

Balotsky, Vladimir

From: Balotsky, Vladimir
Sent: Thursday, February 20, 2014 3:36 PM
To: 'Mirko Marrone'
Cc: 'Dan Hayden'
Subject: RE: Zipline Lease

Mirko,

My apologies with the Zipline sublease. I see that you send it on January 31. I spoke with Jim Barwick and he approved the use. You can go ahead and move forward with the construction. No City consent is required.

Also, you are probably aware that City requested to stop any wall opening/repairs at the mural wall inside the Plunge. This project can be resumed only after the City approve it. Please send me a brief summary of the Plunge project (wall only) and request for approval. The same procedure shall apply to any work that alter appearance of the existing building (buildings Nos. 5 and 7).

If you need more information please contact me or see section 6.04 of the lease.

Thank you,

**Vladimir Balotsky / Supervising Property Agent
City of San Diego / Real Estate Assets Department
1200 Third Avenue, Suite 1700, San Diego, CA 92101
(619) 235-5248 (Voice); (619) 236-6706 (FAX)**

From: Mirko Marrone [<mailto:mmarrone@pacificaent.com>]
Sent: Wednesday, February 19, 2014 11:10 AM
To: Balotsky, Vladimir
Cc: Kara Brown
Subject: FW: Zipline Lease

Hi Vladimir,

Attached is the Zipline lease for your review. Please confirm that you received this.

Mirko Marrone

P A C I F I C A

**Real Estate Services, Inc.
Commercial Property Manager**

From: Mirko Marrone
Sent: Friday, January 31, 2014 10:56 AM
To: VBalotsky@sandiego.gov
Subject: Zipline Lease

Hi Vladimir,



LEASE AGREEMENT

SYMPHONY ASSET POOL XVI LLC

and

Mission Beach Attractions, 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: September 1, 2013.

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

Tenant: Mission Beach Attractions LLC, A Delaware limited Liability company

Tenant's Trade Name: "Speed Wall", Zip Line and Leap of Faith

Premises: Located in Belmont Park Commercial/Recreational Center ("Center") as illustrated on the site plan attached as Exhibit A; and, more particularly described as "secondary" Midway between Plunge and Building 4&7, San Diego, CA 92109, shown as on the floor plan set forth in Exhibit B.

Permitted Use: Operation of a "Speed Wall", Zip line and Leap of Faith attraction.

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 (Any food or drink)
- Sale of bathing suits in excess of 15% of total gross sales
- Sales of any name brand Board Sports Apparel or accessories sold by Center Tenant "Sun Diego At Wave House".

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

Term: 5 Years, commencing on the Commencement Date (defined below) and terminating 5 years thereafter.

Commencement Date: April 1, 2014.

Rent Commencement Date: Payment of rent shall commence April 1, 2014.

Rent: Rent shall be the greater of:

- A. \$60,000/yearly minimum rent
- B. 25% of Tenant's Yearly Gross Sales

Rent Adjustment: Tenant's minimum yearly rent shall increase by 4% per year.

Options To Renew: Tenant shall be granted one (1), five (5) year Extension Options provided the Lease is not in default. Minimum Monthly Rent shall be at Fair Market Rent. Tenant shall provide Notice of its election to exercise each Option not less than 90 days prior to the then expiring term. .

Address for Notices:

To Landlord: Symphony Asset Pool XVI LLC
c/o Pacifica Real Estate Services
Attention: Mirko Marrone
5505 Cancha de Golf
Rancho Santa Fe, California 92091

To Tenant: James Austin
Mission Beach Attractions LLC
3146 Mission Boulevard, Suite H
San Diego, CA 92122
(858) 405-4353

Security Deposit: None.

Initial Marketing Fund Contribution: None.

Landlord Work: Landlord to install infrastructure needed for installation of Zipline. Landlord will not be required to install FF&E needed for the rides.

Real Estate Broker: 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 a summary of certain key provisions of the Lease and 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 February 1, 2014. The lease term shall commence on February 1, 2014. 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.

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.

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 Rent Commencement Date. Upon execution of the Lease, Tenant shall pay its first installment of Minimum Monthly Rent and Tenant's Security Deposit.

5.1.1 Minimum Annual Rent. Tenant shall pay Minimum Annual Rent in the amount of \$60,000 for year one of the term of the Lease payable each month in advance in the sum of Five Thousand Dollars (\$5,000) for year one of the term of the Lease. ("Minimum Monthly Rent") Minimum Annual Rent and Minimum Monthly Rent shall increase each year beginning at the commencement of years 2-5 of the Lease term and years 2-5 of each Option Term if exercised, in the amount of 4% from the preceding year..

