CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Percentage Lease ("Master Lease") entered into with Belmont Park Associates, a California Limited Partnership as amended and assigned to

WAVE HOUSE BELMONT PARK, LLC

("LESSEE") and filed in the Office of the City Clerk as Document RR-266064, hereby consents to that certain Lease Agreement ("Sublease") between the above LESSEE ("SUBLESSOR") and

ATHLEISURE, INC.

("SUBLESSEE") dated November 7, 2005. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego. An assignment by operation of law shall automatically terminate this Sublease.

HOLD HARMLESS: SUBLESSEE shall defend, indemnify, protect, and hold LESSEE and CITY, its elected officials, agents, representatives, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE'S employees, invitees, guests, agents or officers, which arise out of or are in any manner directly or indirectly connected with the development or operations to be performed under this Sublease, and all expenses of investigating and defending against damages or injuries. SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of CITY, its elected officials, officers, agents, representatives, and employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the subleased premises. Minimum coverage shall be two million dollars ($2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Sublease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Percentage Lease dated March 4, 1987, as amended and assigned between the SUBLESSOR herein and the City of San Diego. This Sublease is subject and subordinate to the covenants and conditions of said Percentage Lease notwithstanding any provision hereof contrary to or in conflict with said agreement.

THE CITY OF SAN DIEGO

Dated 3/14/06

By _____
Michael F. Boyle, Acting Director
Real Estate Assets Department

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE. CITY ATTORNEY

Dated 3/15/06

By _____
Deputy City Attorney
MORRIS PAPE

VB/cj
2/14/06
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LEASE AGREEMENT

between

Wave House Belmont Park, LLC
(Landlord)

and

Athleisure, Inc.
(Tenant)

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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: November 7, 2005

Landlord: Wave House Belmont Park, LLC, a California limited liability company

Tenant: Athleisure, Inc., a California Corporation

Tenant's Trade Name: Sun Diego at Wave House

Premises: Located in Belmont Park Commercial/Recreational Center ("Center") as illustrated on the site plan attached as Exhibit A; and, more particularly described as that 6,926 square foot portion of 3126 Mission Blvd., Suite B, San Diego, CA 92109, shown as the unshaded area on the floor plan set forth in Exhibit B, ("Premises").

Permitted Use: Retail sale of surfboards, skateboards, boogies boards, snowboards, flowboards and accessories related thereto; beachwear, skatewear, swimwear and other related surf and sportswear apparel, including but not limited to casual and skate shoes, walk shorts, fleece knits, wovens, pants, boardshorts, t-shirts, sandals, watches and sunglasses; and books and videos related to surfing, snowboarding and skateboarding.

Tenant shall be granted the exclusive right to sell surf wear, sunglasses and accessories consistent with other Sun Diego locations in the San Diego metropolitan area, exclusive of the existing brands sold by Center Tenant "Azul".

Restrictions on Permitted Use:

Tenant specifically acknowledges that Landlord has granted certain exclusive rights to other tenants within the Center. Therefore, in addition to the restrictions contained in Article 7 of this Lease, Tenant shall not sell or offer for sale the following merchandise:

Any food or drink

Tenant acknowledges that Landlord has entered into leases, and may enter into leases in the future with kiosks or open air leasehold spaces which allow for the sale of non-name brand surf wear, sunglasses and accessories. Landlord shall utilize its reasonable best efforts to prohibit any kiosk or open air leasehold within twenty (20) feet of Tenant's Storefront with the exception of the following open air leasehold spaces:

- Open air leasehold space, currently occupied by Images Everywhere, located in the center of the South Midway
- Amusement Ride space, currently occupied by a Children's Boat Ride, located just North of Tenant's Premises.

- Common area alleyway space located to the East of Tenant's Premises, from the Northeast Corner of the Premises to the Southeast corner of the Premises.

Landlord shall utilize its reasonable best efforts to prohibit any kiosk or open air leasehold within two hundred (200) feet of Tenant's Storefront from selling any name brand products or brands marketed by Tenant. It is contemplated that the kiosks and open air lease areas will sell discount and tourist oriented merchandise.

Term: February 1, 2006 through September 30, 2009.

Option to Renew. Tenant shall receive one option to renew as set forth in Article 4. The Renewal term shall terminate no later than September 30, 2020. Tenant acknowledges that Landlord plans a major redevelopment of the Park approximately 4 years from the Commencement of this Lease and that occupancy during the option period may include a relocation of Tenant's Premises pursuant to Section 27.1 of the Lease.

Commencement Date: February 1, 2006 or earlier (depending on Move out date of current Tenant)

Fixturization Period: 60 Days

Rent: Shall commence on the Commencement Date and be the summation of:

A.

Month – Year	Minimum Monthly Rent	Monthly Common Area Maintenance	Monthly Marketing Fund Contribution	Total Monthly Rent
Month 1	$0.00	$0.00	$0.00	$0.00
Month 2	$0.00	$0.00	$0.00	$0.00
Month 3 through Dec 2006	$21,026.56	$8,588.24	$1,385.20	$31,000.00
Jan through Dec 2007	$21,867.62	$8,588.24	$1,440.61	$31,896.47
Jan through Dec 2008	$22,742.32	$8,588.24	$1,498.23	$32,828.79
Jan through Sept 2009	$23,652.01	$8,588.24	$1,558.16	$33,798.41

B. Percentage Rent: For Annual Gross Sales up to $4 million: Seven and one half percent (7.5%) of Annual Gross Sales in excess of Annual Minimum Rent.

For Annual Gross Sales greater than $4 million but less than $5 million: Eight and one half percent (8.5%) of Annual Gross Sales in excess of Annual Minimum Rent.

For Annual Gross Sales $5 million and greater: Nine and one half percent (9.5%) of Annual Gross Sales in excess of Annual Minimum Rent.

Percentage Rent Breakpoints:

Year	Total Minimum Rent	Divided by 7.5%	Breakpoint (Percentage Rent equals 7.5% of Adjusted Gross Sales made in same time period in excess of Breakpoint number)
2006 (10 months)	$210,265.60	Divided by 7.5%	$2,803,541.34
2007 (12 months)	$262,411.44	Divided by 7.5%	$3,498,819.20
2008 (12 months)	$272,907.84	Divided by 7.5%	$3,638,771.20
2009 (9 months)	$212,868.09	Divided by 7.5%	$2,838,241.20

Address for Notices:

To Landlord:
Wave House Belmont Park, LLC
Attn: Property Manager
3146 Mission Blvd. Suite F
San Diego, CA 92109

To Tenant:
Athleisure, Inc.
5925 Priestly Drive
Suite 120
Carlsbad, CA 92008

Security Deposit: None

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 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 – Commencement Date Certificate
Exhibit D – Rules and Regulations.
Exhibit E – Intentionally Blank
Exhibit F – Insurance Requirements
Exhibit G – Adjusted Gross Sales Report
Exhibit H – Tenant Improvement Agreement
Exhibit I – Storm Water Best Management Practices

ARTICLE 3 - COMMERCIAL/RECREATIONAL CENTER AND PREMISES

3.1 Center. As used herein, the term "Center" shall mean those areas of land and the improvements, landscaping, parking, pedestrian walkways and other features located on the land leased by Landlord from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease, as the same may be amended from time to time ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, relocated or expanded from time to time by Landlord in Landlord's discretion and nothing in Exhibit A shall be a warranty or representation as to the future configuration of the Center or location of any improvements thereon. In addition, Landlord may designate other areas of land and improvements as part of the Center.

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

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

ARTICLE 4 - TERM

4.1 Term. The Term shall be for the number of months specified in the Fundamental Lease Provisions and shall commence on the date set forth in the Fundamental Lease Provisions, which is the delivery of Premises to Tenant for Tenant occupancy. Subject to the fixturization period specified in the Fundamental Lease Provisions, if any, the lease term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided by the fixturization period, if any, provided however that in no event shall such delay continue beyond the date on which Tenant opens for business. If the Commencement Date falls on any day of the month other than the first day, then the Term shall be extended by the number of days between the first day of the month and the Commencement Date. Tenant agrees not to unreasonably delay the Commencement Date.

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

4.3 Delay. If Landlord is unable to deliver possession of the Premises to Tenant as a result of causes beyond Landlord's control, Landlord shall not be liable for any damage to Tenant caused thereby. Landlord's delay in delivery of the Premises shall not affect this Lease nor the obligations of Tenant hereunder, except in the determination of the Commencement Date. If Landlord does not deliver possession of the Premises to Tenant within two (2) months of the Anticipated Commencement Date, Landlord or Tenant can elect to terminate this Lease by giving written notice to Landlord within ten (10) days after the expiration of the two (2) month period and

before the Commencement Date. Upon receipt of said notice, the Lease shall terminate and each party shall be relieved of any and all obligations under the Lease

4.4 Option to Renew. Provided that at the time of the required notice and at the commencement of the Renewal Term (defined below), there is no continuing and uncured Event of Default by Tenant under this Lease, and provided that Tenant furnishes current financial statements satisfactory to Landlord which reflect no material adverse change in the financial condition of Tenant since the Commencement Date, Tenant shall have the option to renew ("Renewal Option") the term of this Lease for an additional period beginning from the date of expiration of the First Term and terminating on September 30, 2020 (the "Renewal Term"), which Renewal Option shall be exercised by giving written notice of exercise of the Renewal Option ("Option Notice") to Landlord in the manner provided herein not more than nine (9) and not less than four (4) full calendar months prior to the expiration of the prior Term of the Lease. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option.

The Minimum Monthly Rent during the Renewal Term shall be the higher of the prevailing asking rental rate for comparable space in the Center, or the Rent, as defined in Article 5 below at the expiration of the initial Term, including annual Rent increases of 4%, which rate shall not be adjusted downward to compensate for any Tenant Improvement Allowance for a new incoming tenant and/or commission/brokerage fees or downtime and/or any other offset. Common Area Maintenance (CAM) charge and Marketing Contribution shall be payable monthly throughout the year. Landlord will notice Tenant of the prevailing asking rental rate for comparable space in the center within 30 days of receipt of Tenant's Option Notice. Within ten (10) business days thereafter, Tenant shall respond to Landlord in writing by either accepting Landlord's prevailing asking rental rate or by challenging it ("Challenge").

In the event of a Challenge, Tenant must, at is sole expense, hire an MIA appraiser to determine the prevailing asking rental rate and notify Landlord of the appraiser's name at the time the Challenge is made. Tenant's appraisal shall be submitted to Landlord within thirty (30) calendar days of Challenge. Within thirty (30) days of receipt of Tenant's appraisal, Landlord, at its sole expense, may either:

(1) elect to accept Tenant's appraisal, or
(2) opt to require Tenant to pay the Rent, as defined in Article 5 at the expiration of the initial Term, including annual Rent increases of 4%; or,
(3) procure an appraisal on its behalf and provide a copy to Tenant.
    a. If the difference between Tenant's appraisal and Landlord's appraisal is less than 10%, then, the parties will accept the average prevailing asking rental rate of the two appraisals.
    b. If the difference between the appraisals is equal to or greater than 10%, then, the parties will accept the greater of: the average prevailing asking rental rate of the two appraisals, or the Rent, as defined in Article 5 at the expiration of the initial Term, including annual Rent increases of 4%, which rate shall not be adjusted downward to compensate for any Tenant Improvement Allowance for a new incoming tenant and/or commission/brokerage fees or downtime and/or any other offset.

Tenant acknowledges that the foregoing deadlines associated with a Challenge are reasonable, and that strict compliance with the same is imperative to Landlord maintaining full occupancy and smooth transitions between tenants, if necessary. Therefore, Tenant understands and agrees that its failure to comply

with any of the deadlines shall result in the automatic termination of Tenant's Renewal Option.

No tenant Improvement Allowance or refurbishment allowance will be due Tenant at renewal or during the Renewal Term, except as provided in section 27.2.

If Tenant timely exercises any Renewal Option, Landlord and Tenant shall, within ten (10) days after the determination of the Minimum Monthly Rent during such Renewal Term, execute an amendment to this Lease extending the Lease Term and designating the new Minimum Monthly Rent. All other terms and conditions of the Lease shall remain in full force and effect throughout the Renewal Term.

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 and 5.1.3 below. Rent shall be payable at the times and in the manner hereinafter provided, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Term.

5.1.1 Minimum Monthly Rent. The Minimum Monthly Rent specified in the Fundamental Lease Provisions as adjusted from time to time as provided below. Minimum monthly rent is due on the first and delinquent on the fifth day of the month. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum Annual Rent shall be the twelve month total of Minimum Monthly Rent specified in the Fundamental Lease Provisions. Monthly Annual Rent shall never be less than the Minimum Monthly Annual Rent payable in the immediately preceding period.

5.1.2 Minimum Monthly Rent shall be adjusted upward by four percent (4%) as of the expiration of the end of each calendar year during the First Term. As soon as the Minimum Monthly Rent for each calendar year is determined, Landlord shall give Tenant written notice of the amount thereof. Landlord's failure to make the required calculations promptly shall not be considered a waiver of Landlord's rights to adjust the Minimum Monthly Rent due, nor shall it affect Tenant's obligations to pay the increased Minimum Monthly Rent.

5.1.3 Percentage Rent. Tenant agrees to pay as Percentage Rent that percentage of Gross Sales Tenant made from or upon the Premises as specified in the Fundamental Lease Provisions. Percentage Rent shall be computed and paid annually upon the anniversary of the Commencement Date. Tenant shall pay to Landlord the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's Adjusted Gross Sales made during the twelve (12) month period, exceeds the installments of Minimum Rent payable by Tenant during such twelve (12) month period. Tenant shall complete Exhibit G "Adjusted Gross Sales Report" each month and submit to Landlord no later than ten (10) days following the close of the preceding month. Tenant shall complete Exhibit G and submit same along with payments of Percentage Rent to Landlord no later than ten (10) days following the anniversary of the Commencement Date.

5.1.4 In the event of an increase in the rate of percentage rent that Landlord is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Tenant pays Landlord pursuant to Section 5.1.1 shall automatically increase at the same time and by the same amount.

5.1.5 Additional Rent. Tenant shall pay all other sums of money or charges required to be paid by Tenant under this Lease including but not limited to Common Area Maintenance Fees (Article 19), Marketing Fund Contribution (Article 28), Utilities and Services

(Article 8), Tenant's Conduct of Business (Article 16), and any other Late Fees and Liquidated Damages associated therewith (collectively "Additional Rent").

5.1.6 Lease Interest Rate. If a deficiency exists in the payment of Percentage Rent, or Additional Rent, then such deficiency shall become immediately due and payable as Additional Rent, with interest at the rate of twelve percent (12%) 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.

5.1.7 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.

5.1.8 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 Adjusted Gross Sales.

5.2.1 Statement of Adjusted Monthly Gross Sales. Tenant agrees to furnish or cause to be furnished to Landlord a statement of monthly Adjusted Gross Sales of Tenant utilizing the form in Exhibit G herein within ten (10) days after the close of each calendar month, delinquent after the fifteenth (15th) day of the month, and an annual statement of Adjusted Gross Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category, include a computation of all Minimum Monthly Rent and Percentage Rent for the preceding month, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, by a manager, or managing member, if Tenant is a limited liability company, or by a corporate officer if Tenant is a corporation. Annual statements shall be signed by Tenant's certified public accountant. If Landlord so elects, Tenant shall provide such information in a format specified by Landlord. Tenant shall, concurrently with submittal to the State Board of Equalization, provide Landlord with a copy of all state and local sales and use tax returns filed with said State Board. Should Tenant fail to submit Adjusted Monthly Gross Sales report by the fifteenth (15th) day after the close of each calendar month, 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 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, Adjusted 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 Adjusted 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 Adjusted Gross Sales and the Rent paid to Landlord. Any Landlord audit hereunder shall be conducted by a CPA selected and hired by Landlord on a non profit sharing, non contingency basis, and all information obtained by Landlord and the CPA conducting the audit shall be kept in strictest confidence. 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 Adjusted Gross Sales or any payment of Minimum Monthly Rent or Percentage Rent for any period shall not bind Landlord as to the correctness of the statement or the payment. Within five (5) years after receipt of any such statement, Landlord and City, or their agents, at any time shall be entitled to an inspection and audit of the business of Tenant, its agents, subtenants, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for Landlord and City to determine the amounts of Rent due Landlord in compliance with this Lease. At Landlord's request, Tenant shall provide, at Tenant's expense, any necessary data reasonably available to Tenant to enable Landlord and City to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises and Tenant's conduct of business thereon. Such data will include, if required, a detailed breakdown of Tenant's receipts and expenses.

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Monthly Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the Lease Interest Rate, from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Adjusted 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 (i) one thousand five hundred dollars ($1,500.00) if the deficiency is between two percent (2%) and five percent (5%) (ii) ten percent (10%) of the amount of the deficiency if the deficiency is greater than five percent (5%) 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 intentionally understated Adjusted 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.

5.2.2 Statement of Adjusted Daily Gross Sales. Lessee understands that Lessor may institute an Adjusted Daily Gross Sales Report program, requiring Lessee to submit Daily Gross Sales Reports containing substantially the same information as set forth in the existing Statement of Net Sales required by Lessor under the Lease, on a daily basis. At such

time Lessor gives Lessee written notice, Lessee agrees to comply with the Daily Gross Sales Report program, as set forth in the notice provided.

5.3 Definition of Adjusted Gross Sales. The term "Adjusted 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. Adjusted 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 Adjusted 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. Adjusted 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, (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 Adjusted Gross Sales, (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, (iv) any merchandise returned for credit to shippers, jobbers, wholesalers or manufacturers, (v) any sums received in settlement of claims for loss or damage to merchandise, or (vi) the exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and neither for the purpose of depriving Landlord of the benefits of a sale which would otherwise be made at or from the Demised Premises nor for the purpose of consummating a sale which has been theretofore made at or from the Demised Premises. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Adjusted 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. Adjusted 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 Adjusted 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. Percentage Rent shall be due on the tenth (10th) day of each month, for Percentage Rent accruing during the prior calendar month. Adjusted Gross Sales Report shall be submitted to Landlord by the tenth (10th) day at the close of the month. If Tenant fails to pay any monthly installment of Minimum Monthly Rent by 5:00 p.m., PST on the fifth (5th) day of the month, fails to pay any monthly installment of Percentage Rent or submit the Adjusted Gross Sales Report by 5:00 p.m., PST on the fifteenth (15th) day of the month, or fails to pay any other Additional Rent, 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 sum of $50.00 per day beginning on the due date and continuing until paid ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate from the date due. Tenant further agrees to pay Landlord any costs incurred by Landlord in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency, or salaries of Landlord's employees, including costs incurred for the preparation of notices and the service of notices, whether or not litigation is commenced and/or dismissed. Landlord shall have the right to require that Tenant pay all sums thereafter due hereunder in the form of a cashier's check or money order if any check of Tenant is not honored upon presentment to Tenant's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Landlord shall have the option to require that (i) beginning with the first payment of Rent due following the date when such second late payment was due, Rent shall be payable three (3) months in advance and/or (ii) Tenant shall increase the amount of the Security Deposit (defined in Article 32 below) by one hundred percent (100%), which additional Security Deposit shall be retained by Landlord, and may be applied by Landlord, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate, additional Security Deposit, or advance Rent payment, shall not alter or preclude Landlord's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Landlord may have under the terms of this Lease. Furthermore, acceptance of any such fees by Landlord shall not constitute a waiver by Landlord of Tenant's default or prevent Landlord from exercising any other rights or remedies available to Landlord as hereinafter provided or as provided by law.

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

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

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

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

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

then:

5.8.3 In the case of a default under subparagraph 5.8.1 or 5.8.2, Landlord shall 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.

ARTICLE 6 - PERSONAL PROPERTY TAXES

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

ARTICLE 7 - POSSESSION AND USE

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

7.2. Permitted 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 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.

Tenant shall not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Tenant shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects. Promptly upon demand of Landlord, Tenant shall reimburse Landlord for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Tenant will not solicit, in any manner, in the Common Areas of the Center.

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

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Tenant's Responsibilities. Tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for water, gas, electricity, cable, telephone, DSL, sewer and sanitation and any other service or utility used in or upon or furnished to the Premises, irrespective of whether any such fees, deposits and charges are initially paid or advanced by Landlord. In the event the fees, deposits or charges for any such services are not individually metered or billed to Tenant, Landlord shall apportion such charges among Tenants in the Center receiving such utilities or services, based upon an equitable apportionment to be determined by Landlord. Tenant shall pay its apportioned share to Landlord as Additional Rent. In determining such equitable apportionment, Landlord may cause surveys of Tenant's usage of such services to be made by an independent consultant selected by Landlord. In no event shall Landlord be liable for damages or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of water, gas, electricity, sewer and sanitation or any

other service or utility, nor shall any such interruption, reduction, disruption, curtailment or failure constitute or be deemed to constitute constructive eviction of Tenant or relieve Tenant from its obligations under this Lease unless the interruption, reduction, disruption, curtailment or failure in the supply, quality or character is due to Landlord's intentional acts(s). Further, in the event there is a failure in utility service in excess of thirty-six (36) hours, not the fault of Tenant, and due to such failure Tenant is unable to operate its business at the Premises, during such inability to operate Tenant shall be relieved of Rent and Additional Rent obligations in proportion to the business it is unable to normally operate. Tenant shall be responsible for insuring the drainage system is used properly and in accordance with California Coastal Commission Storm Water Best Management Practices per attached Exhibit I. 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 death, injury, loss, damage, or destruction was proximately caused by Landlord Parties' negligence, fraud, willful injury to person or property, or violation of law. This section shall survive the expiration or earlier termination of this Lease until all claims within the scope of this section are fully, finally, and absolutely barred by the applicable statutes of limitations. Tenant acknowledges that this section 9.1 was negotiated with Landlord, that the consideration for it is fair and adequate, and that Tenant had a fair opportunity to negotiate, accept, reject, modify or alter it.

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

expiration or earlier termination of this Lease until all claims against Landlord Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

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

9.4 Tenant's Insurance Obligations. Tenant agrees to apply for and obtain from insurance companies acceptable to Landlord and authorized to do business in California with a General Policyholder's rating of not less than "A" and a financial rating of at least "VII" rated in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Tenant's sole cost and expense, insurance coverages in the following amounts and form as listed in 9.4.1 through 9.4.5. Tenant shall not commence operation of business within Premises until securing insurance policy satisfying criteria described in Article 9 of the Lease and (more specifically described in Exhibit F) and submitting to Landlord Certificate of Insurance describing the such policy.

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

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

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

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

9.4.5 Policy Form. All policies of insurance to be obtained by Tenant shall be issued in the names of Landlord, City, Tenant, any other person or entity designated by Landlord which policies shall be for the mutual and joint benefit and protection of Landlord, City, Tenant, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after issuance of each such policy. All policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it or Landlord's Parties, by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in the manner and to

like extent, and shall be delivered to Landlord at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give Landlord and City thirty (30) days' notice, in writing, in advance of any cancellation or lapse, or the effective date of any reduction in type or amount of coverage. All policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry, and shall be revised as to amounts and coverages at any time as required by City under the provisions of the Master Lease.

Tenant's obligations to carry insurance may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant, provided, however, that Landlord shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Landlord will not 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.

