

CITY OF SAN DIEGO CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE ("Agreement") is made as of November 16, 2012, 2012 (the "Effective Date") by and among the City of San Diego, a California municipal corporation, as master lessor ("CITY"), Symphony Asset Pool XVI LLC, a Delaware Limited Liability Company, as sublessor ("SUBLESSOR") and Belmont Athletics LLC, a Delaware Limited Liability Company, as sublessee ("SUBLESSEE").

RECITALS

This Agreement is made with regard to the following facts:

- A. CITY and SUBLESSOR (as successor in interest to Belmont Park Associates, a California limited partnership) are parties to that certain CITY OF SAN DIEGO PERCENTAGE LEASE dated March 5, 1987, as amended and assigned ("Master Lease"), and relating to the CITY-owned property known as Belmont Park, consisting of approximately 7.191 acres of land ("Premises").
- B. SUBLESSOR and SUBLESSEE have entered into a lease agreement ("Sublease") for a portion of the Premises more particularly described in the Sublease. A copy of the Sublease is attached as Exhibit A.
- C. Pursuant to Section 4.02 of the Master Lease, SUBLESSOR has requested CITY's consent to sublease a portion of the Premises as set forth in the Sublease to SUBLESSEE.
- D. CITY is willing to consent to the Sublease on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

- 1. CITY's Consent. CITY consents to SUBLESSOR subleasing to SUBLESSEE. This consent is granted only on the terms and conditions stated in this Agreement. CITY is not bound by any of the terms, covenants, or conditions of the Sublease. The Sublease is subject and subordinate to the Master Lease, as may be amended from time to time. If there is a conflict between this Sublease and either the Master Lease or this Agreement, the terms, conditions, and obligations of this Agreement and the Master Lease shall control. If there is a conflict between this Agreement and the Master Lease, the terms, conditions, and obligations of this Agreement shall control.
- 2. Limits of CITY's Consent. Neither the Sublease nor this Agreement will:

- (a) release SUBLESSOR from any liability, whether past, present, or future, under the Master Lease;
 - (b) alter the primary liability of SUBLESSOR to pay the rent and perform all SUBLESSOR's obligations under the Master Lease;
 - (c) be construed as a waiver of CITY's right to consent to any proposed sublease or assignment after the date hereof by SUBLESSOR under the Master Lease or SUBLESSEE under the Sublease, or as a consent to any portion of the Premises in the Sublease being used or occupied by any other party;
 - (d) grant any rights to SUBLESSEE greater than those rights granted to SUBLESSOR under the Master Lease;
 - (e) be deemed CITY consent to any other assignment or sublease;
 - (f) require CITY to recognize SUBLESSEE in the event of a default in the Master Lease by SUBLESSOR;
 - (g) enlarge or in any manner increase CITY's obligations or duties under the Master Lease;
 - (h) create obligations or costs to CITY with regard to the Sublease;
 - (i) modify, waive, amend, or otherwise affect any provision of the Master Lease other than as set forth in this Agreement;
 - (j) be deemed CITY approval of any alterations to the Premises referenced in the Sublease. Any and all alterations to the Premises are subject to the prior written approval of CITY as set forth in Section 6.04 of the Master Lease;
 - (k) be deemed CITY approval of any use subject to the issuance of an Accessory Use Permit as set forth in paragraph 10 of the Fifth Operating Memorandum to the Master Lease adding Section 3.09 of the Master Lease. Any use subject to the issuance of an Accessory Use Permit shall be approved by CITY in accordance with the Master Lease;
 - (l) be deemed approval of CITY as required by any other provision of the Master Lease or Sublease.
3. Required Insurance. Prior to the Effective Date of this Agreement, SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name the "City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insureds for the entire term of the Sublease.

SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability and property damage arising from the use of or the conduct of any operation conducted on the portion of the Premises subject to the Sublease. SUBLESSEE shall maintain minimum coverage in the amount of Three Million Three Hundred Forty Thousand Dollars (\$3,340,000) Combined Single Limit Liability. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by insurance company. Prior to each insurance renewal period, SUBLESSEE shall submit to CITY a copy of the new policy of insurance.

4. Controlling Law. The terms and provisions of this Agreement will be construed in accordance with, and will be governed by, the laws of the State of California.
5. Entire Agreement. This Agreement constitutes the final, complete and exclusive statement between the parties to this Agreement pertaining to the terms of CITY's consent to the Sublease, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors, and assigns. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in Agreement. Any agreement made after the date of this Agreement is ineffective to modify, waive, or terminate this Agreement, in whole or in part, unless that agreement is in writing, is signed by the parties to this Agreement, and specifically states that agreement modifies this Agreement.
6. Partial Invalidity. If any term, covenant, or condition in this Agreement is, to any extent, held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of that term, covenant, or condition to persons or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected by that invalidity or unenforceability, and all other terms, covenants, and conditions of this Agreement will be valid and enforceable to the fullest extent permitted by law.

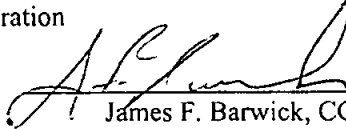
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IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date upon the signature of all of the parties.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 11/14/12

BY:

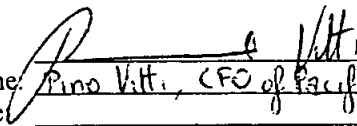


James F. Barwick, CCIM
Real Estate Assets Director

SUBLESSOR, Symphony Asset Pool XVI, LLC

Date: 11/17/2012

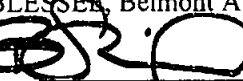
BY:


Name: Pino Vitti, CFO of Pacifica Enterprises Inc, Manager
Title: _____

SUBLESEE, Belmont Athletics, LLC

Date: 11/9/12

BY:


Name: Brett Miller
Title: Managing Member

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH, City Attorney

Date: 11/16/12

By:


Deputy City Attorney



LEASE AGREEMENT

SYMPHONY ASSET POOL XVI LLC

and

Belmont Athletics LLC

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BELMONT PARK LEASE AGREEMENT

In consideration of the rents and covenants set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the following described Premises upon the terms and conditions described in this lease agreement ("Lease"):

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: _____, 2012

Landlord: Symphony Asset Pool XVI LLC, a Delaware limited liability company

Tenant: Belmont Athletics LLC, a Delaware limited liability company

Tenant's
Trade Name: Wave House Athletic Club and The Plunge

Premises: Located in Belmont Park Commercial/Recreational Center ("Center") as illustrated on the site plan attached as Exhibit A; and, more particularly described as those portions of 3115 and 3119 Ocean Front Walk, Buildings 8 and 9, San Diego, CA 92109, shown as on the floor plan set forth in Exhibit B-1 and comprising approximately 36,900 square feet of retail space, and the area shown on Exhibit B-2.

Permitted
Use: Full service fitness facility including operation of the "Plunge" pool facility, and fitness and recreation programs such as aerobic classes, yoga, spinning, surf camps. Operation of a wave machine.

Retail sales - sales of sporting goods (including bodyboards and standup boards), swim accessories (including goggles, swimsuits, fins), soft drinks and take-out food, apparel (including apparel such as t-shirts, hats, jackets, shorts, and pants), and small beach related and sports related retail items (including sunscreen and lip balm)

Rentals - rentals of beach equipment (cabanas, beach umbrellas, chairs, towels) and water equipment (bodyboards, fins, goggles, surfboards)

Restrictions on Permitted Use:

Tenant specifically acknowledges that Landlord has granted certain exclusive rights to other Tenant's within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Tenant shall not:

- Operate a national quick service restaurant or food service establishment.
- Sell more than fifteen percent (15%) of their business volume in swim suits.

Tenant's failure to strictly comply with the foregoing shall constitute a material default by Tenant under this Lease.

Term: Five years, commencing the Commencement Date (defined below) and terminating five years thereafter

Commencement
Date: The date of delivery of the Premises to Tenant

Rental shall be the summation of:

A. Minimum
Monthly Rent: Twenty Thousand (\$20,000) per month

B. Percentage Rent: The amount by which 15.0% of Tenant's Gross Revenues/Sales exceeds \$20,000.

Payment of Rent shall commence on the Commencement Date.

Belmont Athletics LLC
9/28/2012

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Initials

Rent Adjustment: Minimum Monthly Rent shall be adjusted annually based on Market rental Value as agreed by the parties, or determined by appraisal.

Address for Notices:

To Landlord: Symphony Asset Pool XVI LLC
5505 Cancha de Golf
Rancho Santa Fe, California 92091

To Tenant: Belmont Athletics LLC
dba Wave House Athletic Club
3115 Ocean Front Walk
San Diego, CA 92109

Security Deposit: None

**Monthly Common Area
Maintenance
Expense Charge (CAM):** None

**Marketing Fund
Contribution:** \$0.20/sf

Landlord Work: Landlord shall provide certain FF&E to be utilized in the operation of Tenant's business at the Premises as set forth on Exhibit E.

**Real Estate Broker
(if any):** Landlord and Tenant hereto affirm and acknowledge that no real estate broker represented them in this transaction and that there is no real estate brokerage commission due to anyone.

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease.

ARTICLE 2 - EXHIBITS

The following are attached hereto as exhibits and made a part of this Lease:

- Exhibit A - Site Plan of the Center.
- Exhibit B - Floor Plan Showing the Premises.
- Exhibit C - Rules and Regulations
- Exhibit D - Commencement Date Certificate
- Exhibit E - Landlord FF&E
- Exhibit F - Adjusted Gross Sales Report
- Exhibit G - Storm Water Best Management Practices

ARTICLE 3 - COMMERCIAL/RECREATIONAL CENTER AND PREMISES

3.1 **Center:** As used herein, the term "Center" shall mean those areas of land and the improvements, landscaping, parking, pedestrian walkways and other features located on the land leased by Landlord from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease, as the same may be amended from time to time ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, relocated or expanded from time to time by Landlord

In Landlord's discretion and nothing in Exhibit A shall be a warranty or representation as to the future configuration of the Center or location of any improvements thereon. In addition, Landlord may designate other areas of land and improvements as part of the Center.

Tenant acknowledges and understands that the land leased by Landlord from the City is a part of Mission Beach Park, a dedicated public park. Therefore, the Center must be utilized for park and recreation purposes, including commercial and recreational uses which provide services, activities and facilities to the users of Mission Beach Park, as well as to the users of the adjacent beach areas. Tenant agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, the commercial space referred to herein as the "Premises", and described in the Fundamental Lease Provisions and shown on Exhibit B, subject, however, to the provisions of Article 27. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Landlord makes no representation as to the exact square footage. If the Floor Area is actually determined to be more or less than as set forth in the Fundamental Lease Provisions, all obligations of Landlord and Tenant hereunder shall remain unchanged, including, but not limited to the obligations of Tenant to pay Rent and Additional Rent hereunder.

ARTICLE 4 - TERM

4.1 Term. The Term shall be for the number of months specified in the Fundamental Lease Provisions and shall commence on the date on which the Premises is delivered to Tenant for Tenant occupancy. The lease term shall commence on the "Commencement Date." If the Commencement Date falls on any day of the month other than the first day, then the Term shall be extended by the number of days between the first day of the month and the Commencement Date. Tenant agrees not to unreasonably delay the Commencement Date.

4.2 Confirmation of Commencement Date. Tenant agrees to execute a Commencement Date Certificate in the form attached hereto as Exhibit D within ten (10) days after request by Landlord which shall confirm the Commencement Date.

4.3 Delay. If Landlord is unable to deliver possession of the Premises to Tenant as a result of causes beyond Landlord's control, Landlord shall not be liable for any damage to Tenant caused thereby. Landlord's delay in delivery of the Premises shall not affect this Lease nor the obligations of Tenant hereunder, except in the determination of the Commencement Date. If Landlord does not deliver possession of the Premises to Tenant within six (6) months of the anticipated Commencement Date, Tenant can elect to terminate this Lease by giving written notice to Landlord within ten (10) days after the expiration of the six (6) month period and before the Commencement Date. Upon receipt of said notice by Landlord, the Lease shall terminate and each party shall be relieved of any and all obligations under the Lease.

ARTICLE 5 - RENT

5.1 Rent. Tenant agrees to pay, as rent for the use and occupancy of the Premises, the total of the amounts specified in Sections 5.1.1, 5.1.2 and 5.1.3 below. Rent shall be payable at the times and in the manner hereinafter provided, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Term. Upon execution of the Lease, Tenant shall pay its first installment of Minimum Monthly Rent and Tenant's Security Deposit.

5.1.1 Minimum Monthly Rent. Tenant agrees to pay the Minimum Monthly Rent specified in the Fundamental Lease Provisions as adjusted from time to time as provided below. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum Monthly Rent shall never be less than the Minimum Monthly Rent payable in the immediately preceding period.

5.1.1.1 Minimum Monthly Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Term to annual Rent equal to the then current Market Rental Value of the Premises ("MRV"). Four months prior to the end of each calendar year during the Term, Landlord shall give Tenant written notice of its determination of the MRV. Landlord's failure to make the required adjustment promptly shall not be considered a waiver of Landlord's rights to adjust the Minimum Monthly Rent due, nor shall it affect Tenant's obligations to pay the increased Minimum Monthly Rent. The Minimum Monthly Rent

shall not be adjusted in the event of a decrease for any calendar year in MRV. In the event Tenant disagrees with the amount of the MRV as determined by Landlord, and the parties cannot agree within 30 days of Landlord's delivery of notice of the new MRV to Tenant, each party shall appoint a mutually acceptable appraiser to establish the MRV within the next 30 days. All associated costs will be split equally between the parties. Pending the determination of the adjustment, Tenant shall continue to pay the Minimum Monthly Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Tenant, concurrently with the next monthly payment of Minimum Monthly Rent, shall pay to Landlord, the difference between the new Minimum Monthly Rent for the period commencing with the first month of such calendar year and the Minimum Monthly Rent already paid for such period.

5.1.2 Percentage Rent. Tenant agrees to pay as Percentage Rent that percentage of Gross Sales Tenant made from or upon the Premises during each calendar month as specified in the Fundamental Lease Provisions. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month. Tenant shall pay to Landlord the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's Gross Sales during said period exceeds the installments of Minimum Monthly Rent payable by Tenant during such period. The amount of Percentage Rent payable by Tenant in any given calendar month shall not be subject to cumulative adjustment to compensate for differences in Gross Sales between one month and another (i.e., Percentage Rent shall be calculated and payable on a monthly basis only and not on a year-to-date basis). Tenant shall complete Exhibit G "Monthly Tenant Gross Sales Report" and submit same along with payments of Percentage Rent to Landlord no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month.

5.1.2.1 In the event of an increase in the rate of percentage rent that Landlord is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Tenant pays Landlord pursuant to Section 5.1.2 shall automatically increase at the same time and by the same amount.

5.1.3 Additional Rent. Tenant shall pay all other sums of money or charges required to be paid by Tenant under this Lease, (collectively "Additional Rent").

5.1.4 Lease Interest Rate. If a deficiency exists in the payment of Minimum Monthly Rent, Percentage Rent, or Additional Rent, then such deficiency shall become immediately due and payable as Additional Rent, with interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less ("Lease Interest Rate"), from the date when said payment should have been made.

5.1.5 Minimum Monthly Rent, Percentage Rent and Additional Rent are sometimes collectively referred to in this Lease as "Rent". If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum Monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

5.1.6 Net Lease. It is the purpose and intent of Landlord and Tenant that all Rent provided in this Lease shall at all times be absolutely net to Landlord, and that this Lease shall yield net to Landlord, the Rent specified in this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises, which may arise or become due during the term of or pursuant to this Lease shall be paid by Tenant or reimbursed to Landlord, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

5.2 Statement of Gross Sales. Tenant agrees to furnish or cause to be furnished to Landlord a statement of monthly Gross Sales of Tenant utilizing the form in Exhibit G herein within ten (10) days after the close of each calendar month, and an annual statement of Gross Sales within thirty (30) days after the

close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category, include a computation of all Minimum Monthly Rent and Percentage Rent for the preceding month, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, by a manager, or managing member, if Tenant is a limited liability company, or by a corporate officer if Tenant is a corporation. Annual statements shall be signed by Tenant's certified public accountant. If Landlord so elects, Tenant shall provide such information in a format specified by Landlord. Tenant shall, concurrently with submittal to the State Board of Equalization, provide Landlord with a copy of all state and local sales and use tax returns filed with said State Board.

Tenant shall keep at the Premises or within the City of San Diego accurate, true and complete records and accounts of all financial transactions in the operation of all business activities conducted on and financial transactions resulting from the use of the Premises, including, without limitation, Gross Sales of Tenant and of any subtenant, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Tenant not relating to the Premises and such books shall be retained by Tenant for a period of five (5) years after the close of each calendar year. Said records must be supported by source documents of the original entry such as sales slips or invoices, daily cash register tapes, purchase invoices or other documents as necessary to allow Landlord to determine Tenant's Gross Sales and Gross Sales Category. 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. All cash registers shall be equipped with sales totalizer counters for all sales categories, including Gross Sales Categories, sequential transaction counters which are locked in, constantly accumulating and which cannot be reset and contain tapes upon which sale details and sequential transaction numbers are imprinted. Sales totalizer readings shall be made at the beginning and ending of each business day. For admission charges or rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets, both issued and unissued. Landlord shall have the right at all reasonable times to examine and audit said records and accounts, without restriction, for the purpose of determining the accuracy thereof, the percentage of Tenant's Gross Sales in each Category, the monthly and annual statements of Gross Sales and the Rent paid to Landlord. Landlord shall have the discretion to require the installation of any additional accounting methods or controls Landlord may deem necessary.

The receipt by Landlord of any statement of Gross Sales or any payment of Minimum Monthly Rent or Percentage Rent for any period shall not bind Landlord as to the correctness of the statement or the payment. Within five (5) years after receipt of any such statement, Landlord and City, or their agents, at any time shall be entitled to an inspection and audit of the business of Tenant, its agents, subtenants, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for Landlord and City to determine the amounts of Rent due Landlord in compliance with this Lease. At Landlord's request, Tenant shall provide, at Tenant's expense, any necessary data reasonably available to Tenant to enable Landlord and City to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises and Tenant's conduct of business thereon. Such data will include, if required, a detailed breakdown of Tenant's receipts and expenses.

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Monthly Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the Lease Interest Rate, from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Gross Sales by more than two percent (2%) or if Tenant has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Tenant shall pay all of Landlord's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") equal to the greater of (i) one thousand five hundred dollars (\$1,500.00) or (ii) ten percent (10%) of the amount of the deficiency which Understatement Fee is mutually agreed by the parties hereto to be appropriate to compensate Landlord and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account. If any of Tenant's statements shall be found to have understated Gross Sales by more than five percent (5%), or if Tenant has failed to maintain complete and true records, accounts, and

supporting source documents in strict accordance with Article 5, this shall be deemed to be a non-curable breach under this Lease, then in addition to any other rights of Landlord under this Lease, Landlord may terminate this Lease pursuant to Article 21.1.2 herein. Acceptance of the Understatement Fee or any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to an underpayment, or prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Gross Sales. The term "Gross Sales" as used herein defined to mean all income and gross sales of Tenant and of all licensees, concessionaires and subtenants of Tenant, from all business conducted upon or from and occupancy of the Premises, from whatever source derived whether received or to become due and whether such sales be evidenced by cash, check, credit, charge account, exchange or otherwise. Gross Sales shall include, but not be limited to, the amount received from the sale of goods, wares, and merchandise and for services performed on, at or from the Premises and whether such sales be made by means of merchandise or other vending devices in the Premises. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in Gross Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross Sales shall not include (i) sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been first included in gross sales and (ii) sales prices of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales, or (iii) the amount of any sales, use or gross receipts tax imposed by any federal, state, or municipal authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by Tenant to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Gross Sales in any event whatever.

All sales originating at or from the Premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filling of the sale or service order and actual delivery of the merchandise may be made from a place other than the Premises. Gross sales shall include any manufacturer's or importer's excise tax included in the price of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Bad debt losses, possessory interest taxes, and other property taxes shall not be deducted from Gross Sales.

6.4 Point of Sale. Tenant understands and acknowledges that Landlord intends to implement an electronic system of recording and reporting Tenant's transactions from the Premises to Landlord's management office via a computer network point of sale system ("POS System"). Tenant agrees to allow Landlord to install the POS System at Landlord's expense, and Tenant agrees to use and provide normal upkeep for the POS System provided by Landlord, including making any repairs necessitated by Tenant. If Tenant fails to pay such amounts necessary for normal upkeep of the POS System, Landlord will pay such expenses and charge Tenant the cost thereof, plus a 20% administrative fee, as Additional Rent, and bear interest at the Lease Interest Rate until paid in full. Landlord shall provide Tenant, on or about the time of installation of the POS, with a one time standard training of the POS System (if any) that is included in Landlord's purchase of the system, provided that such training is at no additional cost to Landlord. Tenant understands that all software and hardware related to the POS System shall at all times remain the property of Landlord and that Tenant shall have no license for the use of the POS System, separate from the one which allows Tenant to use it in connection with the operation of the Tenant's business at the Premises. Tenant's failure to use the POS System, as directed by Landlord, shall constitute a non-curable breach under this Lease, and, in addition to any other rights or remedies of Landlord herein, Landlord shall have the right to terminate the Lease as provided in Article 21.1.2 herein.

5.5 Failure to Pay. Minimum Monthly Rent shall be due on the first (1st) day of each month, in advance, for the Term of this Lease. Percentage Rent shall be due on the tenth (10th) day of each month, for Percentage Rent accruing during the prior calendar month. If Tenant fails to pay any monthly installment of Minimum Monthly Rent by 5:00 p.m., PST on the fifth (5th) day of the month, or fails to pay any monthly installment of Percentage Rent by 5:00 p.m., PST on the fifteenth (15th) day of the month, Landlord is entitled to compensation for such detriment; however it is extremely difficult and impractical to ascertain the extent of detriment to Landlord. The parties therefore agree that should Tenant fail to pay Rent when due, Landlord shall be entitled to recover from Tenant as liquidated damages the greater of (i) \$100.00 or (ii) six percent (6%) of the delinquent amount ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate from the date due. Tenant further agrees to pay Landlord any costs incurred by Landlord in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency, or salaries of Landlord's employees, including costs incurred for the preparation of notices and the service of notices, whether or not litigation is commenced and/or dismissed. Landlord shall have the right to require that Tenant pay all sums thereafter due hereunder in the form of a cashier's check or money order if any check of Tenant is not honored upon presentment to Tenant's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Landlord shall have the option to require that (i) beginning with the first payment of Rent due following the date when such second late payment was due, Rent shall be payable three (3) months in advance and/or (ii) Tenant shall increase the amount of the Security Deposit (defined in Article 32 below) by one hundred percent (100%), which additional Security Deposit shall be retained by Landlord, and may be applied by Landlord, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate, additional Security Deposit, or advance Rent payment, shall not alter or preclude Landlord's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Landlord may have under the terms of this Lease. Furthermore, acceptance of any such fees by Landlord shall not constitute a waiver by Landlord of Tenant's default or prevent Landlord from exercising any other rights or remedies available to Landlord as hereinafter provided or as provided by law.

5.6 Address for Payments. All Rent and other payments shall be paid by Tenant to Landlord at its Management office in the Center or at such other place as may from time to time be designated by Landlord in writing at least ten (10) days prior to the next ensuing payment date.

5.7 Returned Checks. Tenant shall further pay, as Additional Rent, a charge of fifty dollars (\$50.00) for each payment of Rent which is returned due to insufficient funds, to reimburse Landlord for Landlord's related costs.

5.8 Landlord's Option to Terminate. Notwithstanding anything in the Lease contained to the contrary, if:

5.8.1 At any time during the Term the products which Tenant sells, or the services which Tenant provides, on or from the Premises are not, in Landlord's opinion, of the highest quality; or

5.8.2 Tenant substantially or continually fails to observe the Rules and Regulations and policies and directions made or promulgated by Landlord;

then:

5.8.3 In the case of a default under subparagraph 5.8.1 or 5.8.2, Landlord may give written notice to Tenant, specifying the default complained of and requiring that it be completely cured within forty-eight (48) hours from the giving of such notice and failing the curing of such default within such period of 48 hours, Landlord may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Tenant thirty (30) days' written notice to quit.

If this Lease is so terminated, Tenant covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Landlord upon the expiration of the thirty (30) day notice period, and all Rent shall be adjusted as of the expiration of such period and all amounts due and owing by Tenant pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Tenant shall be discharged from its obligations hereunder and under the Lease, and

Tenant shall have no recourse against Landlord or those for whom it is in law responsible for damages or otherwise and shall not be entitled to any refund of or any credits for any amounts paid by the Tenant.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, Tenant improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Landlord, such assessment shall be equitably divided between Landlord and Tenant to the end that Tenant shall pay only its equitable proportion of such assessment. Landlord shall determine the basis of prorating any such assessments and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees or charges referred to in this Paragraph shall be considered as Taxes as defined in Article 19.

ARTICLE 7 - POSSESSION AND USE

7.1 Possession. Landlord shall deliver the Premises to Tenant no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Tenant shall accept the Premises subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and to all exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

7.2 Permitted Usage. Tenant shall use the Premises solely for the Permitted Use and under Tenant's Trade Name specified in the Fundamental Lease Provisions. Tenant shall not use or permit the Premises to be used for any other use or purposes, and/or under any other trade name whatsoever, or in violation of the Master Lease, without the prior written consent of Landlord, which consent may be withheld for any reason whatsoever. Tenant acknowledges that he may sell, pursuant to the Master Lease, only goods and services determined by the City to be consistent with park/visitor oriented commercial and recreational uses. . Tenant shall not, without the prior written consent of Landlord sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Tenant further covenants and agrees that it will not use or permit any person to use the Premises, or any part thereof, to conduct therein a secondhand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the state, county and city where the Center is situated, or other lawful authorities, and that during the Term the Premises, and every part thereof, shall be kept by Tenant in a clean and wholesome condition, free of any objectionable noises, odors, or nuisances, and that all health, police, and other legal regulations shall, in all respects and at all times, be fully complied with by Tenant.

Tenant understands that the Premises are located within dedicated public parklands and Tenant agrees to conduct its business in a manner so as to primarily cater to the needs of the visitors to Mission Beach Park, as well as adjacent beach areas.

Tenant shall not perform any acts or carry on any practices which may (i) injure the Center or the building in which the Premises is located or (ii) be a nuisance or menace to other Tenants in the Center. Tenant will, at its expense, comply with all requirements of insurance underwriters and governmental authorities having jurisdiction over the Premises, including compliance necessary for the maintenance of reasonable fire and extended coverage insurance for the Premises.

Tenant shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to other stores of Tenant, if any, located outside the Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises.

7.3 Deliveries. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading, and services to the Premises prior to 10:00 a.m. of each day. Tenant shall use its best efforts to cause no delivery trucks or other vehicles servicing the Premises to park or stand in front of, or at the rear of, the Premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries and servicing of the Premises and Tenant agrees to abide by such further non-discriminatory regulations of Landlord.

7.4 Suitability of Merchandise. Tenant hereby acknowledges that the Center is designed and intended to be patronized by, and acceptable to, families and persons of all ages. Landlord reserves the right to prohibit all merchandise, displays, demonstrations, promotions, or any activity which Landlord, in its sole discretion, determines is obscene, pornographic, illegal, immoral, or disreputable, and Tenant agrees, forthwith upon demand of Landlord, to cease carrying or displaying any merchandise or engaging in any activity which Landlord has so prohibited. Tenant agrees not to carry on any police licensed activity without the prior written consent of Landlord, which consent may be withheld for any reason whatsoever.

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Tenant's Responsibilities. Tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for water, gas, electricity, cable, telephone, DSL, sewer and sanitation and any other service or utility used in or upon or furnished to the Premises, irrespective of whether any such fees, deposits and charges are initially paid or advanced by Landlord. In the event the fees, deposits or charges for any such services are not individually metered or billed to Tenant, Landlord shall apportion such charges among Tenants in the Center receiving such utilities or services, based upon an equitable apportionment to be determined by Landlord. Tenant shall pay its apportioned share to Landlord as Additional Rent. In determining such equitable apportionment, Landlord may cause surveys of Tenant's usage of such services to be made by an independent consultant selected by Landlord. In no event shall Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of water, gas, electricity, sewer and sanitation or any other service or utility, nor shall any such interruption, reduction, disruption, curtailment or failure constitute or be deemed to constitute constructive eviction of Tenant or relieve Tenant from its obligations under this Lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Tenant, if such charges are not paid when due, Landlord may pay the same, and any amount so paid, with interest thereon at the Lease Interest Rate plus a Late Fee, shall thereupon become due to Landlord from Tenant as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Exculpation. To the fullest extent permitted by law, Tenant, on behalf of itself and Tenant's officers, directors, shareholders, partners, trustees, members, managers, agents, employees and independent contractors as well as to all persons and entities claiming through any of these persons or entities (the "Tenant Parties") waives all claims (in law, equity, or otherwise) against Landlord, Landlord's officers, directors, shareholders, partners, trustees, members, managers, agents, employees and independent contractors as well as to all persons and entities claiming through any of these persons or entities (the "Landlord Parties") and knowingly and voluntarily assumes the risk of, and agrees that Landlord Parties shall not be liable to Tenant Parties for any of the following: (a) injury to or death of any person; or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause. Landlord Parties shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of the Landlord Parties; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any of the Landlord Parties. Notwithstanding the foregoing, this exculpation clause shall not apply to claims against Landlord Parties to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage, or destruction was proximately caused by Landlord Parties' fraud, willful injury to person or property, or violation of law. This section shall survive the expiration or earlier termination of this Lease until all claims within the scope of this section are fully, finally, and absolutely barred by the applicable statutes of limitations. Tenant acknowledges that this section 9.1 was negotiated with Landlord, that the consideration for it is fair and adequate, and that Tenant had a fair opportunity to negotiate, accept, reject, modify or alter it.

9.2 Indemnity by Tenant. To the fully extent permitted by law, except to the extent caused by the sole negligence of Landlord Parties, Tenant will, at Tenant's sole expense and with counsel acceptable to Landlord and/or City, defend, indemnify and hold harmless Landlord Parties and City from any liability whatsoever, on account of any such real or claimed damages or injury, and from all liens, claims and demands, including attorney's fees and investigation costs and all other reasonable costs, expenses and liabilities with respect to any claim or demand, arising out of (i) the use condition, operation or occupation of the Premises and its facilities, (ii) any repairs or alterations which Tenant may make to the Premises, including the violation or of failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; (iii) any act omission or negligence by Tenant Parties or of any subTenants, invitees, guests or licensees; and (iv) any failure by Tenant to comply or secure compliance with any of the terms or conditions of this Lease, whether before or during the Lease Term or after its expiration or earlier termination. This Section 9.2 shall survive the expiration or earlier termination of this Lease until all claims against Landlord Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

9.3 Waiver of Subrogation. Tenant for itself, its successors, assigns, and insurance companies insuring Tenant with respect to the Premises, hereby waives any right Tenant may have on account of any loss or damage occasioned by Landlord and insured against under policies carried or required to be carried by Tenant hereunder.

9.4 Tenant's Insurance Obligations. Tenant agrees to apply for and obtain from insurance companies acceptable to Landlord and authorized to do business in California with a General Policyholder's rating of not less than "A" and a financial rating of at least "VII" rated in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Tenant's sole cost and expense, insurance coverages in the following amounts and form:

9.4.1 Public Liability and Property Damage. A Commercial General Liability insurance policy (with coverage which shall be at least as broad as the most recent edition of Insurance Services Offices Commercial General Liability coverage [Occurrence form CG 0001] or Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Offices Form GL 0404 covering Broad Form Comprehensive General Liability) with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) insuring Tenant on an occurrence basis against all liability of Tenant and Landlord and their Related Parties arising out of and in connection with Tenant's use or occupancy of the Premises and the maintenance, use and occupancy thereof. All such public and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions of Article 9.2 above.

9.4.2 Plate Glass. Full coverage plate glass insurance on the Premises.

9.4.3 Tenant Improvements. Insurance covering all of Tenant's Leasehold Improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property in, on or upon the Premises, in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.4.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Landlord for a period of up to two (2) years if Tenant is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.4.5 Policy Form. All policies of insurance to be obtained by Tenant shall be issued in the names of Landlord, City, Tenant, any other person or entity designated by Landlord which policies shall be for the mutual and joint benefit and protection of Landlord, City, Tenant, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after issuance of each such policy. All policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it or Landlord's Parties, by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in the manner and to like extent, and shall be delivered to Landlord at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give Landlord and City thirty (30) days' notice, in writing, in advance of any cancellation or lapse, or the effective date of any reduction in type or amount of coverage. All policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry, and shall be revised as to amounts and coverages at any time as required by City under the provisions of the Master Lease.

Tenant's obligations to carry insurance may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant, provided, however, that Landlord shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Tenant does not obtain any of the insurance coverage as required in this Section 9.4, Landlord may, but is not obligated to, obtain such insurance coverage on behalf of Tenant, and Landlord shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Tenant will report in writing to Landlord and City any accident (i) causing property damage of more than ten thousand dollars (\$10,000), increased annually by the increase in the index, and (ii) involving any serious injury to persons on the Premises.