5.1.2 Percentage Rent. In addition to the Minimum Annual Rent, Tenant agrees to pay as Percentage Rent on an annual basis, the amount that twenty five percent (25%) of Gross Sales Tenant made from or upon the Premises during each year of the term of the Lease exceeds the amount of Annual Minimum Rent paid during each year of the term of the Lease, as specified in the Fundamental Lease Provisions. Percentage Rent shall be computed and paid each year within ten (10) days of the completion of each year of the Lease... Tenant shall complete Exhibit G "Monthly Tenant Gross Sales Report" and

submit same no later than ten (10) days following the close of the preceding month. Within (10) days of the close of each Lease year, Tenant shall complete an annual Gross Sales Report that is cumulative of the preceding twelve (12) months of Monthly Gross Sales Reports and submit same along with any Percentage Rent owing to Landlord.

5.1.2.1 In the event of an increase only 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. For instance if Landlord's percentage rent it pays the City is increased by 1% then Tenant's percentage rent shall also increase by 1% from 25% to 26%. Tenant's percentage rent will not decrease regardless of the amount of percentage rent paid by Landlord to the City.

5.1.3 Additional Rent. In addition to Minimum Annual Rent and Percentage 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 Rent. Annual Rent, 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 ten (10) days after the close of each Lease year. All monthly and annual statements shall classify, itemize and total all sales by category, , 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 Annual Minimum Rent, 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 Annual Minimum Rent, 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.

5.4 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. Minimum Rent shall be late on the fifth (5th) day of each month. Percentage Rent shall be due on the tenth (10th) day after each Lease year, for Percentage Rent accruing during the prior Lease year. 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 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 Tenant substantially or continually fails to observe the Rules and Regulations and policies and directions made or promulgated by Landlord;

then:

5.8.2 In the case of a default under subparagraph 5.8.1, 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, subject to the provisions of Sections 4.1 and 4.3. 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 Uses. 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 restricted use as provided 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 or illegal, 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 knowing 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 sub-Tenants, 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 Climbing Wall

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 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 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 therefore, 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 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

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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 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.

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;

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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 Occupancy Transactions. 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 term of this Lease, particularly because this is a percentage lease and Landlord is relying on Tenant's 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 without the consent of Landlord during the term hereof. Tenant, therefore, shall not enter into any Occupancy Transaction during the term hereof, without first procuring the written consent of Landlord and the City (if required) , 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, 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 Procedures For Occupancy Transaction

15.3.1 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:

15.3.1.1 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:

15.3.1.2 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;

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

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Landlord of the Information required by subsection (a) above, Landlord may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.7 below; or

15.3.2.2 Refuse to consent to the Occupancy Transaction or

15.3.2.3 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.

15.4 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.

15.5 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 attorney's fees, incurred in obtaining advice and preparing documentation for each Occupancy Transaction to which Landlord has consented.

15.6 Consideration to Landlord.

15.6.1 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

15.6.1.1 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.

15.6.1.2 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

15.6.1.3 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.

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

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:

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 (i) 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 (ii) 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 Civil 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 waterscaping, 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 Areas 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 and provide security for 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. . 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 Rights 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 acts of third parties (illegal or otherwise) and does not assume responsibility to prevent any such 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, utilize paid valet parking, 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 agrees 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 if any, 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 affect 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 defaults where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. I. 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, and if elected, 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 Lease terminated 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 terminated, 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, including but not limited to 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.

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 Climbing Wall

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, ATTORNMEN 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-Climbing Wall

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 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. In the event that the Tenant does not approve of the space he is to be relocated, he may at his discretion terminate the lease without any penalties or fines.

ART1CLE 28 - GRAND OPENING AND 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. In the event that such sum is specified in the Fundamental Lease Provisions as 0, Landlord at any time after the first year of the Lease term may institute a Marketing Fund contribution which shall be implemented and collected as described herein.

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 Marketing Fund Contribution payable during the following calendar year and unit 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 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 , 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 , 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, rags 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.

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 averment 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.