9.4.6 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.

9.5 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. Landlord agrees to provide Tenant with a copy of the Master Lease and any modifications, alterations, replacements or substitutions thereto that it currently has or which it may obtain during the term or extended term or Tenant's occupancy.

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. Provided, however, that such consent shall not be required for any Non-Structural Interior Alteration to be made to the interior of the Demised Premises in connection with Tenant's Permitted Use thereof which shall not act to reduce the value, nor impair the safety, of the Demised Premises and where the aggregate cost of such Non-Structural Interior Alteration shall not exceed $15,000.00, and so long as the same shall not materially affect the electrical, plumbing or heating, ventilating and air conditioning systems located within the Demised Premises. In no event may Tenant make any alterations to the exterior or structure of the Premises. Tenant shall be responsible for the entire cost and expense of all such permitted alterations and shall provide a performance and completion bond, from any insurance company acceptable to Landlord, in a sum equal to one hundred twenty-five percent (125%) of the cost of the alterations, guaranteeing completion free and clear of liens and charges, and in accordance with the approved plans and specifications. All alterations shall be under the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Landlord before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Landlord, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Tenant in the Center. Upon completion of such work, Tenant shall deliver to Landlord evidence of full payment and unconditional final waivers of all liens for labor services, or materials; and file for record in the office of the San Diego County Recorder, a Notice of Completion in accordance with California Civil Code Section 3093, or any successor statute. Within twenty (20) days after completion of any alternations, Tenant shall deliver to Landlord a reproducible copy of the drawings of the alternations, as built.

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

ARTICLE 12 - MECHANIC'S LIENS

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

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

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

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

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

ARTICLE 13 - SIGNS

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

No advertising medium shall be utilized by Tenant which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Tenant, or to Tenant's Related Parties, or to any other person. Tenant shall not distribute in the Center any handbills or other advertising devices. Tenant further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Landlord's prior written consent.

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 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant subject to Exhibit H "Tenant Improvement Agreement", and Landlord agrees that Tenant shall have the right upon termination or expiration of the term of this Lease, provided Tenant is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property 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;

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, subTenant, pledge, or other recipient of Tenant's interest, rights or duties in the Lease or the Premises in an occupancy transaction.

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

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

15.3 Remaining Term

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

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

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

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

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

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

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

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

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

15.4 Procedures

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

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

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

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

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

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

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

15.4.2.2 Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Landlord Is entitled to withhold its consent or15.4.2.3 In any case terminate this Lease on ten (10) days written notice to Tenant unless Tenant rescinds Its request for consent within five (5) days following receipt of Landlord's notice of termination.

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

15.6 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 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 with adjustment pursuant to Article 5.1.2., which will then be the new Minimum Annual Rent.

15.6.2 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

15.6.2.1 Fifty percent (50%) of 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. "Profit or gain" is defined as the amount of monetary consideration paid to Tenant with respect to the assignment of Tenant's leasehold, excluding consideration received by Tenant for the transfer of the book value of business operations, permits, or other tangible assets (other than the leasehold) of Tenant, and excluding all costs incurred by Tenant in respect of the Assignment, including but not limited to attorneys' fees and brokers fees. Landlord and Tenant further agree than an assumption of the obligations under this Lease by the Assignee shall not be deemed monetary consideration and shall be disregarded in determination "profit or gain".

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

15.7 Exclusion. Landlord recognizes and acknowledges that Tenant is currently a privately held California corporation which operates numerous retail outlets in leased premises throughout Southern California. Accordingly, Tenant and Landlord agree that should Tenant enter into a transaction involving the sale of all of its shares or all of its assets, such transaction shall be excluded from all of the foregoing provisions of this Article 15.

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:

Coaster Co. Operating 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.

16.2 Operating Day Buy-Out. Tenant agrees to a day-rate buy-out clause ("Buy-Out"), whereby Tenant, in order to enable a large group or special event to occupy the Business Center, agrees to close its business operations for a day (or portion thereof) in consideration of receiving a cash payment from Landlord in an amount calculated as follows:

16.2.1 Full Day Buy-Out: = (Monthly Total Rent* / 30) X 2
16.2.2 Half Day Buy-Out (after 4 PM) = (Monthly Total Rent* / 30)

*Monthly Minimum Rent applies to the Monthly Minimum Rent of the month in which the buy-out is to occur.

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In the event Landlord desires an Operating Day Buy-Out, Landlord shall provide Tenant thirty (30) days prior written notice and a check payable to Tenant for the appropriate Buy-Out amount as set-forth above. In the event an event organizer desires to use the Premises as part of a special event site, Tenant will be reasonable and negotiate in good faith to allow the event to occur.

16.3 Partial Closings. If Landlord is conducting an event in the Business Center, Landlord may request, at its sole discretion, that Tenant close its entrance which opens directly into the interior of Belmont Park for public access to and from Premises ("Partial Closing"). Tenant and the public shall have access to the Premises from the South Entrance. For such Partial Closings, Tenant will receive no Operating Day Buyout payment from Landlord. Landlord will use its best efforts to provide written notice of its request for Partial Closings at least thirty (30) calendar days in advance. During Partial Closings, Tenant, or Tenant's patrons, shall not disrupt any function or event occurring in the interior of the park, including disturbing the event with noise, visual disturbances, or any other interruptions, including, selling, offering for sale, entering, or any other transaction that could be construed as an interruption to events within the interior of the park.

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 shall implement a routine quarterly HVAC maintenance program every three months and provide Landlord a copy of the completed service order every three (3) months to demonstrate compliance that all HVAC units that service the Premises were cleaned and serviced. Alternatively, at each quarter, Landlord will provide Tenant its facility service technician and charge Tenant as Additional Rent on the following months Rental invoice. Tenant is required to remove any and all graffiti on the windows of the Premises. If Tenant does not remove graffiti, then Landlord is empowered to remove it and bill back Tenant for the cost of the removal. Tenant hereby waives the provisions of any law permitting repairs by a Tenant at the expense of Landlord, including without limitation, all rights of Tenant under Articles 1941 and 1942 of the Civil Code of the State of California. At Landlord's option if Tenant fails to make such repairs, Landlord may, but need not, make the repairs and replacements. On receipt of an invoice from Landlord, Tenant shall pay Landlord for Landlord's out of pocket costs incurred in connection with such repairs and replacements plus fifteen percent (15%) of such costs, to reimburse Landlord for all overhead, and other costs and expenses arising from Landlord's involvement with such repairs and replacements. Such costs shall be Additional Rent and bear interest at the Lease Interest Rate until paid in full.

17.2 Landlord's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Landlord shall keep in good condition and repair the foundations and exterior walls and roof of the Premises, except for any damage caused by any act or negligence of Tenant or Tenant's employees, agents, invitees, licensees, or contractors which damage Landlord shall repair at Tenant's sole cost and expense.

ARTICLE 18 – RECONSTRUCTION

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

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

18.3 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 abated in proportion to the extent Tenant is unable to reasonably conduct normal business operations . Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, the Center, or Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

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

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall be deemed to include those portions of the Center and other areas that are designated by Landlord from time to time for the general use, conveniences and benefit of Landlord, Tenants in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas and parking structures, driveways, roadways, sidewalks, service areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, art work, artistic displays, ponds and 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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of Tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance, repair and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to five percent (5%) of all gross receipts collected by the property management company from Center operations, from any source whatsoever. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. 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.

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 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 Maintenance Expenses as defined in Section 19.4.1 and 19.4.2 herein. Should Tenant fail to make any payment to Landlord of Tenant's share of Common Area Expenses 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 tights and remedies available to Landlord hereunder or as provided by law.

19.4.2 Within sixty (60) days following the end of each calendar quarter or, at Landlord's option, each calendar year, Landlord shall furnish a statement covering the calendar quarter of 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 year, and the payment by Tenant with respect to such period. If Tenant's pro rata share of Common Area Expenses exceeds Tenant's payments so made, then, Tenant shall pay Landlord the deficiency within ten (10) days after

receipt of such statements. 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 to Landlord as set forth in subparagraph 19.4.1. Tenant's pro rata share of Common Area Expenses is defined as that proportion of Common Area Expenses which the Floor Area in the Premises bears to the total number of interior floor area square feet located within the Center, excluding the Administration and Maintenance offices in Building 7 as determined by Landlord, and that portion of the Center attributable to the indoor public swimming pool and attached fitness 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 illegal acts of third parties and does not assume responsibility to prevent any such illegal acts. To induce Landlord to provide such security guards, if any, as Landlord deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claim Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.7 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and 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, 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.

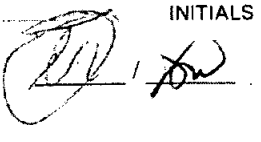
It Is understood and agreed that neither this Lease, nor any interest herein or hereunder, nor any estate hereby created, in favor of Tenant, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, 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"):

21.2 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.

21.2.1 The breach of Tenant of any of the covenants, conditions or provisions of



paragraphs 9 (Insurance and Indemnity), 11 (alterations), 15 (assignment or subletting), 21.2 (vacation or abandonment), 20 (insolvency), 21.2.5 (false statement), 26.4 (estoppel certificate), 26.1 (subordination), 7.2 (auctions), or 5.2 (Gross Sales), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Landlord to Tenant thereof. In the event that Landlord serves Tenant with a Three Day Notice to Quit, pursuant to applicable Unlawful Detainer statutes as a result of such non-curable breach, such notice shall constitute notice sufficient to terminate this Lease.

21.2.2 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.

21.2.3 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.

21.2.4 (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.

21.2.5 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 hereunder, was materially false.

21.3 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.

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

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

21.3.3 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 21.3.2 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.

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

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

21.3.6 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.

21.3.7 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.

21.3.8 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.

21.3.9 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.

INITIALS

ARTICLE 23 - EMINENT DOMAIN

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

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

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

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

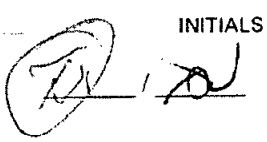
23.4 Transfer Under Threat of Taking. For the purposes of this Article only, a voluntary sale or conveyance under threat and in lieu of condemnation shall be deemed an appropriation or taking under the power of eminent domain.

ARTICLE 24 - ATTORNEYS' FEES

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

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, ATTORNMENT AND ESTOPPEL CERTIFICATE

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

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

26.3 Agreement to Execute Documents. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make the Lease or any option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact. At Landlord's option, 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, and (ii) there are no uncured defaults in the requesting party's performance. If Tenant fails to deliver the certificate within ten (10) days after written request therefore, or at Landlord's option, 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 upon ten (10) days written request from Landlord to deliver to any lender or purchaser designated 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

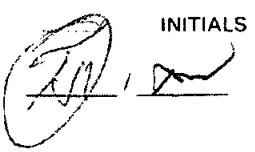
27.1 Quiet Possession. Landlord agrees that Tenant, upon paying Rent and

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. Upon at least nine (9) months written notice, Landlord shall have the right to relocate Tenant, upon completion of Landlord's new building structure, to a 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. If Tenant does not approve of the New Premises (within 60 days of the receipt of Landlord's notice), Tenant has the right to terminate the Lease by delivering a written termination notice to Landlord. In the event Tenant elects to terminate, Landlord shall pay to Tenant an amount equal to 100% of the unamortized Tenant Improvement Costs (exclusive of trade fixtures) paid by Tenant to third parties in order to open for business during the First Term, based on an amortization term of seven (7) years and with a maximum Landlord reimbursement of One Hundred and Fifty Thousand Dollars ($150,000.00). In the event Tenant approves of the New Premises and does relocate to the New Premises, Tenant shall receive a Tenant Improvement Costs allowance (in the form of rent credits to be applied towards Minimum Monthly Rent on a monthly basis until credited in full) from Landlord in an amount equal to 100% of the unamortized Tenant Improvement Costs (exclusive of trade fixtures) paid by Tenant to third parties in order to open for business during the First Term, based on an amortization term of seven (7) years and with a maximum allowance of One Hundred and Fifty Thousand Dollars ($150,000.00). Tenant shall maintain true and accurate records of all of its payments to third parties. The New Premises shall be leased to Tenant upon the base terms 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. 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, other than as may be set forth herein. Tenant agrees that all of the obligations of this Lease shall continue throughout the period of relocation. However, should the New Premises not be ready for immediate occupation and resuming of business, Tenant shall be entitled to an abatement of all Rent, Additional Rents, Common Area Maintenance Expenses, Marketing Fund Contributions, and the like, during the period of time Tenant reasonably requires to prepare the New Premises for occupation and resuming of business. 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. Tenant agrees to use all reasonable efforts to open for business in the New Premises as quickly as is reasonably possible under the circumstances. Immediately following the date of relocation by Tenant, Landlord and Tenant shall execute a supplemental agreement specifying the location of the New Premises and the new Minimum Monthly Rent to be paid pursuant to this Lease. All Additional Rent to be paid pursuant to this Lease shall be adjusted pro rata based upon the differential, if any, in the Floor Area of the existing Premises and the New Premises. The failure of Tenant to relocate in accordance with the provisions of this Lease shall constitute a material default under this Lease.

ARTICLE 28 - 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 Tenants 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 the Lease, as Additional Rent, a sum equal to the Marketing Fund Contribution specified in the Fundamental Lease Provisions, which shall be used for the purposes of promoting and advertising the Center.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution, specified in the Fundamental Lease Provisions shall be adjusted upward after the expiration of the first full calendar year of this Lease, and on the first day of every calendar year thereafter, by four percent (4%). 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 at the sole discretion of Landlord. 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 Grand Opening. No obligation.

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 Tenants within the Center. If, in Landlord's sole discretion, Tenant violates this covenant, Landlord may give Tenant written notice of same and Tenant shaft 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 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 coats, 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 then 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

32.1 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.

32.2 Increase of Minimum 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. Percentage Rent, Common Area Maintenance Contribution and Marketing Fund Contribution shall continue to apply during the holdover tenancy in the monthly amounts as stated in the Lease.

32.3 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 shell 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 end 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 fats due and all other sums payable by Tenant to Landlord, said deposit shall be returned In full to Tenant within thirty (30) days of the last day of the Lease Term.

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

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

ARTICLE 34 - MISCELLANEOUS

34.1 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.

34.2 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.

34.3 Warranty of Authority.

34.3.1 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.

34.3.2 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.

34.4 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.

34.5 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.

34.6 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.

34.7 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 therefore, 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. In the event that Landlord receives rent abatement or other monetary relief from the City of San Diego as a result of a force majeure, then Sun Diego may receive a proportionate amount of such relief based on its pro rata share of Common Area Expenses.

34.8 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.

34.9 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.

34.10 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.

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

34.12 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.

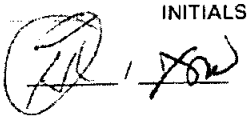
34.13 Confidential Shoppers Program. Landlord shall have the right to institute and maintain a Confidential Shoppers Program which is intended to assist Tenant in maintaining the highest quality of its food, beverages, products, and services provided on the Premises.

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

34.14 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 D. 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 unless it has been proven in a court of competent jurisdiction that Landlord is the approximate or direct cause responsible for any such damages to Tenant, and provided that there is no other specific provision in this Lease that absolves Landlord from responsibility. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

34.15 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.

34.16 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.

34.17 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.

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

34.19 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 unless it has been proven in a court of competent jurisdiction that Landlord is the approximate or direct cause responsible for any such damages to Tenant, and provided that there is no other specific provision in this Lease that absolves Landlord from responsibility.

34.20 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.

34.21 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 subTenant's of Tenant.

34.22 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.

34.23 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.

34.24 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.

34.25 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.

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

34.27 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.

34.28 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.

34.29 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.

34.30 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.

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

ARTICLE 35 - ADDITIONAL PROVISIONS

35.1 Additional Provisions. By insertion of numbers in the following blank, Landlord and Tenant acknowledge that Article(s)_____ is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 35.1, it is conclusive that no additional provisions are a part of this Lease.

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

LANDLORD
Wave House Belmont Park, LLC,
a California limited liability company

By: _____
Name: Thomas Lochtefeld
Title: Manager

TENANT
Athleisure, Inc.
a California corporation

By: _____
Name: DAVID L. HAUSE
Title: PRESIDENT

EXHIBIT A – SITE PLAN OF CENTER

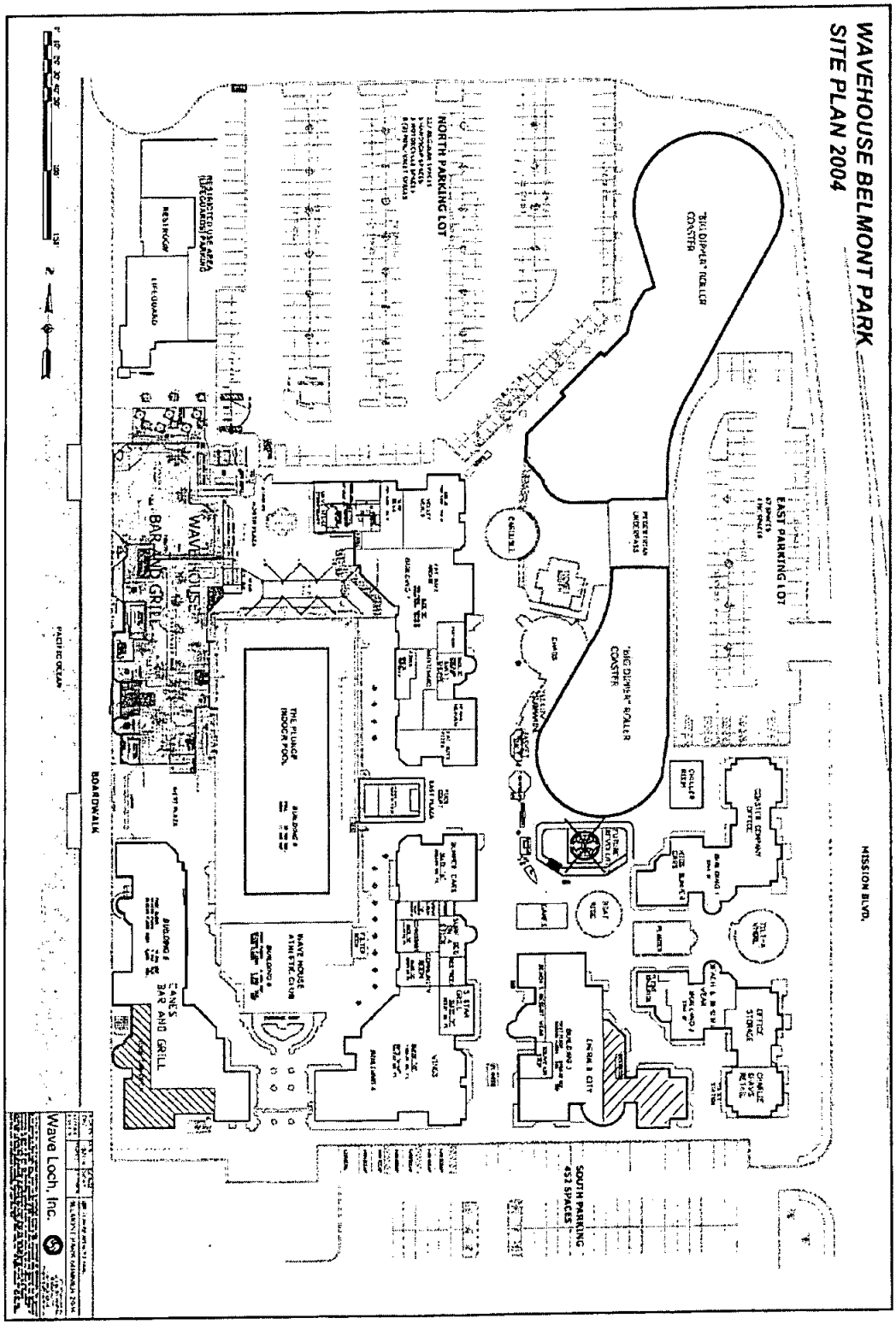


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EXHIBIT B - FLOOR PLAN OF PREMISES

GROUND FLOOR OF BUILDING #3

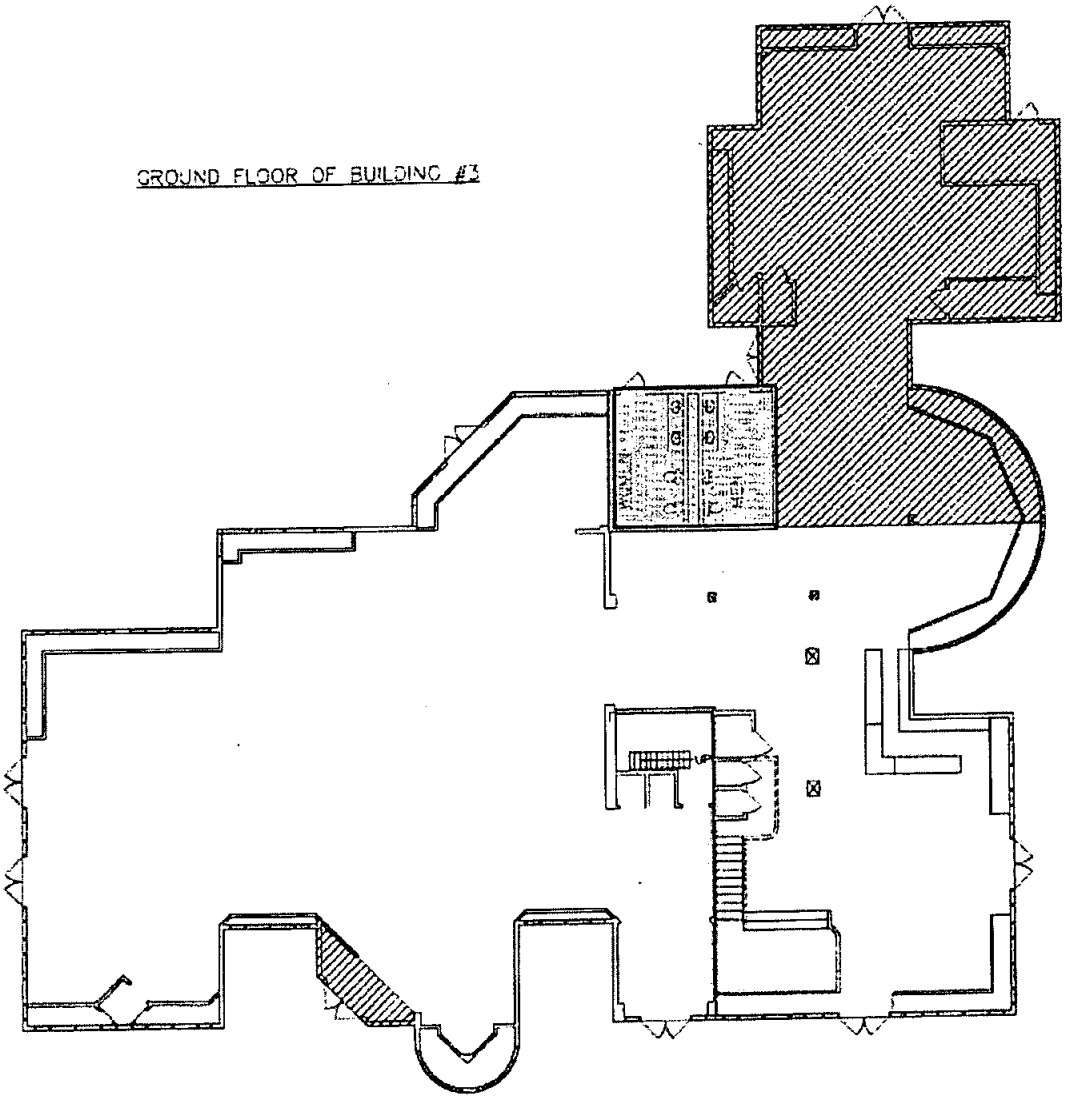

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EXHIBIT C - COMMENCEMENT DATE CERTIFICATE

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: Wave House Belmont Park, LLC., a California limited liability company

   (b) Tenant: Athleisure, Inc., a California corporation

   (c) Lease: Lease dated November 7, 2005, between Landlord and Tenant

   (d) Premises: 3126 Mission Blvd. Suite B, San Diego, California 92109

2. Confirmation of Lease Commencement Date: Landlord and Tenant confirm that the Commencement Date of the Lease is January 16, 2006

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

LANDLORD

Wave House Belmont Park, LLC,
a California limited liability company

By: _____
Name: Thomas Lochtefeld
Title: Manager

TENANT

Athleisure, Inc.,
a California corporation

By: _____
Name: David L. Wasserman
Title: President

EXHIBIT D - RULES AND REGULATIONS

1. The Premises is a part of Mission Beach Park, a dedicated public park. The Premises must therefore be utilized for park and recreation purposes and for facilities needed to accommodate park visitors, including visitor oriented commercial and recreational uses. Tenant shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public uses of the park property.