9.5 Insurance Use Restrictions. Tenant agrees that it will not carry any stock or goods, or do anything in or about the Premises, that will in any way increase the rates for insurance covering the Center, or cause a loss of Belmont Athletics LLC
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coverage for the Center. Tenant agrees to pay to Landlord, as Additional Rent, forthwith upon demand the amount of any increase in premiums charged to Landlord, for any insurance carried by Landlord, which increase results from Tenant's violation of the foregoing restrictions, whether or not Landlord has consented to Tenant's carrying said stock or goods or to Tenant's actions. If Tenant installs on the Premises any electrical equipment which overloads the electrical lines, Tenant shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Landlord's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Landlord's consent to such overloading.

9.6 Increases in Insurance Coverage. If, in the opinion of Landlord's lender, City, or the insurance broker retained by Landlord, the amount or type of insurance carried by Tenant from time to time is inadequate, Tenant shall increase or add the insurance coverage or type as required by Landlord's lender, City, or Landlord's insurance broker.

ARTICLE 10 - MASTER LEASE

10.1 Subject to Master Lease. This Lease is subject and subordinate to the Master Lease, and any modification, alteration, or substitution thereof, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Tenant agrees that as to its leasehold estate, it, and all persons in possession or holding under it, will conform to and will not violate any of the terms or provisions of the Master Lease as such Master Lease may be modified, altered, replaced or substituted from time to time. In the event of any conflict between this Lease and the Master Lease, the Master Lease shall prevail. All consents and approvals required under this Lease from City shall be applied for solely by Landlord and at no time by Tenant. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Tenant agrees that it will not make any alterations in or to the Premises without the prior written consent of Landlord. In no event may Tenant make any alterations to the exterior or structure of the Premises. Tenant shall be responsible for the entire cost and expense of all such permitted alterations and shall provide a performance and completion bond, from any insurance company acceptable to Landlord, in a sum equal to one hundred twenty-five percent (125%) of the cost of the alterations, guaranteeing completion free and clear of liens and charges, and in accordance with the approved plans and specifications. All alterations shall be under the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Landlord before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Landlord, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Tenant in the Center. Upon completion of such work, Tenant shall deliver to Landlord evidence of full payment and unconditional final waivers of all liens for labor services, or materials; and file for record in the office of the San Diego County Recorder, a Notice of Completion in accordance with California Civil Code Section 3093, or any successor statute. Within twenty (20) days after completion of any alterations, Tenant shall deliver to Landlord a reproducible copy of the drawings of the alterations, as built.

Upon the expiration or earlier termination of Tenant's leasehold estate, such alterations shall be considered as improvements and shall not be removed by Tenant but shall become a part of the Premises and the property of Landlord. Notwithstanding the foregoing, all alterations, structures, installations, or improvements of any kind now existing or hereafter placed on the Premises by Tenant shall, at the option of Landlord, be removed by Tenant upon expiration or termination of this Lease, at Tenant's expense. Landlord may exercise said option as to any or all of the alterations, structures, installations, and improvements, either before or after the expiration or sooner termination of this Lease. If Landlord exercises such option and Tenant fails to remove the designated items within two (2) days after termination of the Lease, Landlord shall have the right to have such items removed at the expense of Tenant. As to any or all alterations, structures, installations or improvements that Landlord does not require to be removed, title thereto shall vest in Landlord, without cost to Landlord, and without any payment to Tenant.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Tenant's Covenants. Tenant agrees that it will pay or cause to be paid all costs for work done by or caused to be done by it on the Premises, and Tenant will keep the Premises and Center free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify, defend and save Landlord free and harmless against liability, loss, damages, costs, attorneys'

fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Tenant, Tenant shall, within ten (10) days of the filing of such lien or notice, furnish to Landlord adequate security in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Tenant shall pay and satisfy the same at once.

12.3 Right to Cure. If Tenant shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Landlord security to protect the property and Landlord against such claim of lien, Landlord may (but shall not be so required to) pay the said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord with interest at the Lease Interest Rate from the date(s) of Landlord's payments.

12.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

12.5 Notice of Nonresponsibility. Landlord or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Tenant shall give to Landlord written notice of Tenant's intention to commence work to enable Landlord to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Tenant shall not affix or maintain upon the glass panes and supports of the show windows (and within 72 inches of any window) doors, interior of doors as they face open to the outside of the Premises onto the Common area, and upon the exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, neon tubes, awnings, descriptive material, or any other similar items, without the prior written consent of Landlord. Landlord's approval shall be based upon the conformance by Tenant to (i) the sign program prepared by Landlord's architect ("Sign Program"), (ii) approval of the City of the proposed signage, and (iii) architectural conformity of the signage to the architecture, design and colors of the Center in the sole discretion of Landlord. In no event may Tenant affix any sign to the roof of the Premises.

13.2 Landlord's Control Over Signage. Tenant shall design, construct, install, and maintain Tenant's identification signs at the Premises, subject to the Sign Program and subject to Landlord's written approval prior to installation of such signs. Tenant shall be responsible for all costs related to any such signs, including the cost of review of the proposed signage by Landlord's architect and/or graphics consultant.

13.3 Removal. Any item or items described in this Article 13, placed in the Center by Tenant without the permission of Landlord and City, shall be considered a violation of this Article 13 and shall be subject to immediate removal by Landlord without notice. Tenant shall immediately reimburse Landlord for the cost of such removal.

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Landlord FF&E. On the Commencement Date, Landlord shall deliver to Tenant possession of all existing FF&E located at the Premises as listed on Exhibit E attached ("Landlord FF&E"). Landlord shall retain ownership of all Landlord FF&E delivered to Lessee for its use.

14.2 Other Trade Fixtures and Personal Property. All other trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant provided Tenant is not in default under the terms of this Lease and unless, upon termination or expiration of the term of this Lease, Landlord purchases same from Tenant. Landlord shall have the exclusive right ("Option") to purchase all of the Tenant's FF&E located at the Premises, for an amount equal to the then current fair market value of such FF&E. Such Option may be exercised by giving written notice of exercise to Tenant within 10 days after the effective date of such expiration or termination. If the parties are unable to agree on the fair market value of such FF&E within 10 days after exercise of the Option, then the fair market value shall be determined by an independent, qualified appraiser selected by the parties. If the parties are unable to agree on an appraiser, then either party may request that an appraiser be appointed by the San Belmont Athletics LLC

Diego Superior Court (pursuant to a petition to compel arbitration). The purchase price for the FF&E shall be paid in cash or, in part and at Landlord's option, by assumption of the outstanding balances due under any then outstanding leases assumable by Landlord, and title to such FF&E shall be delivered to Landlord free and clear of all liens, claims and encumbrances other than leases assumed by Landlord; Landlord shall not be obligated to assume any other debts, obligations or liabilities of Tenant. In the event Landlord exercises the Option, then Tenant shall immediately deliver possession of the FF&E to Landlord pending completion of the purchase.

If Landlord does not purchase Tenant's FFE, at Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property that are not Landlord FF&E upon termination or expiration of the Term. Until termination or expiration of the Lease, Tenant may not remove any trade fixtures or personal property without the immediate replacement thereof with similar trade fixtures and personal property of comparable or better quality, so that Tenant shall continuously conduct the Permitted Use specified in the Fundamental Lease Provisions. All trade fixtures and other personal property installed in or attached to the Premises by Tenant must be new when so installed or attached. Tenant, at its expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures and personal property, and upon the last day of the Term or a date of earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris.

14.3 Event Reservations. Upon the Commencement Date, Landlord shall provide Tenant a list of all then current list of any private or promotional events currently scheduled for the Premises ("Event Reservations"), together with copies or originals of such books and records as may be reasonably necessary for Lessee to assume operations of the existing business, and Lessee shall assume all operating expense obligations of Lessor directly associated with the Event Reservations; provided, all revenues and expenses of the Event Reservations shall be prorated as of the Commencement Date.

ARTICLE 15 - ASSIGNMENT, SUBLETTING, MORTGAGING AND CHANGE IN OWNERSHIP

15.1 Definitions. As used in this Article, the following definitions shall apply:

15.1.1 "Transfer" means any voluntary, or involuntary (a) assignment of Tenant's entire interest, rights and duties in the Lease or the Premises, including Tenant's right to use, occupy and possess the Premises, or (b) sublease of Tenant's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Tenant, of some or all of Tenant's interest, rights or duties in the Lease or the Premises, including, without limitation, Tenant's right to use, occupy or possess the Premises in whole or part, including, without limitation, any mortgage, deed of trust, pledge, hypothecation, lien, franchise, concession, or other security arrangement;

15.1.3 "Change of Control" means the transfer by sale, assignment, death or incompetence, mortgage, trust, operation of law, or otherwise, of any shares, voting rights or ownership interest including partnership interest(s), which will result in a change in the identity of the person or persons exercising or who may exercise, effective control of Tenant, unless such change results from the trading of shares listed on a recognized public stock exchange and such trading is not for the purpose of acquiring effective control of Lease. If Tenant is a private corporation whose stock becomes publicly held with its shares listed on a recognized public stock exchange, the transfer of such stock from private to public ownership shall not be deemed a Change of Control;

15.1.4 "Occupancy Transaction" means any Transfer, Encumbrance, Change of Control, or other arrangement whereby the identity of the person or persons using, occupying or possessing the Premises changes or may change, whether such change be of an immediate, deferred, conditional, exclusive, nonexclusive, permanent or temporary nature;

15.1.5 "Transferee" means proposed assignee, sublessee, pledge, or other recipient of Tenant's interest, rights or duties in the Lease or the Premises in an occupancy transaction.

15.2 First Two Years. Landlord is entering into this Lease based upon Tenant's representation to Landlord that Tenant has the expertise and ability to produce maximum sales in the operation of the business to be conducted by Tenant on the Premises. It is recognized by the parties that it is of importance to Landlord that Tenant operate the business during the first two (2) years of this Lease, particularly because this is a percentage lease and Landlord is relying on Tenant's merchandising and operating expertise. Landlord would not enter into this Lease if Tenant were permitted to "trade" on the value of the Lease and assign the Lease or sublease the Premises during the first two (2) years of the term hereof. -

Tenant, therefore, shall not enter into any Occupancy Transaction during the first two (2) years of the term hereof, without first procuring the written consent of Landlord and City, which consent may be given or withheld in Landlord's and City's sole discretion. Any attempted Occupancy Transaction without Landlord's and City's written consent, during the first two (2) years after the execution hereof, shall be void and confer no rights upon any third person.

15.3 Remaining Term

15.3.1 After the first two (2) years of the term hereof, Tenant shall not enter into any Occupancy Transaction, with respect to any of Tenant's interest in and to the Premises, without first procuring (i) the written consent of Landlord, which shall not be unreasonably withheld and, (ii) if Landlord so elects, the written consent of City. Any attempted Occupancy Transaction without Landlord's and, if required by Landlord, City's, written consent, shall be void and confer no rights upon any third person. Landlord reserves the right to refuse to give such consent unless Tenant remains fully liable during the unexpired term of the Lease. The consent by Landlord or City to any assignment or subletting shall not be construed as relieving Tenant or any Transferee of this lease from complying with the terms of this Article 15 with respect to any further Occupancy Transaction.

15.3.2 By way of example and without limitation, Landlord and Tenant hereby agree that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist:

15.3.2.1 The Transferee's proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

15.3.2.2 In Landlord's judgment, the Transferee lacks sufficient ability, management and operation skills and expertise to operate a successful business of the type and quality permitted under this Lease;

15.3.2.3 In Landlord's judgment, the present net worth of the Transferee is less than the greater of Tenant's net worth at the Commencement Date or Tenant's net worth at the date of Tenant's request for consent to the Occupancy Transaction;

15.3.2.4 In Landlord's judgment, the Percentage Rent under Article 5 that Landlord reasonably anticipates receiving from the Transferee will be less than that which Landlord has received or reasonably expects to receive from Tenant;

15.3.2.5 The Occupancy Transaction would be in violation of the Master Lease or would breach any covenant of Landlord respecting radius, location, use, or exclusivity in any lease, financing agreement, or other agreement relating to the Center

15.3.2.6 Landlord cannot obtain the consent of the City when such consent is required under the Master Lease; or

15.3.2.7 In Landlord's judgment, the quality of the merchandising operation or tenant mix in the Center would or could be adversely affected.

15.4 Procedures

15.4.1 Should Tenant desire to enter into an Occupancy Transaction, Tenant shall request, in writing, Landlord's consent to such transaction at least sixty (60) days before the effective date of any such transaction, and shall provide Landlord with the following:

15.4.1.1 The full particulars of the proposed transaction including its nature, all consideration to be paid pursuant to said transaction, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to such proposed transaction;

15.4.1.2 A description of the identity, net worth and previous business experience of the Transferee and the persons involved therein, including, without limitation, copies of Transferee's latest income, balance sheet and change-of-financial-positions statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the Transferee, and resumes, business, and financial references of the Transferee and the persons involved therein;

15.4.1.3 Any further information relevant to the transaction which Landlord may request;

15.4.1.4 A statement that Tenant intends to consummate the transaction if Landlord, and, if required, City, consent thereto.

15.4.2 Subject to Section 15.5 below, within thirty (30) days after receipt by Landlord of the information required by subsection (a) above, Landlord may either

15.4.2.1 Consent to the Occupancy Transaction, subject to Section 15.7 below, if, pursuant to Section 15.2 or 15.3 above, Landlord is not entitled to withhold its consent; or

15.4.2.2 Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Landlord is entitled to withhold its consent or

15.4.2.3 In any case terminate this Lease on ten (10) days written notice to Tenant unless Tenant rescinds its request for consent within five (5) days following receipt of Landlord's notice of termination.

15.5 City's Consent Required. Tenant and Landlord hereby acknowledge and agree that no Occupancy Transaction may be consented to by Landlord or entered into by Tenant without first obtaining the additional written consent of City when such consent is required.

15.6 Documentation and Expenses Each Occupancy Transaction to which Landlord has consented shall be evidenced by an instrument made in such written form as is satisfactory to Landlord and City and executed by Tenant and Transferee. By such instrument, Transferee shall assume and promise to perform the terms, covenants and conditions of this Lease which are obligations of Tenant including the payment of all monies due or to become due under this Lease directly to Landlord. Tenant shall remain fully liable to perform all duties and obligations under the Lease following the Occupancy Transaction. Tenant shall, on demand of Landlord, reimburse Landlord for Landlord's reasonable costs, including attorneys fees, incurred in obtaining advice and preparing documentation for each Occupancy Transaction to which Landlord has consented.

15.7 Consideration to Landlord

15.7.1 In the event Landlord and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Landlord the Rent specified in this Lease, provided, however

15.7.1.1 The Minimum Annual Rent shall be increased on the effective date of such Occupancy Transaction to the highest of:

- (i) An amount equal to one hundred percent (100%) of the total Rent required to be paid by Tenant, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or
- (ii) The then fair market annual rent as reasonably determined by Landlord. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

15.7.1.2 The Percentage Rent shall be increased on the effective date of such Occupancy Transaction to the Percentage Rent payable by the Transferee to the Tenant if such amount is greater than the Percentage Rent specified in this Lease; and

15.7.1.3 Any profit or gain realized by Tenant from any such Occupancy Transaction shall be paid by the Tenant to Landlord within ten (10) days of Landlord's written approval of such Occupancy Transaction.

15.7.2 In no event shall the Minimum Annual Rent, City Rent, and Percentage Rent as adjusted, be less than the Minimum Annual Rent, City Rent and Percentage Rent payable in the period immediately preceding the effective date of the Occupancy Transaction.

15.7.3 Notwithstanding the foregoing, Tenant shall have the right to continue to sublease or re-sublease a portion of the Premises to Mission Beach Water and Sports Physical Therapy, Inc. without additional consents or approvals being necessary.

ARTICLE 16 - TENANT'S CONDUCT OF BUSINESS

16.1 Operating Covenants: Days and Hours. Tenant shall occupy the Premises on the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours:

Monday through Friday	8:30 AM to 8:00 pm
Saturday and Sunday	9:00 AM to 6:00 pm

Tenant may however close for business on Thanksgiving Day, Christmas Day, and New Years Day.

Tenant shall operate one hundred percent (100%) of the Premises during the entire term of this Lease with due diligence and efficiency so as to produce all of the Net Sales which may be produced by such manner of operation. Subject to inability by reason of strikes or labor disputes, Tenant shall carry at all times in the Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce maximum Net Sales. Tenant shall install and maintain at all times displays of merchandise in the display windows (if any) of the Premises. Tenant shall keep the display window and all approved designs, if any, in or on the Premises, well lighted during the hours from sundown to the close of business operations. To keep the Premises suitable for the conduct of Tenant's business, Tenant shall not remove any of its trade fixtures or other personal property, without the immediate replacement thereof with fixtures or property of similar quality.

Tenant agrees that all trash and rubbish of Tenant shall only be deposited within receptacles as provided by Landlord and that no trash receptacles shall remain outside the Premises. Garbage must be in a watertight container that does not permit any dripping or any odors to escape, and must be removed to a location designated by Landlord at such time or times as Landlord may designate by rules and regulations adopted by Landlord in Landlord's discretion. Landlord shall cause such receptacles to be emptied and trash removed at Tenant's cost and expense. Should Tenant fail to use the trash receptacles designated by Landlord for trash deposit after twenty-four (24) hours written notice by Landlord to do so, Tenant shall pay to Landlord the sum of fifty dollars (\$50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Tenant acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expenses, and damages that Landlord will incur by reason of such failures by Tenant, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charges shall not constitute a waiver by Landlord of Tenant's default or prevent Landlord from exercising any of the other rights and remedies available to Landlord hereunder or as provided by law.

Tenant shall, at its sole cost and expense, conform to, abide by, and comply with, all laws, statutes, ordinances, rules and regulations relating to the Premises and the operations herein authorized and shall be subject at all times to applicable rules and regulations, resolutions, ordinances and statutes of the City, the County of San Diego, the State of California and the Federal Government and all other governmental agencies. Where permits are required for such operations, the same must be first had and obtained from the regulatory body having jurisdiction thereof before such operation is undertaken. Tenant and all its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

Tenant shall keep the Premises in a safe, clean, wholesome and sanitary condition to the complete satisfaction of Landlord and City who shall have the right to enter upon and inspect the Premises and the business conducted in the Premises. Should Landlord and/or representatives of the City or the County of San Diego determine the Premises are not being maintained in compliance therewith, Landlord shall be entitled to put the Premises in a safe, clean, wholesome and sanitary condition and charge the costs and expenses thereby incurred to Tenant as Additional Rent.

Tenant agrees to accept Master Card and Visa during the term of this Lease.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Tenant's Obligations. By accepting possession of the Premises, Tenant accepts the Premises as being in the condition called for by this Lease except for such items as Tenant shall advise Landlord in writing within five (5) days from the date Tenant accepts possession of the Premises. Except as provided in Section 17.2 below, Tenant shall keep and maintain the Premises (including all Tenant improvements, alterations, fixtures and furnishings) and the exterior and interior portions of all doors, windows, plate glass, and show cases in good, safe, decent, healthy, and sanitary condition and repair satisfactory to Landlord and City, including, without limitation, all plumbing and sewage facilities within the Premises, windows, interior walls, floors, ceilings and signs (including repair and painting thereof), and heating and air conditioning equipment. Tenant hereby waives the provisions of any law permitting repairs by a Tenant at the expense of Landlord, including without limitation, all rights of Tenant under Articles 1941 and 1942 of the Civil Code of the State of California. At Landlord's option if Tenant fails to make such repairs, Landlord may, but need not, make the repairs and replacements. On receipt of an invoice from Landlord, Tenant shall pay Landlord for Landlord's out of pocket costs incurred in connection with such repairs and replacements plus fifteen percent (15%) of such costs, to reimburse Landlord for all overhead, and other costs and expenses arising from Landlord's involvement with such repairs and replacements. Such costs shall be Additional Rent and bear interest at the Lease Interest Rate until paid in full.

17.2 Landlord's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Landlord shall keep in good condition and repair the foundations and exterior walls and roof of the Premises.

except for any damage caused by any act or negligence of Tenant or Tenant's employees, agents, invitees, licensees or contractors which damage Landlord shall repair at Tenant's sole cost and expense.

ARTICLE 18 - RECONSTRUCTION

18.1 Insured Casualty. In the event of damage or destruction of the Premises by fire, the elements, acts of God, or any other cause which damage or destruction is covered by any insurance then carried by Landlord with respect to the Center, Landlord shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Tenant, at its sole cost and expense, shall promptly repair the interior of the Premises, including all Tenant improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade.

18.2 Uninsured Casualty. In the event of uninsured damage or destruction of the Premises, Landlord shall have the option to repair the Premises and if Landlord does so this Lease shall remain with all force and effect and Tenant, at its sole cost and expense, shall promptly repair the interior of the Premises, including all Tenant improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Landlord shall give written notice of such determination to Tenant within ninety (90) days of the event of damage or destruction and this Lease shall thereupon terminate.

18.3 No Abatement of Rent. In the event that Landlord undertakes such repair, Tenant shall continue the operation of its business on the Premises during such repair period, to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, the Center, or Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

18.4 Waiver and Notice. With respect to any partial or total destruction which Landlord is obligated to restore or may restore under any of the provisions of this Lease, the provisions of Article 1932, Subdivision 2, and Article 1933, Subdivision 4, of the CMI Code of California, are hereby waived by Tenant. Tenant shall give written notice to Landlord and City of any damage or destruction that may occur on the Premises within ten (10) days of such damage or destruction.

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall be deemed to include those portions of the Center and other areas that are designated by Landlord from time to time for the general use, conveniences and benefit of Landlord, Tenants in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas and parking structures, driveways, roadways, sidewalks, service areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, art work, artistic displays, ponds and watercascading, pedestrian overpasses or underpasses, bus stops, and other facilities as Landlord may designate from time to time, for the nonexclusive use and benefit of Landlord, Tenants in the Center and other authorized users. Should a portion of the Center and/or adjacent real property be owned, used, or leased under any agreement by Landlord, or by separate legal entities, for the benefit, in Landlord's sole discretion, of the Center, then the Common Areas shall include any portions of the Center and/or adjacent real property under such separate ownership, use, or master lease that may be designated by Landlord and/or such other separate owner(s) or master Landlord(s).

19.2 Use of Common Areas. Tenant and its employees and invitees are authorized, empowered, and privileged to use the Common Areas in common with other persons during the term of this Lease, subject to the provisions of this Lease and the Master Lease, reasonable rules and regulations which shall be established from time to time by Landlord, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Landlord from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Tenant, and other Tenants, owners and occupants of the land constituting the Center of which the Premises are a part. The use of the swimming pool and community meeting room shall be subject to the Master Lease and the rights of the public to the use thereof.

19.3 Common Area Expenses. Landlord shall keep, or cause to be kept, the Center and the Common Areas in a neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof, but all Common Area Expenses shall be charged and prorated in the manner hereinafter set forth. The phrase "Common Area Expenses" shall include the total cost and expense incurred in operating, maintaining and managing the Center, and the Common Areas, specifically including, without limitation, (a) gardening, planting and

landscaping, (b) public liability and property damage insurance, fire and extended coverage insurance, rental loss insurance, earthquake, flood, sprinkler damage, vandalism, malicious mischief, tidal action, and other insurance required by City or deemed necessary by Landlord or its lender with respect to the Common Areas, Premises, or Landlord's interest therein, and any deductible required to be paid thereunder, (c) roof, building and signage repairs, (d) parking lot resurfacing, line painting, restriping, sweeping and cleaning, (e) lighting utility systems, all utility charges for the Common Areas and the Center, (f) sanitary control, pest control, janitorial services and removal of trash, rubbish, garbage and other refuse, (g) reasonable reserves for replacements and repairs, (h) bookkeeping, the cost of personnel to implement such Common Area services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of Tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance, repair and management of the Center and Common Areas. The parties hereto agree that Landlord need not itself directly manage or otherwise service all or any part of the Common Areas and Center but may cause such management, maintenance and operation and other services to be performed by Landlord's agent (hereinafter the "Manager of the Center"). Landlord may cause the Manager of the Center to render services to Tenant, other Tenants and occupants, required or permitted to be performed by Landlord, pursuant to this Lease, in connection with the maintenance, repair, management and operation of the Common Areas. The expenses described in section 19.4 below are specifically excluded from Common Area Expenses.

For purposes of this Lease, "Taxes" shall include each of the following:

19.3.1 Any form of assessment, license fee, license tax, business license tax, commercial rental tax, levy, charge, penalty, possessor interest tax, public charge or tax, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special district thereof, as against any legal or equitable interest of Landlord in the Master Lease, the Premises or the real property of which the Premises constitute a part;

19.3.2 Any tax on Landlord's right to rent or on other income from the Premises or Center or as against Landlord's business of leasing the Premises;

19.3.3 Any assessment, tax, fee, levy or charge in substitution of, or in addition to, partially or totally, any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such substitute, new, additional and increased assessments, taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of taxes for purposes of this Lease;

19.3.4 Any tax allocable to or measured by the area of the Premises or the Rent payable hereunder, including without limitation, any gross income tax or excise tax levied by the State, any political subdivision thereof, city, or federal government, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, alteration, repair, use or occupancy by Tenant of the Premises, the Center or any portion thereof;

19.3.5 All costs and fees incurred by Landlord to appeal or contest the amount or existence of any such Taxes and any governmental imposition or surcharge imposed or assessed against Landlord, the automobile parking areas and parking structures.

19.3.6 Any tax upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, and any and all assessments Landlord must pay pursuant to any covenants, conditions or restrictions, reciprocal easement agreement, tenancy in common agreements or similar restrictions affecting the Building or Common Areas;

19.3.7 Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

19.4 Method of Payment Tenant shall pay to Landlord as Additional Rent Tenant's pro rata share of Common Area Expenses in the following manner:

19.4.1 From and after the Commencement Date, Tenant shall pay Landlord, on the first day of each calendar month of the Lease Term, Tenant's pro rata share of Common Area Expenses, as hereinafter defined. Should Tenant fail to make any payment to Landlord of Tenant's pro rata share of Common Area Expenses, including, without limitation, the quarterly or yearly payments required pursuant to subparagraph (b) below, by the tenth day following the date on which such payment becomes due, Tenant shall pay interest thereon at the Lease Interest Rate plus a Late Fee of ten percent (10%) of Tenant's pro rata share of such Expense. Tenant acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Landlord will incur by reason of such failure by Tenant, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charge shall not constitute a waiver by Landlord of Tenant's default or prevent Landlord from exercising any of the other rights and remedies available to Landlord hereunder or as provided by law. Landlord may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Landlord's experience and reasonably anticipated costs.

19.4.2 Within thirty (30) days following the end of each calendar quarter or, at Landlord's option, each calendar year, Landlord shall furnish Tenant a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of Landlord, showing the total operating costs, the amount of Tenant's pro rata share of Common Area Expenses for such calendar quarter or year and the payments made by Tenant with respect to such period. If Tenant's pro rata share of Common Area Expenses exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of such statement. If said payments exceed Tenant's pro rata share of Common Area Expenses, Tenant shall be entitled to offset the excess against payments next thereafter to become due Landlord as set forth in subparagraph (19.5.1). Tenant's pro rata share of Common Area Expenses is defined as that proportion of Common Area Expenses which the Floor Area in the Premises bears to the total number of leasable square feet occupied and open for business in the Center, excluding that portion of The Center attributable to the indoor public swimming pool and attached support facilities as determined by Landlord.

19.5 Landlord's Right to Determine Common Areas. Landlord shall at all times have the right to determine the nature and extent of the Common Areas, and to make such changes therein and thereto from time to time which, in its opinion, are deemed to be desirable and for the best interests of persons who may from time to time be using said Common Areas, including the addition of buildings, the location and relocation of driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, installation of prohibited areas, landscaped areas, and other facilities thereof.

Landlord shall have the right, in connection with any expansion or reconfiguration of the Center, to construct improvements, landscaping, parking, pedestrian walkways and other features on the Common Areas, including, without limitation, any parking area which may exist from time to time, provided that such parking conforms to the requirements of the City and the California Coastal Commission. Any costs or expenses incurred by Landlord in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

19.6 Release of Liability. Nothing contained herein shall be deemed to create any liability upon Landlord for any loss of, or damage to, motor vehicles of customers or employees or for loss of property from within such motor vehicles. Tenant acknowledges that if Landlord provides security guards for the Common Areas, Landlord does not represent or guarantee that Tenant will be secure from losses caused by the illegal acts of third parties and does not assume responsibility to prevent any such illegal acts. To induce Landlord to provide such security guards, if any, as Landlord deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claim Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.7 Charged Parking: Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and agree to deliver them to customers in consideration for purchases by the customers from Tenant, pursuant to rules and regulations promulgated by Landlord from time to time. Landlord may at any time, and from time to time in its sole discretion, establish non-discriminatory parking areas, rates, hours, validation system, charges for parking and validations, rules and regulations relating thereto, and any other aspect of the parking arrangements. Tenant acknowledges that validated parking is not currently permitted by City or by the

California Coastal Commission. Nothing contained herein shall be deemed to require Landlord to preserve this status.

19.8 Control of Common Areas. Landlord shall at all times during the term of this Lease have the right to control the use by Tenant and other authorized users of the automobile parking areas, and parking structures, the parking spaces thereon, driveways, entrances, and exits, and the sidewalks and pedestrian passageways, and other Common Areas, and may at any time, from time to time during the term hereof, exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons and service suppliers of Tenant and other Tenants of Landlord who make use of said areas in accordance with the rules and regulations established by Landlord from time to time with respect thereto. Landlord shall further have the right to permit Tenants of the Center to occasional or minimal use of the Common Areas as Landlord deems proper. The rights of Tenant hereunder, in and to the parking areas and parking structure, shall at all times be subject to the rights of Landlord as provided in this Lease, and of the City, and shall at all times be subject to the rights of Landlord and its employees, other Tenants and authorized users, to use the same in common with Tenant, and it shall be the duty of Tenant to keep all of said areas free and clear of any obstructions created or permitted by Tenant, or resulting from Tenant's operation, and to permit the use of any said areas only for normal parking and ingress and egress by the customers, patrons and service suppliers to and from the building occupied by Tenant and other Tenants of Landlord.

If, in the opinion of Landlord, unauthorized persons are using any of said areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall effect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to restrain the use of any said areas by unauthorized persons.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Tenant of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Tenant of a general assignment for the benefit of Tenant's creditors, or any action at the corporate or partnership level taken by Tenant to authorize either of the foregoing actions to be taken on behalf of Tenant, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or any action taken or suffered by Tenant under any state insolvency law now or hereafter in effect, or the taking or seizing of the Premises or any portion thereof under levy of execution or attachment against Tenant, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Tenant and in such event Landlord may at its option terminate this Lease upon written notice to Tenant. The term "Tenant" as used in this Section 20 shall be deemed to include any parent corporation of which Tenant is a subsidiary, and any Guarantor of this Lease.

It is understood and agreed that neither this Lease, nor any interest herein or hereunder, nor any estate hereby created, in favor of Tenant, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, or any other person without the prior written consent of Landlord and the City. Any transfer in violation of the provisions of this Article 20 shall constitute a non-curable material breach of this lease by Tenant.

ARTICLE 21 - DEFAULT BY TENANT

21.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a material default of the Lease by Tenant ("Event(s) of Default"):

21.1.1 The vacation or abandonment of the Premises by Tenant. Vacation of the Premises shall include the failure to occupy the Premises for a continuous period of sixty (60) days or more, whether or not the Rent is paid.

21.1.2 The breach of Tenant of any of the covenants, conditions or provisions of paragraphs 11 (alterations), 15 (assignment or subletting), 21.1.1 (vacation or abandonment), 20 (insolvency), 21.1.6 (false statement), 26.3 (estoppel certificate), 26.1 (subordination), 7.2 (auctions), or 5.2 (Net Sales), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Landlord to Tenant thereof. In the event that Landlord serves Tenant with a Three Day Notice to Quit, pursuant to applicable Unlawful Detainer statutes as a result of such non-curable breach, such notice shall constitute notice sufficient to terminate this Lease.

21.1.3 The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to pay Rent or Quit, or a Notice to Cure Covenant or Quit, pursuant to applicable Unlawful Detainer statutes, such notice shall also constitute the notice required by this subparagraph.

21.1.4 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of the Lease to be observed or performed by Tenant other than those referenced in subparagraph 21.1.2 and 21.1.3 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion. To the extent permitted by law, such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

21.1.5 (i) To the extent allowed by law, the making by Tenant of any general arrangement or general assignment for the benefit of creditors; (ii) Tenant becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereof (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Lease, where such seizure is not discharged within thirty (30) days. In the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no further or effect.

21.1.6 The discovery by Landlord that any financial statement given to Landlord by Tenant or its successor in interest or by any guarantor of Tenant's obligation thereunder was materially false.

21.2 Landlord's Rights and Remedies. Upon an Event of Default, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord pursuant to this Lease, at law or in equity. These remedies are not exclusive but cumulative.

21.2.1 The right of Landlord to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or thereunder.

21.2.2 The right of Landlord, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Tenant, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Landlord elects this remedy, then Tenant shall have the right to engage in an Occupancy Transaction in accordance with and subject to the provisions of Article 15, whether or not such Occupancy Transaction occurs during the first two (2) years of the term of this Lease.

21.2.3 The right of Landlord, even though it may have re-entered the Premises, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

Should Landlord have re-entered the Premises under the provisions of subparagraph 21.2.2 above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay Rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such re-entry or by any action in unlawful detainer, or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election to be evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right but not the obligation to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owners or owners thereof.

