

10.7 Disabled Access Compliance.

LESSEE shall at all times in the construction, maintenance, occupancy and operation of the Premises comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 California Code of Regulations ("Building Code") as defined in Section 18910 of California Health and Safety Code ("Title 24") and any other applicable federal, state or local laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE acknowledges and agrees that the LESSEE is aware of and will comply with Council Policy 100-04, incorporated in this Lease by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. LESSEE will be individually responsible for administering its own ADA and Title 24 program. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions,

conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

- b. LESSEE shall not exclude qualified persons with disabilities on the basis of disability from participation in, or deny the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

10.8 Water Quality - BMP and SWPPS Plans.

CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by Mayor or its designee, within ninety (90) days of the execution of this Lease, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the Mayor requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS for Mayor review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPS.

SECTION 11: GENERAL PROVISIONS

11.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the Premises or at another address designated in writing by LESSEE;

Richard J. George
City Cafe
6106 Calle Mariselda, #203
San Diego, CA 92124

and to CITY as follows:

Mayor
Attention: Real Estate Assets Director
Civic Center Plaza
1200 Third Avenue, Suite 1700 M.S. 51
San Diego, CA 92101-4199

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

11.2 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

11.3 Legal Fees.

In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

11.4 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

11.5 Captions.

The Lease Outline, any Lease summary, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

11.6 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

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

11.7 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

11.8 Authority.

Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that 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.

11.9 CITY Option to Purchase.

If LESSEE desires to dispose of its interest in this lease, together with any of its interest in trade fixtures, and furnishings owned by LESSEE on the Premises, CITY shall be given the first right to purchase the interest and at a mutually agreeable price. If CITY does not exercise the right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at the lower price.

11.10 Schedule of Prices.

All prices of merchandise, equipment, and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment, and services offered in the San Diego area. All prices charged by LESSEE and its sublessees shall be approved in writing by Mayor; provided, however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.

11.11 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

11.12 Broker Fees.

LESSEE warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event a broker other than any broker acknowledged in writing by CITY makes a claim for monies owed LESSEE shall indemnify, defend and hold CITY harmless.

11.13 CITY'S Lease Administrator.

This Lease shall be administered on behalf of City by the Mayor or the Mayor's authorized designee.

11.14 Administrative Fees.

In accordance with Council Policy, CITY maintains a schedule of fees to be paid by LESSEE as an offset to administrative costs incurred for staff services provided that are of benefit to LESSEE. The fee schedule may be updated from time to time at the sole discretion of CITY.

11.15 Governing Law.

The Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

11.16 San Diego's Strong Mayor's Form of Governance.

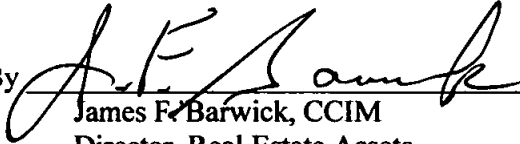
All references to "City Manager" in this Agreement and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.

SECTION 12: SIGNATURES

This Lease is executed by CITY, acting by and through its Mayor, and by LESSEE, acting by and through its lawfully authorized officers.

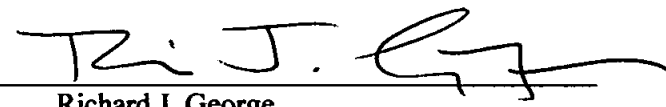
THE CITY OF SAN DIEGO

Date 2/12/07

By 
James F. Barwick, CCIM
Director, Real Estate Assets

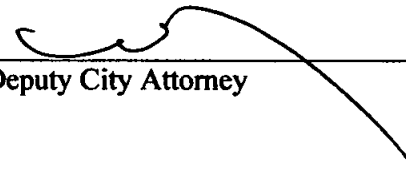
LESSEE

Date 2/9/07

By 
Richard J. George
City Cafe

APPROVED as to form and legality this 12th day of February, 2007.

MICHAEL J. AGUIRRE

By 
Deputy City Attorney

KJ/cb

2/8/07

I:\WPO\2007\JOHNSON\LEASE - CONCOURSE CITY CAFE.doc

SECTION 13: EXHIBITS

13.1 Premises.

13.2 Schedule of Rates and Charges..

LEASE OUTLINE

PREAMBLE

RECITALS

SECTION 1: EXHIBITS	2
1.1 Exhibits	2
SECTION 2: PREMISES	2
2.1 Premises	2
2.2 Easements and Reservations	2
2.3 Eminent Domain	3
2.4 Related Council Actions	4
2.5 Quiet Possession	4
2.6 Rates and Charges	4
2.7 Political Activities	4
SECTION 3: TERM	5
3.1 Commencement	5
3.2 Early Termination	5
3.3 Holdover	5
3.4 Quitclaim and Surrender of LESSEE'S Interest	5
3.5 Relocation Payments	6
SECTION 4: USES	6
4.1 Sole Permitted Uses	6
4.2 Failure to Use Premises	6
4.3 Competent Management	7
SECTION 5: RENT	7
5.1 Time and Place of Payment	7
5.2 Rent	7
5.3 Payment Procedure	9
5.4 Gross Income	10
5.5 Security Deposit	10
5.6 Inspection of Records	11
5.7 Delinquent Rent	13
5.8 Unauthorized Use Charge	14
SECTION 6: ASSIGNMENT	14
6.1 Encumbrance	14
6.2 Assignment and Subletting	14
6.3 Additional Consideration to CITY	15
SECTION 7: DEFAULTS AND REMEDIES	16
7.1 Defaults and Remedies	16
SECTION 8: INSURANCE RISKS/SECURITY	18
8.1 Insurance	18
8.2 Hold Harmless	19

8.3	Waste, Damage or Destruction.	19
SECTION 9: IMPROVEMENTS/ALTERATIONS/REPAIRS		19
9.1	Acceptance of Premises.....	19
9.2	Entry and Inspection.....	20
9.3	Maintenance.	20
9.4	Improvements/Alterations.	20
9.5	Liens.	21
9.6	Taxes.	21
9.7	Signs.	21
9.8	Ownership of Improvements and Personal Property.....	22
9.9	Unavoidable Delay.	23
9.10	Hazardous/Toxic Waste.	23
9.11	Asbestos Disclosure.	24
SECTION 10: CITY POLICY IMPLEMENTATION PROVISIONS.....		24
10.1	Compliance with Law.	24
10.2	CITY Approval.....	24
10.3	Nondiscrimination.	24
10.4	Compliance with CITY'S Equal Opportunity Contracting Program.	25
10.5	CITY Employee Participation Policy.....	25
10.6	Drug-free Workplace.....	26
10.7	Disabled Access Compliance.	26
10.8	Water Quality - BMP and SWPPS Plans.	27
SECTION 11: GENERAL PROVISIONS.....		28
11.1	Notices.....	28
11.2	Partial Invalidity.	28
11.3	Legal Fees.....	28
11.4	Number and Gender.	28
11.5	Captions.....	29
11.6	Entire Understanding.....	29
11.7	Time is of Essence; Provisions Binding on Successors.	29
11.8	Authority.	29
11.9	CITY Option to Purchase.	30
11.10	Schedule of Prices.	30
11.11	Standard of Employees.....	30
11.12	Broker Fees.....	30
11.13	CITY'S Lease Administrator.	30
11.14	Administrative Fees.....	30
11.15	Governing Law.....	31
11.16	San Diego's Strong Major's Form of Governance.....	31
SECTION 12: SIGNATURES.....		32
SECTION 13: EXHIBITS		33
13.1	Premises.....	33
13.2	Schedule of Rates and Charges..	34