2. No projection shall be attached to the outside wall of the buildings in the Center or any exterior portion of the Center without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a Tenant's premises, without the prior written consent of Landlord. Such projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. All electrical ceiling fixtures hung in spaces along the perimeter of the buildings in the Center must be fluorescent, of a quality, type, design and bulb color approved by Landlord.

3. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the passageways or other public places in the Center shall not be covered or obstructed by any Tenant, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and hand trucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any Tenant or its employees, in the delivery or receipt of merchandise.

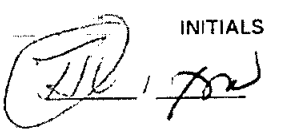
5. No Tenant shall mark, paint. drill into, or in any way deface any part of its premises, or the buildings in the Center, or elsewhere in the Center. No boring, cutting or stringing of wires, or laying of linoleum or other similar floor coverings, or painting or wood staining of fixtures or equipment, shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a Tenant's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a Tenant's premises, except that the preparation of coffee, tea, hot chocolate and similar items for Tenants and their employees shall be permitted. No Tenant shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No Tenant's premises shall be used for manufacturing or for the storage of merchandise, except as such storage may be incidental to the use of the premises as permitted by Landlord. No Tenant shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No Tenant shall engage or pay any employees on its premises, except those actually working for such Tenant on its premises nor advertise for laborers giving an address at its premises. No Tenant's premises shall be used for lodging or sleeping, or for any immoral or illegal purposes.

8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or the mechanism thereof. Each Tenant termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys so furnished, such Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any sales, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Landlord's representative and



take place during the hours which the Landlord may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Landlord and under his supervision, and the persons employed by any Tenant for such work must be acceptable to Landlord.

10. No Tenant shall install any antennas, aerial wires or other such equipment on the roof or exterior walls of any building in the Center or elsewhere in the Center, without, in each and every instance, obtaining the prior approval, in writing, by Landlord.

11. All Signage must comply with Belmont Park Signage Program. Tenant's must procure Landlord's written consent before affixing any signage to the windows, including all vinyl window signage.

EXHIBIT E

INTENTIONALLY BLANK

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EXHIBIT F - INSURANCE REQUIREMENTS

Certificate of Insurance due before commencing	
Carrier adequate	Must be Best Rating "A", financial rating at least "VII".
Commercial General Liability	CG 0001 -or- GL 0002 and GL 0404
	$2 mil, or $1mil/occur and $2mil aggregate w/$1mil umbrella
Licensee Improvements coverage	cover TI's, fixtures, merchandise, personal property at 100% full replace cost, "All risk special coverage" including vandalism, sprinkler damage, malicious mischief
Policy form 1	Policy Form. "All policies of insurance to be obtained by Licensee shall be issued in the names of Licensor, City, Licensee, any other person or entity designated by Licensor which policies shall be for the mutual and joint benefit and protection of Licensor, City, Licensee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Licensor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Licensor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it or Licensor's Parties, by reason of the negligence of Licensee.
Policy form 2	As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Licensee in the manner and to like extent, and shall be delivered to Licensor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Licensor must contain a provision that the company writing said policy will give Licensor 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 Licensor 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.
Policy form 3	** Licensee'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 Licensee, provided, however, that Licensor shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Licensor 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 Licensee does not obtain any of the insurance coverage as required in this Section 9.4, Licensor may, but is not obligated to, obtain such insurance coverage on behalf of Licensee, and Licensor shall be entitled to reimbursement for the cost thereof (plus interest at the License Interest Rate) as Additional Fees.
Policy form 4	** Licensee will report in writing to Licensor and City any accident (i) causing property damage of more than ten thousand dollars ($10,000), and (ii) involving any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and the hour, the names and addresses of any witnesses and any other pertinent information."
Additional Insureds	**Wave House Belmont Park, LLC,** its employees, members and managers at 3146 Mission Boulevard, Suite F, San Diego, California 92109; **Wave House San Diego, LLC,** its employees, members and managers at 3146 Mission Boulevard, Suite F, San Diego, California 92109; **Wave House Athletic Club, Inc.** its employees, members and managers at 3115 Ocean Front Walk, San Diego, California 92109; **Thomas J. Lochtefeld;** **The City of San Diego,** its elected officials, officers, representatives, agents and employees, Attn: Vladimir Balotsky, Property Manager, 1200 Third Avenue, Suite 1700, San Diego, CA 92101.

INITIALS

EXHIBIT G ADJUSTED GROSS SALES REPORT

Sun Diego at Wave House

3126 Mission Blvd. Suite B
San Diego, California 92109

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

Total Gross Sales: $ _____

LESS:

Refunds or

Allowances: $ _____

Exchanges: $ _____

Included Sales, Use or
Gross Receipts Taxes: $ _____

Total Deductions from Gross Sales: ($ _____)

TOTAL ADJUSTED GROSS SALES: $ _____

Total Adjusted Gross Sales for the period of _____: $ _____

Sales up to $4 million: _____ x 7.5% = $ _____

Sales greater than $4 million but less than $5 million: _____ x 8.5% = $ _____

Sales $5 million and greater: _____ x 9.5% = $ _____

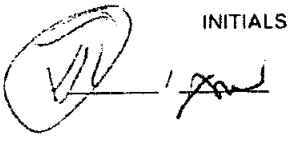
DEDUCT MINIMUM RENT paid during above period - $_____

PERCENTAGE RENT FOR THE PERIOD,
DUE WAVE HOUSE BELMONT PARK, LLC: $ _____

DUE TO LANDLORD 10 DAYS AFTER END OF MONTH.

Authorized Signature _____ **Date**_____

INITIALS



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

INITIALS

EXHIBIT H - TENANT IMPROVEMENT AGREEMENT

TBD

EXHIBIT I - STORM WATER BEST MANAGEMENT PRACTICES

STORM WATER

BEST MANAGEMENT PRACTICES

Prepared by:

I. Belmont Park's Planning and Organization Committee

Thomas Lochtefeld	Managing Director
Karen Holmquist	Property Manager (Enforcement Official)
Johnny McKinney	Maintenance Enforcement Supervisor
Julio Robles	Groundskeeping Enforcement Supervisor

II. Belmont Park's Reference Phone Listing

Name	Phone	Contact
Belmont Park's Admin Office	858-228-9308	Karen Holmquist
City of San Diego Asset Dept	619 235-5248	Vladimir Balotsky
Daily Disposal	619-702-3300	
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	Drew Ector

Quick Reference Municipal Codes

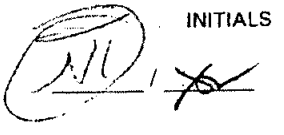
Reference	Reference Code
-City of SD Municipal Code	section 43.0307(a)
-CA Water Code	section 13050(d)
-CA Health/Safety Code	section 25117
-Discharge Conveyance System	section 43.0305
-Exemptions fm Discharge	section 43.0304
-Inland Surface Water Plan	City Clerk as Doc No. 00-17988-4
-Enclosed Bays/Estuaries 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.

Tenant's Hazardous Material Stored On-Site

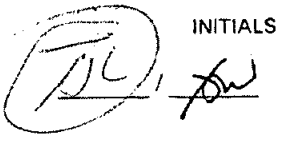
Description	Typical Quantity	Location
Bleach	gallons	Kitchen
Simple Green	gallons	Kitchen

V. 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.

VI. 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.

VII. Spill & Trash Removal Program

Trash Removal:

Tenant must sweep their Premises and the adjacent Boardwalk and West Plaza adjacent to Tenant's space daily and depose of debris in trash receptacles provided in North and East parking lots.

Spill Removal:

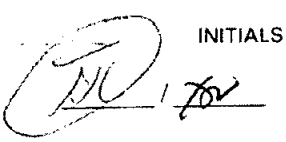
1. For hazardous chemical and fluid spills such as oil, gas, dyes, etc. use kitty litter, sawdust or cornmeal to absorb product. Place in sealed container and take to the Miramar Landfill (hwy 52 & Convoy) -Hazard Material Section. If possible, call for an appointment at 858-694-7000.

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.

VIII. 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.



CONSENT TO SUBLEASE

RECEIVED
CITY OF SAN DIEGO
05 MAR 21 PM 3:35
REAL ESTATE ASSETS DEPT.

The City of San Diego (CITY), as LESSOR under that certain Percentage Lease (MASTER LEASE), dated March 4, 1987, entered into with Belmont Park Associates, as subsequently amended and assigned to

WAVE HOUSE BELMONT PARK, LLC, a California Limited Liability Company

(LESSEE), hereby consents to that certain Lease Agreement ("SUBLEASE") between the above LESSEE ("SUBLESSOR") and

WAVE HOUSE SAN DIEGO, LLC, a California Limited Liability Company

("SUBLESSEE") dated August 1, 2004. The SUBLEASE shall be subordinate to the MASTER LEASE in all respects. The CITY is hereby approving the SUBLEASE and the proposed use, and all terms and conditions of the MASTER LEASE and this consent to license agreement shall control and supersede any inconsistent or contrary provisions in the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE.

In addition, this consent is subject to the following:

1. ASSIGNMENT AND SUBLETTING: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the SUBLEASE.

2. HOLD HARMLESS: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall assume the defense of, indemnify and hold harmless the CITY, its elected officials, officers, representatives, agents and employees, from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents or invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

3. INSURANCE: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be two million dollars ($2,000,000) Combined Single Limit Liability. SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, SUBLESSOR or SUBLESSEE shall submit to CITY a copy of the new policy of insurance.

4. LEGAL PROCEEDING: Notwithstanding anything to the contrary in the SUBLEASE, should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this SUBLEASE, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

5. SUBORDINATION: This consent permits sublease of a portion of the premises covered by the MASTER LEASE between SUBLESSOR and CITY. The SUBLEASE is subject and subordinate to the covenants and conditions of the MASTER LEASE notwithstanding any provision hereof contrary or in conflict with the SUBLEASE.

THE CITY OF SAN DIEGO

Dated 3/24/05

By _____
for the City Manager

SUBLESSOR WAVE HOUSE BELMONT PARK, LLC

Dated 3/14/05

By _____
Name: Thomas J. Lochtefeld
Title: Managing Member

SUBLESSEE WAVE HOUSE SAN DIEGO, LLC

Dated 3/14/05

By _____
Name: Thomas J. Lochtefeld
Title: Managing Member

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Dated 4/7/05

By _____
Deputy City Attorney

VEB/cj
11/10/04
I:\WPO\2004\BALOTSKY\CONSENT TO LICENCE-WAVE HOUSE.wpd

LEASE AGREEMENT

Wave House Belmont Park, LLC

and

Wave House San Diego, 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

Effective Date: August 1, 2004

Landlord: Wave House Belmont Park, LLC, a California limited liability company

Tenant: Wave House San Diego, LLC, a California limited liability company

Tenant's Trade Name: Wave House, dba Busted Board BBQ, and Wave House Events

Premises: The commercial space in Belmont Park Commercial/ Recreational Center previously occupied by Building 6 and currently outlined on Exhibit B estimated as follows:

Wave House Bar (3 satellites)	720 square feet
Wave House Commissary	1,770 square feet
Busted Board BBQ	992 square feet
Info Kiosk (Sub-lease)	62 square feet
Todd Brown (Sub-Lease)	2,102 square feet
Boardwalk Sweet Shoppe (Shepherd Sub-Lease)	600 square feet
Retail Kiosks (3 satellites)	300 square feet
Total	**6,546 square feet**

Tenant agrees that the square footage is approximate and is not the governing factor in the monetary consideration of this Lease.

Permitted Use:

- Operate a restaurant, bar (alcoholic beverage service), banquet and catering facility, take-out food, info kiosk, incidental branded retail, and other restaurant and event support facilities.
- Live entertainment, music, water shows, video, and movies, including night-time special lighting and sound effects.
- Non-exclusive operation of a beach accessory rental and food/non/alcoholic beverage concession servicing the general public in accordance with Section 3.09, Accessory Use Permit, to Fifth Operating Memorandum to Percentage Lease, Resolution Number R-293393, adopted on June 26, 2000 ("Accessory Use Permit").
- Operate a valet/passenger drop off zone of nine drop off spaces and thirty parking spaces in the north parking lot of the Belmont Park leasehold in accordance with Section 1.09, Parking, to Fifth Operating Memorandum to Percentage Lease, Resolution Number R-293392, adopted on June 26, 2000 ("Valet Parking").
- Provide alcoholic beverage service to, and maintain cleanliness and security of the common areas adjacent the Premises, but limited to the area approved by the State of California Alcoholic Beverage Commission as shown in the attached Exhibit I.

Restrictions on Permitted Use:

Tenant shall not:

- Sell more than fifteen percent (15%) of their business volume in swim suits.
- Sell hand dipped ice cream, soft serve ice cream, hard dip sorbet in a cup or a cone, ice cream novelties, hard candy, cotton candy, candy store related items,

and Icee® brand drink (but no other "smoothie" type drink) unless sold by SubTenant Boardwalk Sweet Shoppe
- Fresh Lemonade
- Coney Island Hot Dogs
- Hotdogs or cheese on a stick
- Corndogs
- Chili Dogs and Cheese Dogs

Term: Effective Date of the Agreement through October 31, 2013.

Option to Renew: One seven (7) year option, as provided in Article 4.

Commencement Date: Commencing on the first day of the month following the opening day of service to the public.

Fixturization Period (if any): Until December 31,2004.

Rent shall be the summation of:

A. Minimum Monthly Rent:

I.	Wave House Bar Wave House Commissary Busted Board BBQ	$10,000
II.	Info Kiosk (Sub-lease)	N/A
III.	Todd Brown (Sub-Lease)	Pass-through
IV.	Boardwalk Sweet Shoppe (Shepherd Sub-Lease)	Pass-through
V.	Best Beverage Catering (Dirk Alton Sub-Lease)	Pass-through

B. Percentage Rent: Nine and one half percent (9½ %) of all Tenant's Gross Sales, as defined in Section 5, in excess of Minimum Rent, resulting from the use of the premises.

Address for Notices:

To Landlord: Wave House Belmont Park, LLC
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Tenant: Wave House San Diego, LLC
3125 Ocean Front Walk
San Diego, CA 92109

Security Deposit: Ten Thousand 00/100 Dollars ($10,000)

Monthly Common Area Maintenance Charge: Estimated at approximately $1 / sq ft of Premises.

Marketing Fund Contribution: $.20 / sq ft of Premises

Consent to Assignment and Sublease: Wave House Belmont Park, LLC hereby consents to Wave House San Diego, LLC entering into the following subleases:

Todd Brown (dba to be determined)

Boardwalk Sweet Shoppe (Shephards')
Best Beverage Catering (Dirk Alton)

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

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center
Exhibit B - Floor Plan Showing the Premises
Exhibit C – Rules and Regulations
Exhibit D – Site Plan of Accessory Use Permit Area
Exhibit E – Commencement Date Certificate
Exhibit F – Adjusted Gross Sales Report
Exhibit G – Storm Water Best Practices Management
Exhibit H – WHBP Consent to Assignment and Sublease
Exhibit I – ABC Approved Alcoholic Beverage Service Area

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 upon delivery of Premises to Tenant for Tenant occupancy. Subject to the fixturization period specified in the Fundamental Lease Provisions, if any, the lease term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided by the fixturization period, if any, provided however that in no event shall such delay continue beyond the date on which Tenant opens for business. If the Commencement Date falls on any day of the month other than the first day, then the Term shall be extended by the number of days between the first day of the month and the Commencement Date. Tenant agrees not to unreasonably delay the Commencement Date.

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

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

4.4 Option to Renew. Provided that at the time of the required notice and at the commencement of the Renewal Term (defined below), there is no continuing and uncured Event of Default by Tenant under this Lease, and provided further that Tenant furnishes current financial statements satisfactory to Landlord which reflect no material adverse change in the financial condition of Tenant since the Commencement Date, Tenant shall have the option to renew ("Renewal Option(s)") the term of this Lease, for one (1) additional periods of seven (7) years (the Renewal Term(s)), which Renewal Option(s) shall be exercised by giving written notice of exercise of the Renewal Option ("Option Notice") to Landlord in the manner provided herein not more than six (6) and not less than four (4) full calendar months prior to the expiration of the prior Term of the Lease. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option.

The Minimum Monthly Rent during the Renewal Term shall be the higher of the prevailing asking rental rate for comparable space in the Center or the Rent, as defined in Article 5 below at the expiration of the initial Term, including an annual Rent increase of three (3)% or the amount equal to the annual rate of inflation, whichever is greater, which rate shall not be adjusted downward to compensate for any Tenant Improvement Allowance and/or commission/brokerage fees or downtime and/or any other offset. Landlord will notice Tenant of the prevailing asking rental rate for comparable space in the Center within 30 days of receipt of Tenant's Option Notice. Within ten (10) business days thereafter, Tenant shall respond to Landlord in writing by either accepting Landlord's prevailing asking rental rate or by challenging it ("Challenge").

In the event of a Challenge, Tenant must, at its sole expense, hire an appraiser to determine the prevailing asking rental rate and notify Landlord of the appraiser's name at the time the Challenge is made. Tenant's appraisal shall be submitted to Landlord within thirty (30) calendar days of Challenge. Within the same thirty (30) days, Landlord, at its sole expense, shall also procure an appraisal on its behalf and provide a copy to Tenant.

If the difference between Tenant's appraisal and Landlord's appraisal is less than 5% then the parties will accept the average prevailing asking rental rate of the two appraisals.

If the difference between the appraisals is greater than 5%, then Tenant's and Landlord's appraisers shall agree upon a third appraiser. The third appraiser shall have thirty (30) days to complete his/her appraisal and provide the same to both parties. Tenant shall then have ten (10) business days to accept the third appraiser's prevailing asking rental rate, or withdraw its Option Notice. In the event of withdrawal, Tenant shall be obligated to pay all expenses associated with the third appraisal. In the event Tenant accepts the third appraiser's prevailing asking rental rate, then the parties will split the cost of the third appraiser's appraisal.

Tenant acknowledges that the foregoing deadlines associated with a Challenge are reasonable, and that strict compliance with the same is imperative to Landlord maintaining full occupancy and smooth transitions between tenants, if necessary. Therefore, Tenant understands and agrees that its failure to comply with any of the deadlines shall result in the automatic termination of Tenant's Renewal Option.

No Tenant Improvement Allowance or refurbishment allowance will be due Tenant at renewal or during the Renewal Term. All other terms and provisions of this Lease shall apply.

If Tenant fails to exercise any Renewal Option contained herein, any and all subsequent Renewal Options shall immediately terminated.

If Tenant timely exercises any Renewal Option, Landlord and Tenant shall, within ten (10) days after the determination of the Minimum Monthly Rent during such Renewal Term, execute an amendment to this Lease extending the Lease Term and designating the new Minimum Monthly Rent, which shall be subject to annual increases throughout the Renewal Term as calculated pursuant to Article 5.1.1.1 herein. All other terms and conditions of this Lease shall remain in full force and effect throughout the Renewal Term.

ARTICLE 5 - RENT

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

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

5.1.1.1 Minimum Monthly Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Term to annual Rent increases of three (3)% or the amount equal to the annual rate of inflation, whichever is greater. The adjustment shall be calculated by multiplying the Minimum Monthly Rent payable during the immediately preceding calendar year by the greater of one hundred and three percent (103%) or a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the San Diego metropolitan area (all items (1982-84=100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Monthly Rent for each calendar year is determined, Landlord shall give Tenant written notice of the amount thereof. Landlord's failure to make the required calculations promptly shall not be considered a waiver of Landlord's rights to adjust the Minimum Monthly Rent due, nor shall it affect Tenant's obligations to pay the increased Minimum Monthly Rent. The Minimum Monthly Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. It the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Tenant shall continue to pay the Minimum Monthly Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Tenant, concurrently with the next monthly payment of Minimum Monthly Rent, shall pay to Landlord, the difference between the new Minimum Monthly Rent, including the cost of living increase or the three (3) % increase, whichever is greater, for the period commencing with the first month of such calendar year and the Minimum Monthly Rent already paid for such period.

5.1.2 Percentage Rent. Excluding the first calendar month of operation, Tenant agrees to pay as Percentage Rent that percentage of Gross Sales Tenant made from or upon the Premises during each calendar month as specified in the Fundamental Lease Provisions. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month. Tenant shall pay to Landlord the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's Gross Sales during said period, exceeds the installments of Minimum Monthly Rent payable by Tenant during such period. The amount of Percentage Rent payable by Tenant in any given calendar month shall not be subject to cumulative adjustment to compensate for differences in Gross Sales between one month and another (i.e., Percentage Rent shall be calculated and payable on a monthly basis only and not on a year-to-date basis). Tenant shall complete Exhibit F "Monthly Tenant Adjusted Gross Sales Report" and submit same along with payments of Percentage Rent to

Landlord no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month.

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

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

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

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

5.1.6 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 Adjusted Gross Sales of Tenant utilizing the form in Exhibit F herein within ten (10) days after the close of each calendar month, and an annual statement of Gross Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category, include a computation of all Minimum Monthly Rent and Percentage Rent for the preceding month, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, by a manager, or managing member, if Tenant is a limited liability company, or by a corporate officer if Tenant is a corporation. Annual statements shall be signed by Tenant's certified public accountant. If Landlord so elects, Tenant shall provide such information in a format specified by Landlord. Tenant shall, concurrently with submittal to the State Board of Equalization, provide Landlord with a copy of all state and local sales and use tax returns filed with said State Board.

Tenant shall keep at the Premises or within the City of San Diego accurate, true and complete records and accounts of all financial transactions in the operation of all business activities conducted on and financial transactions resulting from the use of the Premises, including, without limitation, Gross Sales of Tenant and of any subtenant, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Tenant not relating to the Premises and such books shall be retained by Tenant for a period of five (5) years after the close of each calendar year. Said records must be supported by source documents of the original entry such as sales slips or invoices, daily cash register tapes, purchase invoices or other documents as necessary to allow Landlord to determine Tenant's Gross Sales and Gross Sales Category. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, including Gross Sales Categories, sequential transaction counters which are locked in, constantly accumulating and which cannot be reset and contain tapes upon

which sale details and sequential transaction numbers are imprinted. Sales totalizer readings shall be made at the beginning and ending of each business day. For admission charges or rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets, both issued and unissued. Landlord shall have the right at all reasonable times to examine and audit said records and accounts, without restriction, for the purpose of determining the accuracy thereof, the percentage of Tenant's Gross Sales in each Category, the monthly and annual statements of Gross Sales and the Rent paid to Landlord. Landlord shall have the discretion to require the installation of any additional accounting methods or controls Landlord may deem necessary.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Monthly Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the Lease Interest Rate, from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Gross Sales by more than two percent (2%) or if Tenant has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Tenant shall pay all of Landlord's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") equal to the greater of (i) one thousand five hundred dollars ($1,500.00) or (ii) ten percent (10%) of the amount of the deficiency which Understatement Fee is mutually agreed by the parties hereto to be appropriate to compensate Landlord and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account. If any of Tenant's statements shall be found to have understated Gross Sales by more than five percent (5%), or if Tenant has failed to maintain complete and true records, accounts, and supporting source documents in strict accordance with Article 5, this shall be deemed to be a non-curable breach under this Lease, then in addition to any other rights of Landlord under this Lease, Landlord may terminate this Lease pursuant to Article 21.1.2 herein. Acceptance of the Understatement Fee or any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to an underpayment, or prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Gross Sales. The term "Gross Sales" as used herein defined to mean all income and gross sales of Tenant and of all licensees, concessionaires and subtenants of Tenant, from all business conducted upon or from and occupancy of the Premises, from whatever source derived whether received or to become due and whether such sales be evidenced by cash, check, credit, charge account, exchange or otherwise. Gross Sales shall include, but not be limited to, the amount received from the sale of goods, wares, and merchandise and for services performed on, at or from the Premises and whether such sales be made by means of merchandise or other vending devices in the Premises. If any one or more departments or other divisions of Tenant's business shall be sublet by Tenant or conducted by any person, firm or corporation other than Tenant, then there shall be included in Gross Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions, in the same manner and with the same effect as if the business or sales of such departments and divisions of Tenant's business had been conducted by Tenant itself. Gross Sales shall not include (i) sales of merchandise for which cash has been refunded, or allowances made on merchandise claimed to be defective or unsatisfactory, provided they shall have been first included in gross sales and (ii) sales prices of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in Gross Sales, or (iii) the amount of any sales,

use or gross receipts tax imposed by any federal, state, or municipal authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by Tenant to such governmental authority. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Gross Sales in any event whatever.

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

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

exercising any other rights or remedies available to Landlord as hereinafter provided or as provided by law.

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

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

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

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

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

then:

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

If this Lease is so terminated, Tenant covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Landlord upon the expiration of the thirty (30) day notice period, and all Rent shall be adjusted as of the expiration of such period and all amounts due and owing by Tenant pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Tenant shall be discharged from its obligations hereunder and under the Lease, and Tenant shall have no recourse against Landlord or those for whom it is in law responsible for damages or otherwise and shall not be entitled to any refund of or any credits for any amounts paid by the Tenant.

ARTICLE 6 - PERSONAL PROPERTY TAXES

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

ARTICLE 7 - POSSESSION AND USE

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

7.2 Permitted 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 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

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.

Tenant shall not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Tenant shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects. Promptly upon demand of Landlord, Tenant shall reimburse Landlord for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Tenant will not solicit, in any manner, in the Common Areas of the Center.

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

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

ARTICLE 8 - UTILITIES AND SERVICES

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

any fees, deposits and charges which are separately metered or individually billed to Tenant, if such charges are not paid when due, Landlord may pay the same, and any amount so paid, with interest thereon at the Lease Interest Rate plus a Late Fee, shall thereupon become due to Landlord from Tenant as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

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

9.2. Indemnity by Tenant. To the fully extent permitted by law, except to the extent caused by the sole negligence of Landlord Parties, Tenant will, at Tenant's sole expense and with counsel acceptable to Landlord and/or City, defend, indemnify and hold harmless Landlord Parties and City from any liability whatsoever, on account of any such real or claimed damages or injury, and from all liens, claims and demands, including attorney's fees and investigation costs and all other reasonable costs, expenses and liabilities with respect to any claim or demand, arising out of (i) the use condition, operation or occupation of the Premises and its facilities, (ii) any repairs or alterations which Tenant may make to the Premises, including the violation or of failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; (iii) any act omission or negligence by Tenant Parties or of any subTenants, invitees, guests or licensees; and (iv) any failure by Tenant to comply or secure compliance with any of the terms or conditions of this Lease, whether before or during the Lease Term or after its expiration or earlier termination; (v) any alcohol related use or incident that occurs from the Tenant's service of alcohol from the State of California Alcoholic Beverage Commission license area as set forth in Exhibit I, whether or not the alcohol misuse or incident takes place within the Premises, the approved license area or elsewhere. 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. All such public and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions of Article 9.2 above.

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

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

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

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

Tenant's obligations to carry insurance may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant, provided, however, that Landlord shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Landlord will not 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 either Landlord's lender, City, or Landlord's insurance broker.

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

11.2 Landlord Alterations: Landlord shall commit to spending for the benefit of Tenant at least two and one-half percent (2 ½%) of Tenant's gross income towards mutually approved capital improvements described below. The calculation of funds spent shall be two and one-half percent (2½%) percent of the total gross Tenant income during any consecutive four-year period commencing January 1, 2004. The definition of Approved Ongoing Capital Improvements includes those costs that are associated with design, engineering, permitting, bonding, and construction (labor, materials, overhead, profit, third-party construction management fee, supervision and general conditions) for:

(1) Improvements such as additional compatible food facilities, retail shops, rides, attractions, games, water features and/or picnic facilities which result in an increase in LESSEE'S gross revenue;

(2) Improvement, enhancement, and/or renovation of an existing attraction, landscaping, parking area, food facility, retail shop, game, water feature

and/or picnic facility, but only to the extent that such improvement is adding a new feature to an existing element and is not solely for maintenance purposes;

(3) Improvements that increase the safety and security of Leasehold and/or patrons and employees;

(4) Improvements installed for the purposes of the Accessory Use Permit..

ARTICLE 12 - MECHANIC'S LIENS

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

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

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

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

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

ARTICLE 13 - SIGNS

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

No advertising medium shall be utilized by Tenant which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Tenant, or to Tenant's Related Parties, or to any other person. Tenant shall not distribute in the Center any handbills or other advertising devices. Tenant further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Landlord's prior written consent.

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 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right upon termination or expiration of the term of this Lease, provided Tenant is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property 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;

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

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

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

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

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

Tenant, therefore, shall not enter into any Occupancy Transaction during the first two (2) years of the term hereof, without first procuring the written consent of Landlord, whose consent may be given or withheld in Landlord's sole

discretion. Any attempted Occupancy Transaction without Landlord's written consent, during the first two (2) years after the execution hereof, shall be void and confer no rights upon any third person.

15.3 Remaining Term

15.3.1 After the first two (2) years of the term hereof, Tenant shall not enter into

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

15.3.2 By way of example and without limitation. Landlord and Tenant hereby

agree that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist:

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

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

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

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

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

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

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

15.2 Procedures

15.2.1 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:

15.2.1.1 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:

15.2.1.2 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;

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

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

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

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

15.2.2.2 Refuse to consent to the Occupancy Transaction or

15.3 City's Consent Required. Tenant and Landlord hereby acknowledge and agree that no Occupancy Transaction of Premises which exceeds five thousand (5000) square feet may be consented to by Landlord or entered Into by Tenant without first obtaining the additional written consent of City.

15.6 Documentation and Expenses Each Occupancy Transaction to which Landlord has consented shell 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.

15.7 Consideration to Landlord

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

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

(i) An amount equal to one hundred percent (100%) of the total Rent required to be paid by Tenant, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or

(ii) The then fair market annual rent as reasonably determined by Landlord. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

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

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 (except as set forth in Article 16.2) continuously conduct business in the Premises during the following minimum hours: Easter through Labor Day ("In Season") 11:00 a.m. to 9:00 p.m. seven days a week; all other times ("Out-of-Season") 11:00 a.m. to 6:00 p.m. seven days a week. .

16.3 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 Gross 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 on the Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce maximum Gross Sales. Tenant shall keep the display window and all approved designs, if any, in or on the Premises, clean and well lighted from opening 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.

16.4 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, with interest at the Lease Interest Rate from the date(s) of Landlord's payments. 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 with interest at the Lease Interest Rate commencing ten (10) days past due. 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.

16.5 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.

16.6 Tenant agrees to accept Bank Americard, Master Charge, Visa, American Express and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.7 New Locations. During the term of this Lease, neither Tenant nor any individual, firm or corporation that controls Tenant or is controlled by Tenant shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Landlord's remedies, if Tenant violates this covenant, Landlord may, at its option and for so long as Tenant is operating such other business, include Gross Sales of such other business for the purpose of computing Percentage Rent due hereunder. Upon demand of Landlord, Tenant shall provide Landlord with a Statement of Gross Sales for such other business for any period of time during this Lease, as designated by Landlord, during which Tenant has operated, said other business.

ARTICLE 17 - REPAIRS AND MAINTENANCE

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

17.2 Landlord's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Landlord shall keep in good condition and repair the foundations and exterior walls and roof of the Premises, except for any damage caused by any act or negligence of Tenant or Tenant's employees, agents, invitees, licensees or contractors which damage Landlord shall repair at Tenant's sole cost and expense.

ARTICLE 18 - RECONSTRUCTION

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

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

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

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

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall be deemed to include those portions of the Center and other areas that are designated by Landlord from time to time for the general use, conveniences and benefit of Landlord, Tenants in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas and parking structures, driveways, roadways, sidewalks, service areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, art work, artistic displays, ponds and 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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of Tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance, repair and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to five percent (5%) of all gross receipts collected by the property management company from Center operations, from any source whatsoever. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. 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 foe, 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 alt 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 alt 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 Ares Expenses, as hereinafter defined. Should Tenant fail to make any payment to Landlord of Tenant's pro rats 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 rats 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.

19.5.2 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 rats 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 rats share of Common Area Expenses, Tenant shall be entitled to offset the excess against payments next thereafter to become due Landlord as set forth in subparagraph (19.5.1). Tenants pro rats 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.

19.6 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.

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

19.8 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking

free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and 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.

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

If, in the opinion of Landlord, unauthorized persons are using any of said areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall 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, non-curable defaults without the necessity of any notice by Landlord to Tenant thereof. In the event that Landlord serves Tenant with a Three Day Notice to Quit, pursuant to applicable Unlawful Detainer statutes

as a result of such non-curable breach, such notice shall constitute notice sufficient to terminate this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

21.3.3 The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

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

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

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

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

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

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

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

ARTICLE 22 - DEFAULT BY LANDLORD

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

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

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

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

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

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

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

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

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

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

ARTICLE 23 - EMINENT DOMAIN

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

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

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

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

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

ARTICLE 24 - ATTORNEYS' FEES

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

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

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

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

26.4 Estoppel Certificate.

26.4.1 Each party (as "responding party") shall at any time upon not less than ten (10) days prior written notice from the other party ("requesting party") execute, acknowledge an 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.

ARTICLE 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.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified In the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any shall be calculated upon the basis of the I as defined in Section 5.1.1(a). The Marketing Fund Contribution payable during the following calendar year and 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 determined by Landlord. Landlord agrees to consider Tenant 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, coats 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 rats share allocation provided that in no

event shall Tenant be required to pay In any calendar year an amount that exceeds Tenants 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 shell 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 shaft 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 Grand Opening Tenant shall pay to Landlord, as Additional Rent, a sum equal to the Grand Opening Contribution as set forth in the Fundamental Lease Provisions to defray the promotional and advertising expenses incurred In connection with the Grand Opening of the Center (Opening This sum shall be paid by Tenant within fifteen (15) days of receipt of a bill for same. The use and disbursement of such funds shall be determined by Landlord In Landlord's sole discretion

28.7 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 shaft thereafter obtain Landlord's prior written approval of all advertising for a period of six (6) months following said written notice.

28.8 Late Charge Should Tenant fail to make arty 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 coats, 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.

28.9 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 then 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 shell 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 end 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 fats 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 food, beverages, products, and services provided on the Premises.

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

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

35.15 Washrooms. The washrooms and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, 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.

34.24 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.

34.25 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.

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

34.27 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.

34.28 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.

34.29 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.

34.30 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.

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

ARTICLE 35 - ADDITIONAL PROVISIONS

34.1 Additional Provisions. By insertion of numbers in the following blank, Landlord and lessee acknowledge that Article(a) _____ la/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 35.1. it is conclusive that no additional provisions are a part of this Lease.

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

LANDLORD

Wave House Belmont Park, LLC
a California limited liability company

By: _____
Name: Thomas J. Lochtefeld
Title: Managing Member

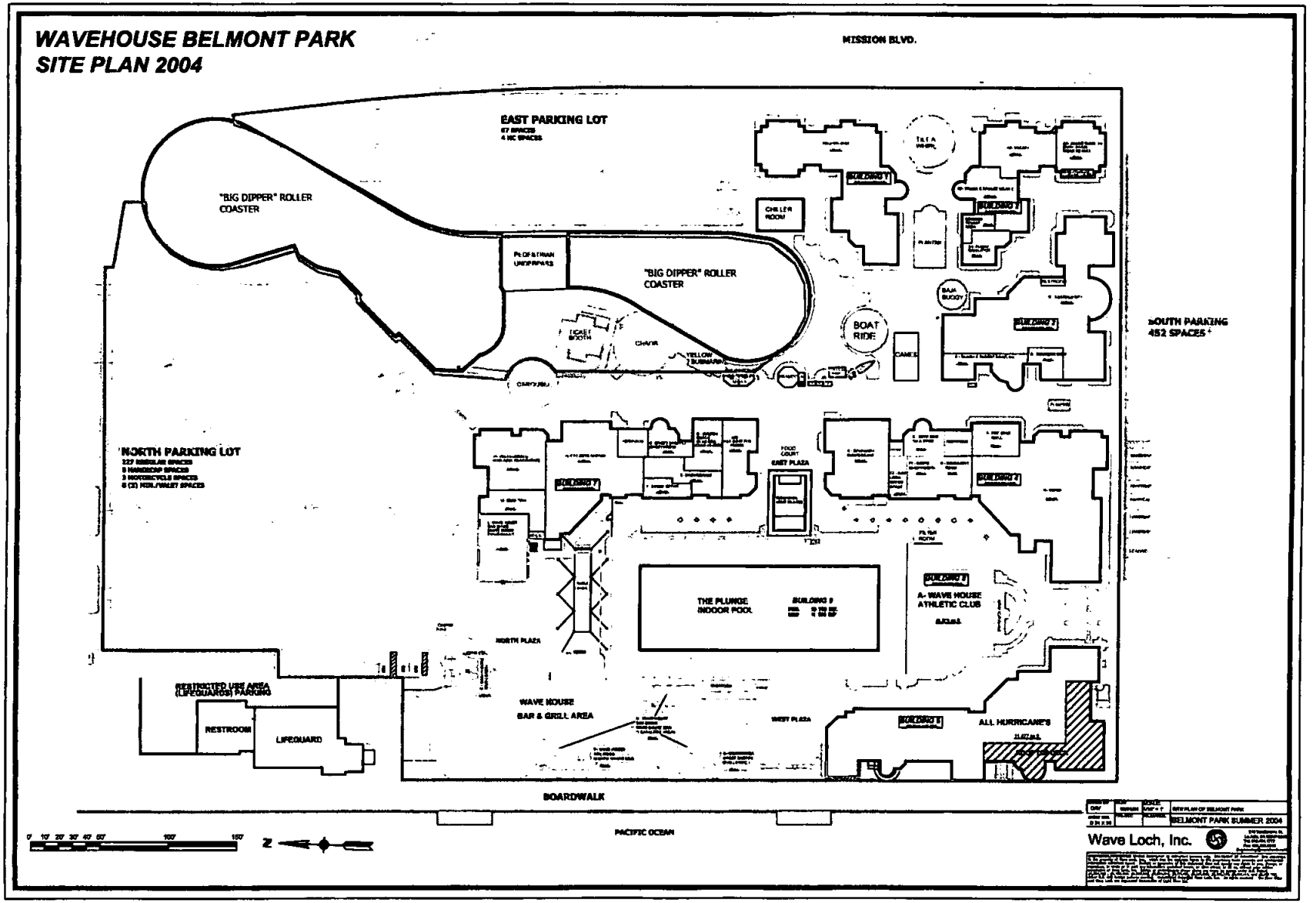
TENANT

Wave House San Diego, LLC
a California limited liability company

By: _____
Name: Thomas J. Lochtefeld
Title: Manager

Initials

EXHIBIT A - SITE PLAN OF THE CENTER



WAVE HOUSE - BAR & GRILL AREA

WAVE HOUSE BAR & GRILL

ADDRESS:

3125 OCEAN FRONTWALK
SAN DIEGO, CA 92109

(858)228 9308

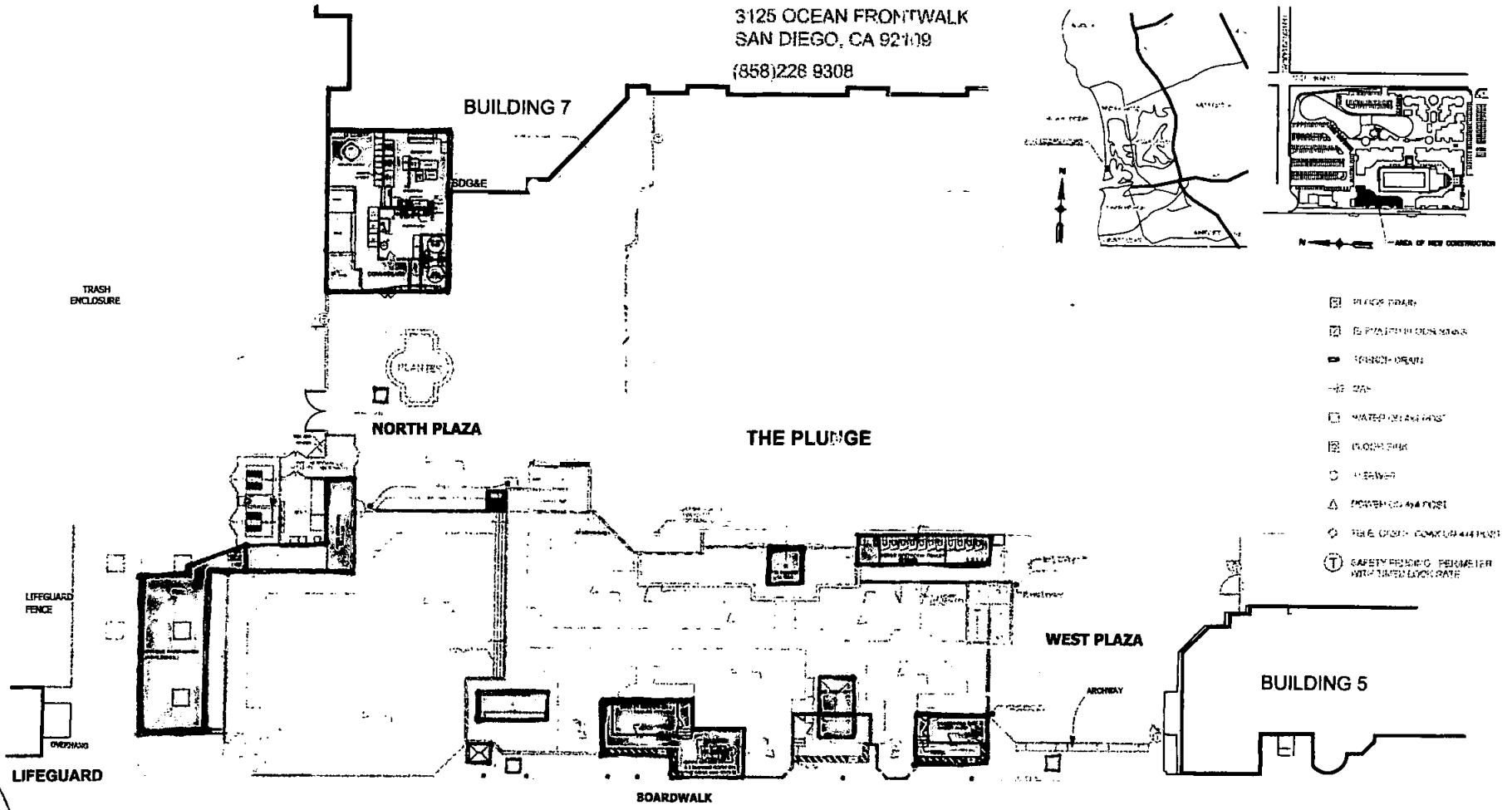


EXHIBIT B- FLOOR PLAN SHOWING THE PREMISES

Initials

EXHIBIT C- RULES AND REGULATIONS

1. The Premises is a part of Mission Beach Park, a dedicated public park. The Premises must therefore be utilized for park and recreation purposes and for facilities needed to accommodate park visitors, including visitor oriented commercial and recreational uses. Tenant shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public uses of the park property.

2. No projection shall be attached to the outside wall of the buildings in the Center or any exterior portion of the Center without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a Tenant's premises, without the prior written consent of Landlord. Such projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. All electrical ceiling fixtures hung in spaces along the perimeter of the buildings in the Center must be fluorescent, of a quality, type, design and bulb color approved by Landlord.

3. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the passageways or other public places in the Center shall not be covered or obstructed by any Tenant, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and hand trucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any Tenant or its employees, in the delivery or receipt of merchandise.

5. No Tenant shall mark, paint. drill into, or in any way deface any part of its premises, or the buildings in the Center, or elsewhere in the Center. No boring, cutting or stringing of wires, or laying of linoleum or other similar floor coverings, or painting or wood staining of fixtures or equipment, shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a Tenant's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a Tenant's premises, except that the preparation of coffee, tea, hot chocolate and similar items for Tenants and their employees shall be permitted. No Tenant shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No Tenant's premises shall be used for manufacturing or for the storage of merchandise, except as such storage may be incidental to the use of the premises as permitted by Landlord. No Tenant shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No Tenant shall engage or pay any employees on its premises, except those actually working for such Tenant on its premises nor advertise for laborers giving an address at its premises. No Tenant's premises shall be used for lodging or sleeping, or for any immoral or illegal purposes.

8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or the mechanism thereof. Each Tenant termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the 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.

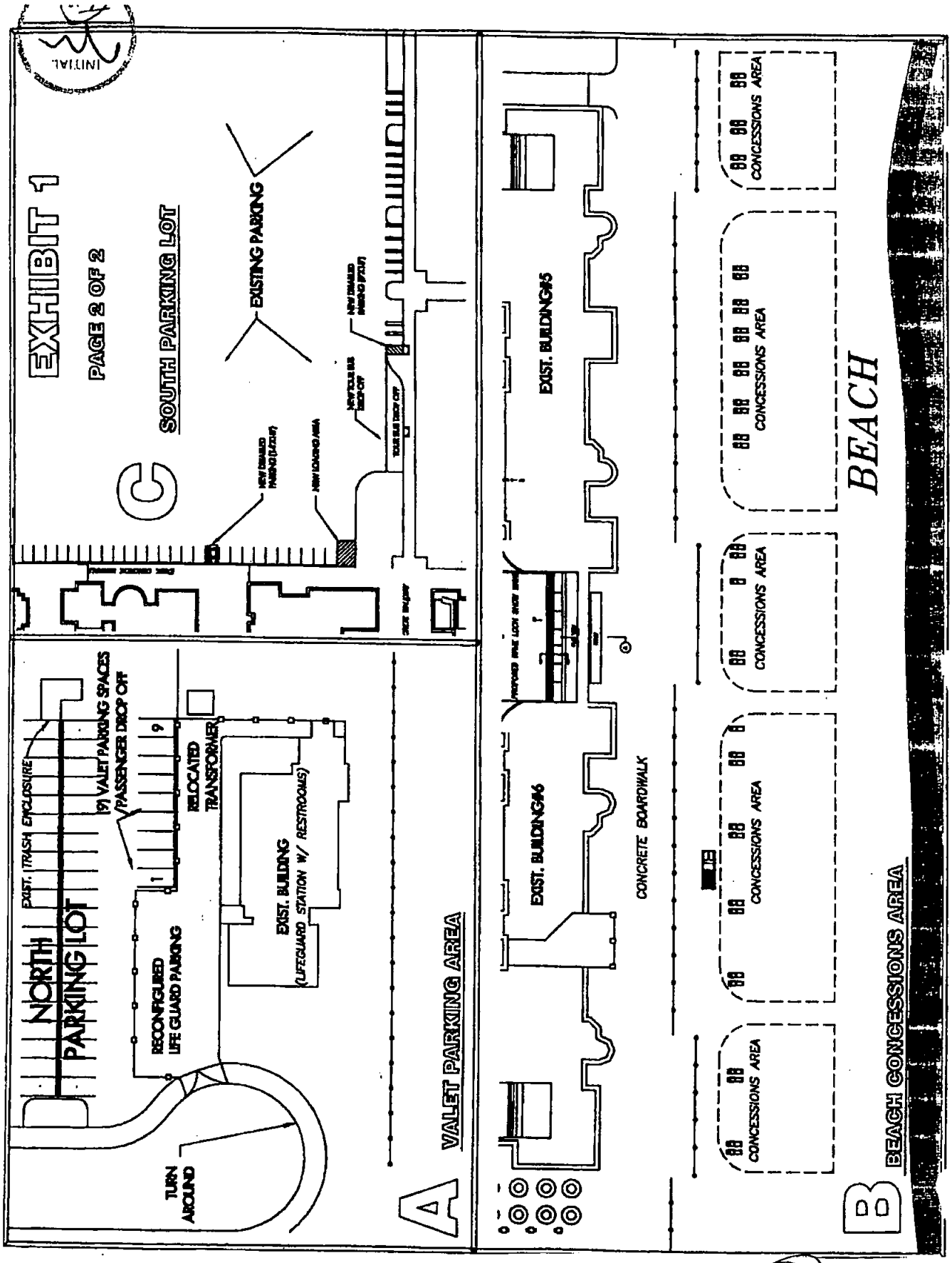


EXHIBIT 1
PAGE 2 OF 2
C
SOUTH PARKING LOT
EXISTING PARKING
NEW ENHANCED PARKING (14 STALLS)
NEW LOADING AREA
NEW PUBLIC BUS DROP-OFF
TOUR BUS DROP OFF
EXIST. BUILDING #5
CONCESSIONS AREA
CONCESSIONS AREA
CONCESSIONS AREA
BEACH
EXIST. BUILDING #6
CONCRETE BOARDWALK
CONCESSIONS AREA
CONCESSIONS AREA
B
BEACH CONCESSIONS AREA
A
VALET PARKING AREA
EXIST. TRASH ENCLOSURE
NORTH PARKING LOT
(9) VALET PARKING SPACES (PASSENGER DROP OFF)
RELOCATED TRANSFORMER
EXIST. BUILDING (LIFEGUARD STATION W/ RESTROOMS)
RECONFIGURED LIFE GUARD PARKING
TURN AROUND

EXHIBIT E - 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: Wave House Belmont Park, LLC, a California limited liability company

   (b) Tenant: Wave House San Diego, LLC, a California limited liability corporation

   (c) Lease: Lease dated August 1, 2004 between Landlord and Tenant

   (d) Premises:__3125 Ocean Front Walk, San Diego, California 92109

2. Confirmation of Lease Commencement Date: Landlord and Tenant confirm that the Commencement Date of the Lease is August 1, 2004 and the expiration date is October 31, 2013.

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

LANDLORD

Wave House Belmont Park, LLC,
a California limited liability company

By_____
Date Aug 1, 2004
Name: Thomas J. Lochtefeld
Title: Managing Member

TENANT

Wave House San Diego, LLC
a California limited liability company

By_____
Date Aug 1, 2004
Name: Thomas J. Lochtefeld
Title: Managing Member

ADJUSTED GROSS SALES REPORT

For

Wave House San Diego, LLC
3125 Ocean Front Walk
San Diego, California 92109

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

Food Gross Sales:
Amount: $ _____ x Percentage: _____ $ _____

Alcohol Gross Sales
Amount: $_____ x Percentage: _____ $_____

Retail & Other Gross Sales:
Amount: $_____ x Percentage: _____ $ _____

LESS:

Refunds or
Allowances: $ _____

Exchanges: $ _____

Included Sales, Use or
Gross Receipts Taxes: $ _____

Total Deductions from Food Gross Sales: ($ _____)

TOTAL ADJUSTED GROSS SALES: **$_____**

LESS TOTAL MINIMUM FEES (if applicable): $ _____

FEES FOR THE PERIOD, DUE WAVE HOUSE BELMONT PARK, LLC:$_____

Due to Landlord10 days after end of month.

_____ _____
Authorized Signature **Date**

Landlord 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

STORM WATER

BEST MANAGEMENT PRACTICES

Prepared by:

I. Belmont Park's Planning and Organization Committee

Thomas Lochtefeld	Managing Director
Fred Bradley	Construction Manager
Steven Egbert	Property Manager (Enforcement Official)
Patrick Crain	Maintenance Enforcement Supervisor

II. Belmont Park's Reference Phone Listing

Name	Phone	Contact
Belmont Park's Admin Office	858-228-9308	Ashley Berman
City of San Diego Asset Dept	619 235-5248	Vladimir Balotsky
Daily Disposal	619-702-3300	
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	Drew Ector

Quick Reference Municipal Codes

Reference	Reference Code
-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

Description	Typical Quantity	Location
Bleach	gallons	Kitchen
Simple Green	gallons	Kitchen

V. 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.

VI. 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.

VII. Spill & Trash Removal Program

Trash Removal:

Tenant must sweep their Premises and the adjacent Boardwalk and West Plaza adjacent to Tenant's space daily and depose 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.

VIII. 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.

EXHIBIT H - WHBP CONSENT TO ASSIGNMENT AND SUBLEASE

CONSENT TO ASSIGNMENT and SUBLEASE AGREEMENT

Wave House Belmont Park ("WHBP"), as Landlord under that certain Lease Agreement ("Lease") entered into with

WAVE HOUSE SAN DIEGO, LLC,
a California Limited Liability Company,
("Tenant")

effective on August 1, 2004, hereby consents to that certain Assignment and SubLease ("Assignment and SubLease") between the above Tenant and

Todd Brown, dba to be determined, effective August 22, 2004_____
("SubTenant")

and the above Tenant and

Sheppard Enterprises, dba Boardwalk Sweet Shoppe, effective August 1, 2004,
("SubTenant").

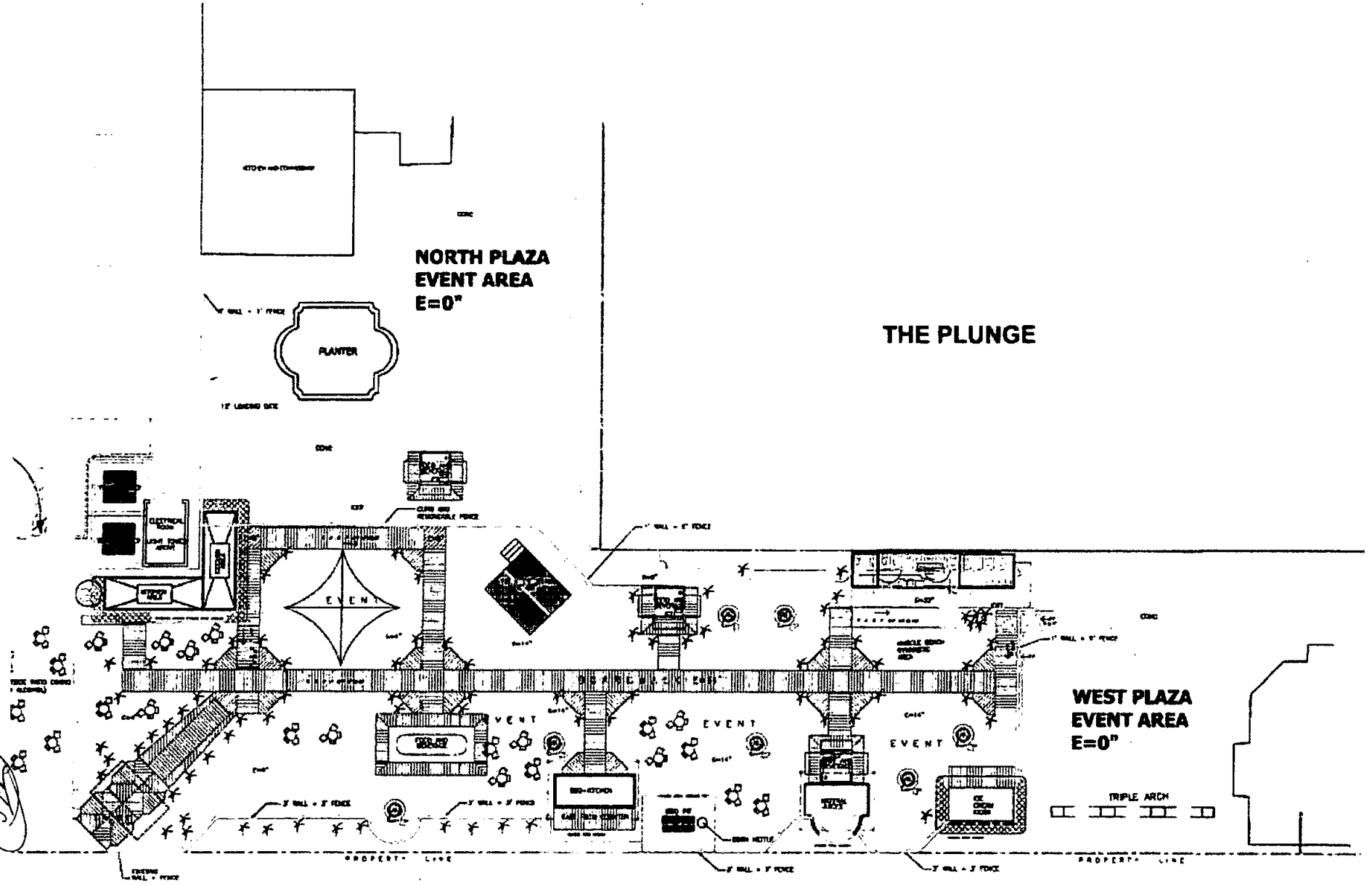
Said Assignment and Sublease shall be subordinate to the Lease in all respects. WHBP is merely approving the Assignment and SubLease proposed use, and all terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in the Subleases. WHBP is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Lease.

WAVE HOUSE BELMONT PARK, LLC
a California Limited Liability Company,

Date 8/12/04

By _____
Thomas J. Lochtefeld
Managing Member

EXHIBIT I – CALIFORNIA ABC APPROVED LIQUOR LICENSE AREA



SEC "A" SIDE VIEW FROM LEFT

Wave Loch, Inc.

Initials: _____

COPY

DUPLICATE ORIGINAL

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is effective on first day of Month following execution, by and between Wave House Belmont Park, LLC, a California limited liability company ("Licensor"), and the City of San Diego, a municipal corporation, ("Licensee").

WITNESSETH:

1. License. Licensor hereby grants to Licensee the non-exclusive right to enter upon the real property commonly known as Belmont Park (the "Business Center"), San Diego, California, as more particularly described and illustrated in Exhibit A attached to this Agreement and incorporated here by this reference, for the purposes set forth below (the "License"). The License shall be subject at all times to such rules and regulations as may be determined by Licensor, in its sole and absolute discretion, from time to time. Licensor may restrict and determine, from time to time, in its sole and absolute discretion, the area or areas within the Business Center where Licensee may use the License within the Premises as illustrated in Exhibit B.

2. Permissible Use. It is expressly agreed that the Premises are licensed to Licensee solely and exclusively for the purposes of operating and maintaining a police storefront and for such other related or incidental purposes and for no other purpose whatsoever.

3. Term. The term of the License shall commence on March 1, 2005, and shall continue for sixteen months (16) until June 30, 2006 (the "Term") unless terminated earlier pursuant to this Agreement. This License may be extended for a period of up to three (3) years by mutual agreement with City Manager approval.

4. Consideration. Licensor agrees to license the Premises in consideration for the City's operation of a police storefront on the property.

5. Operation of Licensee's Business.

   a. Hours of Operation. Licensee may commence its use of the License on March 1, 2005. Licensee may occupy the Premises and conduct its business on the Premises twenty-four hours per day seven days per week. Licensor reserves the right to adjust the hours by giving Licensee three (3) days advance written notice.

   b. Compliance with Law. Licensee shall occupy the Premises and operate its business in compliance with all laws, statutes, ordinances or governmental regulations now in force or subsequently enacted or promulgated, and in compliance Licensor's lease from the City of San Diego for the Business Center, whether entered into before or after the date of this Agreement.

   c. Cleanliness. Premises and area surrounding Premises must be kept free of trash, wrappers, stray product, and any other litter. All equipment must be

N. Division San Diego Police Substation

Page 1 of 7

Initials NC/____

WAVEHOUSE BELMONT PARK

DOCUMENT NO. RR-300191

FILED MAR 07 2005

OFFICE OF THE CITY CLERK

SAN DIEGO, CALIFORNIA

SEE CITY/WAVE HOUSE BELMONT PARK, LLC

located within Premises. Licensee agrees that all trash and rubbish of Licensee shall only be deposited within receptacles as provided by Licensor and that no trash receptacles shall remain outside the Premises. Should Licensee fail to maintain cleanliness after twenty-four (24) hours, written notice by Licensor to do so, Licensee shall pay to Licensor the sum of fifty dollars ($50.00) dollars for Licensor's cleanup services, which will be treated as Additional Fees.

Should Licensor determine the Premises are not being maintained in compliance with cleanliness regulations or any and all other legal review, Licensor shall be entitled to put the Premises in a safe, clean, wholesome and sanitary condition and charge the costs and expenses thereby incurred to Licensee as an Additional Fees.

6. Notices. Any notice which either Licensor or Licensee may be required or desires to give or make upon the other may be given personally or by certified mail, deposited with the United States Postal Service, postage prepaid, addressed to Licensor, in care of its Center Manager, at:

Wave House Belmont Park, LLC
3146 Mission Blvd, Suite F
San Diego, CA 92109

or addressed to Licensee at:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

7. Maintenance and Alterations. Licensee shall at all times maintain the areas of the Premises and the Business Center used by Licensee in a safe, neat and clean condition and in good order, condition, and repair at its own expense. The Premises shall include without limitation all plumbing, electrical and lighting facilities and equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, ceilings, windows, doors, entry doors and plate glass located on the Premises. Licensee shall not permit undue accumulation of garbage, trash, rubbish or other refuse but shall keep such refuse in properly covered adequate containers. Licensee specifically acknowledges that the use of the License shall be subject to the rules and regulations as are established by Licensor from time to time in Licensor's sole and absolute discretion. Licensor shall at all times keep the Building in which the Premises are located and the heating, ventilating, and air conditioning systems servicing the Premises, and all appurtenances thereto, and all sidewalks in reasonably good, clean, safe, secure, and sanitary condition and repair. If Licensee fails to maintain the Premises as specified herein, Licensor shall be entitled to maintain the Premises in a safe,

clean, wholesome and sanitary condition and charge the costs and expenses thereby incurred to Licensee as Additional Fees.

8. Indemnification of Licensor. Licensee shall protect, defend, indemnify and hold harmless Licensor, its agents and employees, from and against any and all liabilities, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature arising or growing out of or in any way connected with Licensee's (or anyone claiming through or under Licensee) use of the License and/or Licensee's operations and activities in the Business Center, excepting any liability or claim arising or growing out of the intentional misconduct or gross negligence of Licensor, its employees and agents.

9. Insurance. Licensee represents to Licensor that it is a self-insured Municipal Corporation, and shall pay all claims which arise from the Licensee's use of the Premises which would normally be covered by a third party insurance carrier. In addition, Licensee shall extend such insurance to Licensor by defending and holding Licensor harmless against all claims which arise from the Licensee's use of the Premises.

10. Assignment. Neither the License, this Agreement, nor any rights under this Agreement shall be assignable by Licensee. Nothing in the Agreement shall create any rights enforceable by any person not a party to this Agreement, except for the rights of the successors-in- interest and assigns of each party to this Agreement, unless such rights are expressly granted in this Agreement, to other specifically identified persons. Any such assignment made by Licensee will result in immediate termination of the License and this Agreement without further notice or opportunity to cure the default. Licensor may send Licensee by certified mail a notice of immediate termination, to confirm the termination. No legal title or leasehold interest in the Premises or Business Center is created or vested in Licensee by the grant of the License.

11. Utilities and Services. The Mission Beach Town Council (MBTC) has agreed by resolution to pay twenty-five ($25.00) per month, for all utility bills, fees and charges directly attributable to the Premises including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for water, gas, electricity, sewer and sanitation and any other service or utility used in or upon or furnished to the Premises (Premises Utility Bill/Fee/Charge), irrespective of whether any such fees, deposits and charges are initially paid or advanced by Licensor. Utility and Services fees are jointly or master metered.

    The MBTC will be billed directly by Licensor for the Premises Utility Bill/Fee/Charge. In the event it is not paid by the MBTC, Licensor will accept responsibility for payment. Licensor will also pay any amounts exceeding twenty-five dollars ($25.00) per month.

    In no event shall Licensor 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 Licensee or relieve Licensee from its obligations under this Agreement.

12. Signs. At Licensee's discretion, Licensee may install signage, including a blade sign, similar to other Licensee Signage in the park. Licensee shall construct, install, and maintain all signage, insignia, trademarks, awnings, descriptive materials, or other such similar items in accordance with the guidelines of the City of San Diego and the Belmont Park Signage Program. All signage must be approved in writing by Licensor, and such approval shall not be unreasonably withheld.

13. Definition of Licensor. The term Licensor shall mean only the person or entity which may from time to time hold Licensor's interest under this Agreement.

14. Waiver. No delay or omission in the exercise of any right or remedy of Licensor in the event of any default by Licensee shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Licensor of delinquent amounts due under this Agreement shall not constitute a waiver of any previous termination of the Agreement or any default other than the particular payment accepted. Licensor's consent to or approval of any act by Licensee requiring Licensors consent or approval shall not be deemed to waive or render unnecessary Licensor's consent to or approval of any other subsequent act by Licensee. Any waiver by Licensor of any default must be in writing and shall not be a waiver of any default concerning the same or any other provision of this Agreement.

15. Amendment of Agreement. This Agreement may be amended by Licensor as necessary during the Term to accommodate the needs of the Business Center with the consent of the Licensee, which consent shall not be unreasonably withheld or delayed.

16. Miscellaneous.

    a. Time is of the essence with respect to the performance of each of the conditions, covenants and agreements contained in this Agreement.

    b. Licensor does not, by reason of receipt of Percentage Fees or otherwise, in any way or for any purpose, become a partner or joint venturer with Licensee in the conduct of its business.

17. Licensee Improvements. Licensee accepts the Premises in its current condition. Any modifications to the Premises shall be incurred at License's sole expense. Licensee will procure Licensor's approval for all work to be done in the Premises prior to the start of construction.

18. Quiet Enjoyment. Licensee agrees and promises to give the Licensorquiet enjoyment and Licensee will use its best efforts to communicate to Licensor in writing only during the Term of this License.

19. Lessor Consent. Pursuant to Section 4.02 of the lease between the City of San Diego and as assigned to Wave House Belmont Park, LLC, Licensee, as lessor of the property under the lease, consents to this agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement..

Wave House Belmont Park, LLC
A limited liability corporation

By:_____
Thomas J. Lochtefeld
Its: Managing Member
Date FEB 22, 2005

City of San Diego

By:_____
Name:_____
City Manager
Date_____

Pursuant to San Diego
City Council Resolution
No. R-300191
Dated MAR 07 2005

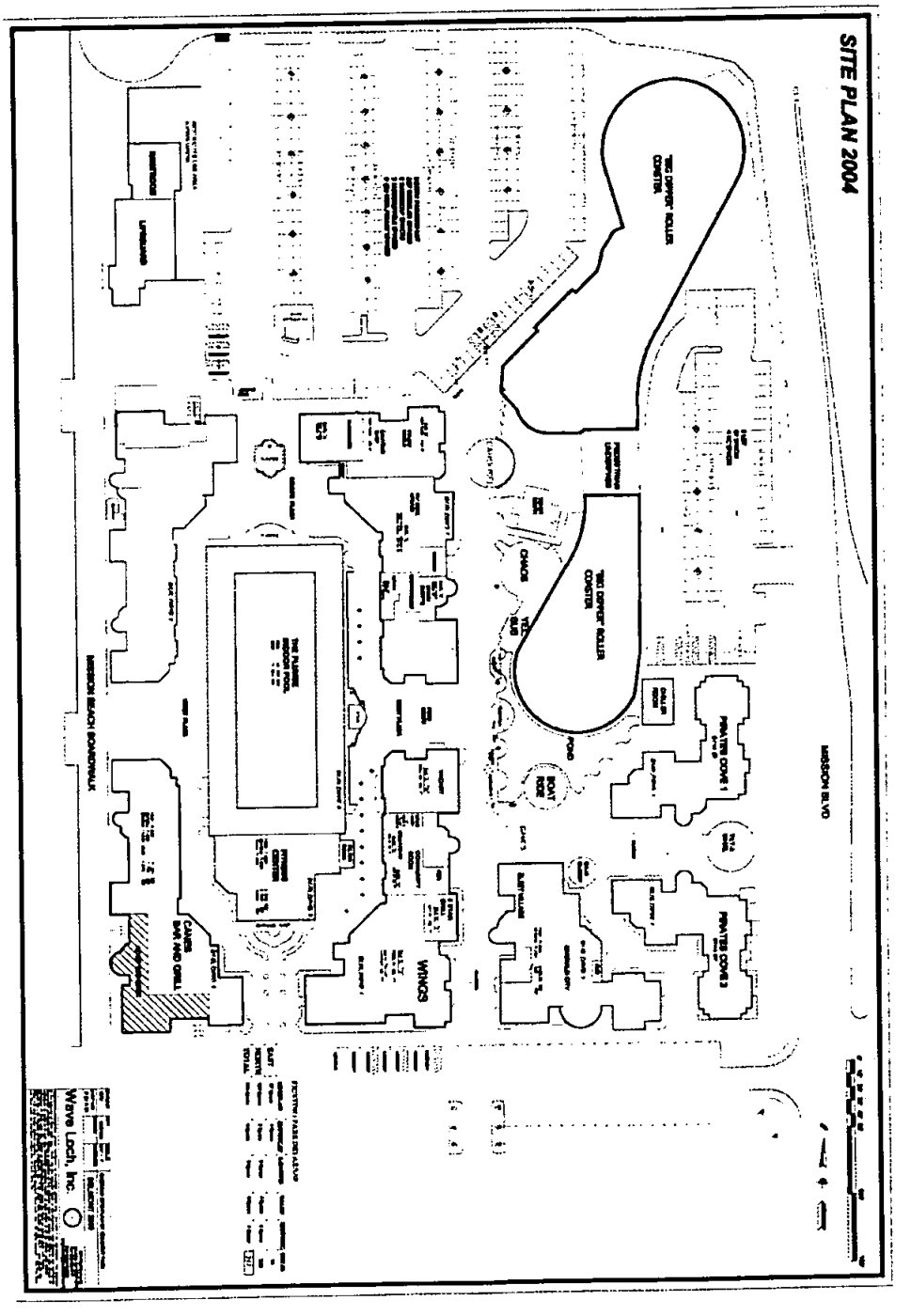
APPROVED as to form and legality this 15th day of March, 2005

Michael J. Aguirre
City Attorney

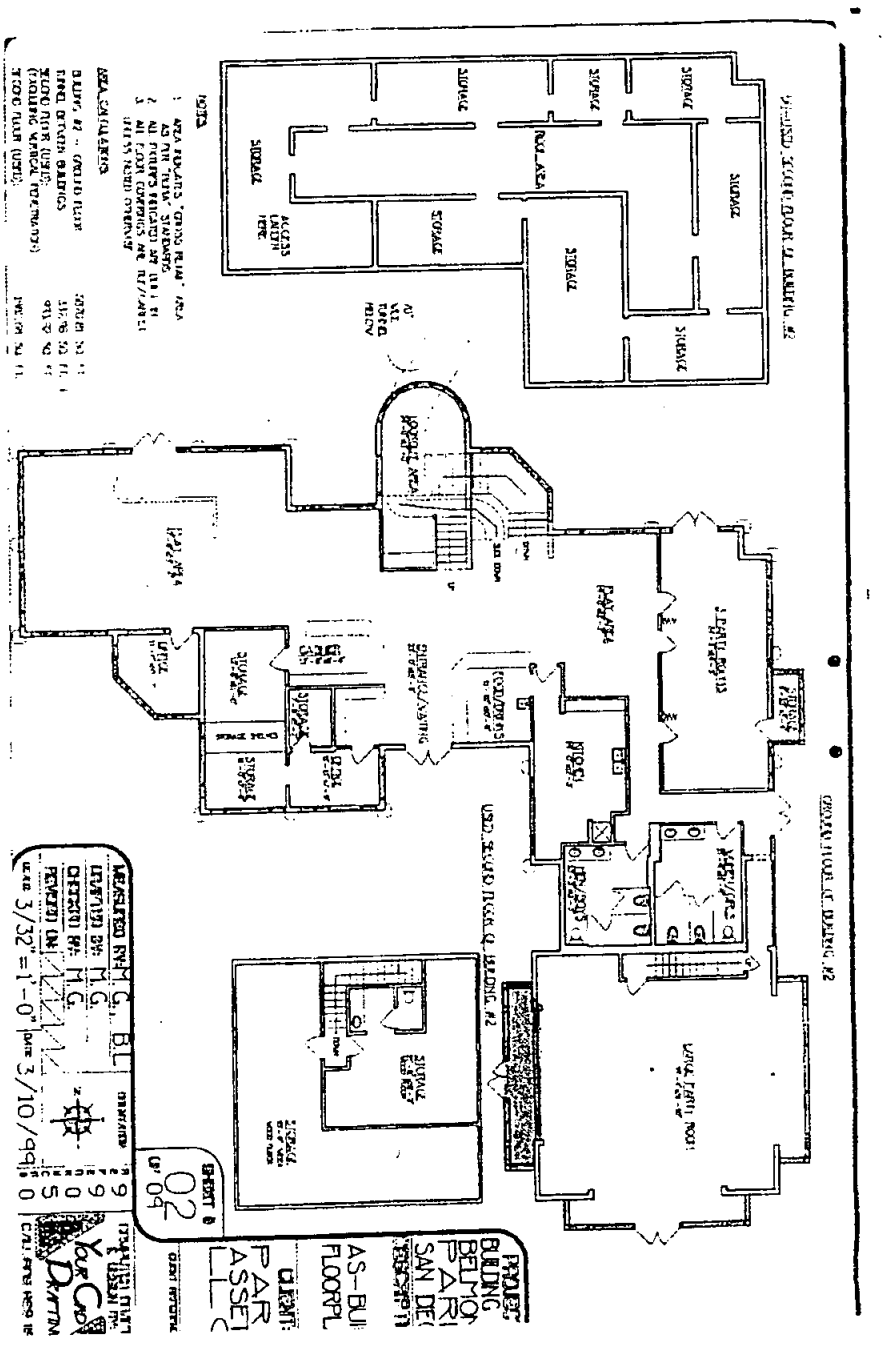
By_____
Deputy City Attorney

EXHIBIT A

Business Center and Premises



EXHIIBT B
Premises



(R-2005-875)

RESOLUTION NUMBER R- 300191

ADOPTED ON MAR 0 7 2005

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A LICENSE AGREEMENT WITH WAVEHOUSE SAN DIEGO, LLC, FOR A POLICE DEPARTMENT STOREFRONT AT BELMONT PARK.

WHEREAS, Wavehouse San Diego, LLC, operators of Belmont Park in Mission Bay, and the San Diego Police Department have agreed to establish a police storefront in Belmont Park; and

WHEREAS, the Police Department will occupy approximately 110 square feet at Belmont Park [Premises] at no rent, for a term of 16 months, with an option to extend for up to three additional years; and

WHEREAS, the Mission Beach Town Council and Wavehouse have agreed to pay the cost of utilities for the Police Department; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 16-month license agreement, with an option to extend for up to three additional years, with Wavehouse San Diego, LLC, a California limited liability company, for the Premises located in Belmont Park at 3146 Mission Boulevard for a Police Department storefront, for no rent, commencing December 1, 2004, on

the terms and conditions substantially as set forth in the License Agreement on file in the office of the City Clerk as Document No. RR-300191.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Elisa A. Cusato
Elisa A. Cusato
Deputy City Attorney

EAC:nda
02/18/05
Or.Dept:READ
R-2005-875
MMS#1325

Passed and adopted by the Council of San Diego on **March 07, 2005** by the following vote:

YEAS:	**PETERS, ZUCCHET, ATKINS, MAIENSCHEIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.**
NAYS:	**NONE.**
NOT PRESENT:	**YOUNG.**
VACANT:	**NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: **Manuel E. Ketcham**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-300191**, passed and adopted by the Council of The City of San Diego, California on **March 07, 2005**.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy
Manuel E. Ketcham

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Percentage Lease (MASTER LEASE), dated March 4, 1987, entered into with Belmont Park Associates, as subsequently amended and assigned to

WAVE HOUSE OF SAN DIEGO, LLC, a California Limited Liability Company

(LESSEE), hereby consents to that certain Lease Agreement, as amended (SUBLEASE) between the above LESSEE (SUBLESSOR) and

Wave House Athletic Club, Inc., a Nevada Corporation

(SUBLESSEE) dated March 1, 2003. Said SUBLEASE shall be subordinate to the MASTER LEASE in all respects. The CITY is hereby approving the SUBLEASE and the proposed use, and all terms and conditions of the MASTER LEASE and this consent to sublease shall control and supersede any inconsistent or contrary provisions in the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE.

In addition, this consent is subject to the following:

1. ASSIGNMENT AND SUBLETTING: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the SUBLEASE.

2. HOLD HARMLESS: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall assume the defense of, indemnify and hold harmless the CITY, its elected officials, officers, representatives, agents and employees, from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from operations conducted on the subleased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents or invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

3. INSURANCE: Notwithstanding anything to the contrary in the SUBLEASE, SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be two million dollars ($2,000,000) Combined Single Limit Liability. SUBLESSEE shall file with CITY a copy of the policy of insurance which shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of the new policy of insurance.

4. LEGAL PROCEEDING: Notwithstanding anything to the contrary in the SUBLEASE, should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this SUBLEASE, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

5. SUBORDINATION: This consent permits sublease of a portion of the premises covered by that certain MASTER LEASE dated March 4, 1987, between the SUBLESSOR herein and the CITY. The SUBLEASE is subject and subordinate to the covenants and conditions of said MASTER LEASE notwithstanding any provision hereof contrary or in conflict with said SUBLEASE.

THE CITY OF SAN DIEGO

Dated 12/22/03

By _____
for the City Manager

SUBLESSEE

Dated Dec 8, 2003

By _____
Name: Thomas V. Lochtefeld
Title: President

SUBLESSOR

Dated Dec 8, 2003

By _____
Name: Thomas V. Lochtefeld
Title: Managing Member

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 2/26/04

By _____
Deputy City Attorney

VEB/cdj
11/20/03
I:\WPO\2003\BALOTSKY\CSA-WAVE HOUSE OF SAN DIEGO.wpd

FIRST AMENDMENT TO LEASE AGREEMENT DATED MARCH 1, 2003

This First Amendment to that Lease Agreement dated March 1, 2003 ("Lease") by and between **WAVE HOUSE SAN DIEGO, LLC,** a California limited liability company ("Landlord") and **WAVE HOUSE ATHLETIC CLUB, Inc.**, a Nevada Corporation ("Tenant") ("First Amendment") is effective November 1, 2003.

RECITALS

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated March 1, 2003 (the "Lease");

WHEREAS, Tenant desires to build stationary surfing wave operations, Cirque de Soleil style water show, nighttime special lighting and sound effects, and water mist projections.

WHEREAS, City of San Diego desires to consent to the Lease between Landlord and Tenant.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed that the Lease is hereby modified, amplified, and amended in the following respect, effective on the date of Certificate of Occupancy for the expanded Premises.

AGREEMENT

NOTHWITHSTANDING anything to the contrary in the Lease, the following shall be in effect:

1. ARTICLE 1, FUNDAMENTAL LEASE PROVISIONS, Premises is amended to add the following in paragraph after the last sentence:

The commercial space in Belmont Park Commercial/Recreational Center ("Center") known as building 8 and building 9, "The Plunge", comprising approximately 36,900 square feet, and the pertinent area occupied by the "Flowrider" attraction located in the adjacent east plaza, comprising approximately one thousand four hundred and eight-four (1484) square feet, and the pertinent area occupied by the "Double Wave Loch" attraction located in the adjacent north plaza, comprising approximately three thousand three hundred and eighty-two (3382) square feet, as outlined on Exhibit B. The square footage is approximate and is not the governing factor in the monetary consideration of this Lease.

2. ARTICLE 1, FUNDAMENTAL LEASE PROVISONS, Permitted Uses is amended to add the following paragraph after the last sentence:

Stationary surfing wave operations, Cirque de Soleil style water show, day and nighttime special lighting and sound effects, mobile/wireless communication services, and water mist projections.

3. EXHIBIT E: CAPITAL IMPROVEMENT AGREEMENT. Modify in its entirety as shown on attached Exhibit E.

IN WITNESS WHEREOF, Landlord and Tenant, the parties hereto, have duly executed this First Amendment to be effective as of the day and year set forth above.

LANDLORD:

Wave House San Diego, LLC
A California limited liability company
By:_____
Name: Thomas J. Lochtefeld
Its: Managing Member

TENANT:

Wave House Athletic Club, Inc.
a corporation
By:_____
Name: Thomas J. Lochtefeld
Its: President

EXHIBIT B

Expanded Premises

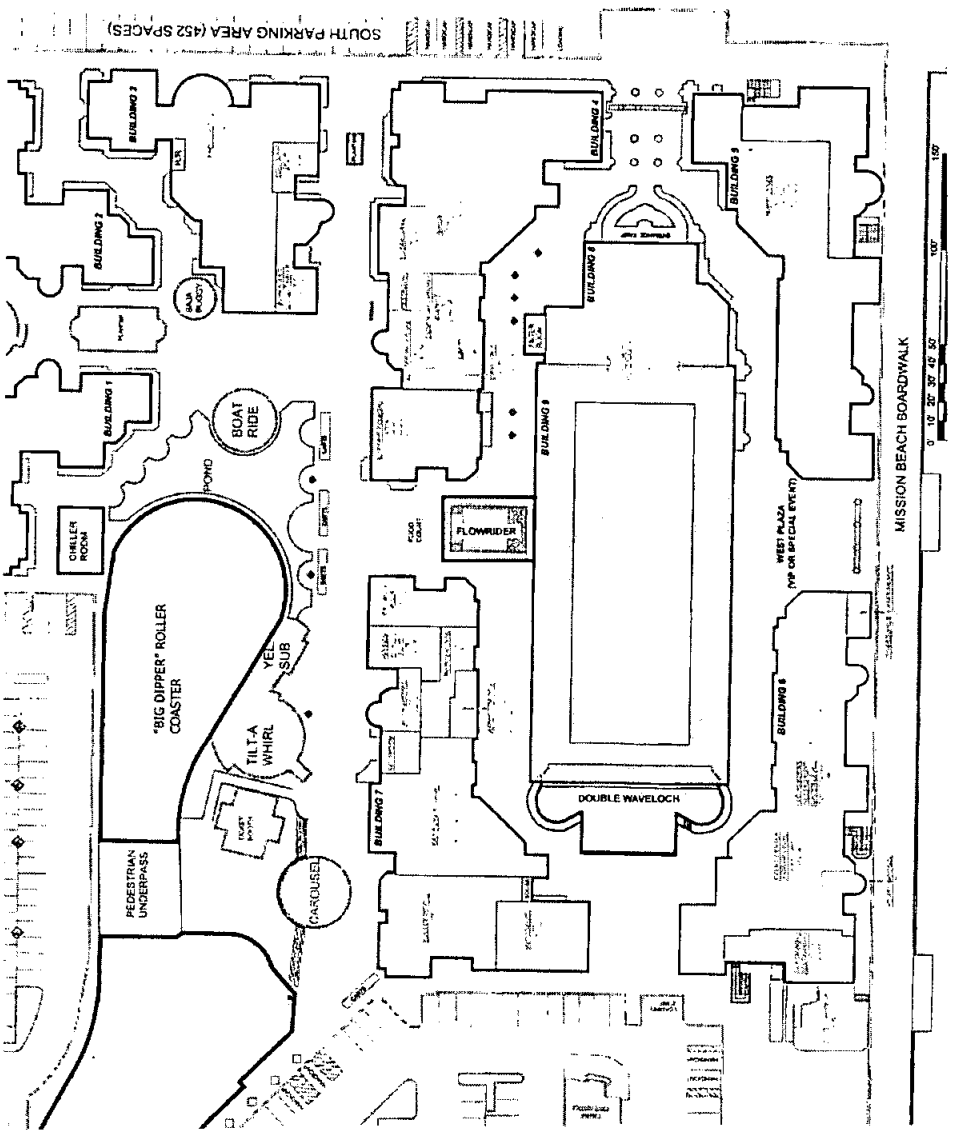


EXHIBIT E

CAPITAL IMPROVEMENT AGREEMENT

Landlord and Tenant are executing simultaneously with this Capital Improvement Agreement ("Improvement Agreement"), a written lease ("Lease") covering those certain premises more particularly described in Exhibit B to the Lease ("Premises"), in the Center more particularly described in Exhibit A to the Lease.

The purpose of this Improvement Agreement is to set forth how the interior improvements in the Premises as set forth in the Construction Documents, as defined below in Section 2.3 ("Capital Improvements"), are to be constructed, who will be responsible for the construction of the Capital Improvements, and the time schedule for the construction and completion of the Capital Improvements.

1.1 Defined Terms. Except as defined in this Agreement to the contrary, all terms utilized in this Agreement shall have the same meaning as the defined terms in the Lease.

1.2 Incorporation of Lease. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Agreement, are hereby incorporated into this Agreement.

2. Tenant Improvement Plans. Landlord has retained a licensed architect ("Space Planner") to prepare a preliminary space plan layout and improvement plans ("Space Plan") to be utilized in the preparation of final working drawings and specifications for the Capital Improvements as more particularly described below.

2.1 Space Plan. Tenant has approved and delivered the Space Plan to Landlord. The Space Plan shows the configuration of the proposed Capital Improvements and contains all information necessary for Landlord to have the mechanical, electrical and engineering drawings (collectively "Engineering Plans") prepared, the cost of which will be deducted from the Tenant Improvement Allowance. When approved, the Space Plan, as modified, shall be deemed the "Final Preliminary Plans."

2.2 Engineering Plans. As required by applicable building regulations, Landlord shall select as the mechanical and electrical engineer a qualified and licensed company, experienced in shopping center Tenant improvements in San Diego County, California,("Engineer") to prepare Engineering Plans based on the Final Preliminary Plans. Upon completion of the Engineering Plans, they will be submitted to Tenant for approval. Tenant shall approve, or disapprove for reasonable reasons and not inconsistent with the previously approved Space Plan, the Engineering Plans within one full (1) business day after Tenant receives the Engineering Plans and, if disapproved, return the Engineering Plans to Landlord who shall cause the Engineer to make all necessary revisions within five (5) business days after Landlord's receipt thereof. This procedure shall be repeated until Tenant ultimately approves the Engineering Plans. When approved, the Engineering Plans, as modified, shall be deemed the "Final Engineering Plans.

2.3 Construction Documents. Within one (1) business day following Tenant's approval of the Final Engineering Plans, Landlord shall cause Space Planner to prepare final plans and specifications ("Final Capital Plans") for completion of the Capital Improvements. Landlord shall then deliver the Final Capital Plans to Tenant. Tenant shall approve, or disapprove for reasonable reasons, the Final Capital Plans within one (1) business day after Tenant receives the Final Capital Plans and, if disapproved, Tenant shall return the Final Capital Plans to Landlord who shall cause Space Planner to make all necessary revisions within five (5) business days after Landlords receipt thereof. This procedure shall be repeated until Tenant ultimately approves the Final Capital Plans. When approved, the Final Capital Plans, as modified, shall be deemed the "Construction Documents". Any and all costs incurred by Tenant in the preparation of the Construction Documents shall be deducted from the Capital Improvement Allowance set forth below in Section 6. All deliveries of the Space Plan, Final Preliminary Plans, and Final Capital Plans shall be delivered by messenger service, by personal hand delivery or by overnight parcel service.

2.4 Landlord's Approval of Plans. Tenant specifically acknowledges that although Landlord

has the right to approve the Space Plan, Final Preliminary Plans, Final Engineering Plans, and Final Capital Plans, Landlord's sole interest in doing so is to protect the Shopping Center and Landlord's interests. Accordingly, Tenant shall not rely upon Landlord's approvals and Landlord shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such Space Plan, Final Preliminary Plans, Final Engineering Plans or Final Capital Plans, or the compliance thereof with applicable laws, and Landlord shall incur no liability of any kind by reason of granting such approvals.

3. Approvals/Fees/Compliance with Laws. Promptly following Landlord's approval of the Construction Documents, Landlord shall apply for all governmental approvals ("Approvals") required for construction of the Capital Improvements. Upon receipt of the Approvals, Contractor (defined below) shall commence construction of the Capital Improvements.

4. Construction. Landlord shall employ an outside contractor ("Contractor") to construct the Capital Improvements in substantial conformance with the Construction Documents; provided that the Contractor and the performance of the work shall be subject to the following conditions:

4.1 Licensing Requirements/Experience. Contractor shall be duly licensed and experienced in the construction of tenant improvements in similar retail premises.

4.2 Notice of Commencement. Contractor shall provide Landlord with at least five (5) days prior written notice of commencement of construction so that Landlord may post appropriate Notice of Non-responsibility upon the Premises.

5. Tenant Improvement Contribution. Landlord shall bear the expense of the build out of the wave improvements to a "shell" condition. Tenant shall be obligated to bear the expense of the "Balance of Capital Improvements" as defined below in this Exhibit. Except as herein provided, the Premises are leased to the Tenant on an "as-is" basis.

5.1. The "Shell Work", as defined in this lease, shall mean the following:

- 5.1.1. All concrete works for wave pool and access thereto.
- 5.1.2. A storefront, which is in keeping with the architectural and historical significance of Belmont Park.
- 5.1.3. Egress Doors as required per building code.
- 5.1.4. Electrical service sufficient for wave operations. Plumbing sufficient for wave operations.
- 5.1.5. Gas service to Premises from a distribution manifold located in Belmont Park.
  A fire sprinkler main and general distribution grid as required to meet minimum N.F.P.A requirements for ordinary hazard occupancies, drop and finish heads.

5.2. Balance of Capital Improvements: shall mean all work (other than the "Shell Work" as specified above) necessary to complete the Premises to a finished condition from which to operate the wave attractions. Landlord will consult with tenant as to the final list of "Balance of Capital Improvements"; however, finalization of this list is solely the decision of the Landlord, and, in any case, will not include such items as ride surface, pumps, nozzles, switch gear, boards, and other items which are periodically disposable such as cleaning or maintenance supplies. Items which may be included in the "Balance of Capital Improvements", at Landlord's sole discretion, include;

- 5.2.1. Walls: Interior partitions suitable to wave attraction operations.
- 5.2.2. Lighting: Lighting fixtures suitable to wave attraction operations.
- 5.2.3. Door hardware.
- 5.2.4. Electrical: Electrical equipment and fixtures within the Premises suitable to wave operations.
- 5.2.5. HVAC: Heating and ventilation equipment suitable for wave attraction operations.
- 5.2.6. Interior Décor and Artwork: suitable to wave operations.
- 5.2.7. Signs/Awnings: suitable to wave operations.

JVC

5.2.8. Miscellaneous Equipment: Suitable to wave operations.

5.3. Themed Center: Tenant understands that the Premises are a part of an overall themed redevelopment by Landlord entitled 'Wave House'. To this end, Tenant agrees that Landlord will have sole discretion over the 'look and feel' of the athletic club exterior and interior and the outfitting of Capital Improvements as set forth in Section 5.2 above.