21.3 Landlord's Damages. Should Landlord elect to terminate this Lease under the provisions of subparagraph 21.2.1 or 21.2.3 above, Landlord may recover from Tenant as damages:

21.3.1 The worth, at the time of award, of any unpaid Rent which had been earned at the time of such termination.

21.3.2 The worth, at the time of award, of the amount by which the unpaid Rent, which would have been earned after termination until the time of award, exceeds the amount of such Rent loss Tenant proves could have been reasonably avoided.

21.3.3 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 such Rent loss that Tenant proves could be reasonably avoided.

avoided.

21.3.4 Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new Tenant, any repairs or alterations to the Premises for such reletting, leasing commissions, costs of Tenant improvements made to the Premises for the benefit of Tenant and at Landlord's expense, or any other costs necessary or appropriate to relet the Premises.

21.3.5 At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in subparagraph 21.3.1 and 21.3.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.3.3 above, the "worth" at the time of award" is computed by discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

For purposes of this Article 21, all items of Rent, other than the Minimum Monthly Rent, shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twelve (12) month period, except that if it becomes necessary to compute such Rent before such a twelve (12) month period has occurred, then on the basis of the average monthly amount thereof accruing during such shorter period.

21.4 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Tenant's furniture, fixtures, equipment, improvements, alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of and use same, rent or charge free, until all defaults are cured, or, at its option, at any time during the term of this Lease, to require Tenant to forthwith remove same.

21.5 No Limitation of Remedies. The remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies which Landlord may have under the laws then in force. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

21.6 No Waiver. The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord.

ARTICLE 22 - DEFAULT BY LANDLORD

22.1 No Right of Termination. In the event that Tenant claims that Landlord is in breach of this Lease or that Landlord has failed to perform any of the covenants, provisions or conditions contained in this Lease on its part to be performed, Tenant shall give written notice of such claim of default to Landlord and any lender of Landlord, the identity of which Tenant has written notice. Landlord shall have thirty (30) days after receipt of written notice, or such additional time as may be reasonably required, to cure any such default. Landlord shall not be considered in breach of this Lease unless this procedure has been followed by Tenant.

22.2 Limitation of Liability. In no event shall Tenant have the right to terminate this Lease or set off any claim against Rent payable hereunder as a result of a default by Landlord. Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

22.2.1 The sole and exclusive remedy shall be against the Landlord's interest in the Center;

22.2.2 No partner, member or manager of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of Landlord);

22.2.3 No service of process shall be made against any partner, manager or member of Landlord (except as may be necessary to secure jurisdiction of Landlord);

22.2.4 No partner, member or manager of Landlord shall be required to answer or otherwise plead to any service of process;

22.2.5 No judgment will be taken against any partner, member or manager of Landlord;

22.2.6 Any judgment taken against any partner, member or manager of Landlord may be vacated and set aside at any time nunc pro tunc;

22.2.7 No writ of execution will ever be levied against the assets of any partner, member or manager of Landlord;

22.2.8 These covenants and agreements are enforceable both by Landlord and also by any partner, member or manager of Landlord.

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Landlord and Tenant shall each thereupon be released from any further liability accruing under this Lease.

In the event more than twenty-five percent (25%) of the square footage of Floor Area of the Premises is taken by Condemnation and if the remaining portion of the Premises is not suitable for the conduct of business by Tenant, or if by reason of Condemnation, regardless of the amount so taken, the Master Lease is terminated, in whole or in part, or the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Tenant from Landlord of written notice that said Premises have been Condemned. In the event of termination, both Landlord and Tenant shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Landlord shall be entitled to the entire award or compensation in such proceedings, but the Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord agrees to refund to Tenant any Rent or other charges paid in advance. Tenant's right to receive compensation or damages for the fixtures and personal property which Tenant has the right to remove shall not be affected in any manner hereby.

23.3 Partial Taking. If neither Landlord nor Tenant terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Tenant shall continue to occupy that portion of the Premises which shall not have been Condemned as herein provided and the parties will proceed as follows: (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will reasonably restore the Premises (b) the Minimum Monthly Rent shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining; and (c) Landlord shall be entitled to receive the total award or compensation in such proceedings. Tenant hereby waives any statutory rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

23.4 Transfer Under Threat of Taking. For the purposes of this Article only, a voluntary sale or conveyance under threat and in lieu of condemnation shall be deemed an appropriation or taking under the power of eminent domain.

ARTICLE 24 - ATTORNEYS' FEES

24.1 Attorneys' Fees. In the event that at any time during the term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the actual attorneys' fees and actual costs and disbursements incurred therein by the successful party. The parties agree that the actual attorneys' fees and disbursements so incurred shall be deemed reasonable.

ARTICLE 25 - SALE OF PREMISES BY LANDLORD

25.1 Release of Landlord. In the event of any sale or transfer of the Center and/or Premises by Landlord, or assignment by Landlord of its rights under the Master Lease, Landlord shall be entirely freed and relieved of all liability under its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Center, Premises or this Lease occurring after the consummation of such sale, transfer or assignment.

ARTICLE 26 - SUBORDINATION, ATTORNEY AND ESTOPPEL CERTIFICATE

26.1 **Subordination.** Upon written request of Landlord or its lender, Tenant will, in writing, subordinate its rights hereunder to the lien of any mortgage, deed of trust, lease or easement, now or hereafter placed upon the land and/or buildings of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof.

26.2 **Attornment.** In the event of any foreclosure or exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Tenant shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Landlord under this Lease.

26.3 **Agreement to Execute Documents.** Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make the Lease or any option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this paragraph 26.

26.4 Estoppel Certificate.

26.4.1 Each party (as "responding party") shall at any time upon not less than ten (10) days prior written notice from the other party ("requesting party") execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that the Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Center or of the business of the business of Tenant.

26.4.2 At the requesting party's option, the failure to deliver such statement within such time shall be a material default of the Lease by the party who is to respond, without any further notice to such party, or it shall be conclusive upon such party that (i) the Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Tenant is the requesting party, no more than one month's rent has been paid in advance. If Tenant fails to deliver the certificate within ten (10) days after written request therefore, Tenant irrevocably constitutes and appoints Landlord as its special attorney-in-fact to execute and deliver the certificate to any third party.

26.4.3 If Landlord desires to refinance or sell the Center, or any part thereof, Tenant hereby agrees to deliver to any lender or purchaser designed by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser. Such statements shall include the past three (3) years' financial statements of Tenant. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes set forth herein.

ARTICLE 27 - QUIET POSSESSION AND RELOCATION

27.1 **Quiet Possession.** Landlord agrees that Tenant, upon paying Rent and performing the covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises during the term hereof or any extension thereof, subject, however, to the provisions of the Master Lease and any mortgages, deeds of trust, agreements and encumbrances to which the Lease is or may become subordinate.

27.2 **Relocation.** Landlord shall have the right at any time, upon at least one hundred twenty (120) days written notice to Tenant, to relocate Tenant to new space in the Center provided the Premises to which Tenant shall be relocated (the "New Premises") shall have the same approximate Floor Area as is contained in the existing Premises. Landlord's notice shall be accompanied by a floor plan of the New Premises. The New Premises shall be leased to Tenant on the same terms and conditions as herein provided, except that in the event the Floor Area of the New Premises shall be more or less than the Floor Area contained in the existing Premises, there shall be a proportionate adjustment of the Minimum Monthly Rent. Tenant shall submit to Landlord, within thirty (30) days following the date Tenant completes renovation and opens for business in the New Premises, an affidavit signed and verified by Tenant setting forth the costs and expenses (accompanied with copies of paid receipts for each item) reasonably incurred by Tenant in connection with the relocation. Within thirty (30) days following Landlord's approval of Tenant's list of expenses, Landlord shall reimburse Tenant for such expenses. Expenses of relocation may include Belmont Athletics LLC
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moving expenses, the unamortized cost of Tenant's Tenant improvements to the existing Premises and trade fixtures (to the extent paid for by Tenant and to the extent such Tenant improvements and trade fixtures cannot be used in the New Premises), and the sums expended by Tenant for new Tenant improvements and trade fixtures required solely as a result of such relocation. Except as provided above, Landlord shall not be liable or responsible in any way for any costs, expenses, damages or injuries suffered by Tenant pursuant to a relocation in accordance with the provisions of this Article 27, including, but not limited to, loss of goodwill, business or profits. Tenant agrees that all of the obligations of this Lease, including the payment of Rent, shall continue throughout the period of relocation. Tenant shall, not later than the date specified in Landlord's notice, vacate and surrender the existing Premises, relocate to the New Premises, and prepare the New Premises for occupancy, all at Tenant's sole cost and expense, subject to the reimbursement provisions set forth above. Tenant agrees to use all reasonable efforts to open for business in the New Premises as quickly as is reasonably possible under the circumstances. Immediately following the date of relocation by Tenant, Landlord and Tenant shall execute a supplemental agreement specifying the location of the New Premises and the new Minimum Monthly Rent to be paid pursuant to this Lease. All Additional Rent to be paid pursuant to this Lease shall be adjusted pro rata based upon the differential, if any, in the Floor Area of the existing Premises and the New Premises. The failure of Tenant to relocate in accordance with the provisions of this Lease shall constitute a material default under this Lease.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund Landlord may institute a program of advertising or promotional events which Landlord determines, in its sole discretion will promote the Center. The costs of such advertising or promotional events shall be paid out of marketing charges collected by Landlord from lessees in the Center (the Marketing Fund).

28.2 Method of Payment From and after the Commencement Date, Tenant shall pay to Landlord on the first day of each calendar month of the term of this Lease, as Additional Rent, a sum equal to the Marketing Fund Contribution specified in the Fundamental Lease Provisions, which shall be used for the purposes of promoting and advertising the Center.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any shall be calculated upon the basis of the I as defined in Section 5.1.1(a). The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the Increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Landlord, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Landlord with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center. Landlord agrees to consider the committee's suggestions but reserves the right to make final determination as to the expenditure of said funds and to terminate any program of promotion or advertising.

Costs and expenses payable out of the Marketing Fund shall include, without limitation, costs and expenses related to a marketing director to be selected by Landlord in Landlord's sole discretion.

28.5 Landlord's Right to Change Marketing Contribution Format. Landlord reserves the right to change Tenant's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Tenant be required to pay in any calendar year an amount that exceeds Tenant's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial calendar year. Landlord shall change the Marketing Fund format to a pro rata format, if at all, only as of the beginning of a calendar year and upon giving Tenant at least three (3) months' advance written notice. Landlord shall notify Tenant in writing of the amount of the Marketing Fund Contribution for each calendar year and of Tenant's pro rata share thereof, and Tenant shall pay Landlord on the first day of each calendar month of the first calendar year that the pro rata share format is in effect. Within thirty (30) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Landlord, showing the total amount of Marketing Fund Contribution payments made by Tenant with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Tenant exceeds the limitations set forth above. If Tenant shall have made any such excess payments, then Tenant shall be entitled to offset the excess against the payment next thereafter to become due Landlord for Marketing Fund Contribution payments as set forth herein, if, however, Tenant's Marketing Fund

Contribution payments during the applicable calendar year do not equal Tenant's Marketing Fund Contribution for such calendar year, the shortage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Landlord. There shall be an appropriate adjustment of Tenant's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

28.6 Tenant Advertising. Tenant agrees not to produce any advertising which is not in good taste or which may injure the Center or other lessees within the Center. If, in Landlord's sole discretion, Tenant violates this covenant, Landlord may give Tenant written notice of same and Tenant shall thereafter obtain Landlord's prior written approval of all advertising for a period of six (6) months following said written notice.

28.7 Late Charge. Should Tenant fail to make any payment to Landlord for its share of Marketing Fund Contribution or Grand Opening Contribution as provided above, by the tenth day following the date on which such payment becomes due, then such amount shall bear interest at the Lease Interest Rate and a Late Fee equal to ten percent (10%) of the amount due shall be assessed. Tenant acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Landlord will incur by reason of such failure by Tenant, the exact amount of such costs, expenses and damages being extremely difficult and impracticable to fix. Acceptance of any such charge shall not constitute a waiver by Landlord of Tenant's default or prevent Landlord from exercising any of the other rights and remedies available to Landlord hereunder, or as provided by law.

28.8 No Interest in Marketing Fund Tenant shall at no time have any right, title or interest in or to the Marketing Fund or any part or portion thereof.

ARTICLE 29 - CAPTIONS AND TERMS: PARTIES: NOTICES

29.1 Reference Only. The captions of Articles of this Lease are for convenience only, are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

29.2 The Term. Except as otherwise specifically stated in this Lease, the "term" shall include the original term and any extension, renewal or holdover thereof.

29.3 Parties. If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter, as the case may be, and the use of the singular shall include the plural.

29.4 Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally or locally recognized overnight or same day delivery service which provides for acknowledgment of delivery (i.e., FedEx) or by telefacsimile ("Fax") machine capable of confirming transmission and receipt. Notices to Landlord and Tenant shall be delivered to the addresses set forth in the Fundamental Lease Provisions. Either party may change such address by giving written notice by certified or registered mail to the other. Notices shall be deemed received upon actual receipt if personally delivered or sent via Fax, and shall be deemed received three (3) days after mailing if sent by certified mail.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Construction: Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

ARTICLE 31 - CONSENTS AND APPROVALS

31.1 Consents Required. Wherever this Lease provides that Tenant is required to obtain consent or approval, such consent or approval must be obtained in advance and shall not be valid or effective unless consented to or approved expressly in writing in each instance. Any such consent or approval may be given or denied at the sole and absolute discretion of any person having the right to give or deny such consent or approval, except as otherwise provided in this Lease. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

31.2 Reimbursement to Landlord. Tenant agrees to reimburse Landlord for payment made to City for any fees or charges assessed in connection with obtaining and/or processing approvals hereof.

ARTICLE 32 - HOLDING OVER

Any holding over by Tenant after the expiration of the Term of this Lease shall be construed to be tenancy from month to month and shall otherwise be upon the terms and conditions provided by this Lease.

32.1 Base Rent on Tenancy from Month-to-Month. Rent shall be at the rate equal to 200% of the sum of the Minimum Monthly Rent amount at the expiration of the Lease and applicable Percentage Rent, Common Area Maintenance Contribution and Marketing Fund Contribution.

32.2 Termination of Tenancy from Month-to-Month. Landlord or Tenant may terminate the tenancy from month-to-month by giving the other party a 30 day notice prior to the next due date of Rent immediately prior to the expiration of the Term or anytime during the month-to-month tenancy provided that the notice is given at least 30 days prior to the next due date of Rent. Tenant shall have a maximum of 30 days from the delivery date of notice by Landlord to vacate the Premises.

ARTICLE 33 - SECURITY DEPOSIT

33.1 Security Deposit. Tenant has deposited with Landlord the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all of the terms of this Lease by Tenant to be observed and performed. Such deposit may be commingled with other funds of Landlord. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant, and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. In the event that Minimum Annual Rent is increased in accordance with the provisions of this Lease, the Security Deposit shall be increased in the same proportion and at the same time as said increase in Minimum Annual Rent.

33.2 Use and Restoration. If Rent or any other sum payable by Tenant to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of Tenant, or Tenant shall fail to perform any of the terms of this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire deposit or so much thereof as may be necessary to compensate Landlord toward the payment of Rent or loss or damage sustained by Landlord due to such breach on the part of Tenant, and Tenant shall forthwith upon demand restore said security to the original sum deposited. Should Tenant comply with all of said terms and promptly pay all Rent as it falls due and all other sums payable by Tenant to Landlord, said deposit shall be returned in full to Tenant within thirty (30) days of the last day of the Lease Term.

33.3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the filing of such proceedings.

33.4 Transfer of Security Deposit. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises in the event that such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to such deposit, and this provision shall also apply to any subsequent transferees.

ARTICLE 34 - SWIMMING POOL RATES AND MINIMUM HOURS

34.1 Swimming Pool Rates and Minimum Hours. Tenant agrees that the pool known as the "Plunge" shall be open to public use twelve (12) months per year (except for New Years Days, Thanksgiving Day, Christmas Day, Easter Day, Memorial Day, Independence Day, and Labor Day), the following minimum hours shall be observed by Tenant: Monday through Friday, 8:00am - 8:00pm; Saturday 8:00am - 4:00pm; and Sunday 8:00 am to 2:00 pm. Upon approval from the City, the rate charged for such day use shall not exceed \$7.00 per individual. Upon obtaining written consent of City, which such consent shall not be unreasonably withheld, Tenant shall be permitted to increase such rates to compensate for increases in the index (if any).

ARTICLE 35 - MISCELLANEOUS

35.1 Relationship of Parties. It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

35.2 Severability. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

35.3 Warranty of Authority.

35.3.1 If Tenant is a corporation the parties executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in California, all franchise and corporate taxes have been paid to date, and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed or paid when due. Upon the request of Landlord, Tenant shall provide Landlord with a certificate of good standing from the California Secretary of State, dated within thirty (30) days of the Commencement Date, along with a copy of the articles of incorporation for Tenant and a corporate resolution authorizing the execution of this Lease by the undersigned.

35.3.2 If Tenant is a limited liability company, or a limited partnership, the parties executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified limited liability company, or limited partnership, and all steps have been taken prior to the date hereof to qualify Tenant to do business in California, all franchise and other taxes have been paid to date, and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed or paid when due. Upon the request of Landlord, Tenant shall provide Landlord with a certificate of good standing from the California Secretary of State, dated within thirty (30) days of the Commencement Date, along with a copy of the articles of organization of Tenant, and a copy of the operating agreement of Tenant authorizing the execution of this Lease by the undersigned.

35.4 Entire Agreement. No oral agreements exist between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto (or their agents) or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

35.5 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Tenant does not rely on the fact, and Landlord does not represent, that any specific Tenant or number of Tenants shall, during the term of this Lease, occupy any space in the Center.

35.6 Governing Law; Forum; Construction. The laws of the State of California shall govern the validity, performance and enforcement of this Lease. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in San Diego County, California. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the result intended by the language.

35.7 Force Majeure. Unless the same will cause the other party to be in default under any obligation to any third party (including without limitation the Master Lease), any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (financial inability excepted) shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Tenant agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, national origin or ancestry, age or physical handicap in the use, occupancy or enjoyment of the Premises or in the providing of goods, services, facilities, privileges, advantages and accommodations or in the obtaining and holding of employment.

Tenant agreed to abide by City's Equal Opportunity Program for non-construction contractors doing business with the City. A copy of the program effective as of the date of this Lease is on file in the City Clerk's Office as Document RR262633, and by this reference is a part hereof. The goal of the program is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the City for its Equal Opportunity Program each year.

35.9 Seasonal Activities. Tenant will cooperate by appropriate decoration of the Premises and participation in promotional and public relations activities of the Center for holidays such as Christmas, Easter, Valentine's Day, Halloween, and other special days selected by Landlord from time to time.

35.10 Cooperation with City. Tenant recognizes that it is the policy of the Center that all Tenants, including Tenant, will cooperate with activities of City and to comply with all rules and regulations of City applicable to the Center and Premises.

35.11 Shoplifting. Tenant will cooperate in all procedures and programs calculated to discourage shoplifting in the Center.

35.12 Lender Requirements. The parties agree that this Lease shall be modified at the request of Landlord in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Tenant hereunder, and in all events no such modification shall change the amount of Rent to be paid by Tenant.

35.13 Confidential Shoppers Program. Landlord shall have the right to institute and maintain a Confidential Shoppers Program which is intended to assist Tenant in maintaining the highest quality of its food, beverages, products, and services provided on the Premises.

Landlord may from time to time, and without Tenant's knowledge, send persons to the Premises for the purpose of assessing the quality of Tenant's food, beverages, products and services. At the conclusion of said visit Landlord shall prepare a written report which shall be furnished to Tenant within fifteen (15) days after said visit. Tenant shall promptly make every effort to remedy any deficiency described in such report.

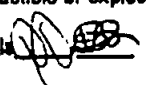
35.14 Rules and Regulations. Tenant and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit C. Landlord may from time to time reasonably amend, delete or modify existing rules and regulations or adopt reasonable new rules and regulations for the use, safety, cleanliness and care of the Premises and the Center and the comfort, quiet and convenience of occupants of the Center. Modifications or additions to the rules and regulations will be effective upon notice to Tenant from Landlord. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Landlord will have all remedies which this Lease provides for default by Tenant, and will, in addition, have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Landlord will not be liable to Tenant for violation of such rules and regulations by any other Tenant, its employees, agents, visitors or licensees, or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

35.15 Washrooms. The washrooms and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rage or other substances shall be thrown therein. Tenant agrees that all damages resulting from any misuse of the fixtures or the Premises by Tenant or its servants, employees, agents, visitors or licensees be repaired by Tenant. Washrooms for public use in the Center shall be maintained by Landlord, and the cost thereof paid by Tenants receiving benefits therefrom, as determined by Landlord in Landlord's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular Tenant receiving benefits therefrom bears to the total number of leasable square feet occupied and open for business by all Tenants receiving benefits therefrom.

35.16 Disturbances. Tenant shall not make or permit to be made, any unseemly or disturbing noises, or disturb or interfere with the occupants of neighboring premises, or those having business with them, whether by the use of any musical instrument, amplified sound, noise, whistling, singing, or in any other way. Tenant shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Tenant shall not do anything or permit anything to be done on or from the Premises which will disturb the quiet enjoyment of any other Tenant or its premises.

35.17 Flammables and Toxic Waste. Neither Tenant, nor any of Tenant's servants, employees, agents, visitors or licensees shall at any time bring to or keep on the Premises any flammable, combustible or explosive fluid, chemical or substance or any toxic, hazardous or radioactive matter.

Belmont Athletics LLC
LEASE AGREEMENT

Initials 

35.18 Canvassing, Soliciting and Peddling. Canvassing, soliciting and peddling in the Center is prohibited and Tenant shall cooperate to prevent the same.

35.19 Violations by Other Tenants. Landlord shall not be responsible to Tenant hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other Tenant.

35.20 No Warranties by Landlord. Landlord makes no warranty, guarantee, covenant or agreement of any nature whatsoever concerning condition of the Premises or the Common Areas, including the physical condition thereof, or any condition which may affect the Center or Premises, including the effect of tidal action, wind storms, flooding, blowing sand, water seepage and the like from the ocean and beach which adjoin the Center and it is agreed that Landlord will not be responsible for any loss, damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

35.21 Time is of Essence; Binding Effect; Assignment. Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Tenant as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any permitted assignees and subTenants of Tenant.

35.22 San Diego Convention and Visitors Bureau. If required by Landlord, Tenant agrees to join and maintain membership in the San Diego Convention and Visitors Bureau during the term of this Lease.

35.23 No Pictorial or Other Representations of Center. Tenant shall not publish or distribute any pictorial or other representation of the Center, or any part thereof, or its name or logo, by postcards, posters, imprints on tee shirts or other clothing, or by any other means, without the prior written consent of Landlord.

35.24 No Oral Representations. Tenant expressly acknowledges and agrees that no oral representation has been made by Landlord to Tenant in conflict with the provisions of this Lease. No revision of this Lease shall be valid unless made in writing and signed by Landlord and Tenant.

35.25 Interior Lighting. Tenant agrees to install permanent lighting which will remain on until at least 2:30 a.m. seven (7) days a week. Lighting must be spots or floods with white bulbs only.

35.26 Pest Extermination. Tenant shall use at its cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

35.27 Operations and Time Period. If Landlord notifies Tenant in writing that the Premises are ready for occupancy and Tenant fails to take possession and open the Premises for business, fully fixtured, stocked and staffed within thirty (30) days, then Landlord shall have, in addition to any and all remedies hereinafter provided, the right to immediately cancel and terminate this Lease.

35.28 Use of Name of Center. Landlord reserves the right to change or modify the name of the Center as Landlord may desire from time to time. Tenant acknowledges that the name "Belmont Park" is a proprietary name held by Landlord and not a geographic name. Tenant shall not have or acquire any property right or interest in the name "Belmont Park," the Belmont Park logo, or in any other name or logo of the Center, and shall not use "Belmont Park," the Belmont Park logo, or any other name or logo of the Center as a part of its trade name, service mark or business name.

35.29 Real Estate Broker. Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiations and/or execution of this Lease, except the broker(s) listed in the Fundamental Lease Provisions. Tenant hereby indemnifies and holds Landlord harmless from and against any costs, expenses, attorneys fees, or liability for compensation or charges which may be claimed by any unnamed broker or agent by reason of any dealings or actions of Tenant.

35.30 Architectural Significance. Tenant acknowledges that Landlord has a significant interest in the architectural and aesthetic appearance of the Center. To protect Landlord's interest, Tenant agrees that he will not do anything to impair Landlord's interest in the architectural and aesthetic nature of the Center and that Landlord may, in Landlord's sole and absolute discretion, remove any item, at Tenant's sole cost and expense, or prohibit installation of any such item.

35.31 Further Assurances. Tenant further agrees and covenants to execute any further documents and actions as Landlord may reasonably require, in order to give effect to any intentions expressed in this Lease.

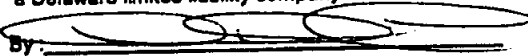
ARTICLE 38 . ADDITIONAL PROVISIONS

38.1 Additional Provisions. By insertion of numbers in the following blank, Landlord and lessee acknowledge that Article(s) _____ is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 38.1, it is conclusive that no additional provisions are a part of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

LANDLORD

Symphony Asset Pool XVI LLC
a Delaware limited liability company

By: 

Name: Dario De Luca
Title: Authorized Representative

TENANT

Belmont Athletics LLC,
a Delaware limited liability company

By: 

Name: Brett H. Miller
Title: Manager

EXHIBIT A
SITE PLAN OF THE CENTER

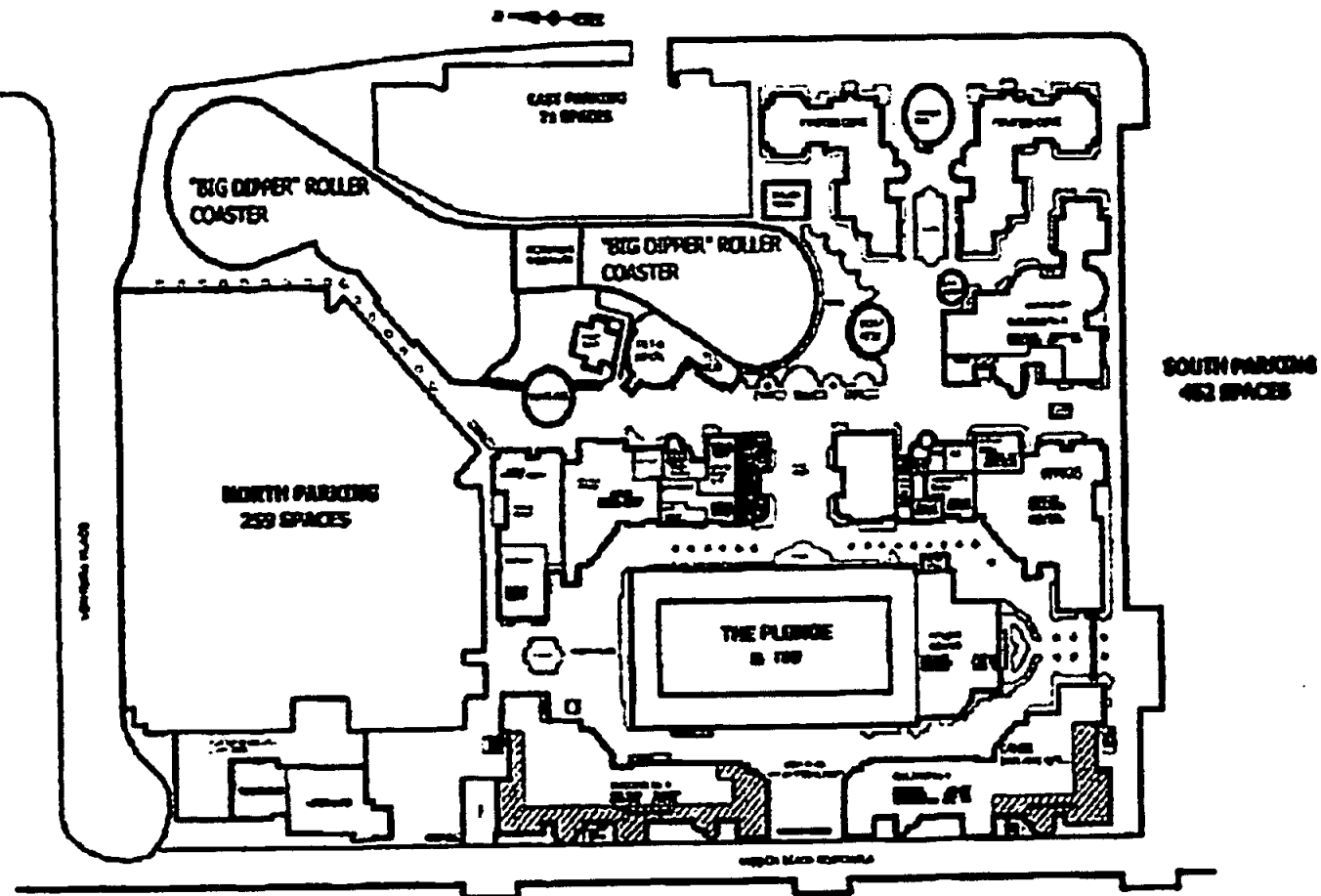


EXHIBIT B-2

**FLOOR PLAN SHOWING THE ADDITIONAL PORTION OF THE PREMISES
(WAVE MACHINE)**

Handwritten initials, possibly "BB", written over a horizontal line.

Architectural site plan of the University of California, San Diego (UCSD) campus. The plan shows various buildings, courtyards, and outdoor spaces. Key features include:

- BUILDING 7** (Faculty Residence)
- BUILDING 9** (Student Union)
- THE PLUNGE INDOOR POOL**
- WAVE HOUSE**
- NORTH PLAZA COURTYARD**
- EAST PLAZA**
- COURT**
- OCEAN PLAZA**
- 1976 OLYMPIC VILLAGE**
- 1976 OLYMPIC STADIUM**

The plan also shows the location of the 1976 Olympic Village and the 1976 Olympic Stadium. The map is oriented with North at the top.

Initials 

EXHIBIT C

RULES AND REGULATIONS

1. The Premises is a part of Mission Beach Park, a dedicated public park. The Premises must therefore be utilized for park and recreation purposes and for facilities needed to accommodate park visitors, including visitor oriented commercial and recreational uses. Tenant shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public uses of the park property.
2. No projection shall be attached to the outside wall of the buildings in the Center or any exterior portion of the Center without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a Tenant's premises, without the prior written consent of Landlord. Such projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. All electrical ceiling fixtures hung in spaces along the perimeter of the buildings in the Center must be fluorescent, of a quality, type, design and bulb color approved by Landlord.
3. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the passageways or other public places in the Center shall not be covered or obstructed by any Tenant, nor shall any bottles, parcels or other articles be placed on the window sills.
4. Vehicles and hand trucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any Tenant or its employees, in the delivery or receipt of merchandise.
5. No Tenant shall mark, paint, drill into, or in any way deface any part of its premises, or the buildings in the Center, or elsewhere in the Center. No boring, cutting or stringing of wires, or laying of linoleum or other similar floor coverings, or painting or wood staining of fixtures or equipment, shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.
6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a Tenant's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a Tenant's premises, except that the preparation of coffee, tea, hot chocolate and similar items for Tenants and their employees shall be permitted. No Tenant shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.
7. No Tenant's premises shall be used for manufacturing or for the storage of merchandise, except as such storage may be incidental to the use of the premises as permitted by Landlord. No Tenant shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No Tenant shall engage or pay any employees on its premises, except those actually working for such Tenant on its premises nor advertise for laborers giving an address at its premises. No Tenant's premises shall be used for lodging or sleeping, or for any immoral or illegal purposes.
8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or the mechanism thereof. Each Tenant termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys so furnished, such Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.
9. All removals, or the carrying in or out of any sales, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Landlord's representative and take place during the hours which the Landlord may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Landlord and under his supervision, and the persons employed by any Tenant for such work must be acceptable to Landlord.
10. No Tenant shall install any antennas, aerial wires or other such equipment on the roof or exterior walls of any building in the Center or elsewhere in the Center, without, in each and every instance, obtaining the prior approval, in writing, by Landlord.

EXHIBIT D
COMMENCEMENT DATE CERTIFICATE

This Commencement Date Certificate ("Certificate") is entered into by Landlord and Tenant pursuant to Section 4.2 of the Lease.

1. Definitions. In this Certificate, the following terms shall have the meanings given to them:

- (a) Landlord: Symphony Asset Pool XVI LLC, a Delaware limited liability company
- (b) Tenant: Belmont Athletics LLC, a Delaware limited liability company
- (c) Lease: Lease dated _____ between Landlord and Tenant
- (d) Premises: 3115 and 3119 Ocean Front Walk, San Diego, California 92109

2. Confirmation of Lease Commencement Date: Landlord and Tenant confirm that the Commencement Date of the Lease is _____ and the expiration date is _____.

Landlord and Tenant have executed this Certificate as of the dates set forth below.