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: _____
Title: _____

TENANT

Mission Beach Attractions LLC,
a Delaware Limited Liability Company

By: _____

Name: _____
Title: _____

EXHIBIT A

SITE PLAN OF THE CENTER

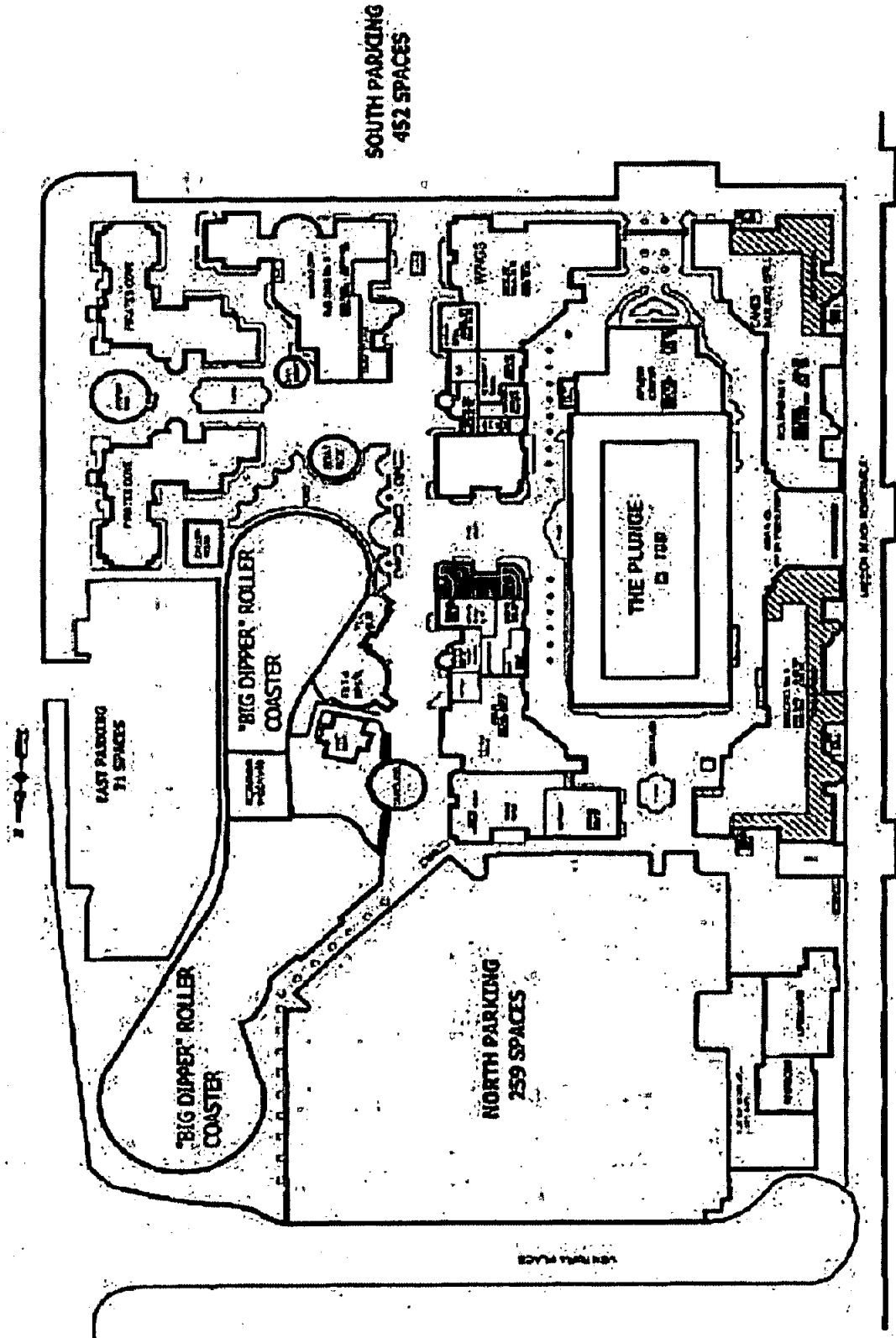


EXHIBIT B
FLOOR PLAN SHOWING THE PREMISES

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 lose 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: San Diego Trading Company Inc.
- (c) Lease: Lease dated September 1, 2013 between Landlord and Tenant
- (d) Premises 3146 Mission Blvd Ste L, San Diego, California 92109

2. Confirmation of Lease Commencement Date: Landlord and Tenant confirm that the Commencement Date of the Lease is February 1, 2014 and the expiration date is January 31, 2019.

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

By: Pacifica Enterprises, Inc.
Its: General Partner

By: Dario DeLuca

Title: President

Date:

TENANT

Mission Beach Attractions LLC,
a Delaware Limited Liability Company

By: _____

Name: _____

Title: _____

Date:

EXHIBIT E

**LANDLORD FF&E
(include list)**

EXHIBIT F

ADJUSTED GROSS SALES REPORT

for

Mission Beach Attractions, LLC

3146 Mission Blvd, Ste H.

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 *Cancelled* check made to such board.