5.4. Inventory of Improvements: It is understood that at execution of this Agreement, a detailed listing of Improvements is difficult to ascertain, however, the parties agree to work in good faith to outfit the Premises suitable for wave operations, On or about the Commencement Date, Tenant agrees to execute an acknowledgement of Commencement Inventory of Items that are included as Landlord's trade fixtures and property under the Lease. Tenant may not remove any of Landlord's property as set forth in this Commencement Inventory without the immediate replacement thereof with similar trade fixtures and property of comparable or better quality, so that Tenant shall continuously conduct the Permitted Use specified in the Fundamental Lease Provisions. Tenant, at its expense, shall immediately repair and maintain such trade fixtures and property, and shall return same to Landlord in good working order upon termination of the Lease.

5.5. Change Orders. In the event that Tenant requests (in writing) any changes to the Construction Documents (each being a "Change Order"), Landlord shall not unreasonably withhold its consent to any such Change Order, provided the Change Order does not adversely affect the time for scheduled restaurant opening or change the structure, systems, equipment or appearance of the Premises or the Building. If such Change Orders, as approved by Landlord, increase the cost of constructing the Capital Improvements in excess of the Tenant Improvement Allowance, Tenant shall pay such additional increased costs at the time of Landlord's approval of such Change Order.

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

LANDLORD
Wave House Belmont Park
a California limited liability company

By:_____
Name: Thomas Lochtefeld
Title: Managing Member

TENANT
Wave House Athletic Club, Inc,
a Nevada Corporation

By:_____
Name: Thomas J. Lochtefeld
Title: President

LEASE AGREEMENT

Wave House San Diego, LLC

and

Wave House Athletic Club, Inc.

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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: March 1, 2003

Landlord: Wave House San Diego, LLC, a California limited liability company

Tenant: Wave House Athletic Club, Inc., a Nevada corporation

Tenant's Trade Name: Wave House Athletic Club

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

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

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

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

Restrictions on Permitted Use:

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

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

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

Term: March 1, 2003 through June 30, 2038

Commencement Date: March 1, 2003

Rental shall be the summation of:

A. Minimum Monthly Rent: Eighteen Thousand Dollars ($ 18,000.00) per month.

B. Percentage Rent: None.

Payment of Rent shall commence on April 1, 2004.

Address for Notices:

To Landlord:	Wave House San Diego, LLC. 3146 Mission Blvd, Suite F San Diego, California 92109
To Tenant:	Wave House Athletic Club, Inc. 3115 Ocean Front Walk San Diego, CA 92109
Security Deposit:	None
Monthly Common Area Maintenance Expense Charge (CAM):	None
Marketing Fund Contribution:	None
Real Estate Broker (if any):	Landlord and Tenant hereto affirm and acknowledge that no real estate broker represented them in this transaction and that there is no real estate brokerage commission due to anyone.

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center.

Exhibit B - Floor Plan Showing the Premises.

Exhibit C – Rules and Regulations

Exhibit D – Commencement Date Certificate

Exhibit E – Capital Improvement Agreement

Exhibit F – Adjusted Gross Sales Report

Exhibit G – Storm Water Best Management Practices

ARTICLE 3 - COMMERCIAL/RECREATIONAL CENTER AND PREMISES

3.1 Center. As used herein, the term "Center" shall mean those areas of land and the improvements, landscaping, parking, pedestrian walkways and other features located on the land leased by Landlord from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease, as the same may be amended from time to time ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, relocated or expanded from time to time by Landlord in Landlord's discretion and nothing in Exhibit A shall be a warranty or representation as to the future configuration of the Center or location of any improvements thereon. In addition, Landlord may designate other areas of land and improvements as part of the Center.

Tenant acknowledges and understands that the land leased by Landlord from the City is a part of Mission Beach Park, a dedicated public park. Therefore, the Center must be utilized for park and recreation purposes, including commercial and recreational uses which provide services, activities and facilities to the users of Mission

Beach Park, as well as to the users of the adjacent beach areas. Tenant agrees to utilize the Premises for purposes consistent with the foregoing requirements.

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

ARTICLE 4 - TERM

4.1 Term. The Term shall be for the number of months specified in the Fundamental Lease Provisions and shall commence on the date March 1, 2003, which is the delivery of Premises to Tenant for Tenant occupancy. Subject to the fixturization period specified in the Fundamental Lease Provisions, if any, the lease term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided by the fixturization period, if any, provided however that in no event shall such delay continue beyond the date on which Tenant opens for business. If the Commencement Date falls on any day of the month other than the first day, then the Term shall be extended by the number of days between the first day of the month and the Commencement Date. Tenant agrees not to unreasonably delay the Commencement Date.

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

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

4.4 Right of First Refusal. Upon the expiration of this Lease, and upon the condition that the Tenant has fully complied with the terms and conditions of this Lease during the Term, or cured any monetary breaches within fifteen (15) days after notice hereof and non-monetary breaches within a reasonable time after notice thereof, Landlord agrees that Tenant shall have the right of first refusal to enter into a new Lease for the Premises upon such terms and conditions as are determined appropriate in the sole discretion of the City Council. The right of first refusal shall be contingent upon a finding by Landlord that it is desirable and in Landlord's best interest to continue the uses of the property as specified in this Lease. In the event the Landlord determines to utilize the Premises for other uses, the Tenant shall not have a right of first refusal. If Landlord does not determine to continue to Lease the Premises for the uses approved under this Lease, Landlord shall advise Tenant of proposed terms and conditions at least one year prior to the expiration of the initial term hereof. In the even Tenant and Landlord are unable to agree upon terms and conditions within one hundred eighty (180) days after said notice to Tenant, Landlord may Lease the property to another party so long as the Lease contains substantially the same terms and conditions as were rejected by Tenant. In any event, any and all rights of first refusal shall expire two years following the expiration of this Lease in the event Landlord and Tenant have not entered into a new Lease of the Premises.

ARTICLE 5 - RENT

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

5.1.1 Minimum Monthly Rent. Tenant agrees to pay the Minimum Monthly Rent specified in the Fundamental Lease Provisions as adjusted from time to time as provided below. Minimum monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum

Monthly Rent shall never be less than the Minimum Monthly Rent payable in the immediately preceding period.

5.1.1.1 Minimum Monthly Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Term to annual Rent increases of three (3)% or the amount equal to the annual rate of inflation, whichever is greater. The adjustment shall be calculated by multiplying the Minimum Monthly Rent payable during the immediately preceding calendar year by the greater of one hundred and three percent (103%) or a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the San Diego metropolitan area (all items (1982-84=100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Monthly Rent for each calendar year is determined, Landlord shall give Tenant written notice of the amount thereof. Landlord's failure to make the required calculations promptly shall not be considered a waiver of Landlord's rights to adjust the Minimum Monthly Rent due, nor shall it affect Tenant's obligations to pay the increased Minimum Monthly Rent. The Minimum Monthly Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. It the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Tenant shall continue to pay the Minimum Monthly Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Tenant, concurrently with the next monthly payment of Minimum Monthly Rent, shall pay to Landlord, the difference between the new Minimum Monthly Rent, including the cost of living increase or the three (3) % increase, whichever is greater, for the period commencing with the first month of such calendar year and the Minimum Monthly Rent already paid for such period.

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

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

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

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

5.1.5 Minimum Monthly Rent, Percentage Rent and Additional Rent are sometimes collectively referred to in this Lease as "Rent". If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum

Monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

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

5.2 Statement of Gross Sales. Tenant agrees to furnish or cause to be furnished to Landlord a statement of monthly Gross Sales of Tenant utilizing the form in Exhibit G herein within ten (10) days after the close of each calendar month, and an annual statement of Gross Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category, include a computation of all Minimum Monthly Rent and Percentage Rent for the preceding month, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, by a manager, or managing member, if Tenant is a limited liability company, or by a corporate officer if Tenant is a corporation. Annual statements shall be signed by Tenant's certified public accountant. If Landlord so elects, Tenant shall provide such information in a format specified by Landlord. Tenant shall, concurrently with submittal to the State Board of Equalization, provide Landlord with a copy of all state and local sales and use tax returns filed with said State Board.

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

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Monthly Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the Lease Interest Rate, from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Gross Sales by more than two percent (2%) or if Tenant has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Tenant shall pay all of Landlord's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") equal to the greater of (i) one thousand five hundred dollars ($1,500.00) or (ii) ten percent (10%) of the amount of the deficiency which Understatement Fee is mutually agreed by the parties hereto to be appropriate to compensate Landlord and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account. If any of Tenant's statements shall be found to have understated Gross Sales by more than five percent (5%), or if Tenant has failed to maintain complete and true records, accounts, and supporting source documents in strict accordance with Article 5, this shall be deemed to be a non-curable breach under this Lease, then in addition to any other rights of Landlord under this Lease, Landlord may terminate this Lease pursuant to Article 21.1.2 herein. Acceptance of the Understatement Fee or any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to an underpayment, or prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

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

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

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

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

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

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

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

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

then:

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

If this Lease is so terminated, Tenant covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Landlord upon the expiration of the thirty (30) day notice period, and all Rent shall be adjusted as of the expiration of such period and all amounts due and owing by Tenant pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Tenant shall be discharged from its obligations hereunder and under the Lease, and Tenant shall have no recourse against Landlord or those for whom it is in law responsible for damages or otherwise and shall not be entitled to any refund of or any credits for any amounts paid by the Tenant.

ARTICLE 6 - PERSONAL PROPERTY TAXES

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

ARTICLE 7 - POSSESSION AND USE

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

7.2 Permitted 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 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.

Tenant shall not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Tenant shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects. Promptly upon demand of Landlord, Tenant shall reimburse Landlord for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Tenant will not solicit, in any manner, in the Common Areas of the Center.

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

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

ARTICLE 8 - UTILITIES AND SERVICES

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

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Exculpation. To the fullest extent permitted by law, Tenant, on behalf of itself and Tenant's officers, directors, shareholders, partners, trustees, members, managers, agents, employees and independent contractors as well as to all persons and entities claiming through any of these persons or entities (the Tenant Parties") waives all claims (in law, equity, or otherwise) against Landlord, Landlord's officers, directors, shareholders, partners, trustees, members, managers, agents, employees and independent contractors as well as to all persons and entities claiming through any of these persons or entities (the "Landlord Parties") and knowingly and voluntarily assumes the risk of, and agrees that Landlord Parties shall not be liable to Tenant Parties for any of the following: (a) injury to or death of any person; or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause. Landlord Parties shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of the Landlord Parties; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any of the Landlord Parties. Notwithstanding the foregoing, this exculpation clause shall not apply to claims against Landlord Parties to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage, or destruction was proximately caused by Landlord

Parties' fraud, willful injury to person or property, or violation of law. This section shall survive the expiration or earlier termination of this Lease until all claims within the scope of this section are fully, finally, and absolutely barred by the applicable statutes of limitations. Tenant acknowledges that this section 9.1 was negotiated with Landlord, that the consideration for it is fair and adequate, and that Tenant had a fair opportunity to negotiate, accept, reject, modify or alter it.

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

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

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

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

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

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

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

9.4.5 Policy Form. All policies of insurance to be obtained by Tenant shall be issued in the names of Landlord, City, Tenant, any other person or entity designated by Landlord which policies shall be for the mutual and joint benefit and protection of Landlord, City, Tenant, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after issuance of each such policy. All policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it or Landlord's Parties, by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in the manner and to like extent, and shall be delivered to Landlord at least

ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give Landlord and City thirty (30) days' notice, in writing, in advance of any cancellation or lapse, or the effective date of any reduction in type or amount of coverage. All policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry, and shall be revised as to amounts and coverages at any time as required by City under the provisions of the Master Lease.

Tenant's obligations to carry insurance may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant, provided, however, that Landlord shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Landlord will not 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.

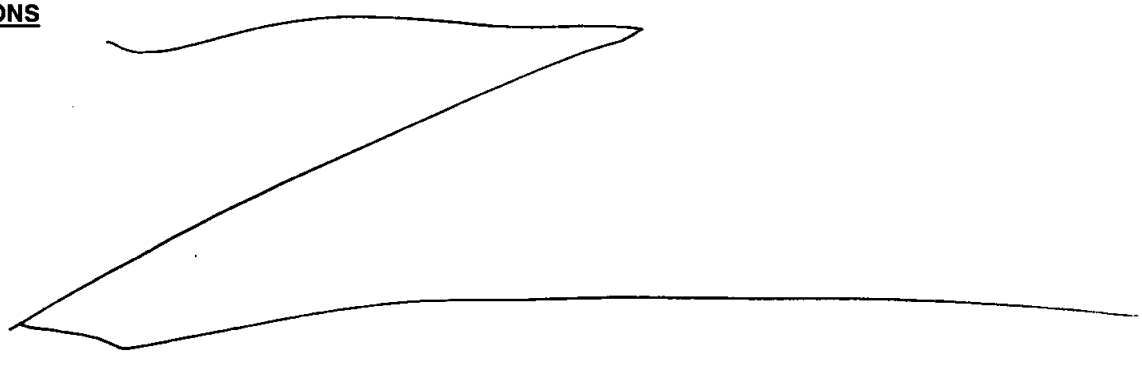
9.5 Insurance Use Restrictions. Tenant agrees that it will not carry any stock or goods, or do anything in or about the Premises, that will in any way increase the rates for insurance covering the Center, or cause a loss of coverage for the Center. Tenant agrees to pay to Landlord, as Additional Rent, 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 of or interfere with the quiet enjoyment of any other Tenant in the Center. Upon completion of such work, Tenant shall deliver to Landlord evidence of full payment and unconditional final waivers of all liens for labor services, or materials; and file for record in the office of the San Diego County Recorder, a Notice of Completion in accordance with California Civil Code Section 3093, or any successor statute. Within twenty (20) days after completion of any alternations, Tenant shall deliver to Landlord a reproducible copy of the drawings of the alternations, as built.

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

ARTICLE 12 - MECHANIC'S LIENS

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

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

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

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

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

ARTICLE 13 - SIGNS

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

No advertising medium shall be utilized by Tenant which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television. Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Tenant, or to Tenant's Related Parties, or to any other person. Tenant shall not distribute in the Center any handbills or other advertising devices. Tenant further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Landlord's prior written consent.

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 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right upon termination or expiration of the term of this Lease, provided Tenant is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property 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;

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

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

corporation whose stock becomes publicly held with its shares listed on a recognized public stock exchange, the transfer of such stock from private to public ownership shall not be deemed a Change of Control;

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

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

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

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

15.3 Remaining Term

15.3.1 After the first two (2) years of the term hereof, Tenant shall not enter into

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

15.3.2 By way of example and without limitation. Landlord and Tenant hereby

agree that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist:

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

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

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

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

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

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

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

15.4 Procedures

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

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

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

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

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

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

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

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

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

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

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

15.7 Consideration to Landlord

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

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

(i) An amount equal to one hundred percent (100%) of the total Rent required to be paid by Tenant, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or

(ii) The then fair market annual rent as reasonably determined by Landlord. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

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

ARTICLE 16 - TENANT'S CONDUCT OF BUSINESS

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

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

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

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

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

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

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

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

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

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Tenant's Obligations. By accepting possession of the Premises, Tenant accepts the Premises as being in the condition called for by this Lease except for such items as Tenant shall advise Landlord in writing within five (5) days from the date Tenant accepts possession of the Premises. Except as provided in Section 17.2 below, Tenant shall keep and maintain the Premises (including all Tenant improvements, alterations, fixtures and furnishings) and the exterior and interior portions of all doors, windows, plate glass, and show cases in good, safe,

decent, healthy, and sanitary condition and repair satisfactory to Landlord and City, including, without limitation, all plumbing and sewage facilities within the Premises, windows, interior walls, floors, ceilings and signs (including repair and painting thereof), and heating and air conditioning equipment. Tenant hereby waives the provisions of any law permitting repairs by a Tenant at the expense of Landlord, including without limitation, all rights of Tenant under Articles 1941 and 1942 of the Civil Code of the State of California. At Landlord's option if Tenant fails to make such repairs, Landlord may, but need not, make the repairs and replacements. On receipt of an invoice from Landlord, Tenant shall pay Landlord for Landlord's out of pocket costs incurred in connection with such repairs and replacements plus fifteen percent (15%) of such costs, to reimburse Landlord for all overhead, and other costs and expenses arising from Landlord's involvement with such repairs and replacements. Such costs shall be Additional Rent and bear interest at the Lease Interest Rate until paid in full.

17.2 Landlord's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Landlord shall keep in good condition and repair the foundations and exterior walls and roof of the Premises, except for any damage caused by any act or negligence of Tenant or Tenant's employees, agents, invitees, licensees or contractors which damage Landlord shall repair at Tenant's sole cost and expense.

ARTICLE 18 - RECONSTRUCTION

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

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

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

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

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall be deemed to include those portions of the Center and other areas that are designated by Landlord from time to time for the general use, conveniences and benefit of Landlord, Tenants in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas and parking structures, driveways, roadways, sidewalks, service areas, pedestrian walkways, public restrooms, landscaped and planted areas, open and enclosed courts and malls, museum pieces, art work, artistic displays, ponds and 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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of Tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance, repair and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to five percent (5)%) of all gross receipts collected by the property management company from Center operations, from any source whatsoever. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. 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 foe, 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 alt 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 alt 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 Ares Expenses, as hereinafter defined. Should Tenant fail to make any payment to Landlord of Tenant's pro rats 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 rats 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 rats share of Common Area Expenses, Tenant shall be entitled to offset the excess against payments next thereafter to become due Landlord as set forth in subparagraph (19.5.1). Tenants pro rats 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 illegal acts of third parties and does not assume responsibility to prevent any such illegal acts. To induce Landlord to provide such security guards, if any, as Landlord deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claim Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.7 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and 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, 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, non-curable defaults without the necessity of any notice by Landlord to Tenant thereof. In the event that Landlord serves Tenant with a Three Day Notice to Quit, pursuant to applicable Unlawful Detainer statutes as a result of such non-curable breach, such notice shall constitute notice sufficient to terminate this Lease.

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

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

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

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

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

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

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

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

Should Landlord have re-entered the Premises under the provisions of subparagraph 21.2.2 above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay Rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such re-entry or by any action in unlawful detainer, or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease, and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of California, and the surrender of possession pursuant

to such notice, shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election to be evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right but not the obligation to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owners or owners thereof.

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

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

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

21.3.3 The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

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

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

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

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

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

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

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

ARTICLE 22 - DEFAULT BY LANDLORD

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

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

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

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

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

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

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

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

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

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

ARTICLE 23 - EMINENT DOMAIN

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

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

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

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

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

ARTICLE 24 - ATTORNEYS' FEES

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

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

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

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

26.4 Estoppel Certificate.

26.4.1 Each party (as "responding party") shall at any time upon not less than ten (10) days prior written notice from the other party ("requesting party") execute, acknowledge an 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.

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.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified In the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any shall be calculated upon the basis of the I as defined in Section 5.1.1(a). The Marketing Fund Contribution payable during the following calendar year and 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 arid disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persona; one (1) representative appointed by Landlord, and two (2) representatives who shall be elected by lessees in good standing within the Canter. 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 committees 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, coats 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 rats share allocation provided that in no event shall Tenant be required to pay In any calendar year an amount that exceeds Tenants 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 shell 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 shaft 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 Grand Opening .Tenant shall pay to Landlord, as Additional Rent, a sum equal to the Grand Opening Contribution as set forth in the Fundamental Lease Provisions to defray the promotional and advertising expenses incurred In connection with the Grand Opening of the Center (Opening This sum shall be paid by Tenant within fifteen (15) days of receipt of a bill for same. The use and disbursement of such funds shall be determined by Landlord in Landlord's sole discretion

28.7 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 shaft thereafter obtain Landlord's prior written approval of all advertising for a period of six (6) months following said written notice.

28.8 Late Charge. Should Tenant fail to make arty 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 coats, 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.

28.9 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 then 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 shell 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 end 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 fats due and all other sums payable by Tenant to Landlord, said deposit shall be returned In full to Tenant within thirty (30) days of the last day of the Lease Term.

33,3 Bankruptcy. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the filing of such proceedings.

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

ARTICLE 34 – SWIMMING POOL RATES AND MINIMUM HOURS

34.1 Swimming Pool Rates and Minimum Hours. Tenant agrees that the pool known as the "Plunge" shall be open to public use twelve (12) months per year (except for New Years Days, Thanksgiving Day, Christmas Day, Easter Day, Memorial Day, Independence Day, and Labor Day), the following minimum hours shall be observed by Tenant: Monday through Friday, 6:00am – 8:00pm; Saturday 8:00am – 4:00pm; and Sunday 8:00 am to 2:00 pm. Upon approval from the City, the rate charged for such day use shall not exceed $5.00 per individual. Upon obtaining written consent of City, which such consent shall not be unreasonably withheld, Tenant shall be permitted to increase such rates to compensate for increases in the Index (if any).

ARTICLE 35 - MISCELLANEOUS

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

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

35.3 Warranty of Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35.14 Rules and Regulations. Tenant and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit C. Landlord may from time to time reasonably amend, delete or modify existing rules and regulations or adopt reasonable new rules and regulations for the use, safety, cleanliness and care of the Premises and the Center and the comfort, quiet and convenience of occupants of the Center. Modifications or additions to the rules and regulations will be effective upon notice to Tenant from Landlord. In the event of any breach of any rules or regulations, or any amendments or

additions to such rules and regulations, Landlord will have all remedies which this Lease provides for default by Tenant, and will, in addition, have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Landlord will not be liable to Tenant for violation of such rules and regulations by any other Tenant, its employees, agents, visitors or licensees, or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

35.15 Washrooms. The washrooms and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, 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.

ARTICLE 36 . ADDITIONAL PROVISIONS

36.1 Additional Provisions. By insertion of numbers in the following blank, Landlord and lessee acknowledge that Article(s) _____ is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 35.1. it is conclusive that no additional provisions are a part of this Lease.