LANDLORD

Symphony Asset Pool XVI LLC,
a Delaware limited liability company

TENANT

Belmont Athletics LLC,
a Delaware limited liability company

By _____
Date _____
Name: _____
Title: _____

By _____
Date _____
Name: _____
Title: _____



EXHIBIT E
LANDLORD FF&E
(ATTACHED)

FF&E (Built In) - BELMONT ATHLETICS LLC

1	boiler/HVAC - gym A/C	
1	boiler/HVAC - insulate gas	
1	boiler/HVAC - Plunge pool heat	
	check in kiosk - WHAC	
1	combustion blower - Bmax jacuzzi	
1	hardwood floors	
1	lighting - fixtures and systems - WHAC	
1	pool chemical controller	
1	pool deck	
1	pool filter	
1	pool pump	
1	pool tile - materials	
1	sauna - locker room	
1	signage - WHAC	
1	window graphics	
1	kiosk - boardwalk	
1	kiosk - Bmax/retail	
1	Bruticus Maximus Wave Machine	
1	Bmax truss system	
1	Flowrider Wave Machine	
2	jacuzzi/spa - 6 ft x 4 ft	
1	drinking fountain	
1	ADA lift - Plunge pool	
1	Wyland mural	
1	sufboard locker system	
	Locker Rooms - detail	
10	sinks	kohler
5	men's urinals	kohler
11	toilets	American Standard
4	paper towel dispensers	
11	toilet seat cover dispensers	
11	toilet paper dispensers	
2	bathing suit dryer	suitmate
2	baby changing station	
10	hand soap dispensers	
172	member's lockers w/ doors (mens)	
172	member's lockers w/ doors (womens)	
10	shower heads/fixtures	
2	shower heads (ADA compliant)	
2	shower benches (ADA compliant)	

EXHIBIT F

ADJUSTED GROSS SALES REPORT

for

Belmont Athletics LLC
3115 and 3119 Ocean Front Walk
San Diego, California 92109

According to the terms of our License, I / we hereby certify under penalty of perjury that the gross sales for the period: _____ to _____ are as follows:

Food Gross Sales:

Amount: \$ _____ Percentage: _____ \$ _____

Retail & Other Gross Sales:

Amount: \$ _____ Percentage: _____ \$ _____

LESS:

Refunds or

Allowances: \$ _____

Exchanges: \$ _____

Included Sales, Use or
Gross Receipts Taxes: \$ _____

Total Deductions from Gross Sales: (\$ _____)

TOTAL ADJUSTED GROSS SALES: \$ _____

TOTAL PERCENTAGE MINIMUM FEES (if applicable): \$ _____

FEES FOR THE PERIOD, DUE SYMPHONY ASSET POOL XVI LLC: \$ _____

Due to Licensor 10 days after end of month.

Authorized Signature

Date

Licensor may request at any time copies of the report to the Board of Equalization and copy of Canceled check made to such board.

[Handwritten Signature]
[Handwritten Initials]

EXHIBIT G



STORM WATER
BEST MANAGEMENT PRACTICES

Prepared by:



I. Belmont Park's Planning and Organization Committee

Mirko Marone
Justin Lopez
John Akers

Property Manager (Enforcement Official)
Director of Operations
Maintenance Enforcement Supervisor

II. Belmont Park's Reference Phone Listing

<u>Name</u>	<u>Phone</u>	<u>Contact</u>
Belmont Park's Admin Office	858-273-8440	Steve Smith
City of San Diego Asset Dept	619-238-6020	Jim Barwick
Allied Waste (Daily Disposal)	858-278-6081	Mark Sanders
Darling Int'l (grease removal)	858-568-8600	Toby Simpson
San Diego's Hazardous Management	619-533-4477	Recording
San Diego's Waste Enforcement	858-492-6056	Recording
San Diego's Graffiti Hotline	619-525-8522	Recording
San Diego's Code Compliance	619-238-6500	Recording
Storm Water Pollution Hotline	619-533-3793	Recording
Police non-emergency	858-484-3154	Officer on duty
District 2 Councilman – Kevin Faulkner	858-238-8822	Katie Hansen

Quick Reference Municipal Codes

Reference

- City of SD Municipal Code
- CA Water Code
- CA Health/Safety Code
- Discharge Conveyance System
- Exemptions fm Discharge
- Inland Surface Water Plan
- Enclosed Bays/Estuaries Plan
- Basin Plan
- City's Storm Water Division

Reference Code

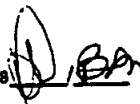
- section 43.0307(a)
- section 13050(d)
- section 25117
- section 43.0305
- section 43.0304
- City Clerk as Doc No. 00-17988-4
- City Clerk as Doc No. 00-17988-3
- City Clerk as Doc No. 00-17988-1
- www.sandiego.gov/stormwater
- www.thinkblued.org

III. RESTAURANT TENANT OBLIGATIONS AND RECOMMENDATIONS

The by-products of food-related businesses can harm the ocean and sea life if they enter the storm drain system. Food businesses can cause harm by food waste in leaky trash receptacles, not cleaning up outdoor food or chemical spills, or by washing outdoor spills into the storm drain system. Oil and grease can clog fish gills and block oxygen from entering the water. Also, in high concentrations toxins found in oven and floor cleaners can harm aquatic life.

Landlord requires that a Tenant operating food service facilities practice the proper handling, storing, and disposing of materials to keep pollutants out of storm drains.

Landlord recommends that Tenant use less toxic products, preferably products that are non-toxic, non-petroleum-based; free of ammonia, phosphates, dye, or perfume; or readily biodegradable. Tenant should avoid chlorinated compounds, petroleum distillates, phenols, and formaldehyde. Tenant should preferably use water-based products. Tenant must keep oil and grease in proper containers to prevent spills while transporting to the re-cycle container located at the compactor enclosure (north parking lot).



1. Grease traps and interceptors. Tenant must contract with a licensed grease disposal service to removed grease collections. Landlord recommends Darling International (1-800-447-3273) for recycling.
2. Tenant must contain all liquid trash in sealed bags to eliminate spills on Boardwalk/compactor area.

III. Tenant's Hazardous Material Stored On-Site

<u>Description</u>	<u>Typical Quantity</u>	<u>Location</u>
Bleach	gallons	Kitchen
Simple Green	gallons	Kitchen

IV. Materials Handling and Cleaning Requirements

Proper handling, storing, and disposing of materials can prevent pollutants from entering the storm drains.

1. Painting:
 - a. Keep all liquid paint products and wastes away from the street, gutter, and storm drains. Liquid residues from paints, thinners, solvents, glues, and cleaning fluids are hazardous wastes. When thoroughly dry, used brushes, rags, drop cloths, and empty paint cans (lids off) may be disposed of as trash.
 - b. Use water-based paints instead of oil-based paints. Look for the words "latex" or "clean up with water" on the label.
 - c. Don't use paints over 15 years old. They may contain toxic levels of lead
 - d. Reuse paint thinner. Set used thinner aside in a closed jar to settle out paint particles. Then pour off clear liquid for future use. Wrap the residue in newspaper and dispose of it in the trash.
 - e. Paint Removal: Chips and dust from marine paints or paints containing lead or tributyl tin are hazardous wastes. Dry sweep and call (819-533-4477) for disposal information.
 - f. Paint chips and dust from non-hazardous dry stripping or sanding may be swept up and disposed of as trash.
2. Keep pollutants off exposed surfaces.
3. Place trashcans and recycling receptacles around the Premises and service often.
4. Cover and maintain trash receptacles. Check frequently for leaks. NEVER CLEAN A TRASH RECEPTACLE BY HOSING IT DOWN OUTSIDE OF A SINK, e.g., Do not clean on the Boardwalk..
5. Never hose down "dirty" pavement or surfaces where materials have spilled. Use dry cleanup methods whenever possible.
6. Make sure subcontractors know about the storm water requirements and their own responsibilities.
7. Minimize waste when ordering materials. Order only the amounts needed to complete the job.
8. Use recycled and recyclable materials whenever possible.

V. Parking Lot Vehicles

At no time shall the Tenant or their employees wash their vehicles in the North and East parking lots. At no time shall the Tenant service their vehicles by way of oil changes, engine work or any other means of dispensing pollutants on the surface ground.

VI. Spill & Trash Removal Program

Trash Removal:

Tenant must sweep their Premises and the adjacent Boardwalk and North Plaza adjacent the lifeguard tower daily and dispose of debris in trash receptacles provided in North and East parking lots.

Spill Removal:

1. For hazardous chemical and fluid spills such as oil, gas, dyes, etc. use kitty litter, sawdust or cornmeal to absorb product. Place in sealed container and take to the Miramar Landfill (hwy 52 & Convoy) -Hazard Material Section. If possible, call for an appointment at 858-694-7000.
2. For common spills such as soda, icee, ice cream, etc. mop up with mixture of water and a biodegradable detergent, (e.g., 'Simple Green') in a bucket and dispose in the maintenance office deep sink.
3. For vomit / excrement cleanup, use sawdust or kitty litter material and sweep. After sweep clean up, apply the anti-bacterial disinfectant, (e.g., 'Consume') in the area and clean up with bucket and water. Dispose water and product into the maintenance office deep sink.

XIII Staff Training

All Tenant employees will be trained by the Enforcement Official in the proper use of storm drains and the removal of standing water per the Best Management Practices. This training will be documented and copies placed in the employees' personnel files. Every employee will be given a copy of Belmont Park's Storm Water Pollution Prevention Program.

A handwritten signature in black ink, appearing to be 'J. Green', written over a horizontal line.

CITY OF SAN DIEGO

LESSEE'S AND SUBLESSEES QUESTIONNAIRE
FOR ALL LEASES, ASSIGNMENTS AND
SUBLEASES

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete): WAVE HOUSE BELMONT PARK, LLC (*this*

entity is under receivership and pending a trustee sale)

Exact name of proposed Lessee (complete only if applicable):

Exact name of existing Sublessee (complete only if applicable): WAVE HOUSE ATHLETIC CLUB,
LLC

Exact name of proposed Sublessee (complete only if applicable): BELMONT ATHLETICS LLC

Date this Questionnaire completed: OCTOBER 8, 2012

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: CHIEF FINANCIAL OFFICER

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE 1 700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub) Lessee exactly as it will appear on the actual tenancy document:

BELMONT ATHLETICS LLC

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

1253 GARNET AVENUE, SUITE A, SAN DIEGO, CA 92109

Telephone No.: 858-273-8440 Fax. No. 858-274-2803
E-mail Address: CWILLIAMS@EATDRINKANDSLEEP.NET

3. Billing Address (*only if different from Mailing Address*);

Telephone No.: _____ Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (); Corporation ();
Limited Liability Company (X); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable)

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization:
2. General Partnership ()
 Limited Partnership ()
 Other () Explain
3. Statement of Partnership recorded: Yes () No ()

Date	Book	Page	Count y
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4. Has the partnership conducted business in San Diego County?
 Yes () No () If so, when? _____
 If so, where? _____
5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

BELMONT ATHLETICS LLC

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sublessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in

BELMONT ATHLETICS LLC

the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: SEPTEMBER 5, 2012
2. Where Organized: DELAWARE
3. Is the Company authorized to do business in California?
 - a. Yes (X) No ()
 - b. If so, as of what date? SEPTEMBER 7, 2012
4. Has the Company conducted business in San Diego County?
 - a. Yes () No (X)
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %
MANAGER	MILLER PACIFIC BEACH ENTERPRISES INC.	1253 GARNET AVENUE, SUITE A, SAN DIEGO, CA 92109	0%
MEMBER	BRETT A. MILLER REVOCABLE TRUST	1253 GARNET AVENUE, SUITE A, SAN DIEGO, CA 92109	30%
MEMBER	SDLL VENTURES LLC	5505 CANCHA DE GOLF, RANCHO SANTA FE, CA 92091	70%

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (X)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (X)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

METHOD OF OPERATION

Athletics Membership

Our memberships are all-inclusive, providing access to our full lines of cardio, free weight and cable equipment, indoor heated pool (84") and our many group exercise and aquatic classes.

Club Features

- State of the Art Cardio Equipment
- Spacious Weight Room
- Olympic Sized Swimming Pool
- Personal Training
- Unlimited Group Fitness Classes and Aquatic Classes
- Regularly updated Healthy Living tips
- In house - Water Sports and Physical Therapy
- Video Surround System
- Outside Decked Work Out Area
- Personalized Working Tracking Software
- Social Activities and Events

Local Member Discounts

- 50% off Wave Riding on FlowRider and FlowBarrel at Wave House
- 20% off North Shore Café, Sound Wave, Wave House Bar & Grill, Patio Grill restaurants
- 20% off Swim School lessons at Wave House Athletic Club
- 25% off Birthday and Pool Parties at Wave House Athletic Club

Personal Training Consultation

New members receive an orientation program including three training sessions that focus on fitness assessments, goal setting, functional training and corrective exercises.

Classes

Belmont Athletic Club wants its members to value movement just as much as we do. We will create an exercise environment conducive to all fitness levels, abilities and desires. We'll offer a wide selection of class favorites including Body Sculpting, Mind/Body, Kickboxing, Zumba/Salsa and Core Classes. In addition, we'll offer an array of classes unique to the Wave House including Boards Sports Performance, TRX overlooking the ocean, Aqualogix, Kettle Bells and Rehab classes. Our enthusiastic and highly certified team of instructors creates an atmosphere that is motivating, educational and most importantly, fun. Instructors are there before and after classes to ensure their participants feel welcome and ready to move.

Fitness Classes

Abs of Steel
Head to Toe Definition
B.A.R.K.
Iyengar Yoga
B.A.R.K. Instruction
Kickboxing
Booty Bootcamp
Power Vinyasa Yoga
BOSU Bootcamp
Qi Gong
Circuit Boxing
Spin
DCT/E-Centric Stretch
Surfer's Flow Yoga

Easy Yoga
Train Like a Pro
Flirty Girl
TRX Intermediate
Flowboarding
TRX Intro
G.R.I.T.
Turbokick
Gentle Hatha Yoga
Vinyasa Yoga
H.A.B.I.T.
Yoga Strength, Rehab & Mobility
Hatha Fusion Yoga
Zumba

Aquatic Classes

Advanced Swim Training
Discover Scuba Diving
Aqua Zumba
Flowboarding
Aqualogix Fitness
H2O Bootcamp
Arthritis Foundation
Intro to Triathlon
Deep H2O Power
Open Water Polo
Deep H2O Sweat
Stroke Development
Deep Water Workout

Fitness for Life

The ability to move is an amazing gift that we have been given and it is too often overlooked. Whether you're taking a stroll with a friend, lifting a heavy box, putting your child into his or her car seat or training for an intense competition, we all, in some way or another, move our bodies all day long. What better way to train, than to train for life? Belmont Athletics trainers adhere to a holistic approach of athletic training in order to assist our clients in achieving and surpassing their goals. With an emphasis on functional training, we use balance/stability, core training, strength training and cardiovascular principles to challenge the body to move in ways that mimic movements of daily life. Further, we'll focus on creating a life of balance and enhancing the mind/body/spirit connection. The Belmont Athletics trainers recognize that we are all on our own personal journey and are both motivated and excited to be a part of yours.

Below are just a few of our many features and amenities to help you get in shape and keep you that way...

- State of the Art Cardio Equipment
- Spacious Weight Room
- Olympic Sized Swimming Pool
- Customizable Personal Training
- Saunas
- Unlimited Group Fitness Classes and Aquatic Classes
- Regularly updated Healthy Living tips and blog
- In house Physical Therapy
- Free Parking

Southern California's Largest Indoor Heated Pool

Play, workout and have fun at The Plunge. Built in 1925, The Plunge at Mission Beach has served as a historic aquatics and community center for many generations. It's believed that over a million San Diegan's have learned how to swim in this pool. Today The Plunge continues to be the centerpiece of Belmont Park, surrounded by restaurants, shops, our famous roller coaster, and Mission Beach, San Diego's #1 rated beach. The Plunge is now operated by the Belmont Athletic Club, an innovative provider of sports and fitness management services. We invite you and your family to join us for fitness, sports and fun here at The Plunge.

Our mission is to provide our swimmers with an aquatics facility that meets and exceeds the health, fitness, safety, educational and recreational needs of San Diego citizens

BELMONT ATHLETICS LLC

The Plunge gets to offer:

- Swim School "Learn to Swim Program"
- The Belmont Swim Team
- Adult Swim
- Water Fitness Classes
- Pool Birthday Parties
- Pool/Lane Rental
- Lifeguarding Training Courses
- Family Swim

Health and Safety Courses

- Lifeguard Course
- 2012 Lifeguard Review
- Title 22
- CPR - AED for Lifeguards
- Water Safety Instructor
- Babysitter Training
- Pet First Aid/CPR
- Heart Saver CPR/AED
- Heart Saver First Aid
- Basic Life Support

On-site and Group Training

On-site training is for corporations, unified school district staff, workplaces, community based organizations or social groups. We'll offer a large variety of classes including CPR, AED and First Aid for all ages and levels, child care provider classes and a Bloodborne Pathogens course.

Where: We offer private group trainings at your site or ours - whichever is most convenient for you.

When: We can schedule a class for whatever time you would like! Classes are typically scheduled 2-4 weeks in advance so please plan accordingly.

Who: The minimum class size is 6 and maximum class size is 10 per training.

Cost: Varies

Ages: All

Private Events

Offering fabulous party options, you are able to create the perfect celebration package for any occasion! Catch the perfect wave on our FlowRider and enjoy the largest indoor swimming pool in Southern California, The Plunge.

Belmont Athletics is happy to take care of all your party needs! Each party includes: Party Pan Pizza & Soda for children. party area with tablecloths, utensils & balloons. You bring the cake, invite your guests, and we'll handle the rest!

Party Packages at Belmont Athletics

- Splashin' Pool Party
- Ultimate Surf Party
- Flowrider Wave Party

**PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE**

Building 8 & 9 – “The Athletic Club and Plunge

Building Sq Ft: 36,900

Guest Spaces

Locker Room Remodel

All finishes in both the woman’s and men’s locker room need updating. Large format spa-style tiles, granite counters and new fixtures will improve the look and functionality. The locker’s chap veneers will be replaced with wood. Cleanable, anti-bacterial carpets installed. Light fixtures need updating.

Roof Top Workout Facility

A new bridge will be constructed from the existing gym deck over to the roof of building #3. In that location San Diego’s first outdoor, beachfront, group workout area will be developed. The Athletic Cub will be able to maximize revenues by offering a completely unique product. Decking and glass wind screen will be installed.

Replacement of Tile

This tile (non-historic) must be removed and replaced with a non-skid product.

Financing and Timeline for Improvements

The Plunge / Athletic Club

Financing: Landlord (Symphony Asset Pool XVI) will fund proposed improvements in cash.

Schedule: Improvements by the landlord will commence within 15 days of the Trustee Sale. See commencement dates below. It is anticipated that the improvements will coincide with the necessary structural repairs of the Plunge building...

By Landlord:

Guest Spaces

Locker Room Remodel

All finishes in both the woman’s and men’s locker room need updating. Large format spa-style tiles, granite counters and new fixtures will improve the look and functionality. The locker’s chap veneers will be replaced with wood. Cleanable, anti-bacterial carpets installed. Light fixtures need updating. (3/13)

Roof Top Workout Facility

A new bridge will be constructed from the existing gym deck over to the roof of building #3. In that location San Diego’s first outdoor, beachfront, group workout area will be developed. The Athletic Cub will be able to maximize revenues by offering a completely unique product. Decking and glass wind screen will be installed. (3/13)

Replacement of Hazardous Tile

The tile that surrounds the Plunge is hazardous when wet. Especially for the older members. This tile (non-historic) must be removed and replace by a non-skid product. (3/13)

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	2013	2014	2015	2016	2017
1	\$1,735,000	\$2,035,000	\$2,211,825	\$2,256,062	\$2,278,622
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

Brett Miller is one of the beach area's most successful business developers and restaurant entrepreneurs. Proprietor and Chief Executive of Eat Drink and Sleep, with corporate offices on Garnet Avenue in Pacific Beach, he has served on the Pacific Beach Planning Committee and the Discover Pacific Beach Board of Directors, and is a dedicated contributor to the beach area's gentrification and growth. Brett is also active in the greater community as a member of the California Restaurant Association's San Diego Board of Directors and served on the San Diego Historical Society's Board of Directors.

Originally from Washington State, Brett grew up in California and began working at the age of 13. Bright and self-directed, he inherited leadership skills from his father and entered management by age 16. He exhibited a natural talent for commerce and opened his own business while still in high school. Attending San Diego State University, Brett got his real estate license at age 20 and started his first corporation at the age of 22.

Brett's initial restaurant venture was acquisition of a neighborhood bar called Moondoggies on Everts Street in 1990. Foming Moondoggies, Inc., he opened Moondoggies La Jolla on Prospect Street in 1992, and successfully followed that with Moondoggies Pacific Beach on Garnet Avenue in 1995. Brett then developed plans for a striking transformation of the 6,000 historic Old Ox restaurant site at Mission Blvd. and Garnet Avenue into a contemporary, upscale Mexican restaurant. He opened Gringo's Cocina y Cantina to rave reviews in July 2001.

The culmination of Brett's vision for a groundbreaking hotel on the boardwalk next to the historic Crystal Pier soon followed. Taking Southern California by storm, the cutting edge, three story, 45,000 square foot Tower23 Hotel opened to national acclaim in July 2005. The eight-year, joint venture development project with Pacific Beach landowners Vern and Mary Taylor quickly achieved both national and international recognition.

Appearing in such prestigious media as the *New York Times* Travel section, the *Sunday London Times*, *National Geographic Traveler* and cited among *Conde Nast Travelers* Best Hotels of 2006, the neo-modernistic glass hotel designed by San Diego architect Graham Downes has been viewed worldwide in travel videos from Spain, to Brazil, to Australia. Aptly named for Lifeguard Tower 23 on its beachfront, Tower23 Hotel features 44 ocean view and designer Spa and Terrace Cabana Suites, a private second story Tower Deck exclusively for guests, and luxury en suite spa services. In addition, Tower23's entire ground floor is dedicated to state of the art ocean view dining for San Diegans and tourists alike with its upscale 10,000 square foot steak and seafood restaurant, JRDN. As one of the city's liveliest and most popular venues for breakfast, lunch and dinner daily, the award-winning JRDN boasts unique indoor and outdoor dining, the Tower Lounge, Ei8ht Sushi Bar, and a private Wine Room and Sunset Patio with fire ring, water sculpture, special event and meeting facilities, all overlooking the majestic Pacific Ocean.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

BELMONT AHLETICS LLC

LIMITED LIABILITY COMPANY AGREEMENT

THE OFFER AND SALE OF MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY APPLICABLE STATE SECURITIES LAWS. MEMBERSHIP INTERESTS MAY NOT BE TRANSFERRED UNLESS (A) COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTERED OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS, OR (B) EXEMPTIONS FROM SUCH REGISTRATION OR QUALIFICATION REQUIREMENTS ARE AVAILABLE. AS A CONDITION TO PERMITTING ANY TRANSFER OF MEMBERSHIP INTERESTS, THE COMPANY MAY REQUIRE THAT IT BE FURNISHED WITH AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY TO THE EFFECT THAT NO REGISTRATION OR QUALIFICATION IS LEGALLY REQUIRED FOR SUCH TRANSFER.

BELMONT ATHLETICS LLC
LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement ("Agreement") is entered into effective as of September 10, 2012 (the "Effective Date"), by Brett A. Miller Revocable Trust ("Miller"), and SDLL Ventures LLC, a Delaware limited liability company ("SDLL").

1. **COMPANY FORMATION AND IDENTIFICATION.**

1.1 **Name.** The name of the limited liability company ("LLC") governed by this Agreement (the "Company") is Belmont Athletics LLC.

1.2 **Formation.** A Certificate of Formation for the Company was filed with the Delaware Secretary of State on September 5, 2012.

1.3 **Principal Executive Office.** The principal executive office of the Company shall be at 1253 Garnet Ave., Suite A, San Diego, California 92109, until changed by the Manager.

2. **DEFINITIONS.**

The following terms used in this Agreement shall have the following meanings, unless expressly provided otherwise:

2.1 **"Agents"**: means (i) as to a corporation, its officers and directors, (ii) as to a partnership, its general partners, (iii) as to a limited liability company, its managers and officers, and (iv) as to any Person, its attorneys and other authorized agents.

2.2 **"Affiliate"** means any Person directly or indirectly controlling, controlled by or under common control with another Person.

2.3 **"Allocations"** means a Person's share of the Net Income, Net Loss, and separately stated items of income, deduction or tax credits, for income tax purposes, of the Company.

2.4 **"Bankruptcy"** means, with respect to any Person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

2.5 **"Budget"** means the initial budget included in the Business Plan, and such updates or revised budgets as may be approved by SDLL pursuant to this Agreement.

2.6 **"Business Plan"** means the business plan for the Business attached to this Agreement as Addendum 1. The Business Plan includes an initial Budget and financial projections.

2.7 **"Capital Proceeds"** means all proceeds from a Capital Transaction less the amount of such proceeds (i) used to pay debts, liabilities and obligations of the Company related to the Capital Transaction, if any, and (ii) set aside as reserves to pay other debts, liabilities and obligations of the Company.

2.8 **"Capital Transaction"** means any sale or other disposition of all or substantially all of the assets of the Business and any recovery of damage awards, condemnation awards (or payments received as a result of a transfer under threat of or in lieu of condemnation) and/or insurance proceeds pertaining to

demolition, destruction and/or condemnation by any governmental body of all or substantially all of the assets of the Business.

2.9 **"Cash Flow From Operations"** means all funds received by or on behalf of the Company (other than Capital Proceeds or Refinancing Proceeds), less the amount of such funds used to pay, or set aside as reserves to pay, all expenses and expenditures of the Company (other than non-cash expenses such as depreciation and amortization), including without limitation debt service payments (including interest and principal) and operating expenses.

2.10 **"Change in Control"** means, with respect to a Person:

(a) the cumulative sale or other transfer, directly or indirectly, in one or more transactions, of (i) all or substantially all of the assets of such Person, (ii) 50% or more of the issued and outstanding capital stock, or partnership, membership or other ownership interests, of such Person, or (iii) 50% or more of the voting power of such Person;

(b) a merger or other consolidation of such Person with or into another entity which results in a change of 50% or more of the ownership or voting power of such Person; or

(c) any other transaction or series of transactions which results in a change of 50% or more of the ownership or voting power of such Person.

2.11 **"Distribution"** means the transfer of money or property by the Company to its Members without consideration.

2.12 **"Economic Interest"** means a Person's right to share in the Allocations of, and to receive Distributions from, the Company, but does not include any other rights of a Member, including the right to vote or to participate in management or any right to information concerning the business and affairs of the Company.

2.13 **"IRC"** means the Internal Revenue Code of 1986, as amended.

2.14 **"LLC Act"** means the Limited Liability Company Act, Title 6, Article 18, Sections 18-101 et seq., of the Delaware Code.

2.15 **"Manager"** means a Person elected by the Members to manage the Company in accordance with the LLC Act.

2.16 **"Member"** means a Person who has (i) been admitted to the Company as a member in accordance with the LLC Act and this Agreement, or an assignee of a Membership Interest in the Company who has become a member pursuant to this Agreement; and (ii) not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

2.17 **"Membership Interest"** means a Member's rights in and obligations to the Company, including the Member's Economic Interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the LLC Act or this Agreement.

2.18 **"Officer"** means a Person elected or appointed as an officer of the Company pursuant to Section 18-407 of the LLC Act.

2.19 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity.

2.20 "Preferred Return" means a return accruing at the annual rate of 10% on a Member's Unreturned Capital outstanding from time to time.

2.21 "Profits Percentage" means, initially, with respect to each Member, as provided in Paragraph 4.1 below. Profits Percentages shall be adjusted upon the transfer, issuance or redemption of a Membership Interest or as otherwise provided in this Agreement or by operation of law.

2.22 "Refinancing Proceeds" means all proceeds from refinancing or restructuring of debt of the Company, less the amount of such proceeds (i) used to pay the debt being refinanced or restructured and related expenses, and (ii) set aside as reserves to pay debts, liabilities and obligations of the Company.

2.23 "Unreturned Capital" means an amount equal to the capital contributions made by a Member, less the cumulative amount of all distributions made to such Member under Paragraph 5.2.1 (as to SDLL) or Paragraph 5.2.2 (as to Miller) below, as applicable.

3. PURPOSE AND POWERS.

3.1 Purpose. The purpose of the Company is to lease, manage and operate the property (currently) commonly known as the Wave House Athletic Club and The Plunge and related improvements and personal property, located at Belmont Park, in San Diego, California, in the premises located at 3115 and 3119 Ocean Front Walk, aka Buildings 8 and 9 (collectively, the "Property"), and to carry on such related activities as may be necessary or incidental to such purpose (collectively, the "Business"). The Company is authorized to take such action as may be necessary or appropriate to acquire the Property and to otherwise proceed with the renovation project set forth in the Business Plan (the "Project").

3.2 Powers. The Company shall have the power and authority to engage in all activities which an LLC may legally engage in under applicable law, including the powers described in Section 18-106 of the LLC Act.

4. CAPITALIZATION.

4.1 Initial Capital Contributions.

4.1.1 Sponsor Initial Capital Contribution. Miller shall contribute to the Company the sum of \$5,000, payable in cash on or before the Effective Date. In exchange for such contribution, Miller shall be admitted as a Member and shall receive a 30% Profits Percentage.

4.1.2 Investor Initial Capital Contribution. SDLL shall contribute to the Company the sum of \$95,000, payable in cash on or before the Effective Date. In exchange for such contribution, SDLL shall be admitted as a Member and shall receive a 70% Profits Percentage.

4.2 Additional Capital Contributions.

4.2.1 Capital Call. If the Manager determines that the Company needs additional capital, the Manager may call for additional capital contributions from the Members (a "Capital Call"). In that event, the Members shall be obligated to contribute additional capital to the Company (each, an "Additional Capital Contribution") in the following percentages (the "Capital Call Percentages"):

SDLL	95%
Miller	5%

Notwithstanding the foregoing, the cumulative total of required Additional Capital Contributions shall not exceed \$100,000 without the approval of all Members. Additional Capital Contributions shall be payable within 15 days after written notice to the Members.

4.2.2 Default Preferred Return. If Additional Capital Contributions are made other than pro rata based on Capital Call Percentages, then each Member making an Additional Capital Contribution (a "Contributing Member") shall be entitled to receive an additional preferred return (the "Default Preferred Return") on such Member's unreturned Additional Capital Contributions outstanding from time to time, accruing at the annual rate of 10% (i.e., such Additional Capital Contributions will, in effect, bear a total preferred return of 20%, consisting of the (regular) Preferred Return and the Default Preferred Return. For purposes of determining a Member's unreturned Additional Capital Contributions, distributions to such Member under Paragraph 5.2.1 (as to Symphony) or Paragraph 5.2.2 (as to Miller) below shall be applied first to return outstanding Additional Capital Contributions.

4.3 Loans. The Company shall not borrow money or incur any indebtedness for monies borrowed, whether from a Member or otherwise, without the prior written approval of SDLL. The amount of any loan from a Member shall not increase the capital account or Profits Percentage of the lending Member; the amount of any such loan shall be a debt due from the Company to such lending Member, repayable on the terms agreed on by the lending Member and the Company and approved by SDLL. No Member shall be obligated to make any loans to the Company.

5. DISTRIBUTIONS.

5.1 Cash Flow from Operations. Cash Flow From Operations shall be distributed from time to time as follows:

5.1.1 SDLL Preferred Return. First, to SDLL until it receives distributions under this subparagraph equal to the then accrued and undistributed Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital.

5.1.2 Miller Preferred Return. Second, to Miller until it receives distributions under this subparagraph equal to the then accrued and undistributed Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital.

5.1.3 Profits Percentages. Third, to both Members pro rata based on their respective Profits Percentages.

5.2 Capital and Refinancing Proceeds. Capital Proceeds and Refinancing Proceeds shall be distributed from time to time:

5.2.1 SDLL Unreturned Capital. First, to SDLL until it receives distributions under this subparagraph equal to its Unreturned Capital.

5.2.2 Miller Unreturned Capital. Second, to Miller until it receives distributions under this subparagraph equal to its Unreturned Capital.

5.2.3 SDLL Preferred Return. Third, to SDLL until it receives distributions under this subparagraph equal to the then accrued and undistributed Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital.

5.2.4 Miller Preferred Return. Fourth, to Miller until it receives distributions under this subparagraph equal to the then accrued and undistributed Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital.

5.2.5 Profits Percentages. Fifth, to both Members pro rata based on their respective Profits Percentages.

5.3 Authority. Subject to the limitations in this Agreement, the Manager shall from time to time determine the amount and timing of all Distributions.

5.4 Limitations on Distributions. No Distributions shall be made in contravention of Section 18-607 of the LLC Act. No Member shall be entitled to receive Distributions from the Company other than as provided in this Agreement.

6. ALLOCATIONS.

6.1 Allocation of Net Income, Gain and Net Loss. Net Income, Gain and Net Loss shall be allocated as set forth below.

6.1.1 Net Income and Gain shall be allocated as follows:

(a) First, in reverse order of the Net Loss allocated pursuant to Subparagraph 6.1.2 below, up to the amount of cumulative Net Loss so allocated, less any amount of Net Income or Gain previously allocated pursuant to this item (i).

(b) Next, to SDLL until it has received Allocations of Net Income and Gains under this item (iii) equal to the then accrued Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital, less any amount of Net Income or Gains previously allocated pursuant to this item (iii).

(c) Next, to Miller until it has received Allocations of Net Income and Gains under this item (iv) equal to the then accrued Preferred Return (and any Default Preferred Return, if applicable) on its Unreturned Capital, less any amount of Net Income or Gains previously allocated pursuant to this item (iv).

(d) Next, to the Members pro rata based on their respective Profits Percentages.

6.1.2 Net Loss. Net Loss shall be allocated as follows:

(a) First, in reverse order of the Net Income and Gain allocated pursuant to Subparagraph 6.1.1 above, up to the amount of cumulative Net Income and Gain so allocated, less any amount of Net Loss previously allocated pursuant to this item (i).

(b) Next, to the Members pro rata based on the amount of the then outstanding and unreturned Additional Capital Contributions made by each Member, until they have received Allocations of Net Losses pursuant to this item (ii) equal to their unreturned Additional Capital Contributions, less any Net Losses previously allocated pursuant this item (ii).

(c) Next, to SDLL until it has received cumulative Allocations of Net Losses pursuant to this item (iii) equal to its Unreturned Capital, less any Net Losses previously allocated pursuant this item (iii).

(d) Thereafter, to the Members pro rata based on their respective Profits Percentages.

6.2 Net Income, Gain and Net Loss. The Net Income, Gain and Net Loss of the Company shall be computed at the end of each fiscal year in accordance with federal income tax principles, consistently applied, and shall be allocated among and credited to or debited against the capital accounts of the Members. The terms Net Income, Gain and Net Loss shall refer to and be defined as those terms are used and defined for federal income tax purposes.

6.3 Pre-Contribution Gain. Items of income, gain, loss and deduction with respect to property contributed by a Member to the Company shall be allocated to the Members so as to take account of the variation between the basis of the property to the Company and its fair market value at the time of contribution, in accordance with IRC Section 704(c) and Treasury Regulations promulgated thereunder.

6.4 Allocation Overrides.

6.4.1 Limitation on Losses. No loss or deduction shall be allocated to any Member if, or to the extent, such allocation would create or increase a deficit in such Member's capital account (adjusted as required by applicable Treasury Regulations) as of the end of the taxable year to which such allocation relates, unless such allocation of loss or deduction is attributable to nonrecourse debt of the Company and otherwise satisfies the requirements of applicable Treasury Regulations.

6.4.2 Qualified Income Offset. If a Member unexpectedly receives any Allocations, Distributions or adjustments, as described in applicable Treasury Regulations, which result in a deficit balance in such Member's capital account, Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate, as quickly as possible, such deficit created by such Allocations, Distributions or adjustments.

6.4.3 Reversal of Allocation Overrides. If any Allocations of Net Income or Net Loss are made to Members under the allocation overrides set forth above, Net Income and Net Loss shall subsequently be allocated in a manner which most quickly results in the Allocations made under this subparagraph offsetting the effect of the prior allocation overrides, such that the Members' capital accounts are returned to the balances which would have existed absent the allocation overrides; provided, however, Allocations under this subparagraph shall also be subject to the allocation overrides set forth above.

6.5 Adjustments. The Tax Matters Member may make reasonable adjustments to the Allocations set forth in this Section 6, based on the advice of the Company's accountant, to fairly allocate such items to the Members in accordance with their Membership Interests.

6.6 Savings Clause. The Allocations set forth in this Section 6 are intended to be consistent with the interests of the Members in the Company and to comply with the requirements of IRC Section 704(b). If such Allocations do not accomplish that objective, they shall be modified to the extent reasonably necessary to accomplish that objective.

7. CAPITAL ACCOUNTS.

7.1 Capital Account Maintenance. An individual capital account shall be maintained for each Member, in accordance with applicable Treasury Regulations. Subject to such requirement, each Member's capital account shall consist of such Member's initial capital contribution (i) increased by any additional capital contributions (valued at fair market value) and such Member's share of Net Income and Gain; and (ii) decreased by any Distributions and its share of Net Loss.

7.2 Book-up on Revaluation of Company Property. The Members' individual capital accounts may be increased or decreased to reflect the revaluation of Company property on the Company's books upon the occurrence of those events described in applicable Treasury Regulations. This adjustment shall be made in the manner described in applicable Treasury Regulations.

7.3 Distribution of Property and Constructive Termination. If Company property other than cash is distributed to a Member in liquidation of the Company, capital accounts shall be adjusted for the hypothetical gain or loss that would have been realized by the Company if such property had been sold for cash, to reflect unrealized gain or loss. Capital accounts may also be adjusted upon the constructive termination of the Company as provided in IRC Section 708, as required by applicable Treasury Regulations.

7.4 Target Capital Accounts. The Allocation provisions of this Agreement are intended to produce final capital account balances ("Target Capital Accounts") that reflect the distribution provisions set forth in Section 5. To the extent the Allocation provisions of this Agreement would not produce such Target Capital Accounts, then Net Income, Net Loss and separately stated items of income, gain, deduction, tax credit and similar items shall be allocated in a manner that produces such Target Capital Accounts, and, if necessary, prior tax returns shall be amended to reallocate such items to produce such Target Capital Accounts.

8. OTHER FINANCIAL MATTERS.

8.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

8.2 Accounting Method. The Company's books shall be kept on an accrual basis in accordance with generally accepted accounting principles consistently applied.

8.3 Books and Records. Each Member shall have the right at any time to inspect and copy all books and records of the Company.

8.4 Bank Accounts. The Company shall maintain a checking account in the name of the Company at a bank or other financial institution (and with signatories) approved by the Manager. All funds of the Company shall be maintained in such account(s).

8.5 Organization Expenses. The Company shall pay or reimburse the Members for all organizational expenses of the Company, including legal fees and costs incurred in connection with formation of the Company and preparation of this Agreement.

8.6 Tax Information. Within 60 days after the end of each fiscal year, the Company shall cause to be prepared and sent to each Member or assignee such tax information and statements as shall be necessary for the preparation of each Member's federal and state income tax returns.

8.7 Tax Matters Partner. SDLL shall be the "Tax Matters Partner" for purposes of IRC Sections 6221-6232 (the "TMP"). The TMP shall have the right to exercise the powers and assume the responsibilities set forth in the applicable provisions of the IRC and related regulations.

8.8 Tax Elections. The Company shall have the right, as determined by the TMP, to make any other elections or determinations required or permitted for federal or state income tax or other tax purposes.

9. MANAGEMENT.

9.1 Manager.

9.1.1 General: Authority. The Company shall have one Manager. The Initial Manager shall be Miller Pacific Beach Enterprises, Inc., a California corporation doing business as Eat.Drink.Sleep ("MPBE"). The business and affairs of the Company shall be managed by or under the authority of the Manager. Subject to the limitations and restrictions set forth in Subparagraph 9.1.45 below, the Manager shall have full power and authority to act on behalf of the Company, including the power and authority to enter into agreements, to make expenditures and to incur obligations, all as provided in the Business Plan and any approved Budget.

9.1.2 Duties and Responsibilities. The Manager shall be responsible for and shall:

- (a) Manage and supervise the Business, including the Property renovations;
- (b) Manage all employees of the Business, which employees will be employed by the Company;
- (c) Prepare and process applications for and obtain all licenses, building permits and other governmental and regulatory approvals or consents required in connection with the Business;
- (d) Use its best efforts to operate the Business in accordance with the Business Plan, including the then approved Budget;
- (e) Prepare and submit to SDLL for its approval any proposed changes to the Budget, as needed (but no less frequently than quarterly) to keep the Budget current. If SDLL fails to approve or disapprove any proposed change to the Budget within 21 days after written notice (properly delivered) from the Manager, such change shall be deemed approved;
- (f) Supervise all Company bookkeeping, accounting and tax return preparation, and coordinate the services of accountants, attorneys and other consultants;
- (g) Establish and maintain a single bank account for all Company matters, and deliver to SDLL copies of all monthly statements and deposits to, and checks drawn on, such account;
- (h) Prepare and deliver to SDLL a list of all vendors and service providers used for the Business, and update such list at least semi-annually;
- (i) Prepare and deliver to SDLL, within 15 days after the end of each calendar month, a monthly status report, which shall include a narrative describing financial matters

(including monthly and year-to-date income statement, balance sheet and cash flow statement, budget reports (including identification of variances), average occupancy and room rates, marketing plans and such other management information as is within its reasonable control and requested by SDLL;

(j) Meet with SDLL at least once each calendar month, within 15 days after the end of each calendar month and at such time as may be requested by SDLL with at least three business days' advance notice, with both the project superintendent and at least one senior executive of Manager actively involved with the Project being present; and

(k) Notify SDLL of any lawsuit filed against the Company, in each case within ten business days after notice thereof.

9.1.3 Compensation.

(a) The Company shall pay compensation to the Manager, in a total amount equal to the lesser of 5% of gross revenues of the Business or the Adjusted Net Income (as defined below) of the Business (the "Management Fee"), commencing on acquisition of the Business by the Company and payable monthly within 15 days after end of each calendar month based on the cumulative gross revenues and cumulative Adjusted Net Income of the Business during the preceding twelve calendar months, less the Management Fees already paid for such preceding twelve calendar months; for clarity, the intended effect of the foregoing is to enable the Manager to carry forward any shortfall between the 5% of gross revenues of the Business and the Adjusted Net Income of the Business to be paid to the extent future Adjusted Net Income exceeds 5% of gross revenues of the Business, but only up to a maximum of twelve months. "Adjusted Net Income" means net income as determined on an accrual basis in accordance with Generally Accepted Accounting Principles consistently applied, less a hypothetical deduction for depreciation of tenant improvements and personal property provided by the lessor of the Property.

(b) The Management Fee includes compensation for all administrative, executive, office and overhead expenses of the Manager. No additional amounts shall be charged by the Manager for such expenses, including accounting and bookkeeping services, information technology (IT) services, marketing or branding services, executive or management personnel or expenses of the Manager's main office. Contracted services provided by third parties, including advertising, public relations, designers, professional fees and tax preparation will be billed as an operating expense.

(c) The Company and the Manager will enter into a management agreement approved by both Members that will incorporate the terms of this Paragraph 9.1.3 ("Management Agreement").

9.1.4 Expenses. The Manager shall be reimbursed by the Company for direct expenses advanced or incurred on behalf of the Company, subject to appropriate documentation and such policies as may be approved by the Members.

9.1.5 Limitations on Manager's Authority. Without obtaining the prior written approval of SDLL, the Manager shall not, and shall have no authority to, take any of the following actions on behalf of the Company or otherwise cause or permit the Company to do any of the following:

(a) deviate from the Business Plan or the then approved Budget in any manner which would involve or result in (i) any material change in the Business, or (ii) an increase in Project costs of more than the lesser of \$5,000 or 20% on a line item basis;

- (b) sell, exchange or transfer Company property other than in the ordinary course of the Business;
- (c) encumber any Company property;
- (d) modify or terminate the lease for the Property;
- (e) enter into or modify any other agreement or transaction with Miller, the Manager or any Affiliate of either Miller or the Manager;
- (f) obtain any loan or otherwise incur indebtedness for monies borrowed;
- (g) make any Distributions of assets other than cash;
- (h) make any Distributions other than in accordance with Section 5 above;
- (i) use Company assets for other than a Company purpose;
- (j) guaranty any indebtedness of any Person;
- (k) acquire any real property;
- (l) do any act that would make it impossible or not reasonably practical to carry on the ordinary business of the Company;
- (m) confess a judgment against the Company or stipulate to the entry of any judgment or arbitration award of more than \$5,000;
- (n) admit any Member to the Company; or
- (o) do any act in contravention of this Agreement or any amendment.

9.1.6 No Exclusive Duty. The Manager shall not be required to devote all or substantially all of its time or efforts to the management of the Company. Except as provided in Paragraph 11.2 below, (i) there is no limitation on the outside interests or activities of the Manager, (ii) the Manager may have other business interests and may engage in other activities, whether or not such activities or interests are competitive with the Company, without any obligation to offer any interest in such interests or activities to the Company or any Member, and (iii) neither the Company nor any Member shall have any right to share or participate in any other business interests or activities of the Manager and each Member waives and releases any right to share or participate in any such interests or activities.

9.2 Removal and Replacement of Manager.

9.2.1 Removal of Manager. The Manager may be removed by SDLL (and the Management Agreement terminated without liability by the Company), effective on written notice from SDLL, only upon the occurrence of any of the following events:

- (a) the Company defaults under the lease of the Property, and such default is not cured before expiration of any cure period;

(b) Miller fails to make an additional capital contribution when and in the amount required under this Agreement and such failure is not cured within ten business days after written notice from SDLL;

(c) Miller, the Manager or any Affiliate of either commits a material act of dishonesty with respect to the Company (including embezzlement, misuse or misappropriation of funds, or receipt of rebates or kickbacks from consultants, contractors, subcontractors, suppliers or others);

(d) the Manager fails to perform its duties and responsibilities set forth in Subparagraph 9.1.2 above and, as to the first three such failures, such failure is not cured within ten business days after written notice from SDLL;

(e) the Manager breaches its obligations under the Management Agreement and, as to the first three such failures, such failure is not cured within ten business days after written notice from SDLL;

(f) the Manager acts in contravention of the limitations and restrictions set forth in Subparagraph 9.1.45 above;

(g) Miller or the Manager otherwise breaches its obligations under this Agreement, and such failure is not cured within ten business days after written notice from SDLL;

(h) Miller transfers all or any portion of its Membership Interest in contravention of Section 13 below;

(i) a Change in Control occurs with respect to Miller or the Manager;

(j) the dissolution of Miller or the Manager;

(k) Miller or the Manager makes an assignment for the benefit of creditors or becomes the subject of an order for relief under the United States Bankruptcy Code or any comparable order under any state insolvency laws; or

(l) entry of an order appointing a receiver, custodian, trustee or similar official for Miller or the Manager or for any substantial part of the assets or property of any of them, or ordering the winding up or liquidation of the affairs of Miller or the Manager, and such decree or order remains in effect for a period of 60 days.

9.2.2 Replacement of Manager. If at any time a Manager is removed, resigns or otherwise cease to be the Manager for any reason, a new Manager may be appointed by SDLL. Such appointment shall be effective on execution of a written instrument by SDLL designating the successor Manager.

9.3 Members.

9.3.1 Member's Authority. No Member shall, acting solely in the capacity of a Member, be an agent of the Company, nor have any authority to bind or act for, or execute any instrument on behalf of, the Company.

9.3.2 Arrangements with Members. A Member may transact business with the Company and, subject to other applicable law, has the same rights and obligations with respect thereto as

a Person who is not a Member; however, any arrangements between the Company and Miller or any affiliates of Miller shall be approved in writing by SDLL and, in any event, the terms of any such arrangements shall be no less favorable to the Company as are available from unaffiliated Persons.

10. MEETINGS AND VOTING OF MEMBERS.

10.1 Voting Rights. Members shall have the right to vote on only those matters required by law or as provided in this Agreement. On any matter on which a vote of the Members is required by law or this Agreement, Members shall vote in accordance with their Profits Percentages. Except as otherwise provided by law or in this Agreement, whenever the approval of the Members is required, such approval shall be by the vote of Members holding a majority of the Profits Percentages.

10.2 Rules and Procedures for Meetings and Voting. The rules and procedures for meetings and voting of Members shall be as set forth in attached Addendum 2.

11. OUTSIDE INTERESTS.

11.1 General. Except as provided in Paragraph 11.2 below, (i) there is no limitation on the outside interests or activities of any Member, (ii) any Member may have other business interests and may engage in other activities, whether or not such interests or activities are competitive with the Company, without any obligation to offer any participation in such interests or activities to the Company or any Member, and (iii) neither the Company nor any Member shall have any right to share or participate in any other business interests or activities of any Member or its affiliates, and each Member hereby waives and releases any right to participate in any such interests or activities.

11.2 No Direct Competition by Miller. Neither Miller nor any Affiliate of Miller shall, directly or indirectly, sponsor, manage or own any interest in any athletic club within a radius of one mile of the Property.

11.3 Outside Activities. Each Member shall indemnify, defend, protect and hold the Company and the other Members harmless from and against all claims, losses and liabilities, including attorneys' fees and costs, incurred as a result of any activity or liability of such Member not associated with and outside the scope of the business and purpose of the Company.

12. LIABILITY AND INDEMNITY.

12.1 Liability of Members. Except as provided in Section 18-607 of the LLC Act, no Member shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability, of the Company, whether that debt, liability or obligation arises in contract, tort or otherwise, solely by reason of being a Member of the Company.

12.2 Liability of Managers. No Person who is a Manager shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the Company, whether that debt, liability or obligation arises in contract, tort or otherwise, solely by reason of being a Manager of the Company.

12.3 Indemnity of Members. Except as provided in Paragraph 12.5 below, the Company shall indemnify, defend, protect and hold each Member (and its Affiliates and their respective Agents) harmless from and against all claims, losses and liabilities, including attorneys' fees and costs, incurred or sustained in connection with Company matters, unless such claims, losses or liabilities arise out of bad

faith or willful misconduct by the Member. This paragraph shall not apply to a claim asserted against a Member in its capacity as a Manager.

12.4 Tax Matters Partner. The Company shall indemnify, defend, protect and hold the Tax Matters Partner harmless from and against all claims, losses and liabilities, including attorneys, accountants and expert fees and costs, incurred or sustained in acting as the Tax Matters Partner during or after expiration of the term of the Company.

12.5 Indemnity of Managers.

12.5.1 In any threatened, pending or completed action or proceeding, other than an action by a Member or by or in the right of the Company, to which a Manager was or is a party or is threatened to be made a party by reason of the fact that such Person is or was a Manager of the Company, the Company shall indemnify, defend, protect and hold the Manager harmless from and against all claims, losses and liabilities, including attorneys' fees and costs and amounts paid in settlement, incurred in connection with Company matters.

12.5.2 In any threatened, pending or completed action or proceeding, by a Member or by or in the right of the Company, to which a Manager was or is a party or is threatened to be made a party by reason of the fact that such Person is or was a Manager of the Company, the Company may (as approved by the Members) indemnify, defend, protect and hold the Manager or Officer harmless from and against all claims, losses and liabilities, including attorneys' fees and costs and amounts paid in settlement, provided the Manager acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company, and provided that such Person's conduct has not been determined by a court to constitute gross negligence, bad faith or willful misconduct, or a breach of such Person's fiduciary obligations to the Company or its Members.

12.5.3 To the extent a Manager has been successful on the merits or otherwise in defense of any claim, action or proceeding referred to in Subparagraph 12.5.2 above, the Company shall indemnify the Manager in connection therewith.

13. TRANSFER OF INTERESTS.

13.1 Approval Required. Except as otherwise provided in this Agreement, no Member shall transfer such Member's Membership Interest without the approval of the other Member, and no purported transfer, whether voluntary, involuntary or by operation of law, shall be effective without such approval. Such approval may be given or withheld in the sole discretion of the other Member. The other Member may require satisfaction of such conditions and may require such undertakings as the other Member deems necessary or appropriate in connection with any proposed transfer of a Membership Interest.

13.2 Excluded Transfer. Paragraph 13.1 shall not apply to a transfer of a Membership Interest to an Affiliate of such Member (an "Excluded Transfer").

13.3 Status of Transferee. Except for transferees receiving their Membership Interest pursuant to a transfer approved by the other Member or an Excluded Transfer, the transferee of a Membership Interest shall be an assignee of an Economic Interest only (entitled to receive, in accordance with the terms of the transfer, the Distributions and Allocations the transferring Member otherwise would have received, and without any right to vote or to participate in management or any right to information concerning the business and affairs of the Company).

14. RIGHT OF FIRST REFUSAL.

14.1 Excluded Transfers. The provisions of this Section 14 shall not apply to an Excluded Transfer.

14.2 Notice and First Right. If a Member (the "Transferring Member") desires to sell, exchange, encumber or otherwise transfer (a "Transfer") any or all of such Member's Membership Interest, or any right or interest therein (the "Transferring Interest"), such Member shall first provide written notice ("Notice of Transfer") to the other Member. Such Notice of Transfer must identify the proposed transferee, the Transferring Interest and all of the terms of the Transfer, including (as applicable) the consideration for the Transfer and the terms of payment, and be accompanied by a copy of all written agreements between the Transferring Member and any proposed transferee and other documents relating to the proposed Transfer. The other Member shall then have the exclusive right, for a period of 30 days after receipt of the Notice of Transfer, to acquire the Transferring Interest on the same terms and conditions as set forth in the Notice of Transfer, exercised by delivering written notice of exercise to the Transferring Member within such 30-day period. If the other Member exercises such option, then such Member shall then be obligated to acquire, and the Transferring Member shall be obligated to transfer, the Transferring Interest on the same terms and conditions as provided in the Notice of Transfer.

14.2.1 Non-Exercise of Rights of Refusal. The Transferring Interest specified in a Notice of Transfer and not purchased by the other Member may be sold or transferred at any time within 90 days from the date of such notice, to the transferee named and on the terms and conditions specified in the Notice of Transfer, provided the transferee executes a written instrument agreeing to be bound by the terms of this Agreement, in a form acceptable to Company (however, such transferee shall in any event be bound by the terms of this Agreement). If a Transferring Interest specified in a Notice of Transfer and not purchased by the other Member is not transferred pursuant to the Notice of Transfer within such 90-day period, or the terms and conditions of such transfer are altered from those set forth in the Notice of Transfer, then the Transferring Member may not consummate a Transfer without first re-offering the Transferring Interest in the manner set forth above.

15. WITHDRAWAL AND OTHER DISSOCIATION.

15.1 Withdrawal or Resignation. No Member may withdraw as a Member of the Company. Upon any attempted or purported withdrawal, or on any resignation, (i) the Company shall not be dissolved, (ii) the affected Member shall not be entitled to receive any Distributions other than as provided in this Agreement, and (iii) the affected Member's Membership Interest shall be automatically converted to an Economic Interest, with the affected Member thereafter treated as the holder of an Economic Interest only (entitled to receive the Distributions and Allocations the affected Member otherwise would have received, but without any right to vote or to participate in management or any right to information concerning the business and affairs of the Company).

15.2 Dissolution. If a Member is dissolved or terminated, the affected Member's Membership Interest shall be automatically converted to an Economic Interest, and the legal representative or successors and assigns of such Member shall be treated as the holder(s) of an Economic Interest only (entitled to receive the Distributions and Allocations the affected Member otherwise would have received, but without any right to vote or to participate in management or any right to information concerning the business and affairs of the Company).

15.3 Bankruptcy. In the event of a bankruptcy of a Member, the affected Member's Membership Interest shall be automatically converted to an Economic Interest, and the bankruptcy estate

of such Member shall be treated as the holder(s) of an Economic Interest only (entitled to receive the Distributions and Allocations the affected Member otherwise would have received, but without any right to vote or to participate in management or any right to information concerning the business and affairs of the Company).

15.4 Expulsion. Neither the Manager nor the Members shall have the right to expel a Member.

15.5 Miller Ceases to be Manager. If MPBE ceases to be the Manager, whether due to resignation, removal or otherwise, Miller's Membership Interest shall be automatically converted to an Economic Interest, and the legal representative or successors and assigns of such Member shall be treated as the holder(s) of an Economic Interest only (entitled to receive the Distributions and Allocations the affected Member otherwise would have received, but without any right to vote or to participate in management or any right to information concerning the business and affairs of the Company).

16. DISSOLUTION.

16.1 Events of Dissolution. The Company shall be dissolved upon the earlier of (i) an election to dissolve by one or more Members holding a majority of the Profits Percentages, or (ii) sale or other disposition of all non-cash assets of the Company (each, an "Event of Dissolution").

16.2 Effect of Event of Dissolution. Upon the occurrence of an Event of Dissolution, the Company shall cease carrying on its business and affairs except as necessary for winding up the Company, but its legal existence shall continue until its business and affairs are wound up and a certificate of cancellation is executed and filed in accordance with applicable law.

16.3 Winding Up and Liquidation. Upon dissolution of the Company, the Manager shall wind up the affairs of and liquidate the Company in accordance with applicable law and distribute the net proceeds of liquidation to the Members pursuant to this Agreement.

16.4 Time for Liquidation. A reasonable time shall be allowed for the orderly liquidation of Company property and the discharge of Company debts, liabilities and obligations, so as to reduce the loss normally resulting from liquidation.

16.5 Certificate of Dissolution of Company. Upon dissolution of the Company, the Manager shall execute, file, publish and record such certificates of dissolution and cancellation, tax returns and other documents and instruments as may be required under applicable law.

17. INVESTOR ACKNOWLEDGEMENTS.

17.1 Representations and Warranties. Each Member represents and warrants as follows:

17.1.1 Such Member knows of no public solicitation or advertisement conducted by the Company or any other person with respect to the offer and sale of Membership Interests.

17.1.2 Such Member is acquiring a Membership Interest for such Member's own account (or a trust account if such Member is a trustee) for purposes of investment and not with a view to or for sale in connection with any distribution of the Membership Interests.

17.1.3 Such Member (i) has a pre-existing personal or business relationship with the Manager, and (ii) has the capacity to protect such Member's own interests in connection with the purchase of Membership Interests, by reason of such Member's business or financial experience.

17.1.4 Such Member has had a reasonable opportunity to ask questions of and receive answers concerning the Company and Membership Interests, and all such questions have been answered to the satisfaction of such Member.

17.1.5 In purchasing a Membership Interest, such Member is relying solely on such Member's own investigation and due diligence.

17.1.6 Neither the Manager, nor any agent or other representative of the Company or of the Manager, nor any Member, nor any other person, has at any time expressly or implicitly guaranteed, represented or warranted to such Member that such Member would receive a return of such Member's investment, or any profit on such investment, or that any distributions will be made to the Members in any specific amount or by any specific date.

17.2 Acknowledgments. Each Member acknowledges and agrees as follows:

17.2.1 Any return on such Member's investment is determined solely by the terms of this Agreement and no additional return of such Member's investment has been guaranteed or assured.

17.2.2 Neither the Manager nor any other Members or any other person or entity has guaranteed return of such Member's investment, or will be liable or responsible for any return of such Member's investment.

17.2.3 There will be no recognizable market for the resale or distribution of Membership Interests. Such Member further understands such Member's right to transfer its Membership Interest will be subject to restriction under applicable securities laws.

17.2.4 No federal or state agency has made any finding or determination as to the fairness of an investment in Membership Interests, nor has any recommendation or endorsement of Membership Interests been made by any such agency.

17.2.5 No federal or state agency has reviewed or approved, or made any finding or determination as to the adequacy or accuracy of the disclosures set forth in this Agreement or any other documents.

17.2.6 The offer and sale of Membership Interests are not and will not be registered under the Securities Act of 1933, as amended (the "1933 Act"), by reason of exemptions from federal registration requirements provided by Section 4(2) of the 1933 Act and Regulation D promulgated by the Securities and Exchange Commission. Such Member further acknowledges the offer and sale of Membership Interests have not been registered or qualified with any other federal or state regulatory authority.

17.2.7 The Membership Interests cannot be sold or transferred unless they are subsequently registered and qualified under the 1933 Act and applicable state securities laws, or an exemption from such registration and qualification is available. The Company must place a legend on documents evidencing the Membership Interests, stating that the Membership Interests have not been registered under the 1933 Act and setting forth or referring to the restrictions on transferability and sale of the securities.

17.2.8 A Membership Interest is a speculative investment which involves a substantial degree of risk of loss of such Member's entire investment in the Company, that such Member understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history.

18. GENERAL PROVISIONS.

18.1 Notices. Except as otherwise provided in this Agreement, any notice or other communication given to any Member under this Agreement or applicable law shall be in writing and shall be deemed duly given (i) on the date of delivery if personally delivered to the Member at such Member's address for notices set forth below (including delivery by a recognized courier or overnight delivery service with a signed receipt confirming delivery), (ii) on the date of delivery by electronic mail or facsimile transmission to the Member at such Member's email address or facsimile number for notices set forth below, if receipt is confirmed by electronic receipt or by telephone, or (iii) three business days after mailing if sent by first class mail, postage prepaid, properly addressed to the Member at such Member's address for notices set forth below. A member may change its contact information for notices by giving written notice of such change to the Company and to the other Member.

18.2 Amendment and Waiver. This Agreement may be amended only by a written agreement signed by all parties to this Agreement. Waiver of any provision of this Agreement shall not be deemed or constitute a waiver of any other provisions, nor shall such waiver constitute a continuing waiver.

18.3 Governing Law and Severability. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to its conflicts of law principles. If any provision of this Agreement is invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

18.4 Construction. This Agreement has been negotiated at arm's length and each party has been or has had the opportunity to be represented by legal counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties and the purpose of this Agreement. As used in this Agreement, unless the context otherwise requires, "include," "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.

18.5 Successor Provisions. References in this Agreement to provisions of the LLC Act, IRC, Treasury Regulations or other applicable law shall be construed to include any successor provisions.

18.6 Paragraph Headings. The captions of the paragraphs in this Agreement are inserted as a matter of convenience and for reference only and do not define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

18.7 Gender. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

18.8 Entire Agreement. This Agreement contains the entire understanding among the Company and the Members and supersedes any prior written or oral representations, understandings and agreements between the Company and the Members with respect to the subject matter of this Agreement.

18.9 Waiver. Waiver of any provision of this Agreement shall not be deemed or constitute a waiver of any other provisions, nor shall such waiver constitute a continuing waiver.

18.10 Successors and Assigns. Subject to the restriction on transfers set forth herein, this Agreement shall be binding on and inure to the benefit of the legal representatives, successors and assigns of each Member.

18.11 Further Assurances. The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

18.12 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

18.13 Time. Time is of the essence under this Agreement.

19. REPRESENTATION.

The parties acknowledge that this Agreement has been prepared by Judkins, Glatt & Hulme LLP ("JG&H"), which represents the Company and SDLL, and that such representation involves the representation of multiple, conflicting interests. By executing this Agreement, (a) such parties acknowledge and confirm that they have been advised of the right to seek independent counsel, and have given their informed written consent to such representation of multiple, conflicting interests, and (b) Miller acknowledges and confirms that JGH does not represent it and that it has been advised by its own attorneys in connection the Company and this Agreement.

20. ALTERNATE DISPUTE RESOLUTION PROVISIONS.

Any dispute, claim or other controversy arising under this Agreement or in connection with the Company, including any dispute regarding the interpretation or enforcement of this Agreement and any claims asserted against a Member or an Affiliate, agent or representative of a Member (at the request of such person), shall be resolved pursuant to the Alternative Dispute Resolution Provisions attached as Addendum 3 to this Agreement. All persons covered by this provision, if not a Member, shall be third party beneficiaries of this provision.

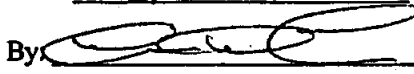
[Signatures on next page]

SDLL:

SDLL Ventures LLC,
a Delaware limited liability company

By: Pacifica Enterprises, Inc.,
a California corporation,
Its Manager

By: 
Name: Pino Vitti
Title: CEO

By: 
Name: Dario DeLuca
Title: President

Address:
5505 Cancha de Golf
Rancho Santa Fe, California 92091

Manager:

Miller Pacific Beach Enterprises, Inc.,
a California corporation

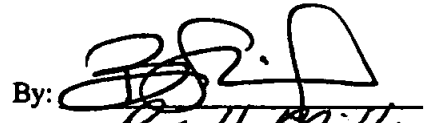
By: 
Name: Brett Miller
Title: Manager

By: _____
Name: _____
Title: _____

Address:
1253 Garnet Ave., Suite A
San Diego, California 92109

Miller:

Brett A. Miller Revocable Trust

By: 
Name: Brett Miller
Title: Manager

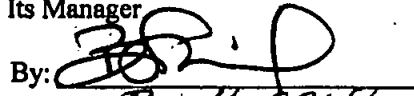
By: _____
Name: _____
Title: _____

Address:
1253 Garnet Ave., Suite A
San Diego, California 92109

Company:

Belmont Athletics LLC,
a Delaware limited liability company

By: Miller Pacific Beach Enterprises, Inc.,
a California corporation,
Its Manager

By: 
Name: Brett Miller
Title: Manager

By: _____
Name: _____
Title: _____

ADDENDUM 1
BUSINESS PLAN

ADDENDUM 2

RULES AND PROCEDURES FOR MEETINGS AND VOTING

The rules and procedures for meetings and voting of Members shall be as follows:

1. **Place of Meetings.** Meetings of Members may be held at the principal executive office of the Company or at such other place as may be designated by the Manager.

2. **Call of Meetings.** A meeting of the Members may be called by any Manager or by any Member or Members holding more than 10% of the Profits Percentages in the case of a meeting of all of the Members for the purpose of addressing any matters on which the Members may vote.

3. **Notice of Meeting.**

3.1 Whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 days nor more than 60 days before the date of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at this meeting.

3.2 Any report or any notice of a Members' meeting shall be given either personally or by mail or other means of written communication, addressed to the Member at the address of the Member appearing on the books of the Company or given by the Member to the Company for the purpose of notice, or, if no address appears or is given, at the place where the principal executive office of the Company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication. An affidavit of mailing of any notice or report in accordance with the provisions of this article, executed by a Manager, shall be prima facie evidence of the giving of the notice or report. If any notice or report addressed to the Member at the address of the Member appearing on the books of the Company is returned to the Company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the Member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if they are available for the Member at the principal executive office of the Company for a period of one year from the date of the giving of the notice or report to all other Members.

3.3 Upon written request to a Manager by any person entitled to call a meeting of Members, the Manager shall immediately cause notice to be given to the Members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than 10 days nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the person entitled to call the meeting may give the notice or, upon the application of that person, the superior court of the county in which the principal executive office of the Company is located, or if the principal executive office is not in this state, the county in which the Company's address in this state is located, shall summarily order the giving of the notice, after notice to the Company affording it an opportunity to be heard. The court may issue any order as may be appropriate, including an order designating the time and place of the meeting, the record date for determination of Members entitled to vote, and the form of notice.

4. **Adjournment of Meeting.** When a Members' meeting is adjourned to another time or place, unless the Certificate of Formation or a written operating agreement otherwise require and, except as

provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than 45 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

5. Waiver of Notice. The actions taken at any meeting of Members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All waivers, consents, and approvals shall be filed with the Company records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting.

6. Telephonic Participation. Members may participate in a meeting of the Company through the use of conference telephones or similar communications equipment, as long as all Members participating in the meeting can hear one another. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

7. Quorum. A majority of the Profits Percentages with respect to a meeting of all of the Members represented in person or by proxy shall constitute a quorum at a meeting of Members. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite Profits Percentages. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the vote of the applicable Profits Percentages either in person or by proxy.

8. Written Consent. Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed and delivered to the Company within 60 days of the record date for that action by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote thereon were present and voted. Unless the consents of all Members entitled to vote have been solicited in writing, (a) notice of any Member approval of an amendment to the Certificate of Formation or operating agreement, a dissolution of the Company or a merger of the Company, without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and (b) prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent, to those Members entitled to vote who have not consented in writing. Any Member giving a written consent, or the Member's proxy holder, may revoke the consent by a writing received by the Company prior to the time that written consents of Members having the minimum number of votes that would be required to authorize the proposed action have been filed with the Company, but may not do so thereafter. This revocation is effective upon its receipt at the office of the Company required to be maintained.

9. Proxies. The use of proxies in connection with this section will be governed in the same manner as in the case of private corporations.

10. **Record Date.** In order that the Company may determine the Members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, the Manager, or Members representing more than 10% of the Profits Percentages in the case of a meeting of all of the Members may fix, in advance, a record date, that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed, (a) the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held; (b) the record date for determining Members entitled to give consent to limited liability company action in writing without a meeting shall be the day on which the first written consent is given; (c) the record date for determining Members for any other purpose shall be at the close of business on the day on which the Manager adopts the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later; and (d) the determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting unless the Manager or the Members who called the meeting fix a new record date for the adjourned meeting, but the Manager or the Members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

ADDENDUM 3
ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

A. **Mediation.** The parties shall first endeavor to resolve any claim, dispute or other controversy subject to this addendum ("**Dispute**") through mediation. The mediation shall be conducted by an organization or individual selected by agreement of the parties or, failing such agreement, then by the San Diego offices of the American Arbitration Association ("**AAA**"). The complaining party shall contact AAA to schedule a mediation conference within 30 days. The parties may agree on a mediator from the AAA panel. If they are unable to agree, AAA shall provide a list of three available mediators and each party may strike one. The remaining one will serve as the mediator. Neither party may initiate arbitration proceedings until mediation is completed.

B. **Arbitration.** Any Dispute not resolved through mediation shall be resolved by binding arbitration. The arbitration will be conducted by an organization or individual agreed upon by the parties or, failing such an agreement, by the San Diego offices of AAA. The parties may agree on an arbitrator from the AAA panel. If they are unable to agree, AAA shall provide a list of three available arbitrators and each party may strike one. The remaining one will serve as arbitrator. The arbitrator may be the same person who served as mediator. The complaining party shall initiate arbitration by delivering a written demand for arbitration by personal delivery or by certified mail (return receipt requested) to all parties. The demand must contain a description of the dispute, the amount involved, and the remedy sought. The parties shall be permitted discovery, including the right to take depositions, under the supervision and rules set by the arbitrator

C. **Consolidation.** To the maximum extent possible, the parties agree that any mediation or arbitration under this addendum be consolidated with other mediation or arbitration proceedings in which related issues are being resolved. The parties agree to take all action necessary or desirable to achieve such consolidation.

D. **Provisional Remedies.** This addendum shall not preclude the filing of a lawsuit or other judicial action to enable the recording of a notice of pending action, or for attachment, receivership, injunction or other provisional remedies.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapters (X)
2. When incorporated? May 15, 1996
3. Where incorporated? California
4. Is the corporation authorized to do business in California? Yes (X) No () If so, as of what date?
5. The corporation is held:
 - a. Publicly () Privately (X)
 - b. If publicly held, how and where is the stock traded?

Please list the following:	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	100,000	10,000	10,000
b. Number of nonvoting shares:	0	0	0
c. Number of shareholders:			1
d. Value per share of Common Stock:		Par	\$0
		Book	\$2000
		Market	\$1,400,000

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: Brett Miller
Title: President, Vice President, CFO, Secretary
Address: 1253 Garnet Ave. Ste. A San Diego, CA 92109

No. of Shares: 10,000

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

Name:

Title:

Address:

No. of Shares:

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sublessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in

BELMONT ATHLETICS LLC MILLER PACIFIC BEACH ENTERPRISES INC

the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (X)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (X)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUBLESSEE)

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Sharon Council

Firm: Pacific Western Bank

Title: Senior Vice President

Address: 401 West A Street Suite 200 San Diego, CA 92101

Telephone: 619-338-1437

Nature and magnitude of purchase, sale, loan, business, association, etc.

\$12M loan with Pacific Western Bank for Tower 23, LP. Also, the majority of Brett Miller's companies bank with Pacific Western Bank

REFERENCE NO. 2

Name: David Gonzalez

Firm: Union Bank of CA

Title: Vice President

Address: 1706 Garnet Ave. San Diego, CA 92109

Telephone: (858) 581-5103

Nature and magnitude of purchase, sale, loan, business, association, etc.

The majority of Brett Miller's companies have bank accounts with Union Bank. There are 2 small lines of credit as well. 10

REFERENCE NO. 3

Name: Janis Palmeter

Firm: US Foodservice

Title: Regional Sales Manager

Address: 1201 Park Center Dr. Vista, CA 92081

Telephone: 800-627-1115 Ext 6770

Nature and magnitude of purchase, sale, loan, business, association, etc.

US Foodservice is the largest purveyor of food & beverage products for Brett Miller's companies

REFERENCE NO. 4

Name: Kurt Martin

Firm: Anheuser Busch

Title: Director of Sales & Marketing

Address: PO Box 80758 San Diego, CA 92138 _____

Telephone: 800-301-4726

Nature and magnitude of purchase, sale, loan, business, association, etc.

Anheuser Busch is the largest beer purveyor for Brett Miller's companies.

BY-LAWS
OF

MILLER PACIFIC BEACH ENTERPRISES INC.
A CALIFORNIA CORPORATION

ARTICLE I
OFFICES

Section 1. PRINCIPAL OFFICE. The principal office for the transaction of business of the corporation is hereby fixed and located at

City of _____, County of _____, State of California. The location may be changed by approval of a majority of the authorized Directors, and additional offices may be established and maintained at such other place or places, either within or without California, as the Board of Directors may from time to time designate.

Section 2. OTHER OFFICES. Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where the corporation is qualified to do business.

ARTICLE II
DIRECTORS - MANAGEMENT

Section 1. RESPONSIBILITY OF BOARD OF DIRECTORS. Subject to the provisions of the General Corporation Law and to any limitations in the Articles of Incorporation of the corporation relating to action required to be approved by the Shareholders, as that term is defined in Section 153 of the California Corporations Code, or by the outstanding shares, as that term is defined in Section 152 of the Code, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors. The Board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person, provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 2. STANDARD OF CARE. Each Director shall perform the duties of a Director, including the duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances. (Sec. 309)

Section 3. EXCEPTION FOR CLOSE CORPORATION. Notwithstanding the provisions of Section 1, in the event that this corporation shall elect to become a close corporation as defined in Sec. 158, its Shareholders may enter into a Shareholders' Agreement as defined in Sec. 186. Said Agreement may provide for the exercise of corporate powers and the management of the business and affairs of this corporation by the Shareholders, provided, however, such agreement shall, to the extent and so long as the discretion or the powers of the Board in its management of corporate affairs is controlled by such agreement, impose upon each Shareholder who is a party thereof, liability for managerial acts performed or omitted by such person pursuant thereto otherwise imposed upon Directors as provided in Sec. 300 (d); and the Directors shall be relieved to that extent from such liability.

Section 4. NUMBER AND QUALIFICATION OF DIRECTORS. The authorized number of Directors shall be () until changed by a duly adopted amendment to the Articles of Incorporation or by an amendment to this by-law adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote, as provided in Sec. 212.

Section 5. ELECTION AND TERM OF OFFICE OF DIRECTORS. Directors shall be elected at each annual meeting of the Shareholders to hold office until the next annual meeting. Each Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

Section 6. VACANCIES. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, except that a vacancy created by the removal of a Director by the vote or written consent of the Shareholders or by court order may be filled only by the vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of holders of a majority of the outstanding shares entitled to vote. Each Director so elected shall hold office until the next annual meeting of the Shareholders and until a successor has been elected and qualified.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in the event of the death, resignation, or removal of any Director, or if the Board of Directors by resolution declares vacant the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony, or if the authorized number of Directors is increased, or if the shareholders fail, at any meeting of shareholders at which any Director or Directors are elected, to elect the number of Directors to be voted for at that meeting.

The Shareholders may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors, but any such election by written consent shall require the consent of a majority of the outstanding shares entitled to vote.

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Section 7. REMOVAL OF DIRECTORS. The entire Board of Directors or any individual Director may be removed from office as provided by Secs. 302, 303 and 304 of the Corporations Code of the State of California. In such case, the remaining Board members may elect a successor Director to fill such vacancy for the remaining unexpired term of the Director so removed.

Section 8. NOTICE, PLACE AND MANNER OF MEETINGS. Meetings of the Board of Directors may be called by the Chairman of the Board, or the President, or any Vice President, or the Secretary, or any two (2) Directors and shall be held at the principal executive office of the corporation, unless some other place is designated in the notice of the meeting. Members of the Board may participate in a meeting through use of a conference telephone or similar communications equipment so long as all members participating in such a meeting can hear one another. Accurate minutes of any meeting of the Board or any committee thereof, shall be maintained as required by Sec. 1500 of the Code by the Secretary or other Officer designated for that purpose.

Section 9. ORGANIZATION MEETINGS. The organization meetings of the Board of Directors shall be held immediately following the adjournment of the annual meetings of the Shareholders.

Section 10. OTHER REGULAR MEETINGS. Regular meetings of the Board of Directors shall be held at the corporate offices, or such other place as may be designated by the Board of Directors, as follows:

Time of Regular Meeting:
Date of Regular Meeting:

If said day shall fall upon a holiday, such meetings shall be held on the next succeeding business day thereafter. No notice need to be given of such regular meetings.

Section 11. SPECIAL MEETINGS - NOTICES - WAIVERS. Special meetings of the Board may be called at any time by any of the aforesaid officers, i.e., by the Chairman of the Board or the President or any Vice President or the Secretary or any two (2) Directors.

At least forty-eight (48) hours notice of the time and place of special meetings shall be delivered personally to the Directors or personally communicated to them by a corporate Officer by telephone or telegraph. If the notice is sent to a Director by letter, it shall be addressed to him or her at his or her address as it is shown upon the records of the corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. In case such notice is mailed, it shall be deposited in the United States mail, postage prepaid, in the place in which the principal executive office of the corporation is located at least four (4) days prior to the time of the holding of the meeting. Such mailing, telegraphing, telephoning or delivery as above provided shall be due, legal and personal notice to such Director.

When all of the Directors are present at any Directors' meeting, however called or noticed, and either (i) sign a written consent thereto on the records of such meeting, or, (ii) if a majority of the Directors are present and if those not present sign a waiver of notice of such meeting or a consent to holding the meeting or an approval of the minutes thereof, whether prior to or after the holding of such meeting, which said waiver, consent or approval shall be filed with the Secretary of the corporation, or, (iii) if a Director attends a meeting without notice but without protesting, prior thereto or at its commencement, the lack of notice, then the transactions thereof are as valid as if had at a meeting regularly called and noticed.

Section 12. SOLE DIRECTOR PROVIDED BY ARTICLES OF INCORPORATION OR BY-LAWS. In the event only one (1) Director is required by the By-Laws or Articles of Incorporation, then any reference herein to notices, waivers, consents, meetings or other actions by a majority or quorum of the Directors shall be deemed to refer to such notice, waiver, etc., by such sole Director, who shall have all the rights and duties and shall be entitled to exercise all of the powers and shall assume all the responsibilities otherwise herein described as given to a Board of Directors.

Section 13. DIRECTORS ACTION BY UNANIMOUS WRITTEN CONSENT. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting and with the same force and effect as if taken by a unanimous vote of Directors, if authorized by a writing signed individually or collectively by all members of the Board. Such consent shall be filed with the regular minutes of the Board.

Section 14. QUORUM. A majority of the number of Directors as fixed by the Articles of Incorporation or By-Laws shall be necessary to constitute a quorum for the transaction of business, and the action of a majority of the Directors present at any meeting at which there is a quorum, when duly assembled, is valid as a corporate act; provided that a minority of the Directors, in the absence of a quorum, may adjourn from time to time, but may not transact any business. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for such meeting.

Section 15. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place be fixed at the meeting adjourned and held within twenty-four (24) hours, but if adjourned more than twenty-four (24) hours, notice shall be given to all Directors not present at the time of the adjournment.

Section 16. COMPENSATION OF DIRECTORS. Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board a fixed sum and expense of attendance, if any, may be allowed for attendance at each regular and special meeting of the Board; provided that nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity and receiving compensation therefor.

Section 17. COMMITTEES. Committees of the Board may be appointed by resolution passed by a majority of the whole Board. Committees shall be composed of two (2) or more members of the Board, and shall have such powers of the Board as may be expressly delegated to it by resolution of the Board of Directors, except those powers expressly made non-delegable by Sec. 311.

Section 18. ADVISORY DIRECTORS. The Board of Directors from time to time may elect one or more persons to be Advisory Directors who shall not by such appointment be members of the Board of Directors. Advisory Directors shall be available from time to time to perform special assignments specified by the President, to attend meetings of the Board of Directors upon invitation and to furnish consultation to the Board. The period during which the title shall be held may be prescribed by the Board of Directors. If no period is prescribed, the title shall be held at the pleasure of the Board.

Section 19. RESIGNATIONS. Any Director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

ARTICLE III OFFICERS

Section 1. OFFICERS. The Officers of the corporation shall be a President, a Secretary, and a Chief Financial Officer. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other Officers as may be appointed in accordance with the provisions of Section 3 of this Article III. Any number of offices may be held by the same person.

Section 2. ELECTION. The Officers of the corporation, except such Officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the Board of Directors, and each shall hold office until he or she shall resign or shall be removed or otherwise disqualified to serve, or a successor shall be elected and qualified.

Section 3. SUBORDINATE OFFICERS, ETC. The Board of Directors may appoint such other Officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-Laws or as the Board of Directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed, either with or without cause, by the Board of Directors, at any regular or special meeting to the Board, or, except in case of an Officer chosen by the Board of Directors, by any Officer upon whom such power of removal may be conferred by the Board of Directors.

Any Officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the Officer is a party.

Section 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the By-Laws for regular appointments to that office.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned by the Board of Directors or prescribed by the By-Laws. If there is no President, the Chairman of the Board shall in addition be the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in Section 7 of this Article III.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an Officer, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and Officers of the corporation. He or she shall preside at all meetings of the Shareholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. The President shall be ex officio a member of all the standing committees, including the Executive Committee, if any, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the By-Laws.

Section 8. VICE PRESIDENT. In the absence or disability of the President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the By-Laws.

Section 9. SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors and Shareholders, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of shares present or represented at Shareholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office or at the office of the corporation's transfer agent, a share register, or duplicate share register, showing the names of the Shareholders and their addresses; the number and classes of shares held by each; the number and date of certificates issued for the same; and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all the meetings of the Shareholders and of the Board of Directors required by the By-Laws or by law to be given. He or she shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the By-Laws.

Section 10. CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained in accordance with generally accepted accounting principles, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, earnings (or surplus) and shares. The books of account shall at all reasonable times be open to inspection by any Director.

This Officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the President and Directors, whenever they request it, an account of all of his or her transactions and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-Laws.

ARTICLE IV SHAREHOLDERS' MEETINGS

Section 1. PLACE OF MEETINGS. All meetings of the Shareholders shall be held at the principal executive office of the corporation unless some other appropriate and convenient location be designated for that purpose from time to time by the Board of Directors.

Section 2. ANNUAL MEETINGS. The annual meetings of the Shareholders shall be held, each year, at the time and on the day following:

Time of Meeting:
Date of Meeting:

If this day shall be a legal holiday, then the meeting shall be held on the next succeeding business day, at the same hour. At the annual meeting, the Shareholders shall elect a Board of Directors, consider reports of the affairs of the corporation and transact such other business as may be properly brought before the meeting.

Section 3. SPECIAL MEETINGS. Special meetings of the Shareholders may be called at any time by the Board of Directors, the Chairman of the Board, the President, a Vice President, the Secretary, or by one or more Shareholders holding not less than one-tenth (1/10) of the voting power of the corporation. Except as next provided, notice shall be given as for the annual meeting.

Upon receipt of a written request addressed to the Chairman, President, Vice President, or Secretary, mailed or delivered personally to such Officer by any person (other than the Board) entitled to call a special meeting of Shareholders, such Officer shall cause notice to be given, to the Shareholders entitled to vote, that a meeting will be held at a time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after the receipt of such request. If such notice is not given within twenty (20) days after receipt of such request, the persons calling the meeting may give notice thereof in the manner provided by these By-Laws or apply to the Superior Court as provided in Sec. 305 (c).

Section 4. NOTICE OF MEETINGS - REPORTS. Notice of meetings, annual or special, shall be given in writing not less than ten (10) nor more than sixty (60) days before the date of the meeting to Shareholders entitled to vote thereat. Such notice shall be given by the Secretary or the Assistant Secretary, or if there be no such Officer, or in the case of his or her neglect or refusal, by any Director or Shareholder.

Such notices or any reports shall be given personally or by mail or other means of written communication as provided in Sec. 601 of the Code and shall be sent to the Shareholder's address appearing on the books of the corporation, or supplied by him or her to the corporation for the purpose of notice, and in the absence thereof, as provided in Sec. 601 of the Code.

Notice of any meeting of Shareholders shall specify the place, the day and the hour of meeting, and (1) in case of a special meeting, the general nature of the business to be transacted and no other business may be transacted, or (2) in the case of an annual meeting, those matters which the Board at date of mailing, intends to present for action by the Shareholders. At any meetings where Directors are to be elected, notice shall include the names of the nominees, if any, intended at date of notice to be presented by management for election.

If a Shareholder supplies no address, notice shall be deemed to have been given if mailed to the place where the principal executive office of the corporation, in California, is situated, or published at least once in some newspaper of general circulation in the County of said principal office.

Notice shall be deemed given at the time it is delivered personally or deposited in the mail or sent by other means of written communication. The Officer giving such notice or report shall prepare and file an affidavit or declaration thereof.

When a meeting is adjourned for forty-five (45) days or more, notice of the adjourned meeting shall be given as in case of an original meeting. Save, as aforesaid, it shall not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

Section 5. WAIVER OF NOTICE OR CONSENT BY ABSENT SHAREHOLDERS. The transactions of any meeting of Shareholders, however called and noticed, shall be valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Shareholders entitled to vote, not present in person or by proxy, sign a written waiver of notice, or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance shall constitute a waiver of notice, unless objection shall be made as provided in Sec. 601 (e).

Section 6. SHAREHOLDERS ACTING WITHOUT A MEETING - DIRECTORS. Any action which may be taken at a meeting of the Shareholders, may be taken without a meeting or notice of meeting if authorized by a writing signed by all of the Shareholders entitled to vote at a meeting for such purpose, and filed with the Secretary of the corporation, provided, further, that while ordinarily Directors can only be elected by unanimous written consent under Sec. 603 (d), if the Directors fail to fill a vacancy, then a Director to fill that vacancy may be elected by the written consent of persons holding a majority of shares entitled to vote for the election of Directors.

Section 7. OTHER ACTIONS WITHOUT A MEETING. Unless otherwise provided in the California Corporations Code or the Articles, any action which may be taken at any annual or special meeting of Shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, signed by the holders of outstanding shares

having not less than the minimum number of votes that would be necessary to authorized or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Unless the consents of all Shareholders entitled to vote have been solicited in writing,

(1) Notice of any Shareholder approval pursuant to Secs. 310, 317, 1201 or 2007 without a meeting by less than unanimous written consent shall be given at least ten (10) days before the consummation of the action authorized by such approval, and

(2) Prompt notice shall be given of the taking of any other corporate action approved by Shareholders without a meeting by less than unanimous written consent, to each of those Shareholders entitled to vote who have not consented in writing.

Any Shareholder giving a written consent, or the Shareholder's proxyholders, or a transferee of the shares of a personal representative of the Shareholder or their respective proxyholders, may revoke the consent by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary of the corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the corporation.

Section 8. QUORUM. The holders of a majority of the shares entitled to vote thereat, present in person, or represented by proxy, shall constitute a quorum at all meetings of the Shareholders for the transaction of business except as otherwise provided by law, by the Articles of Incorporation, or by these By-Laws. If, however, such majority shall not be present or represented at any meeting of the Shareholders, the Shareholders entitled to vote thereat, present in person, or by proxy, shall have the power to adjourn the meeting from time to time, until the requisite amount of voting shares shall be present. At such adjourned meeting at which the requisite amount of voting shares shall be represented, any business may be transacted which might have been transacted at a meeting as originally notified.

If a quorum be initially present, the Shareholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough Shareholders to leave less than a quorum, if any action taken is approved by a majority of the Shareholders required to initially constitute a quorum.

Section 9. VOTING. Only persons in whose names shares entitled to vote stand on the stock records of the corporation on the day of any meeting of Shareholders, unless some other day be

fixed by the Board of Directors for the determination of Shareholders of record, and then on such other day, shall be entitled to vote at such meeting.

Provided the candidate's name has been placed in nomination prior to the voting and one or more Shareholder has given notice at the meeting prior to the voting of the Shareholder's intent to cumulate the Shareholder's votes, every Shareholder entitled to vote at any election for Directors of any corporation for profit may cumulate their votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which his or her shares are entitled, or distribute his or her votes on the same principle among as many candidates as he or she thinks fit.

The candidates receiving the highest number of votes up to the number of Directors to be elected are elected.

The Board of Directors may fix a time in the future not exceeding sixty (60) days preceding the date of any meeting of Shareholders or the date fixed for the payment of any dividend or distribution, or for the allotment or rights, or when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the Shareholders entitled to notice of and to vote at any such meeting, or entitled to receive any such dividend or distribution, or any allotment of rights, or to exercise the rights in respect to any such change, conversion or exchange of shares. In such case only Shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting, or to receive such dividends, distribution or allotment of rights, or to exercise such rights, as the case may be notwithstanding any transfer of any share on the books of the corporation after any record date fixed as aforesaid. The Board of Directors may close the books of the corporation against transfers of shares during the whole or any part of such period.

Section 10. PROXIES. Every Shareholder entitled to vote, or to execute consents, may do so, either in person or by written proxy, executed in accordance with the provisions of Secs. 604 and 705 of the Code and filed with the Secretary of the corporation.

Section 11. ORGANIZATION. The President, or in the absence of the President, any Vice President, shall call the meeting of the Shareholders to order, and shall act as chairman of the meeting. In the absence of the President and all of the Vice Presidents, Shareholders shall appoint a chairman for such meeting. The Secretary of the corporation shall act as Secretary of all meetings of the Shareholders, but in the absence of the

Secretary at any meeting of the Shareholders, the presiding Officer may appoint any person to act as Secretary of the meeting.

Section 12. INSPECTORS OF ELECTION. In advance of any meeting of Shareholders the Board of Directors may, if they so elect, appoint inspectors of election to act at such meeting or any adjournment thereof. If inspectors of election be not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any such meeting may, and on the request of any Shareholder or his or her proxy shall, make such appointment at the meeting in which case the number of inspectors shall be either one (1) or three (3) as determined by a majority of the Shareholders represented at the meeting.

Section 13. (A) SHAREHOLDERS' AGREEMENTS. Notwithstanding the above provisions, in the event this corporation elects to become a close corporation, an agreement between two (2) or more Shareholders thereof, if in writing and signed by the parties thereof, may provide that in exercising any voting rights the shares held by them shall be voted as provided therein or in Sec. 706, and may otherwise modify these provisions as to Shareholders' meetings and actions.

(B) EFFECT OF SHAREHOLDERS' AGREEMENTS. Any Shareholders' Agreement authorized by Sec. 300 (b), shall only be effective to modify the terms of these By-Laws if this corporation elects to become a close corporation with appropriate filing of or amendment to its Articles as required by Sec. 202 and shall terminate when this corporation ceases to be a close corporation. Such an agreement cannot waive or alter Secs. 158, (defining close corporations), 202 (requirements of Articles of Incorporation), 500 and 501 relative to distributions, 111 (merger), 1201 (e) (reorganization) or Chapters 15 (Records and Reports) or 16 (Rights of Inspection), 18 (Involuntary Dissolution) or 22 (Crimes and Penalties). Any other provisions of the Code or these By-Laws may be altered or waived thereby, but to the extent they are not so altered or waived, these By-Laws shall be applicable.

ARTICLE V CERTIFICATES AND TRANSFER OF SHARES

Section 1. CERTIFICATES FOR SHARES. Certificates for shares shall be of such form and device as the Board of Directors may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a statement of the rights, privileges, preferences and restrictions, if any; a statement as to the redemption or conversion, if any; a statement of liens or restrictions upon transfer or voting, if any; if the shares be assessable or, if assessments are collectible by personal action, a plain statement of such facts.

All certificates shall be signed in the name of the corporation by the Chairman of the Board or Vice Chairman of the Board or the President or Vice President and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or any Assistant Secretary, certifying the number of shares and the class or series of shares owned by the Shareholder.

Any or all of the signatures on the certificate may be facsimile. In case any Officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be that Officer, transfer agent, or registrar before that certificate is issued, it may be issued by the corporation with the same effect as if that person were an Officer, transfer agent, or registrar at the date of issue.

Section 2. TRANSFER ON THE BOOKS. Upon surrender to the Secretary or transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 3. LOST OR DESTROYED CERTIFICATES. Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of the fact and shall, if the Directors so require, give the corporation a bond of indemnity, in form and with one or more sureties satisfactory to the Board, in at least double the value of the stock represented by said certificate, whereupon a new certificate may be issued in the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

Section 4. TRANSFER AGENTS AND REGISTRARS. The Board of Directors may appoint one or more transfer agents or transfer clerks, and one or more registrars, which shall be an incorporated bank or trust company, either domestic or foreign, who, shall be appointed at such times and places as the requirements of the corporation may necessitate and the Board of Directors may designate.

Section 5. CLOSING STOCK TRANSFER BOOKS - RECORD DATE. In order that the corporation may determine the Shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the date of such meeting nor more than sixty (60) days prior to any other action.

If no record date is fixed; the record date for determining Shareholders entitled to notice of or to vote at a meeting of Shareholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. The record date for determining Shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the Board is necessary, shall be the day on which the first written consent is given.

The record date for determining Shareholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later.

Section 6. LEGEND CONDITION. In the event any shares of this corporation are issued pursuant to a permit or exemption therefrom requiring the imposition of a legend condition, the person or persons issuing or transferring said shares shall make sure said legend appears on the certificate and shall not be required to transfer any shares free of such legend unless an amendment to such permit or a new permit be first issued so authorizing such a deletion.

Section 7. CLOSE CORPORATION CERTIFICATES. All certificates representing shares of this corporation, in the event it shall elect to become a close corporation, shall contain the legend required by Sec. 418 (c).

Section PROVISION RESTRICTING TRANSFER OF SHARES.
Before there can be a valid sale or transfer of any of the shares of this corporation by the holders thereof, the holder of the shares to be sold or transferred shall first give notice in writing to the Secretary of this corporation of his or her intention to sell or transfer such shares. Said notice shall specify the number of shares to be sold or transferred, the price per share and the terms upon which such holder intends to make such sale or transfer. The Secretary shall within five (5) days thereafter, mail or deliver a copy of said notice to each of the other Shareholders of record of this corporation. Such notice may be delivered to such Shareholders personally or may be mailed to the last known addresses of such Shareholders, as the same may appear on the books of this corporation. Within days after the mailing or delivery of said notices to such Shareholders, any such Shareholder or Shareholders desiring to acquire any part or all of the shares referred to in said notice shall deliver by mail or otherwise to the Secretary of this corporation a written offer or offers to purchase a specified number or numbers of such shares at the price and upon the terms stated in said notice.

If the total number of shares specified in such offers exceeds the number of shares referred to in said notice, each offering Shareholder shall be entitled to purchase such proportion of the shares referred to in said notice to the Secretary, as the number of shares of this corporation, which he or she holds bears to the total number of shares held by all Shareholders desiring to purchase the shares referred to in said notice to the Secretary.

If all of the shares referred to in said notice to the Secretary are not disposed of under such apportionment, each Shareholder desiring to purchase shares in a number in excess of his or her proportionate share, as provided above, shall be entitled to purchase such proportion of those shares which remain thus undisposed of, as the total number of shares which he or she holds bears to the total number of shares held by all of the Shareholders desiring to purchase shares in excess of those to which they are entitled under such apportionment.

The aforesaid right to purchase the shares referred to in the aforesaid notice to the Secretary shall apply only if all of the shares referred to in said notice are purchased. Unless all of the shares referred to in said notice to the Secretary are purchased, as aforesaid, in accordance with offers made within said days, the Shareholder desiring to sell or transfer may dispose of all shares of stock referred to in said notice to the Secretary to any person or persons whomsoever; provided, however, that he or she shall not sell or transfer such shares at a lower price or on terms more favorable to the purchaser or transferee than those specified in said notice to the Secretary.

Any sale or transfer, or purported sale or transfer, of the shares of said corporation shall be null and void unless the terms, conditions and provisions of this section are strictly observed and followed.

Section PLEDGED OR HYPOTHECATED SHARES. Any Shareholder desiring to borrow money on or hypothecate any or all of the shares of stock held by such Shareholder shall first mail notice in writing to the Secretary of this corporation of his or her intention to do so. Said notice shall specify the number of shares to be pledged or hypothecated, the amount to be borrowed per share, the terms, rate of interest, and other provisions upon which each Shareholder intends to make such loan or hypothecation. The Secretary shall, within five (5) days thereafter, mail or deliver a copy of said notice to each of the other Shareholders of record of this corporation. Such notice may be delivered to such Shareholder personally, or may be mailed to the last known addresses of such Shareholders as the same may appear on the books of this corporation. Within fifteen (15) days after the mailing or delivering of said notice to said Shareholders, any such Shareholder or Shareholders desiring to lend any part or all of the amount sought to be borrowed, as set forth in said notice, at the terms therein specified, shall deliver by mail, or otherwise, to the Secretary of this corporation a written offer or offers to lend a certain amount of money for the term, at the rate of interest, and upon the other provisions specified in said notice.

If the total amount of money subscribed in such offers exceeds the amount sought to be borrowed, specified in said notice, each offering Shareholder shall be entitled to lend such proportion of the amount sought to be borrowed, as set forth in said notice, as the number of shares which he or she holds bears to the total number of shares held by all such Shareholders desiring to lend all or part of the amount specified in said notice.

If the entire amount of monies sought to be borrowed, as specified in said notice, is not subscribed as set forth in the preceding paragraphs, each Shareholder desiring to lend an amount in excess of his or her proportionate share, as specified in the preceding paragraph, shall be entitled to lend such proportion of the subscribed amount as the total number of shares which he or she holds bears to the total number of shares held by all of the Shareholders desiring to lend an amount in excess of that to which they are entitled under such apportionment. If there be but one Shareholder so desiring to lend, such Shareholder shall be entitled to lend up to the full amount sought to be borrowed.

If none, or only a part of the amount sought to be borrowed, as specified in said notice, is subscribed as aforesaid, in accordance with offers made within said fifteen (15) day period, the Shareholder desiring to borrow may borrow from any person or persons he or she may so desire as to any or all shares of stock held by him or her which have not been covered by lending Shareholders; provided, however, that said Shareholders shall not borrow any lesser amount, or any amount on terms less favorable to the borrower, than those specified in said notice to the Secretary.

Any pledge or hypothecation, or other purported transfer as security for a loan of the shares of this corporation, shall be null and void unless the terms, conditions and provisions of these By-Laws are strictly observed and followed.

ARTICLE VI
RECORDS - REPORTS - INSPECTION

Section 1. RECORDS. The corporation shall maintain, in accordance with generally accepted accounting principles, adequate and correct accounts, books and records of its business and properties. All of such books, records and accounts shall be kept at its principal executive office in the State of California, as fixed by the Board of Directors from time to time.

Section 2. INSPECTION OF BOOKS AND RECORDS. All books and records provided for in Sec. 1500 shall be open to inspection of the Directors and Shareholders from time to time and in the manner provided in said Sec. 1600 - 1602.

Section 3. CERTIFICATION AND INSPECTION OF BY-LAWS. The original or a copy of these By-Laws, as amended or otherwise altered to date, certified by the Secretary, shall be kept at the corporation's principal executive office and shall be open to inspection by the Shareholders of the corporation at all reasonable times during office hours, as provided in Sec. 213 of the Corporations Code.

Section 4. CHECKS, DRAFTS, ETC. All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

Section 5. CONTRACTS, ETC. -- HOW EXECUTED. The Board of Directors, except as in the By-Laws otherwise provided, may authorize any Officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no Officer, agent or employee shall have any power or authority to bind the corporation by any contract or agreement, or to pledge its credit, or to render it liable for any purpose or to any amount, except as provided in Sec. 313 of the Corporations Code.

ARTICLE VII
ANNUAL REPORTS

Section 1. REPORT TO SHAREHOLDERS, DUE DATE. The Board of Directors shall cause an annual report to be sent to the Shareholders not later than one hundred twenty (120) days after the close of the fiscal or calendar year adopted by the corporation. This report shall be sent at least fifteen (15) days before the annual meeting of Shareholders to be held during the next fiscal year and in the manner specified in Section 4 of Article IV of these By-Laws for giving notice to Shareholders of the corporation. The annual report shall contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year, accompanied by any report of independent accountants or, if there is no such report, the certificate of an authorized Officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

Section 2. WAIVER. The annual report to Shareholders referred to in Section 1501 of the California General Corporation Law is expressly dispensed with so long as this corporation shall have less than one hundred (100) Shareholders. However, nothing herein shall be interpreted as prohibiting the Board of Directors from issuing annual or other periodic reports to the Shareholders of the corporation as they consider appropriate.

ARTICLE VIII
AMENDMENTS TO BY-LAWS

Section 1. AMENDMENT BY SHAREHOLDERS. New By-Laws may be adopted or these By-Laws may be amended or repealed by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that if the Articles of Incorporation of the corporation set forth the number of authorized Directors of the corporation, the authorized number of Directors may be changed only by an amendment of the Articles of Incorporation.

Section 2. POWERS OF DIRECTORS. Subject to the right of the Shareholders to adopt, amend or repeal By-Laws, as provided in Section 1 of this Article VIII, and the limitations of Sec. 204 (a) (5) and Sec. 212, the Board of Directors may adopt, amend or repeal any of these By-Laws other than a By-Law or amendment thereof changing the authorized number of Directors.

Section 3. RECORD OF AMENDMENTS. Whenever an amendment or new By-Law is adopted, it shall be copied in the book of By-Laws with the original By-Laws, in the appropriate place. If any By-Law is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or written assent was filed shall be stated in said book.

ARTICLE IX
CORPORATE SEAL

The corporate seal shall be circular in form, and shall have inscribed thereon the name of the corporation, the year or date of its incorporation, and the word "California".

ARTICLE X
MISCELLANEOUS

Section 1. REFERENCES TO CODE SECTIONS. "Sec." references herein refer to the equivalent Sections of the California Corporations Code effective January 1, 1977, as amended.

Section 2. REPRESENTATION OF SHARES IN OTHER CORPORATIONS. Shares of other corporations standing in the name of this corporation may be voted or represented and all incidents thereto may be exercised on behalf of the corporation by the Chairman of the Board, the President or any Vice President and the Secretary or an Assistant Secretary.

Section 3. SUBSIDIARY CORPORATIONS. Shares of this corporation owned by a subsidiary shall not be entitled to vote on any matter. A subsidiary for these purposes is defined as a corporation, the shares of which possessing more than 25% of the total combined voting power of all classes of shares entitled to vote, are owned directly or indirectly through one (1) or more subsidiaries.

Section 4. INDEMNIFICATION AND LIABILITY. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and shareholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

Section 5. ACCOUNTING YEAR. The accounting year of the corporation shall be fixed by resolution of the Board of Directors.

CERTIFICATE OF ADOPTION OF BY-LAWS

ADOPTION BY INCORPORATOR(S) OR FIRST DIRECTOR(S).

The undersigned person(s) named in the Articles of Incorporation as the Incorporator(s) or First Director(s) of the above named corporation hereby adopt the same as the By-Laws of said corporation.

Executed this _____ day of _____, 19__

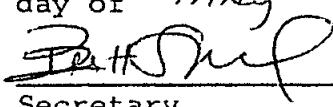
Name

CERTIFICATE BY SECRETARY

I DO HEREBY CERTIFY AS FOLLOWS:

That I am the duly elected, qualified and acting Secretary of the above named corporation, that the foregoing By-Laws were adopted as the By-Laws of said corporation on the date set forth above by the person(s) named in the Articles of Incorporation as the Incorporator(s) or First Director(s) of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 17 day of May, 1976



Secretary

CERTIFICATE BY SECRETARY OF ADOPTION BY SHAREHOLDERS' VOTE.

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of the above named corporation and that the above and foregoing Code of By-Laws was submitted to the Shareholders at their first meeting and recorded in the minutes thereof, was ratified by the vote of Shareholders entitled to exercise the majority of the voting power of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this day of 17th May, 1976



Secretary

kepler.sos.ca.gov/cbs.aspx

Bank of America - Sign On... ☐ Pacific Western Bank ☐ Mohave State Bank ☒ Bank of America ☒ American Express

privacy *All people Liberty* *Speak* *Without discrimination*
Commerce
California Secretary of State Debra Bowen

ary of State Administration Elections **Business Programs** Political Reform Archives Registries Other Services

Entities (BE)

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Business Entity Detail

Data is updated weekly and is current as of Friday, September 28, 2012. It is not a complete or certified record of

Entity Name:	MILLER PACIFIC BEACH ENTERPRISE, INC.
Entity Number:	C1902110
Date Filed:	05/15/1996
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	1253 GARNET AVE., STE. A
Entity City, State, Zip:	SAN DIEGO CA 92109
Agent for Service of Process:	BRETT ALLEN MILLER
Agent Address:	1253 GARNET AVE., STE. A
Agent City, State, Zip:	SAN DIEGO CA 92109



State of California

Bill Jones

Secretary of State

 P.O. Box 944230
 Sacramento, CA 94244-2300
 Phone: (916) 657-3537

STATEMENT BY DOMESTIC STOCK CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 1502, CORPORATIONS CODE)

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER RIBBON OR BLACK INK

1 DUE DATE: AUGUST 15, 1996

1902110

MILLER PACIFIC BEACH ENTERPRISE, INC.

DO NOT ALTER PREPRINTED NAME. IF ITEM NO. 1 IS BLANK, PLEASE ENTER CORPORATE NAME

DO NOT WRITE IN THIS SPACE

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE

444 West C Street

ROOM NO.

Ste 410

2A. CITY AND STATE

San Diego, California

2B. ZIP CODE

92101

3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA (IF ANY)

ROOM NO.

3A. CITY

CA

3B. ZIP CODE

4. MAILING ADDRESS

444 West C Street

ROOM NO.

Ste 410

4A. CITY AND STATE

San Diego, California

4B. ZIP CODE

92101

5. CHIEF EXECUTIVE OFFICER

BRETT MILLER

5A. STREET ADDRESS (SEE REVERSE SIDE)

444 West C Street, Ste 410

5B. CITY AND STATE

San Diego, California

5C. ZIP CODE

92101

6. SECRETARY

BRETT MILLER

6A. STREET ADDRESS (SEE REVERSE SIDE)

444 West C Street, Ste 410

6B. CITY AND STATE

San Diego, California

6C. ZIP CODE

92101

7. CHIEF FINANCIAL OFFICER

BRETT MILLER

7A. STREET ADDRESS (SEE REVERSE SIDE)

444 West C Street, Ste 410

7B. CITY AND STATE

San Diego, California

7C. ZIP CODE

92101

8. NAME

BRETT MILLER

8A. STREET ADDRESS (SEE REVERSE SIDE)

444 West C Street, Ste 410

8B. CITY AND STATE

San Diego, California

8C. ZIP CODE

92101

9. NAME

9A. STREET ADDRESS (SEE REVERSE SIDE)

9B. CITY AND STATE

9C. ZIP CODE

10. NAME

10A. STREET ADDRESS (SEE REVERSE SIDE)

10B. CITY AND STATE

10C. ZIP CODE

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY: 0

12. NAME

BARRY M. CRANE

 13. CALIFORNIA STREET ADDRESS IF AGENT IS AN INDIVIDUAL. (DO NOT USE P.O. BOX) DO NOT INCLUDE ADDRESS IF AGENT IS A CORPORATION.
 444 West C Street, Suite 410, San Diego, California 92101

1. TYPE OF BUSINESS

Restaurant/Tavern

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE.

BRETT MILLER

TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT

SIGNATURE

President

TITLE

May 17, 1996

DATE

1902110

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

MAY 15 1996

ARTICLES OF INCORPORATION

OF

MILLER PACIFIC BEACH ENTERPRISE, INC.

BILL JONES, Secretary of State

I.

The name of this corporation is Miller Pacific Beach Enterprise, Inc.

II.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Barry M. Crane, 444 West "C" Street, Suite 410, San Diego, California 92101

IV.

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is 100,000 of capitol stock.

V.

This corporation is a close corporation.

VI.

All of the corporation's issued shares of stock shall be held of record by not more than thirty-five (35) persons.

VII.

Stock shall be issued and transferred only to (1) natural persons, (2) estates, or (3) a trust as defined in the Internal Revenue Code provision defining a qualified "small business corporation."

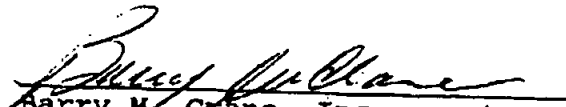
VIII.

Any reorganization involved in this corporation which results in the shareholders of the corporation receiving shares in a corporation that is not a close corporation, may be approved by an affirmative vote of a majority of outstanding shares.

IX.

An amendment to these articles deleting this corporation's designation as a close corporation may be adapted by the affirmative vote of a majority of the outstanding shares.

The undersigned incorporation has executed these articles of incorporation on May 10, 1996.


Barry M. Crane, Incorporator

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: SEPTEMBER 5, 2012
2. Where Organized: DELAWARE
3. Is the Company authorized to do business in California?
 - a. Yes (X) No ()
 - b. If so, as of what date? SEPTEMBER 10, 2012

Has the Company conducted business in San Diego County?

- a. Yes () No (X)
- b. If so, when? _____
- c. If so, where?

Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %
MEMBER MANAGER	PACIFICA ENTERPRISES INC.	5505 CANCHA DE GOLF, RANCHO SANTA FE, CA 92091	100%

Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION**FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (X)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (X)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Robert Hultstrom

Firm: California Bank & Trust

Title: Senior Vice President

Address: 4320 La Jolla Village Drive Suite 120, San Diego, CA 92122

Telephone: (858) 623-3120

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 2

Name: Nancy Aul

Firm: Pacific Western Bank

Title: Senior Vice President

Address: 401 West A Street, San Diego, CA 92101

Telephone: 619-338-1425

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 3

Name: Greg Judkins

Firm: Judkins, Glatt & Hulme LLP

Title: Attorney at law

Address: 600 B Street, Suite 2350, San Diego, CA 92101

Telephone: 619-232-4604 x13

Nature and magnitude of purchase, sale, loan, business, association, etc.

Lawfirm

REFERENCE NO. 4

Name: Pete Palmer

Firm: Swenson Advisors, LLP

Title: Certified CPA

Address: 25220 Hancock Avenue, Suite 240, Murrieta, CA 92562

Telephone: 951-445-4700 x218

Nature and magnitude of purchase, sale, loan, business, association, etc.

Accountant

SDLL VENTURES LLC
LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement ("Agreement") is entered into effective as of September 5, 2012 (the "Effective Date") by Pacifica Enterprises, Inc., a California corporation (the "Member").

1. COMPANY FORMATION AND IDENTIFICATION.

1.1 Name. The name of the limited liability company governed by this Agreement (the "Company") is SDLL Ventures LLC.

1.2 Formation. The Company was formed by filing a Certificate of Formation ("Certificate") with the Delaware Secretary of State on the Effective Date.

1.3 Principal Executive Office. The principal executive office of the Company shall be at 5505 Cancha de Golf, Rancho Santa Fe, California 92091, until changed by the Manager.

1.4 Agent for Service of Process. The agent for service of process of the Company shall be designated from time to time by the Manager.

1.5 Admission of Member. The Member is hereby admitted as a member of the Company.

2. DEFINITIONS.

The following terms used in this Agreement shall have the following meanings, unless expressly provided otherwise:

2.1 "Allocations" means a person's share of the net income, gains, net losses, and similar items, for income tax purposes, of the Company.

2.2 "Distribution" means the transfer of money or property by the Company to its Members without consideration.

2.3 "IRC" means the Internal Revenue Code of 1986, as amended, or any successor provisions.

2.4 "LLC Act" means the Limited Liability Company Act, Title 6, Article 18, Sections 18-101 et seq., of the Delaware Code, or any successor provisions.

2.5 "Manager" means a person elected by the Members to manage the Company in accordance with the LLC Act.

2.6 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity.

3. POWERS AND PURPOSE.

3.1 General. The Company shall have the power to engage in all activities which an LLC may legally engage in under applicable law, including the powers described in Section 18-106 of the LLC Act.

3.2 Purpose. The purpose of the Company is to (i) become a member of limited liability companies engaged in hospitality businesses associated with Lake San Marcos Resort and Belmont Park and

other venues as may be approved by the Manager, and (ii) carry on such related activities as may be necessary or incidental to such purposes.

4. CAPITALIZATION.

4.1 Capital. The Member shall from time to time contribute to the Company such amounts as may be determined by the Member. The Member may, but shall not be obligated to, contribute additional capital to the Company.

4.2 Loans. The Company may from time to time borrow such amounts from such persons (including the Member or his affiliates) on such security and payable on such terms as may be approved by the Member. The Member shall not be obligated to make any loans to the Company.

5. DISTRIBUTIONS.

5.1 General. Distributions shall be made from time to time to the Member, in such amounts as the Manager may from time to time determine.

5.2 Limitations on Distributions. No distributions shall be made in contravention of Section 18-607 of the LLC Act.

6. ALLOCATIONS.

6.1 Allocation of Income, Gains, Losses, Deductions and Tax Credits. All income, gains, losses, deductions, tax credits and similar items of the Company shall be allocated from time to time to the Member.

6.2 Net Income, Gain and Net Loss. The net income, gain and net loss of the Company shall be computed at the end of each fiscal year in accordance with federal tax accounting principles, consistently applied, and shall be credited to or debited against the capital account of the Member. The terms net income, net loss, income, gains, losses, deductions and tax credits shall refer to and be defined as those terms are used and defined for federal income tax purposes.

7. OTHER FINANCIAL MATTERS.

7.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

7.2 Tax Elections. The Company shall have the right, as determined by the Manager, to make any elections or determinations required or permitted for federal or state income tax or other tax purposes.

7.3 Bank Accounts. The Company shall maintain a checking account in the name of the Company at a bank or other financial institution (and with signatories) approved by the Manager. Additional accounts of the Company may be authorized by the Manager. All funds of the Company shall be maintained in such account(s).

7.4 Organization Expenses. The Company shall pay or reimburse the Member for all organizational expenses of the Company, including legal fees and costs incurred in connection with formation of the Company.

8. MANAGEMENT.

8.1 Manager.

8.1.1 Management Authority. The business and affairs of the Company shall be managed by or under the authority of a Manager. The Manager shall have full power and authority to act on behalf of the Company, including without limitation the power and authority to execute contracts, instruments and other documents on behalf of the Company.

8.1.2 Number and Qualifications. The Company shall have one Manager. The Manager may, but need not, be a Member.

8.1.3 Election and Removal. The Manager shall be elected and removed by the Member. The initial Manager shall be Pacifica Enterprises, Inc.

8.1.4 No Exclusive Duty. The Manager shall not be required to devote all or substantially all of the Manager's time or efforts to the management of the Company. The Manager may have other business interests and may engage in other activities not related to the Company. Neither the Company nor any Member shall have any right to share or participate in such other business interests or activities.

8.2 Officers.

8.2.1 General. The Manager may from time to time appoint and remove officers of the Company, including a chairman of the board, a president and chief executive officer, a chief operating officer, one or more vice presidents, a chief financial officer, a secretary and any other officers with such titles, powers, and duties as shall be determined from time to time by the Managers.

8.2.2 Appointment. The officers shall be appointed by the Manager, and each shall hold office until resignation or removal, or appointment of a successor. Unless otherwise determined by the Manager, the officers shall not be entitled to any fee or other compensation in connection with the performance of their obligations under this Agreement.

8.2.3 Removal. Any officer may be removed, either with or without cause, by the Manager, at any regular or special meeting or by written consent.

8.2.4 Resignation. Any officer may resign at any time by giving written notice to the Manager or to the president of the Company (subject to the rights, if any, of the Company under any contract of employment). Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; unless otherwise specified in a notice, the acceptance of a resignation shall not be necessary to make it effective.

8.3 Member.

8.3.1 Member's Authority. The Member shall not, acting solely in the capacity of a member, be an agent of the Company, or have any authority to bind or act for, or execute any instrument on behalf of, the Company.

8.3.2 Arrangements with Member. The Member may transact business with the Company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a Member.

9. OUTSIDE INTERESTS.

There is no limitation on the outside interests or activities of the Member. The Member may have other business interests and may engage in other activities, whether or not such interests or activities are competitive with the Company, without any obligation to offer any interest in such interests or activities to the Company.

10. LIABILITY AND INDEMNITY.

10.1 Liability of Member. Except as provided in Section 18-607 of the LLC Act, the Member shall not be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability, of the Company, whether that debt, liability or obligation arises in contract, tort or otherwise, solely by reason of being a Member of the Company.

10.2 Liability of Manager. No person who is a Manager, shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the Company, whether that debt, liability or obligation arises in contract, tort or otherwise, solely by reason of being a Manager of the Company.

10.3 Indemnity of Member. The Company shall indemnify, defend, protect and hold the Member (and its agents) harmless from and against all claims, losses and liabilities, including attorneys' fees and costs, incurred in connection with Company matters.

10.4 Indemnity of Manager. The Company shall indemnify, defend, protect and hold the Manager harmless from and against all claims, losses and liabilities, including attorneys' fees and costs, incurred in connection with Company matters, unless such claims, losses or liabilities arise out of bad faith or willful misconduct by the Manager.

11. DISSOLUTION.

11.1 Events of Dissolution. The Company shall be dissolved upon a written election to dissolve by the Member.

11.2 Winding Up and Liquidation. Upon dissolution of the Company, the Manager shall wind up the affairs of and liquidate the Company in accordance with applicable law and distribute the net proceeds of liquidation to the Member.

11.3 Time for Liquidation. A reasonable time shall be allowed for the orderly liquidation of Company property and the discharge of Company debts, liabilities and obligations, so as to reduce the loss normally resulting from liquidation.

11.4 Certificate of Dissolution of Company. Upon dissolution of the Company, the Manager shall execute, file, publish and record such certificates of dissolution and cancellation, tax returns and other documents and instruments as may be required under applicable law.

12. GENERAL PROVISIONS.

12.1 Governing Law and Severability. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to its conflicts of law principles. If any provision of this Agreement is invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable, or (ii) if it cannot be so modified, be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

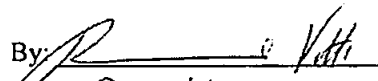
12.2 Amendment and Waiver. This Agreement may be amended only by a written agreement signed by all parties to this Agreement. Waiver of any provision of this Agreement shall not be deemed or constitute a waiver of any other provisions, nor shall such waiver constitute a continuing waiver.

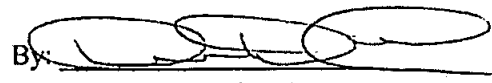
12.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, beneficiaries, legal representatives, successors, assigns and personal representatives of the Member.

12.4 Paragraph Headings. The captions of the paragraphs in this Agreement are inserted as a matter of convenience and for reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

Member:

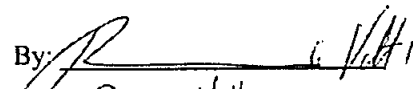
Pacifica Enterprises, Inc.,
a California corporation

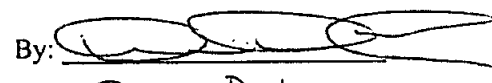
By: 
Name: Pino Vitti
Title: CFO

By: 
Name: Dario De Luca
Title: President

Manager:

Pacifica Enterprises, Inc.,
a California corporation

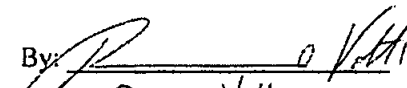
By: 
Name: Pino Vitti
Title: CFO

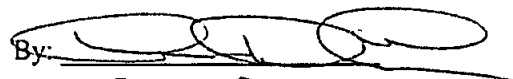
By: 
Name: Dario De Luca
Title: President

Company:

SDLL Ventures LLC,
a Delaware limited liability company

By: Pacifica Enterprises, Inc.,
a California corporation,
Its Manager

By: 
Name: Pino Vitti
Title: CFO

By: 
Name: Dario De Luca
Title: President

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S (X)
2. When incorporated? OCTOBER 17, 2003
3. Where incorporated? CALIFORNIA
4. Is the corporation authorized to do business in California? Yes (X) No ()
If so, as of what date? OCTOBER 17, 2003
5. The corporation is held:
 - a. Publicly () Privately (X)
 - b. If publicly held, how and where is the stock traded?

Please list the following:	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	100,000	100,000	100,000
b. Number of nonvoting shares:	0	0	0
c. Number of shareholders:			2
d. Value per share of Common Stock:		Par \$	0
		Book \$	10.96
		Market	N/A

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: ROBERT AND ROMINA COLUCCI REVOCABLE TRUST
DATED NOVEMBER 26, 2001

Title: ROBERT COLUCCI, TRUSTEE

Address: 5505 CANCHA DE GOLF, RANCHO SANTA FE, CA 92091

No. of Shares: 50,000 VOTING

Name: DARIO AND PATRICIA DE LUCA REVOCABLE FAMILY TRUST
DATED AUGUST 9, 2000

Title: DARIO DE LUCA, TRUSTEE

Address: 5505 CANCHA DE GOLF, RANCHO SANTA FE, CA 92091

No. of Shares: 50,000 VOTING

Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sublessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

FINANCIAL AND OTHER BACKGROUND INFORMATION**FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (X)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (X)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUBLESSEE)

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Robert Hulterstrom

Firm: California Bank & Trust

Title: Senior Vice President

Address: 4320 La Jolla Village Drive Suite 120, San Diego, CA 92122

Telephone: (858) 623-3120

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 2

Name: Nancy Aul

Firm: Pacific Western Bank

Title: Senior Vice President

Address: 401 West A Street, San Diego, CA 92101

Telephone: 619-338-1425

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 3

Name: Greg Judkins

Firm: Judkins, Glatt & Hulme LLP

Title: Attorney at law

Address: 600 B Street, Suite 2350, San Diego, CA 92101

Telephone: 619-232-4604 x13

Nature and magnitude of purchase, sale, loan, business, association, etc.

Lawfirm

REFERENCE NO. 4

Name: Pete Palmer

Firm: Swenson Advisors, LLP

Title: Certified CPA

Address: 25220 Hancock Avenue, Suite 240, Murrieta, CA 92562

Telephone: 951-445-4700 x218

Nature and magnitude of purchase, sale, loan, business, association, etc.

Accountant

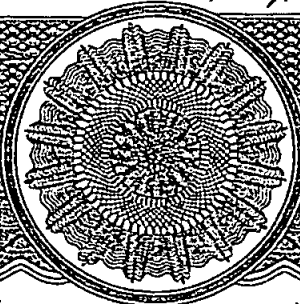
INCORPORATED UNDER THE LAWS OF THE STATE OF
CALIFORNIA
OCTOBER 17, 2003

PACIFICA ENTERPRISES, INC.

AUTHORIZED CAPITAL STOCK
100,000 SHARES

This Certifies that ROBERT COLUCCI and ROMINA COLUCCI, Co-Trustees of the
Robert and Romina Colucci Revocable Family Trust
07/07T dated November 26, 2001 *is the record holder*
of Fifty Thousand (50,000) Shares of the Capital Stock of
PACIFICA ENTERPRISES, INC.
transferable only on the books of the Corporation by the holder hereof in person or
by Attorney upon surrender of this Certificate properly endorsed, or assigned.

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 31st *day of* December A.D. 2009

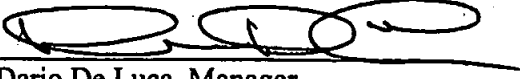


ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto Dario De Luca and Patricia De Luca, Co-Trustees of the Dario and Patricia De Luca Family Trust U/D/T dated August 9, 2000, 50,000 shares of the capital stock ("Shares") of Pacifica Enterprises, Inc. ("Corporation") standing in the name of Pacifica Enterprises LLC, on the books of the Corporation represented by Certificate No. 1 herewith and does hereby irrevocably constitute and appoint Clive M. Essakow attorney to transfer the Shares on the books of the Corporation with full power of substitution.

DATED: December 31, 2009.

Pacifica Enterprises LLC,
a California limited liability company

By: 

Dario De Luca, Manager

INCORPORATED UNDER THE LAWS OF THE STATE OF
CALIFORNIA
OCTOBER 17, 2003

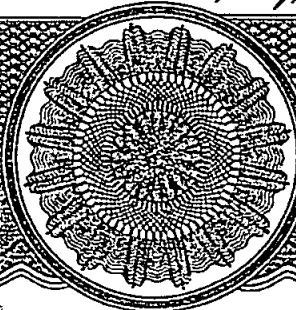
PACIFICA ENTERPRISES, INC.

AUTHORIZED CAPITAL STOCK
100,000 SHARES

DARIO DE LUCA and PATRICIA DE LUCA, Co-Trustees of the
Dario and Patricia De Luca Family Trust U/D/T
dated August 9, 2000

This Certifies that _____ is the record holder
of Fifty Thousand (50,000) _____ Shares of the Capital Stock of
PACIFICA ENTERPRISES, INC.
transferable only on the books of the Corporation by the holder hereof in person or
by Attorney upon surrender of this Certificate properly endorsed, or assigned.

In Witness Whereof the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 31st day of December A.D. 2009

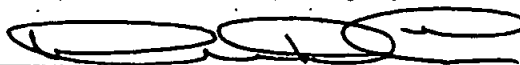


ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto Robert Colucci and Romina Colucci, Co-Trustees of the Robert and Romina Colucci Revocable Family Trust U/D/T dated November 26, 2001, 50,000 shares of the capital stock ("Shares") of Pacifica Enterprises, Inc. ("Corporation") standing in the name of Pacifica Enterprises LLC, on the books of the Corporation represented by Certificate No. 1 herewith and does hereby irrevocably constitute and appoint Clive M. Essakow attorney to transfer the Shares on the books of the Corporation with full power of substitution.

DATED: December 31, 2009.

Pacifica Enterprises LLC,
a California limited liability company

By: 

Dario De Luca, Manager

**WRITTEN CONSENT ACTION
OF BOARD OF DIRECTORS OF
PACIFICA ENTERPRISES, INC.**

The undersigned, constituting the entire board of directors PACIFICA ENTERPRISES, INC., a California corporation, hereby take the following action by written consent without a meeting pursuant to the authority granted to the directors by the bylaws of this corporation.

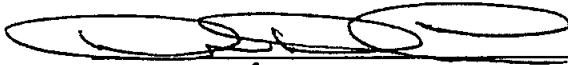
RESOLVED, the following persons are elected as officers of this corporation to serve in the offices set forth opposite their names until their successors are elected and qualified:

<u>Name</u>	<u>Office</u>
Robert Colucci	Chief Executive Officer
Dario De Luca	President, Chief Operating Officer, Secretary
Pino Vitti	Chief Financial Officer

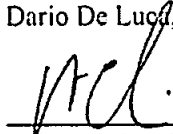
RESOLVED, FURTHER, all actions taken by the officers of this corporation since the last annual meeting of the board of directors or the last written consent action in lieu of such meeting, whether or not such actions are recorded in the minutes of this corporation, are hereby ratified, confirmed and approved in all respects, including without limitation all compensation to officers, employees, and independent contractors, all loan transactions (including loans to and/or from directors or shareholders), all real and personal property lease or purchase transactions (including transactions with directors or shareholders), all actions taken with respect to governmental agencies and all other actions, whether or not within the ordinary course of business.

This consent action may be executed in counterparts.

Dated effective as of July 1, 2012



Dario De Luca, Director



Robert Colucci, Director

**WRITTEN CONSENT ACTION
OF SHAREHOLDERS OF
PACIFICA ENTERPRISES, INC.**

The undersigned, holders of all the issued and outstanding shares of stock of PACIFICA ENTERPRISES, INC., a California corporation, hereby take the following action by written consent without a meeting pursuant to the authority granted to the shareholders by the bylaws of this corporation.

RESOLVED, the following persons are elected to serve as directors of this corporation until the next annual meeting of the shareholders and until their successors are elected and qualified:

Robert Colucci
Dario De Luca

RESOLVED, FURTHER, all actions taken by the officers and directors of this corporation since the last annual meeting of the shareholders, or the last written consent action in lieu of such meeting, whether or not such actions are recorded in the minutes of this corporation, are hereby ratified, confirmed and approved in all respects, including without limitation all compensation to officers, employees, and independent contractors, all loan transactions (including loans to and/or from directors or shareholders), all real and personal property lease or purchase transactions (including transactions with directors or shareholders), all actions taken with respect to governmental agencies and all other actions, whether or not within the ordinary course of business.

This consent action may be executed in counterparts.

Dated effective as of July 1, 2012



Robert Colucci, Co-Trustee of the
Robert and Romina Colucci Revocable
Family Trust U/D/T dated November 26, 2001



Dario De Luca, Co-Trustee of the
Dario and Patricia De Luca Revocable
Family Trust U/D/T dated August 9, 2000

2298957

ARTICLES OF INCORPORATION
OF
PACIFICA ENTERPRISES, INC.

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

OCT 17 2003

KEVIN SHELLEY
Secretary of State

I.

The name of the corporation is Pacifica Enterprises, Inc.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of this corporation's initial agent for service of process is Dario Deluca, 12780 High Bluff Drive, Suite 160, San Diego, California 92130.

IV.

This corporation is authorized to issue only one class of shares of stock and the total number of shares which this corporation is authorized to issue is 100,000.

V.

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VI.

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

DATED: October 17, 2003


Greg D. Jenkins, Incorporator



BYLAWS FOR THE REGULATION,
EXCEPT AS OTHERWISE PROVIDED BY
STATUTE OR ITS ARTICLES OF INCORPORATION,
OF

PACIFICA ENTERPRISES, INC.

ARTICLE I

OFFICES

Section 1. Principal Executive Offices. The principal executive office of the corporation is hereby fixed and located at 12780 High Bluff Drive, Suite 160, San Diego, California 92130. The board of directors is hereby granted full power and authority to change the principal executive office from one location to another. Any change of location may be noted on the bylaws by the secretary opposite this section or this section may be amended to state the new location.

Section 2. Other Offices. Other offices of the corporation may be established by the board of directors at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF SHAREHOLDERS

Section 1. Place of Meetings. All meetings of shareholders shall be held at the principal executive office of the corporation, at the place specified in the notice or at any other place within or without the State of California designated either by the board of directors or by the written consent of all persons entitled to vote thereat and not present at the meeting, given either before or after the meeting and filed with the secretary of the corporation.

Section 2. Annual Meetings. The annual meetings of shareholders shall be held on a date fixed by the board of directors. At annual meetings of shareholders, directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders.

Section 3. Special Meetings. Special meetings of shareholders may be called for the purposes of taking any action permitted by shareholders under the California General Corporations Law and the Articles of Incorporation at any time by the chairman of the board or the president, or by the board of directors, or by one (1) or more shareholders holding not less than ten percent (10%) of the shares entitled to vote at the meeting. Upon request in writing that a special meeting of shareholders be called for any proper purpose, directed to the chairman of the board, president, vice president or secretary by any person or persons (other than the board) entitled to call a special meeting of the shareholders, the officer shall cause notice to be given to shareholders entitled to vote at the meeting as set forth in ARTICLE II, Section 5 below. Any such meeting requested shall be held at a time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after receipt of the request. In the event such notice has not

been given within twenty (20) days after receipt of the request, the person or persons entitled to call the meeting may give the notice. No business other than that described in the notice of the meeting may be transacted at a special meeting of the shareholders.

Section 4. Adjourned Meetings. Any meeting of shareholders, whether or not a quorum is present or has been established, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy. When any meeting of shareholders is adjourned for forty-five (45) days or more, or a new record date for the adjourned meeting is fixed, notice of the adjourned meeting shall be given as in the case of an original meeting as specified in ARTICLE II, Section 5. If a meeting of shareholders is adjourned for a total of less than forty-five (45) days, notice of the time and place of the adjourned meeting or the business to be transacted need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken. To the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 5. Notice and Waiver. Written notice of every meeting of shareholders shall be given to each shareholder entitled to vote at such meeting, either personally or by mail, telegram or other means of written communication, charges prepaid, addressed to such shareholder at his address appearing on the books of the corporation or given by him to the corporation for the purpose of notice. In the event any notice or report addressed to a shareholder at the address of such shareholder appearing on the books of the corporation is returned to the corporation by United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder at such address, all future notices or reports shall be deemed to have been fully given without further mailing if the notice or report shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one (1) year from the date of the giving of the notice or report to any other shareholder. If no address appears on the books of the corporation and a shareholder gives no address, notices shall be deemed to have been given to such shareholder if sent by mail, telegram or other means of written communication addressed to the place where the principal executive office of the corporation is located, or if published at least once in a newspaper of general circulation in the county in which the principal executive office of the corporation is located.

All notices shall be personally delivered, deposited in the mail, or sent by other means of written communication to each shareholder entitled thereto not less than ten (10) nor more than sixty (60) days before such meeting. An affidavit of mailing of any such notice in accordance with the foregoing provisions, executed by the secretary, assistant secretary or any transfer agent of the corporation shall be prima facie evidence of the giving of the notice.

Except in special cases where other express provision is made by statute, notice of meetings shall contain the following information:

- a. the place, date and hour of the meeting;
- b. the general nature of the business to be transacted or proposed, if any, including but not limited to actions with respect to the approval of (i) a contract or other transaction with an interested director; (ii) the amendment of the Articles of Incorporation; (iii) a merger, exchange or sale of assets reorganization as defined by section 181 of the California General Corporations Law; (iv) the voluntary dissolution of the corporation; or (v) a distribution and dissolution other than in accordance with the rights of outstanding preferred shares, if any;

c. if directors are to be elected the names of nominees intended at the time of the notice to be presented by management for election if any; and

d. in the case of an annual meeting, those matters which the board of directors at the time of the mailing of the notice intends to present for action by the shareholders.

Section 6. Validation of Meetings Held Without Proper Call or Notice. The transactions of any meeting of shareholders, however called and noticed, and wherever held, shall be valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if either before or after the meeting, each of the persons entitled to vote and not present in person or by proxy, or who though present has at the beginning of the meeting objected to the transaction of any business because the meeting was not lawfully called or convened or has objected to the consideration of particular matters of business required to have been included in the notice of the meeting but not so included, signs a written waiver of notice, a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 7. Quorum. The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting shall constitute a quorum for the transaction of business. Shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding a withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 8. Action Without a Meeting. Except with respect to the election of directors, any action which may be taken at a meeting of the shareholders may be taken without a meeting and without prior notice except as set forth below. If a consent or consents in writing, setting forth the action so taken, is signed by the holders of shares having not less than the minimum number of votes that would be necessary to authorize such action at a meeting at which all shareholders entitled to vote thereon were present and voted. In the event the consents of all shareholders entitled to vote have not been solicited in writing, notices shall be given in the manner as provided in Section 5 of ARTICLE II of these bylaws as follows:

a. at least ten (10) days before consummation of the action authorized by shareholder approval, notice shall be given of shareholder approval of (i) a contract or other transaction with an interested director; (ii) indemnification of an agent of the corporation; (iii) a merger, exchange or sale of assets reorganization as defined in section 181 of the California General Corporations Law; or (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, if any; and

b. Promptly with respect to any other corporate action approved by shareholders without a meeting by less than unanimous written consent to those shareholders entitled to vote who have not consented in writing.

In the event the board of directors has not fixed a record date as provided in Section 1 of ARTICLE V of these bylaws, for the determination of shareholders entitled to give such written consent, the record date for determining shareholders entitled to give consent to corporate action in writing without a meeting shall be at the close of business on the date on which the board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such action, whichever

is later, and in the event no prior action by the board has been taken the day on which the first written consent is given. All such written consents shall be filed with the secretary of the corporation.

Any shareholders giving a written consent, or the shareholders' proxyholders or a transferee of the shares or personal representative of the shareholder or their respective proxyholders, may revoke the consent by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the secretary of the corporation.

Directors may be elected without a meeting by unanimous written consent of the persons who would be entitled to vote for the election of directors; provided, if a vacancy on the board of directors exists and has not been filled by the directors, a director may be elected at any time without prior notice by the written consent of persons holding a majority of the outstanding shares entitled to vote for the election of directors.

Section 9. Elections of Directors. In any election of directors, the candidates receiving the highest number of votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares are elected. Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins.

Every shareholder entitled to vote at any election of directors may cumulate such shareholder's votes and give one (1) candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit, provided however, that no shareholder shall be entitled to cumulate votes unless the name of each such candidate has been placed in nomination prior to the voting and a shareholder has given notice at the meeting prior to the voting of such shareholder's intention to cumulate such shareholder's votes.

Section 10. Proxies. Every person entitled to vote shares shall have the right to do so in person or by one (1) or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the secretary of the corporation. Any proxy executed is not revoked and continues in full force and effect until (i) a writing stating that the proxy is revoked or a duly executed proxy bearing a later date is filed with the secretary of the corporation prior to the vote pursuant thereto; (ii) the person executing the proxy attends the meeting and votes in person; or (iii) written notice of the death or incapacity of the maker of such proxy is received by the corporation before the vote pursuant thereto is counted; provided that no proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which such proxy is to continue in force.

Section 11. Inspectors of Election. In advance of any meeting of shareholders, the board may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any person so appointed fails to appear or refuses to act, the chairman of any meetings of shareholders may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting. The number of inspectors shall either been one (1) or three (3). If appointed at a meeting on the request of one (1) or more shareholders or proxies, the majority of

shares represented in person or by proxy shall determine whether one (1) or three (3) inspectors are to be appointed.

The inspectors of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum and the authenticity, validity and effectiveness of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders. In the determination of the validity and effect of proxies, the dates contained on the forms of proxy shall presumptively determine the order of execution regardless of the postmark dates on the envelopes in which they are mailed.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE III

DIRECTORS

Section 1. Powers. Subject to the limitations of the Articles of Incorporation, the business and affairs of the corporation shall be managed and all the corporate powers shall be exercised by or under the direction of the board of directors. The board of directors may delegate the management of the day-to-day operation of the business of the corporation to the management of company or other person or persons provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board of directors. Without prejudice to such general powers, but subject to the same limitations, the directors shall have the following powers:

First: To select and remove all the officers, agents and employees of the corporation; prescribe such powers and duties for them as may be consistent with law, the Articles of Incorporation and these Bylaws; fix their compensation; and require from them security for faithful service.

Second: To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefor consistent with law, the Articles of Incorporation or these Bylaws, as they may deem best.

Third: To change the principal executive office and the principal office for the transaction of business of the corporation from one location to another as provided in ARTICLE I, Section 1; to fix and locate from time to time one (1) or more subsidiary offices of the corporation within or without the State of California as provided in ARTICLE I, Section 2; to designate any place within or without the state for the holding of any meeting or meetings of shareholders; to adopt, make and use the corporate seal and to prescribe the forms of certificates of shares; and to alter the form of such seal and certificates from time to time as in their judgment they deem best, provided such seal and such certificates shall at all times comply with the provisions of law.

Fourth: To authorize issuance of shares of the corporation from time to time upon such terms as may be lawful in consideration of money paid, labor done, services actually rendered to the corporation or for its benefit or in its formation or reorganization, debts or securities cancelled, and tangible or intangible property actually received either by the corporation or any one of its wholly owned subsidiaries, if any, or as a share dividend or upon a stock split, reverse stock split, reclassification, conversion or exchange of shares for shares of another class or series of shares, but not in consideration of promissory notes of the purchaser (unless adequately secured by collateral other than the shares acquired or pursuant to a stock purchase plan or agreement or stock option plan or agreement authorized by section 408 of the California General Corporations Law) or future services.

Fifth: To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered in the corporate name promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities.

Sixth: By resolution adopted by a majority of the authorized number of directors, to designate an executive committee and other committees, each consisting of two (2) or more directors, to serve at the pleasure of the board. Unless the board of directors shall otherwise prescribe the manner of proceedings of any such committee, meetings of such committee (other than the executive committee whose proceedings shall be governed by Section 16 of this ARTICLE II of these bylaws) may be regularly scheduled in advance and may be called at any time by any two (2) members thereof; otherwise, the provisions of these bylaws with respect to notice and conduct of the meetings of the board shall govern. Any such committee, to the extent provided in a resolution of the board, shall have all the authority of the board, except with respect to:

(i) the approval of any action for which the California General Corporations Law or the Articles of Incorporation also require shareholder approval;

(ii) the filling of vacancies on the board of directors or on any committee;

(iii) the fixing of compensation of the directors for serving on the board or any committee;

(iv) the adoption, amendment or repeal of bylaws;

(v) the amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable;

(vi) the declaration of a dividend, or the authorization or ratification of the repurchase or redemption of shares, except at a rate or in a periodic amount or within a price range determined by the board of directors; and

(vii) the appointment of other committees of the board or the members thereof.

Section 2. Number and Qualifications of Directors. The authorized number of directors shall be two (2) until changed by amendment of the Articles of Incorporation or by an amendment of this section duly adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided that a proposal to reduce the authorized number of

directors below five (5) cannot be adopted if the votes cast against its adoption at a meeting, or the shares not consenting in the case of action by written consent, are equal to more than sixteen and two-thirds percent (16 2/3%) of the outstanding shares entitled to vote.

Section 3. Election and Term of Office. The directors shall be elected at each annual meeting, but if any such annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of shareholders held for that purpose. All directors shall hold office until the next annual meeting of shareholders and until their respective successors have been elected and qualified, subject to the California General Corporations Law and the provisions of these bylaws with respect to vacancies on the board of directors.

Section 4. Vacancies. A vacancy in the board of directors shall be deemed to exist in the event of the death, resignation, or removal of any directors, any increase of the authorized number of directors, or the failure of the shareholders at any annual or special meeting of shareholders at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting. The board of directors may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

A vacancy or vacancies in the board of directors, except for a vacancy created by the removal of a director, may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until his successor is elected in an annual or special meeting of shareholders called for that purpose. A vacancy in the board of directors created by the removal of a director may be filled only by the vote of the majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of the holders of the majority of the outstanding shares. The shareholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors. Any such election by written consent shall require the consent of holders of a majority of the outstanding shares entitled to vote.

Any directors may resign upon giving written notice to the chairman of the board, the president, the secretary or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 5. Place of Meetings. All meetings of the board of directors shall be held at any place within or without California which has been designated in the notice of the meeting, or if not stated in the notice or if there is no notice, at any place designated from time to time by resolution of the board or by written consent of all members of the board. In the absence of such designation, meetings shall be held at the principal executive office of the corporation.

Section 6. Telephonic or Other Meetings. So long as permitted by statute, directors may participate in a meeting through any means of communication, including conference telephone, electronic video screen communication, or other communications equipment. Participating in a meeting pursuant to this section constitutes presence in person at that meeting if each participating director is provided the means to communicate with all of the other directors concurrently and (i) the meeting is held by conference telephone or video conferencing or other communications mode enabling participants to determine, through voice or image recognition, that a participant is or is not a director entitled to participate in the meeting or (ii) another communications device (such as a

computer modem) is used in conjunction with another method (determined in the discretion of the chairperson of the meeting) enabling participants to determine that a participant is or is not a director entitled to participate in the meeting. Such verification method may include use of passwords or similar codes for gaining access to the meeting or encryption and authentication technology approved in the discretion of the chairperson. Participation in a meeting as permitted in the preceding sentence constitutes presence in person at such meeting.

Section 7. Organization Meeting. Immediately following each annual meeting of shareholders, the board of directors shall hold a regular meeting at the place of the annual meeting of shareholders or at such other place as shall be fixed by the board of directors, for the purpose of organization, election of officers and the transaction of other business.

Section 8. Other Regular Meetings. Other regular meetings of the board of directors shall be held at such times as may be designated by the board of directors.

Section 9. Special Meetings. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any director.

Section 10. Notice of Directors' Meetings. Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board. Notice of a meeting need not be given to a director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Whenever any director has been absent from any meeting of the board of directors for which notice has not been dispensed with, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such director.

Section 11. Quorum. The presence at a meeting of the board of directors of a majority of the members of the board of directors shall constitute a quorum for the transaction of business; provided that such quorum shall at no time be less than one-third (1/3) of the authorized number of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of enough directors to leave less than a quorum, provided that any action taken is approved by at least a majority of the required quorum for such meeting.

Section 12. Voting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, unless a greater number, or the same number after disqualifying one (1) or more directors from voting, is required by law, by the Articles of Incorporation or by these bylaws.

Section 13. Validation of Meetings Held Without Proper Call or Notice. The transactions of any meeting of the board of directors, however called and noticed or wherever held, shall be valid as though had at a meeting duly held after regular call and notice, if a quorum is initially

present, and if, either before or after the meeting, each of the directors not present or who though present has prior to the meeting or at its commencement protested the lack of proper notice to him signs a written waiver of notice, a consent to holding of such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 14. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any directors' meeting to meet again at another time or place. In the event a meeting of the board of directors is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment. Otherwise, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed and announced at the meeting so adjourned.

Section 15. Unanimous Written Consent to Actions Taken. Any action required or permitted to be taken by the board of directors may be taken without a meeting if all the members of the board of directors shall individually or collectively consent in writing to such action. Such consent or consents shall be filed with the minutes of the proceedings of the board of directors and shall have the same force and effect as a unanimous vote of the directors.

Section 16. Fees and Compensation. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement for expenses as may be fixed or determined by resolution of the board of directors. Nothing herein shall be considered to preclude any director from serving the corporation in any other capacity, including as an officer, agent, employee or otherwise, and receiving compensation therefor.

Section 17. Executive Committee. In the event the board of directors shall appoint an executive committee and shall not provide otherwise, regular meetings of the executive committee shall be held at such times as are determined by the board or by such committee as appointed, and notice of such regular meetings is hereby dispensed with. Meetings of the executive committee shall be held at the place designated in the notice of the meeting, or if not stated in the notice or if there is no notice, at any place which has been designated from time to time by resolution of the executive committee or by written consent of all the members thereof, or in the absence of such designation, at the principal executive office of the corporation. Special meetings of the executive committee may be called by the chairman of the board, the president, any vice president who is a member of the executive committee, or any two (2) members thereof, upon written notice to the members of the executive committee of the time and place of such special meeting given in the manner and within the time provided for giving of notice to members of the board of directors of the time and place of special meetings thereof. Minutes shall be recorded of each meeting of the executive committee and kept in a book of minutes of the corporation. Vacancies in the membership of the executive committee may be filled only by the board of directors. Only members of the board of directors shall serve as members of the executive committee. A majority of the authorized number of members of the executive committee shall constitute a quorum for the transaction of business. The provisions of this ARTICLE III also apply to the executive committee and action by the executive committee, mutatis mutandis. The board of directors may designate one (1) or more directors as alternate members of the executive committee, who may replace and act in the stead of any absent members at any meeting of such committee.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the corporation shall be a president, a secretary and a chief financial officer (who may be called the treasurer). The corporation may also have, at the discretion of the board of directors, a chairman of the board, one (1) or more vice presidents, one (1) or more assistant secretaries, one (1) or more assistant financial officers, and such other officers as may be appointed in accordance with the provisions of Section 4 of this ARTICLE IV. Any number of offices may be held by the same person.

Section 2. Election. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 4 of this ARTICLE IV, shall be chosen by the board of directors, and each shall hold his office until he shall resign or shall be removed by the board of directors or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. Subordinate Officers. The board of directors may appoint, and may empower the chairman of the board or the president to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as the appointing authority may designate, subject to any limitations imposed by resolution of the board of directors.

Section 4. Removal. Any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting thereof or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors (subject, in each case to the rights, if any, of an officer under any contract of employment).

Section 5. Resignation. Any officer may resign at any time by giving written notice to the board of directors or to the president or secretary of the corporation, with prejudice, however, to the rights, if any, of the corporation under any contract to which such officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office.

Section 7. Chairman of the Board. The chairman of the board, if there shall be such an officer, shall, if present, preside at all meetings of the board of directors and shareholders and exercise and perform such other powers and duties as may be from time to time assigned to him by the board of directors or prescribed by these bylaws.

Section 8. President. Subject to such powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the business and officers of the corporation. In the absence of the chairman of the board or if there be none, he shall preside at all meetings of the shareholders and the board of directors. He shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

Section 9. Vice Presidents. In the absence or disability of the president, the vice presidents, if there be any, in order of their rank as fixed by the board of directors or, if not ranked, the vice president designated by the board of directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or these bylaws.

Section 10. Secretary. The secretary shall record or cause to be recorded, and shall keep or cause to be kept, at the principal executive office of the corporation and such other place or places as the board of directors may order, a book of minutes of actions taken at all meetings of directors, committees and shareholders, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at directors' and committee meetings, the number of shares present or represented at shareholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent, a share register, or a duplicate share register, showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all the meetings of the shareholders and the board of directors required by these bylaws or by law to be given and he shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

The secretary shall keep at the principal executive office, and if the corporation's principal executive office is not in California, at the corporation's principal business office in California, the original or a copy of these bylaws as amended to date.

Section 11. Chief Financial Officer. The chief financial officer (who may be called the treasurer) shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, income, losses, changes in financial position, capital stock, retained earnings and shares.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and the directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

ARTICLE V

MISCELLANEOUS

Section 1. Record Date. The board of directors may fix a time in the future as record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders, give consent to corporate action in writing without a meeting, receive any report, receive any dividend or other distribution or any allotment of rights, or exercise rights in respect to any change, conversion or exchange of shares. The record date so fixed shall not be more than sixty (60) days nor less than ten (10) days prior to the date of any meeting, nor more than sixty (60) days prior to any other event for the purpose of which it is fixed. In the event the board of directors does not fix a record date, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the business day next preceding the day on which notice is given, or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held; the record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the board of directors has been taken, shall be the day on which the first written consent is given; and the record date for determining shareholders for any other purpose shall be the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later. Only shareholders of record on the record date are entitled to notice of and to vote at any such meeting, give consent without a meeting, receive any report, receive a dividend, distribution or allotment of rights, or exercise the rights, as the case may be, notwithstanding any transfer of shares on the books of the corporation after the record date, except as otherwise provided in the Articles of Incorporation or these bylaws. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the board of directors fixes a new record date for the adjourned meeting. In the event such a meeting is adjourned for more than forty-five (45) days from the date set for the original meeting, the board of directors shall fix a new record date.

Section 2. Director Inspection of Corporate Records. Every director shall have the absolute right at any reasonable time to inspect all books of account, records and documents of every kind and to inspect the physical properties of the corporation and all of its subsidiaries, both domestic and foreign. Inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts.

Section 3. Shareholder Inspection of Corporate Records. The accounting books and records and minutes of proceedings of the shareholders and the board of directors and committees of the board of this corporation and all of its subsidiaries shall be open to inspection upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours for a purpose reasonably related to such holder's interest as a shareholder or as a holder of such voting trust certificate. Inspection by a shareholder or a holder of a voting trust certificate may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts.

A shareholder or shareholders who hold at least five percent (5%) in the aggregate of the outstanding voting shares of the corporation, or hold at least one percent (1%) of such voting shares and have filed a Schedule 14 B with the United States Securities and Exchange Commission relating to the election of directors of the corporation shall have the right, exercisable in person or by agent or attorney, to inspect and copy the record of shareholders' names and addresses and shareholdings, as of the most recent record date for which it has been compiled or as of a date specified by the shareholder subsequent to the date of demand. The list shall be made available on or before the later of five (5) business days after the demand is received or the date specified therein as of the date as of which the list is to be compiled.

Every shareholder shall have the absolute right to inspect at all reasonable times during office hours the original or a copy of these bylaws as amended to date, at the corporation's principal executive office, or if its principal executive office is not in California, then at its principal business office in California. In the event the principal executive office of the corporation is outside California, and the corporation has no principal business office in California, it shall, upon the written request of any shareholder, furnish to such shareholder a copy of the bylaws as amended to date.

Section 4. Annual and Financial Reports. The requirement for the sending of an annual report to the shareholders, except upon proper request as set forth below, is expressly waived.

A shareholder or shareholders holding in the aggregate at least five percent (5%) of the outstanding shares of any class of the corporation may make a written request to the corporation for an income statement of the corporation for the three (3) month, six (6) month, or nine (9) month period of the current fiscal year ended not less than thirty (30) days prior to the date of the request and a balance sheet of the corporation as of the end of such period, and in addition, if no annual report for the last fiscal year has been sent to shareholders, the annual report for the last fiscal year. The income statement, balance sheet, and if applicable the annual report, shall be delivered to the person making the request within thirty (30) days thereafter. In addition, the corporation shall, upon a written request of any shareholder, mail to the shareholder a copy of the last annual, semiannual or quarterly income statement and balance sheets and other financial statements referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation, or the certificate of the chief financial officer or any other officer authorized by the board of directors that such financial statements were prepared without audit from the books and records of the corporation. A copy of any such statement and reports shall be kept on file in the principal executive office of the corporation for twelve (12) months and they shall be exhibited at all reasonable times to any shareholder demanding an examination of them or a copy shall be mailed to such shareholder.

Section 5. Share Certificates. Every holder of shares in the corporation shall be entitled to have a certificate signed in the name of the corporation by the chairman or vice president and by the chief financial officer or any assistant financial officer or the secretary or any assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any of the signatures on the certificate may be a facsimile, provided that in such event at least one (1) signature, including that of any of the aforementioned officers or the corporation's registrar or transfer agent if any, shall be manually signed. In the event any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

There shall appear on certificates for shares of the corporation the following facts if, and to the extent, applicable:

a. the shares are subject to restrictions upon transfer, including those imposed by the California Corporate Securities Law of 1968, the federal securities laws, any agreement between the corporation and the issuee thereof, the Articles of Incorporation, these bylaws or otherwise;

b. the shares are assessable;

- c. the shares are not fully paid and the total amount of the consideration to be paid therefor and the amount theretofore paid thereon;
- d. the shares are subject to a close corporation voting agreement;
- e. the shares are subject to restrictions upon voting rights contractually imposed by the corporation;
- f. the shares are redeemable;
- g. the shares are convertible and the period for conversion;
- h. the corporation has elected to be taxed pursuant to the provisions of Subchapter S of the Internal Revenue Code of 1986, as amended; and
- i. the shares are classified or a class of the shares has two (2) or more series, and a statement setting forth the office or agency of the corporation from which shareholders may obtain, upon request and without charge a copy of a statement of the rights, preferences, privileges and restrictions granted to or imposed upon each class or series of shares authorized to be issued and upon the holders thereof.

No new certificate for shares shall be issued in lieu of an old certificate unless the latter is surrendered and cancelled at the same time; provided however, that the board of directors may authorize the issuance of a new share certificate in the place of any certificate previously issued by the corporation and alleged to be lost, stolen or destroyed in the event that: (i) the request for the issuance of the new certificate is made within a reasonable time after the holder of the old certificate has notice of its loss, destruction or theft and prior to the receipt of notice by the corporation that the old certificate has been acquired by a bona fide purchaser or holder in due course; and (ii) the holder of the old certificate files a sufficient indemnity bond with or provides other adequate security to the corporation and satisfies any other reasonable requirements imposed by the board. In the event of the issuance of a new certificate, the rights and liabilities of the corporation and the holders of the old and new certificates shall be governed by the provisions of sections 8104 and 8405 of the California Commercial Code.

Section 6. Representation of Shares of Other Corporations. The chairman of the board, the president or any vice president, or the chief financial officer, or any assistant financial officer, and the secretary or any assistant secretary of this corporation are authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the corporation. The authority granted to such officers to vote or represent on behalf of this corporation any and all shares held by this corporation in any other corporation or corporations may be exercised either by such officers in person or by any other person authorizing to do so by proxy or power of attorney duly executed by any of such officers.

Section 7. Registrars and Transfer Agents. The board of directors may appoint one (1) or more registrars of transfers, which shall be incorporated banks or trust companies, either domestic or foreign, and one (1) or more transfer agents or transfer clerks, who shall be appointed at such times and places as the board of directors shall determine.

Section 8. Subchapter S Election. If this corporation has elected to be taxed pursuant to the provisions of Subchapter S of the Internal Revenue Code of 1986, as amended, then the corporation, any shareholder and any person to whom any of its shares are transferred shall not do any act or take any course of conduct which shall have the effect of terminating such election without the prior vote of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of the corporation or the written consent of the persons entitled to vote such shares.

Section 9. Fiscal Year. The fiscal year of the corporation shall be determined by the board of directors, and having been so determined by the board of directors, and having been so determined, is subject to change from time to time as the board of directors shall determine.

Section 10. Checks, Drafts and Other Instruments. All checks, drafts, or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the board of directors.

Section 11. Execution of Contracts and Instruments. The board of directors, except as these bylaws may otherwise provide, may authorize one (1) or more officers or agents of the corporation to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Any instrument may also be executed on behalf of and in the name of the corporation by the chairman of the board, the president, or any vice president, and the secretary, or any assistant secretary, chief financial officer, or any assistant financial officer.

Section 12. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules or construction and definitions contained in the California General Corporations Law shall govern the construction of these bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes a corporation or partnership in trust, as well as a natural person.

Section 13. Indemnification and Liability Insurance.

a. This corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

b. This corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other

amounts actually and reasonably incurred by such person in connection with the defense or settlement of such action. Notwithstanding any other provisions contained herein, no indemnification shall be made for any of the following:

(1) in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation and its shareholders, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine;

(2) of amounts paid in settling or otherwise disposing of a pending action without court approval; or

(3) of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval;

(4) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law;

(5) for acts or omissions that an agent believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the agent;

(6) for any transaction from which an agent derived an improper personal benefit;

(7) for acts or omissions that show a reckless disregard for the agent's duty to the corporation or its shareholders in circumstances in which the agent was aware, or should have been aware, in the ordinary course of performing the agent's duties, of a risk of serious injury to the corporation or its shareholders;

(8) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the agent's duty to the corporation or its shareholders;

(9) under California Corporations Code section 310; or

(10) under California Corporations Code section 316.

c. To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subsections a or b or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

d. Except as provided in subsection c above, any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper under the circumstances because the agent had met the applicable standard of conduct set forth in subsections a or b, by any of the following:

(1) a majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) if such a quorum of directors is not obtainable, by independent legal counsel in a written opinion;

(3) approval of the shareholders pursuant to California Corporations Code Section 153, with the shares owned by the person to be indemnified not being entitled to vote thereon; or

(4) the court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering service in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

e. Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this Section.

f. The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent such additional rights to indemnification are authorized in the Articles of Incorporation. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

g. No indemnification or advance shall be made under this section, except as provided in subsections c or d(4), in any circumstance where it appears:

(1) that it would be inconsistent with a provision of the Articles of Incorporation, these bylaws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) that it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

h. This corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section. If the corporation owns all or a portion of the shares of the company issuing the policy of insurance this subdivision shall remain applicable if either of the following conditions are satisfied: (1) if authorized in the articles of the corporation, any policy issued is limited to the extent provided by California Corporations Code Section 204; or (2)(A) the company issuing the insurance policy is organized, licensed, and operated in a manner that complies with the insurance laws and

regulations applicable to its jurisdiction of organization, (B) the company issuing the policy provides procedures for processing claims that do not permit that company to be subject to the direct control of this corporation, and (C) the policy issued provides for some manner of risk sharing between the issuer and purchaser of the policy, on one hand, and some unaffiliated person or persons, on the other, such as by providing for more than one unaffiliated owner of the company issuing the policy or by providing that a portion of the coverage furnished will be obtained from some unaffiliated insurer or reinsurer.

i. For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subsections c or d(4).

ARTICLE VI AMENDMENTS

Section 1. Power of Shareholders. New bylaws may be adopted or these bylaws may be amended or repealed by the affirmative vote of a majority of the shares entitled to vote or by the written consent of shareholders entitled to vote such shares, except as otherwise provided by law, or by the Articles of Incorporation; provided however, that this ARTICLE VI may be amended or repealed only upon the affirmative vote of at least eighty percent (80%) of the shares entitled to vote or the written consent of shareholders entitled to vote such shares, and Section 8 of ARTICLE V may be amended or repealed only upon the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the shares entitled to vote or the written consent of shareholders entitled to vote such shares.

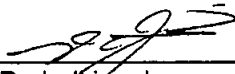
Section 2. Power of Directors. Subject to the right of shareholders as provided in Section 1 of this ARTICLE VI to adopt, amend or repeal bylaws, the board of directors may adopt new bylaws or amend or repeal these bylaws other than Section 8 of ARTICLE V and this ARTICLE VI; provided however, that the board of directors may not adopt, amend or repeal a bylaw changing the authorizing number of directors except for the purpose of fixing the exact number of directors within the limits specified in Section 2 of ARTICLE III of these bylaws if such section provides for a variable number of directors.

CERTIFICATE OF INCORPORATOR

The undersigned does hereby certify that:

1. I am the Incorporator of Pacifica Enterprises, Inc., a California corporation; and
2. The foregoing Bylaws constitute the Bylaws of the corporation as duly adopted by the incorporator this day.

DATED: November 24, 2003



Greg D. Jenkins, Incorporator

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (X)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (X)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (X)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUBLESSEE)

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Sharon Council

Firm: Pacific Western Bank

Title: Senior Vice President

Address: 401 West A Street Suite 200 San Diego, CA 92101

Telephone: 619-338-1437

Nature and magnitude of purchase, sale, loan, business, association, etc.

\$12M loan with Pacific Western Bank for Tower 23, LP. Also, the majority of Brett Miller's companies bank with Pacific Western Bank

REFERENCE NO. 2

Name: David Gonzalez

Firm: Union Bank of CA

Title: Vice President

Address: 1706 Garnet Ave. San Diego, CA 92109

Telephone: (858) 581-5103

Nature and magnitude of purchase, sale, loan, business, association, etc.

The majority of Brett Miller's companies have bank accounts with Union Bank. There are 2 small lines of credit as well. 10

REFERENCE NO. 3

Name: Janis Palmeter

Firm: US Foodservice

Title: Regional Sales Manager

Address: 1201 Park Center Dr. Vista, CA 92081

Telephone: 800-627-1115 Ext 6770

Nature and magnitude of purchase, sale, loan, business, association, etc.

US Foodservice is the largest purveyor of food & beverage products for Brett Miller's companies

REFERENCE NO. 4

Name: Kurt Martin

Firm: Anheuser Busch

Title: Director of Sales & Marketing

Address: PO Box 80758 San Diego, CA 92138

Telephone: 800-301-4726

Nature and magnitude of purchase, sale, loan, business, association, etc.

Anheuser Busch is the largest beer purveyor for Brett Miller's companies.

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name Brett Allen Miller
Date of Birth 08/23/1968
Place of Birth Snohomish, WA
Social Security Number 565-75-4208
Driver's License Number/State C4693470 CA
Home Address 1145 Skylark Dr. La Jolla, CA 92037

Previous Address 3888 Riviera Dr. San Diego, CA 92109

Home Telephone No. 858-459-6445
Employer Miller Pacific Beach Enterprise, Inc.
Occupation CEO
Business Address 1253 Garnet Ave. Ste A San Diego, CA 92109
Business Telephone No. 858-273-8440
Business Fax No. 858 -274-2803

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date 10/9/2012 Signed 

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

BELMONT ATHLETICS LLC

FINANCIAL AND OTHER BACKGROUND INFORMATION**FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition. The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

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REFERENCES FOR PROPOSED (SUBLESSEE)

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Robert Hulterstrom

Firm: California Bank & Trust

Title: Senior Vice President

Address: 4320 La Jolla Village Drive Suite 120, San Diego, CA 92122

Telephone: (858) 623-3120

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 2

Name: Nancy Aul

Firm: Pacific Western Bank

Title: Senior Vice President

Address: 401 West A Street, San Diego, CA 92101

Telephone: 619-338-1425

Nature and magnitude of purchase, sale, loan, business, association, etc.

Business banking relationship

REFERENCE NO. 3

Name: Greg Judkins

Firm: Judkins, Glatt & Hulme LLP

Title: Attorney at law

Address: 600 B Street, Suite 2350, San Diego, CA 92101

Telephone: 619-232-4604 x13

Nature and magnitude of purchase, sale, loan, business, association, etc.

Lawfirm

REFERENCE NO. 4

Name: Pete Palmer

Firm: Swenson Advisors, LLP

Title: Certified CPA

Address: 25220 Hancock Avenue, Suite 240, Murrieta, CA 92562

Telephone: 951-445-4700 x218

Nature and magnitude of purchase, sale, loan, business, association, etc.

Accountant

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

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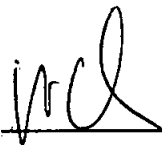
First, Middle, & Last Name Robert Anthony Colucci _____
Date of Birth February 25, 1969 _____
Place of Birth Los Angeles, CA _____
Social Security Number 560-43-8640 _____
Driver's License Number/State C5153968 CALIFORNIA _____
Home Address 7222 Pacifica Ranch Hills Rd, Rancho Santa Fe, CA
92091
Previous Address 1553 Summer Creek Ct, Vista, CA 92084

Home Telephone No.: 760-419-8526 _____
Employer: Self Employed _____
Occupation: Chief Executive Officer _____
Business Address 5505 Cancha de Golf, Rancho Santa Fe, CA 92091
Business Telephone No (858) 755-0216 _____
Business Fax No (858) 755-1212 _____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date: October 3, 2012

Signed: _____



Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

BELMONT ATHLETICS LLC

FINANCIAL AND OTHER BACKGROUND INFORMATION**FINANCIAL STATEMENT**

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Nature and magnitude of purchase, sale, loan, business, association, etc.

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Telephone: 619-232-4604 x13

Nature and magnitude of purchase, sale, loan, business, association, etc.

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Title: Certified CPA

Address: 25220 Hancock Avenue, Suite 240, Murrieta, CA 92562

Telephone: 951-445-4700 x218

Nature and magnitude of purchase, sale, loan, business, association, etc.

Accountant

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The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name Dario De Luca _____
Date of Birth 02/06/1969 _____
Place of Birth INGLEWOOD _____
Social Security Number 563-75-2214 _____
Driver's License Number/State C5095868 CALIFORNIA _____
Home Address 18138 Pacifica Ranch Rd, Rancho Santa Fe, CA
92091
Previous Address 18545 Aliso Canyon Rd, Rancho Santa Fe, CA
92091
Home Telephone No.: 619-992-4294 _____
Employer: Self Employed _____
Occupation: Chief Operating Officer _____
Business Address 5505 Cancha de Golf, Rancho Santa Fe, CA 92091
Business Telephone No (858) 755-0216 _____
Business Fax No (858) 755-1212 _____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date: October 3, 2012

Signed: _____



Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

BELMONT ATHLETICS LLC