EXHIBIT G



STORM WATER
BEST MANAGEMENT PRACTICES

Prepared by:

Symphony Asset Pool XVI LLC

I. Belmont Park's Planning and Organization Committee

Mirko Marrone
Justin Lopez
John Akers

Asset 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	858-488-1549	Justin Lopez
City of San Diego Asset Dept	619-236-6766	Chris Hargett
Daily Disposal	619-702-3300	John Fermanian
Darling Int'l (grease removal)	1-800-447-3273	Joe Bentley
San Diego's Hazardous Management	619-533-4477	Recording
San Diego's Waste Enforcement	858-492-5055	Recording
San Diego's Graffiti Hotline	619-525-8522	Recording
San Diego's Code Compliance	619-236-5500	Recording
Storm Water Pollution Hotline	619-533-3793	Recording
Police non-emergency	858-484-3154	Officer on duty
District 2 Councilman	619-236-6622	Anthony Wagner

Quick Reference Municipal Codes

<u>Reference</u>	<u>Reference Code</u>
-City of SD Municipal Code	section 43.0307(a)
-CA Water Code	section 13050(d)
-CA Health/Safety Code	section 25117
-Discharge Conveyance System	section 43.0305
-Exemptions fm Discharge	section 43.0304
-Inland Surface Water Plan	City Clerk as Doc No. 00-17988-4
-Enclosed Bays/Estuaries Plan	City Clerk as Doc No. 00-17988-3
-Basin Plan	City Clerk as Doc No. 00-17988-1
-City's Storm Water Division	www.sandiego.gov/stormwater www.thinkbluesd.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 (619-533-4477) 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.

RESOLUTION NUMBER R- 308044

DATE OF FINAL PASSAGE APR. 04 2013

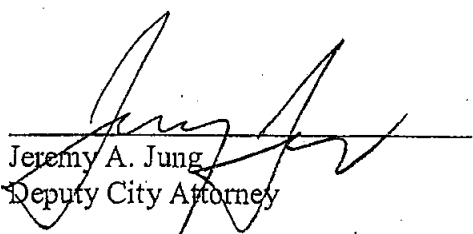
A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE APPROVAL OF AN
AGREEMENT WITH HDR ENGINEERING, INC., FOR AS-
NEEDED CONSULTANT SERVICES FOR WASTEWATER
FACILITIES CONDITION ASSESSMENT, AND TAKING
RELATED ACTIONS.

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his
designee is authorized to execute a three-year agreement with HDR Engineering, Inc. for As-
Needed Consultant Services for Wastewater Facilities Condition Assessment for an amount not
to exceed \$5,000,000 and under the further terms and conditions set forth in the document filed
with the City Clerk as Document No. RR- 308044.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to
appropriate and expend an amount not to exceed \$5,000,000 from Sewer Funds 700000 and
700001, for the purpose of funding the agreement with HDR Engineering, Inc., contingent upon
the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and provided
that the Chief Financial Officer first furnishes one or more certificates demonstrating that the
funds for this expenditure are, or will be, on deposit in the City Treasury.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Jeremy A. Jung
Deputy City Attorney

JAJ:cw

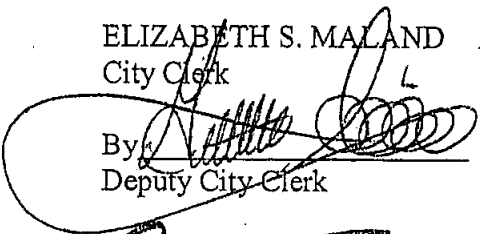
01/07/13

Or.Dept:Public Utilities - Wastewater

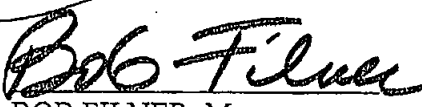
Doc. No.: 490285_2

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 19 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4/4/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

Passed by the Council of The City of San Diego on March 19, 2013, by the following vote:

YEAS: LIGHTNER, FAULCONER, GLORIA, KERSEY, ZAPF,
SHERMAN, ALVAREZ, & EMERALD.

NAYS: NONE.

NOT PRESENT: NONE.

VACANT: DISTRICT 4.

RECUSED: NONE.

AUTHENTICATED BY:

BOB FILNER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

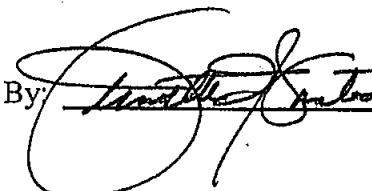
By: JEANNETTE I. SANTOS, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-308044, approved by the Mayor of The City of San Diego,
California on April 4, 2013.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy