

FIRST AMENDMENT TO USE AND OCCUPANCY PERMIT

[OLD MILL CAFE]

THIS FIRST AMENDMENT TO USE AND OCCUPANCY PERMIT ("First Amendment") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and OLD MILL CAFE, INC., a California corporation ("PERMITTEE"), to be effective as of **January 26, 2012** (the "First Amendment Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY and PERMITTEE are parties to that certain CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT dated August 1, 2010 (the "Permit," attached hereto as **Exhibit A: Permit**), for the operation of a coffee cart concession for sale of coffee drinks and other limited snacks and beverages on CITY-owned property located at 202 "C" Street, San Diego, California 92101.
- B. The parties have agreed to amend the Permit to reduce the amount of the rent and the security deposit.

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

1. Monthly Rent. The Permit shall be amended by deleting Permit section 1.a. in its entirety and replacing it with the following new Permit section 1.a.:

"Monthly Rent" shall be the greater of Five Hundred Dollars (\$500) or ten percent (10%) of PERMITTEE'S gross revenue derived from its use of the Permit Area, whichever is greater. "Gross revenue" shall mean all revenue generated by PERMITTEE's use of the Permit Area, less all sales taxes paid by PERMITTEE and directly resulting from PERMITTEE's use of the Permit Area.

2. Security Deposit. CITY currently holds a security deposit under the Permit in the amount of Three Thousand Dollars (\$3,000). Upon the execution and delivery of this First Amendment, CITY shall promptly refund to PERMITTEE One Thousand Five Hundred Dollars (\$1,500) of that security deposit. The Permit shall be amended by adding the following new Permit section 1.e.:

"Security Deposit" shall mean an amount equal to One Thousand Five Hundred Dollars (\$1,500), the payment and receipt of which is acknowledged by CITY.

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3. No Other Changes. Except as may render the terms of this First Amendment inoperable, all other terms and conditions of the Permit shall remain in full force and effect. Any conflict between the terms and conditions of the Permit and those of this First Amendment shall be resolved in favor of this First Amendment.

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

OLD MILL CAFE, INC., a California corporation

BY: Linda E. Jensen
Name: Linda E. Jensen
Title: President

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: James F. Barwick
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: Brock Ladewig
Brock Ladewig, Deputy City Attorney

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Exhibit A: Permit

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