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

LANDLORD

Wave House San Diego, LLC
a California limited liability company

By: _____
Name: Thomas J. Lochtefeld
Title: Managing Member

TENANT

Wave House Athletic Club, Inc.
a Nevada corporation

By: _____
Name: Thomas J. Lochtefeld
Title: President

EXHIBIT A

SITE PLAN OF THE CENTER

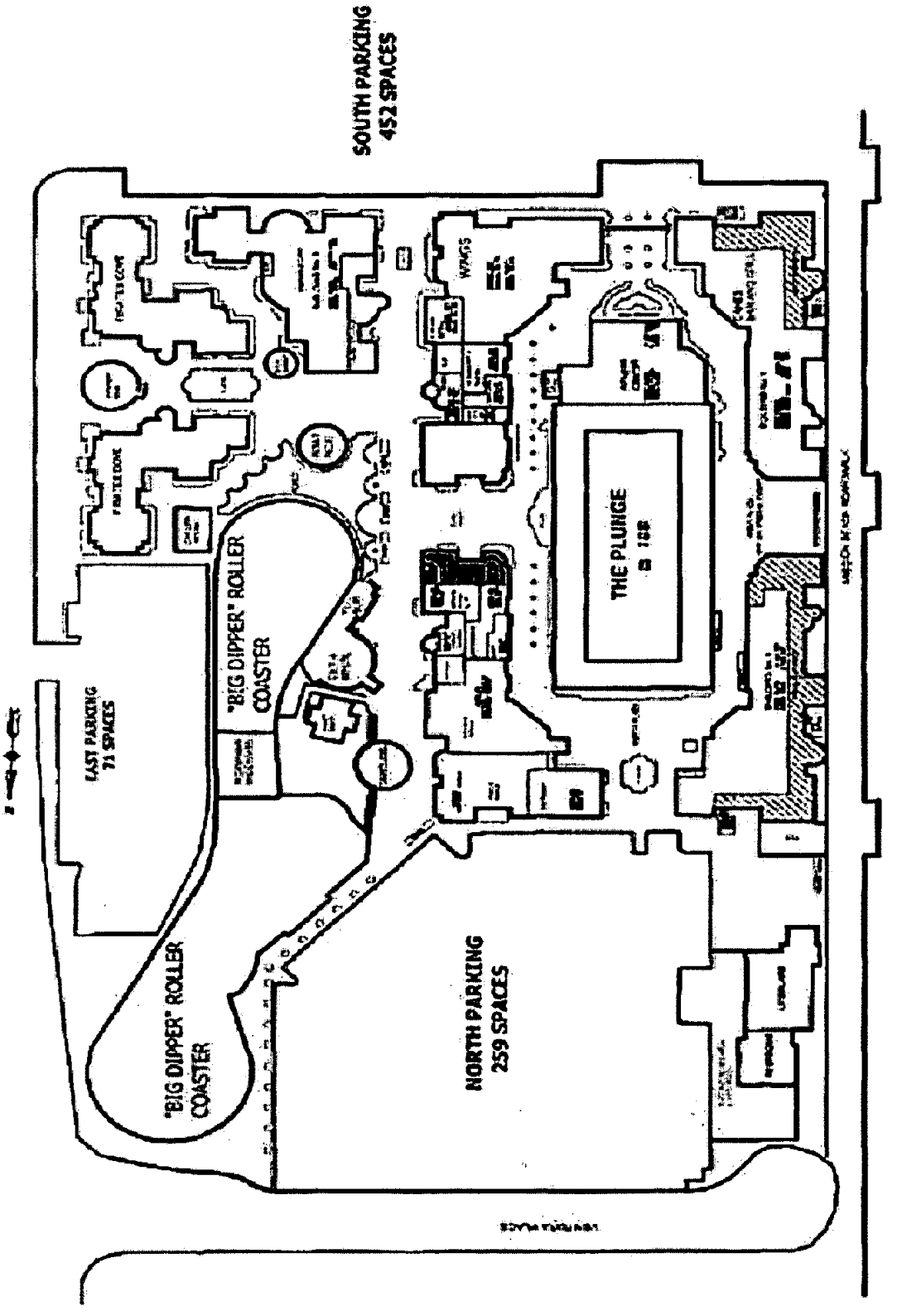
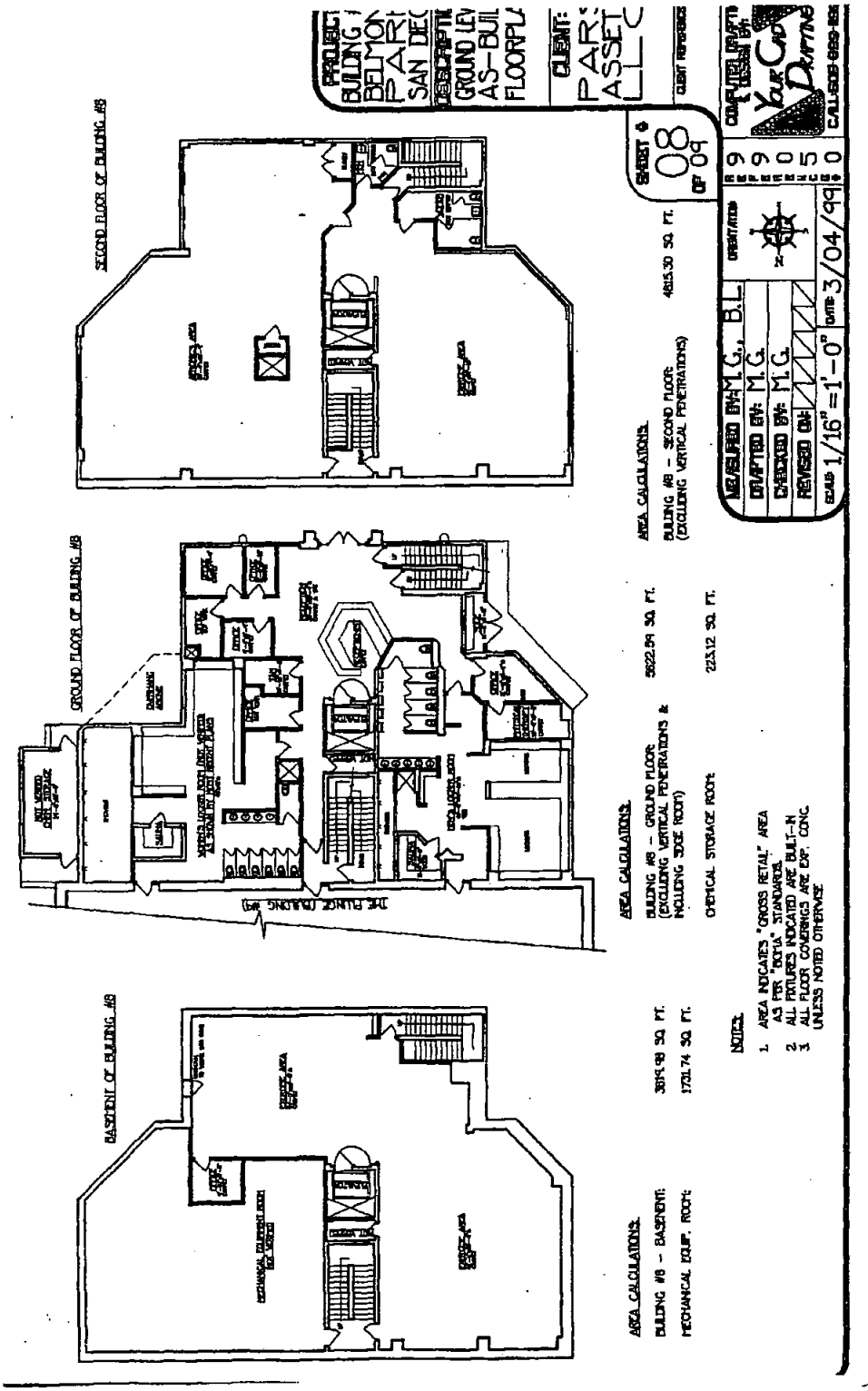
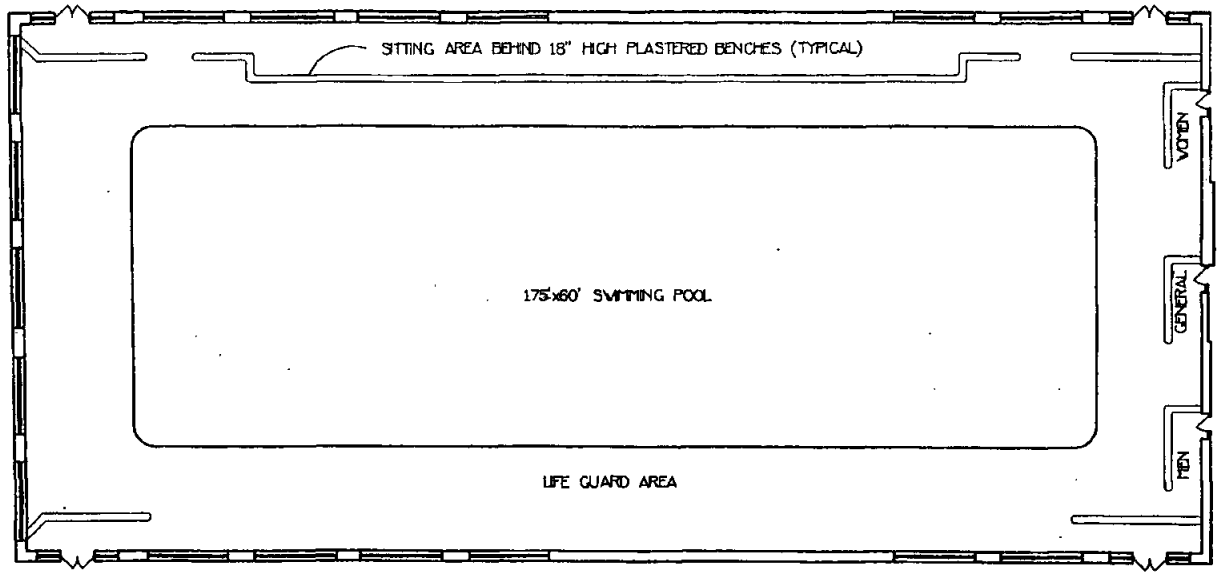


EXHIBIT B

FLOOR PLAN SHOWING THE PREMISES



THE PLUNGE SWIMMING POOL – BUILDING #9



NOTES:

1. AREA INDICATES "GROSS RETAIL" AREA AS PER "BOMA" STANDARDS.
2. ALL FIXTURES INDICATED ARE BUILT-IN
3. ALL FLOOR COVERINGS ARE EXP. CONC. OR TILE, UNLESS NOTED OTHERWISE

AREA CALCULATIONS:

BUILDING #9 – THE PLUNGE 22530.62 SQ. FT.

PROJECT: BUILDING BELMON PARK SAN DIEG

DESCRIPTION: THE PLUNG AS-BUIL FLOORPLA

CLIENT: PARS ASSET LLC

CLIENT REFERENCE

SHEET # 09 OF 09

MEASURED BY: M.G., B.L.
DRAFTED BY: M.G.
CHECKED BY: M.G.
REVISED ON:
SCALE: 1/16"=1'-0"
DATE: 3/04/99

ORIENTATION

REFERENCE # 99050

COMPUTER DRAFTING & DESIGN BY: YOUR CAD DRAFTING

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: Wave House San Diego, LLC., a California limited liability company

   (b) Tenant: Wave House Athletic Club, Inc., a corporation

   (c) Lease: Lease dated _____ between Landlord and Tenant

   (d) Premises: 3115 Ocean Front Walk, San Diego, California 92109

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

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

LANDLORD	**TENANT**
Wave House San Diego, LLC, a California limited liability company	Wave House Athletic Club, Inc. a Nevada corporation
By_____ Date_____ Name: Thomas J. Lochtefeld Title: Managing Member	By_____ Date_____ Name: Thomas J. Lochtefeld Title: President

EXHIBIT E

Capital Improvement Agreement
(intentionally blank)

EXHIBIT F

ADJUSTED GROSS SALES REPORT

for

Wave House Athletic Club
3115 Ocean Front Walk
San Diego, California 92109

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

Food Gross Sales:

Amount: $ _____ Percentage: _____ $ _____

Retail & Other Gross Sales:

Amount: $ _____ Percentage: _____ $ _____

LESS:

Refunds or

Allowances: $ _____

Exchanges: $ _____

Included Sales, Use or
Gross Receipts Taxes: $ _____

Total Deductions from Gross Sales: ($ _____)

TOTAL ADJUSTED GROSS SALES: $ _____

TOTAL PERCENTAGE MINIMUM FEES (if applicable): $ _____

FEES FOR THE PERIOD, DUE WAVE HOUSE SAN DIEGO, 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.*

BELMONT PARK
LEASE AGREEMENT

PARS BELMONT PARK, LLC
a California limited liability company
(Landlord)

WAVE HOUSE SAN DIEGO, LLC
a California limited liability company
(Tenant)

TERM: April 4, 2000 — March 31, 2012

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:	April 4, 2000
Landlord:	PARS BELMONT PARK, LLC, a California limited liability company
Tenant:	WAVE HOUSE SAN DIEGO, LLC, a California limited liability company
Tenant's Trade Name:	Wave House
Premises:	The commercial space in Belmont Park Commercial/Recreational Center ("Center") as outlined on Exhibit B. The square footage is approximate and is not the governing factor in the monetary consideration of this Lease.
Permitted Use:	Restaurant serving food and alcoholic beverages. Exclusive right to serve food and non-alcoholic beverages and sell sundry beach products on the designated beach area in front of the Premises. Retail sales of action sports clothes and merchandise. Flow Rider Sheet Wave and Children's Wave ("Flow Rider") operations, rentals and ticket sales. Exclusive rental of beach chairs and umbrellas, surfboards, bodyboards, kayaks and other beach accessories on the beach and Flow Rider staging area. Live entertainment to the extent permitted by governmental ordinances.

Restrictions on Permitted Use:

Tenant specifically acknowledges that Landlord has granted certain exclusive rights to other tenants within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Tenant shall not sell or offer for sale the following merchandise to the extent it conflicts with existing tenant leases in the Center:

(a) Swim wear, to the extent it conflicts with existing tenant leases in the Center;

(b) Fish and chips in food court area;

(c) Gyros in food court area;

(d) Philly cheese steak sandwiches in food court area.

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

Exclusives:	Right to serve food and non-alcoholic beverages and sell sundry beach products on the designated beach area in front of the Premises. Operation and ticket sales of Flow Rider. Rental of beach chairs and umbrellas.
Term:	April 4, 2000 through March 31, 2012.
Option to Renew:	Two five (5) year options, as provided in Article 4.4.

Initials: _____

Anticipated Commencement Date: April 4, 2000.

Fixturization Period (if any): Phase 1: April 1, 2000 through June 30, 2000.
Phase 2 Option One: April 1, 2000 through February 1, 2001
Phase 2 Option Two: April 1, 2000 through August 31, 2000.

Phase 2 Option One and Phase 2 Option Two are more particularly described in Article 4.2 hereof.

Rental shall be the greater of:

A. Minimum Monthly Rent: Seventeen Thousand Five Hundred and 00/100 Dollars ($17,500.00) per month beginning July 1, 2000 and Forty Five Thousand and 00/100 Dollars ($45,000.00) per month beginning at the end of the Phase Two Fixturization Period, payable monthly during the Term of the Lease. Minimum Monthly Rent shall increase by four percent (4%) compounded per annum beginning April 1, 2001.

Percentage Rent: Seven percent (7%) of Tenant's Net Sales as defined in Section 5.3.

Address for Notices:

To Landlord: PARS BELMONT PARK, LLC
c/o PARS-Assets, LLC
7310 Miramar Road, Suite 625
San Diego, California 92126

To Tenant: WAVE HOUSE SAN DIEGO, LLC
3125 Ocean Front Walk
San Diego, CA 92109

Security Deposit: Twenty Five Thousand and 00/100 Dollars ($25,000.00)

Marketing Fund Contribution: None.

Common Area Maintenance Contribution: None.

Real Estate Broker (if any): None.

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center.

Exhibit B - Floor Plan Showing the Premises.

Exhibit C - Tenant Improvement Agreement.

Initials: _____

Exhibit D - Rules and Regulations.

Exhibit E - Guarantee of Lease.

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 ("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", including rights to the Common Areas as hereinafter specified 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.

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 April 4, 2000 (the "Commencement Date").

4.2 Fixturization Period. The period from the Lease Commencement Date until the date set forth below shall be considered the Fixturization Period. It is contemplated that the completion of Tenant Improvements shall occur in two phases:

A. Phase 1 -- fixturization of the adjacent Wave Pool common areas, roof top deck and "Cantina Space" as shown on Exhibit B shall end on or before June 30, 2000.

B. Phase 2 — fixturization of the "Volley World Space" as shown on Exhibit B shall end depending upon the following scenarios:

1. if Music Television ("MTV") subleases the existing Volley World Space from Tenant, then, five months after MTV vacates the Premises but in no event later than February 1, 2001; or,
2. if MTV does not sublease the Volley World Space, then, August 31, 2000.

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

Initials: _____

4.4 Option to Renew. Provided that at the time of the required notice and at the commencement of the Renewal Term (defined below), there is no continuing and uncured Event of Default by Tenant under this Lease, and provided further that Tenant furnishes current financial statements satisfactory to Landlord which reflect no material adverse change in the financial condition of Tenant since the commencement of the initial Term (for exercise of the first option to renew) or commencement of the first renewal option (for exercise of the second renewal option) Tenant shall have the option to renew ("Renewal Option") the term of this Lease, for two (2) additional periods of five (5) years, which Renewal Option shall be exercised by giving written notice of exercise of the Renewal Option ("Option Notice") to Landlord in the manner provided in the Lease not more than nine (9) and not less than seven (7) full calendar months prior to the expiration of the initial Term of the Lease. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises (excluding subletting to MTV the existing Volley World space) shall terminate the Renewal Option.

The Minimum Monthly Rent during the Renewal Term shall be the higher of the prevailing asking rental rate for comparable space in the Center or the Rent, as defined in Article 5 below at the expiration of the initial Term, which rate shall not be adjusted downward to compensate for any Tenant Improvement Allowance for a new incoming tenant and/or commission/brokerage fees or downtime and/or any other offset. Landlord will notify Tenant of the prevailing asking rental rate for comparable space in the Center within 30 days of receipt of Tenant's Option Notice. Within ten (10) business days thereafter, Tenant shall respond to Landlord in writing by either accepting Landlord's prevailing asking rental rate or by challenging it ("Challenge").

In the event of a Challenge, Tenant must, at its sole expense, hire an appraiser to determine the prevailing asking rental rate and notify Landlord of the appraiser's name at the time the Challenge is made. Tenant's appraisal shall be submitted to Landlord within thirty (30) calendar days of Challenge. Within the same 30 days, Landlord, at its sole expense, shall also procure an appraisal on its behalf and provide a copy to Tenant.

If the difference between Tenant's appraisal and Landlord's appraisal is less than 5% then the parties will accept the average prevailing asking rental rate of the two appraisals.

If the difference between the appraisals is greater than 5%, then Tenant's and Landlord's appraisers shall agree upon a third. The third appraiser shall have 30 days to complete his/her appraisal and provide the same to both parties. Tenant shall then have ten (10) business days to accept the third appraiser's prevailing asking rental rate, or withdraw its Option Notice. In the event of withdrawal, Tenant shall be obligated to pay all expenses associated with the third appraisal. In the event Tenant accepts the third appraiser's prevailing asking rental rate, then the parties will split the cost of the third appraiser's appraisal.

Tenant acknowledges that the foregoing deadlines associated with a Challenge are reasonable, and that strict compliance with the same is imperative to Landlord maintaining full occupancy and smooth transitions between tenants, if necessary. Therefore, Tenant understands and agrees that its failure to comply with any of the deadlines shall result in the automatic termination of Tenant's Renewal Option.

No Tenant Improvement Allowance or refurbishment allowance will be due Tenant at renewal During the Renewal Term. All other terms and provisions of this Lease shall apply.

ARTICLE 5 - RENT

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

5.1.1 Minimum Monthly Rent. The Minimum Monthly Rent specified in the Fundamental Lease Provisions shall be increased by four percent (4%) per annum compounded beginning April 1, 2001. Minimum Monthly Rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum Monthly Rent shall never be less than the Minimum Monthly Rent payable in the immediately preceding period.

5.1.2 Percentage Rent. The Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Tenant made from or upon the Premises, including but not limited to Net Sales made from Flow Rider, rentals, and ticket sales, beach rental of any sort, and the service of food and beverages on the beach, during each calendar month. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month. Tenant shall pay to Landlord the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's Net Sales during said period exceeds the installments of Minimum Monthly Rent payable by Tenant during such period. The amount of Percentage Rent payable by Tenant in any given calendar month shall not be subject to cumulative adjustment to compensate for differences in Net Sales between one month and another (i.e., Percentage Rent shall be calculated and payable on a monthly basis only and not on a year-to-date basis). Tenant shall make payments of Percentage Rent to Landlord no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month.

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

5.1.4 Rent Discount. For a period not to exceed five (5) months during the construction of the permanent Flow Rider and Children's Wave built-out of concrete (beginning either October 1, 2000 or October 1, 2001, depending on the construction schedule), Minimum Monthly Rent then in effect shall be reduced by 20%, to the extent that such construction significantly interferes with the operation of the restaurant at the Premises by 20% or more ("Rent Discount"). During the period of Rent Discount, Tenant shall be obligated for full payment of Rent as defined in Section 5.1 above subject to this Rent Discount provision.

5.2 Statement of Net Sales. Tenant agrees to furnish or cause to be furnished to Landlord a statement of monthly Net Sales of Tenant within ten (10) days after the close of each calendar month, and an annual statement of Net Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Monthly Rent and Percentage Rent for the preceding month, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, or by a corporate officer if Tenant is a corporation and annual statements shall, in addition, 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" on and financial transactions resulting from the Permitted Use of the Premises or otherwise, including, without limitation, Net Sales of Tenant and of any subtenant, licensee or concessionaire. The term "business activities" means that the Net Sales generated from any off-premise ride, sale, rental or activity that is marketed from the Premises must be included in the Statement. Likewise, if Tenant uses the Premises to do the accounting, bookkeeping or administration (e.g., accepting telephone reservations and/or sales) for any off-premise ride, sales, rentals or other activity, the income generated therefrom must be included in Tenant's Net Sales Statement. 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 Net Sales and Net 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 Net 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 Net Sales in each Category, the monthly and annual statements of Net 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.

On or before September 15, 2000, Tenant shall install and use, at Tenant's sole cost and expense, electronic systems of recording and reporting transactions in Tenant's business, as specified and approved by Landlord, such as, for example, a point of sale computer program or cash register or similar type capable of being networked through Licensor's management office.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Monthly Rent or Percentage Rent, then such deficiency shall become immediately due and payable, with interest at the 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. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net 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 Net 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, then in addition to any other rights of Landlord under this Lease, Landlord may terminate this Lease. 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 a late payment, or prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Net Sales. The term "Net Sales" as used herein is 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. Net Sales shall include, but not be limited to, the amount received from the Flow Rider, beach rentals, 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. Any amounts received from or in connection with any off-premise ride, sale, rental or activity that is marketed from the Premises must be included in the Statement. Likewise, if Tenant uses the Premises to do the accounting, bookkeeping or administration (e.g., accepting telephone reservations and/or sales) for any off-premise ride, sales, rentals or other activity, the income generated therefrom must be included in Net Sales. 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 Net 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. Net 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 Net 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 Net 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, including but not limited to the designated beach area in front of the Premises and the Flow Rider. Net 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 Net Sales.

5.4 Additional Rent. Tenant shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Monthly Rent, Percentage Rent and Additional Rent are 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 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.

5.5 Failure to Pay. Rent shall be due on the first day of each month ("Due Date"), in advance, for the Term of this Lease. If Tenant fails to pay any monthly installment of Rent by 5:00 p.m., PST on the fifth (5th) day of the month, Landlord should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. 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 per day or (ii) one percent (1%) per day (compounded daily) of the amount due beginning on the Due Date and continuing until paid ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate as defined in Article 5.2. 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. Landlord shall have the right to require that Tenant pay monies due 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 to the contrary contained in the Lease, if:

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

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

Then:

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

If this Lease is so terminated, Tenant covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Landlord upon the expiration of the thirty (30) day notice period, and all Rent shall be adjusted as of the expiration of such period and all amounts due and owing by Tenant pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Tenant shall be discharged from its obligations hereunder and under the Lease, and Tenant shall have no recourse against Landlord or those for whom it is in law responsible for damages or otherwise and shall not be entitled to any refund of or any credits for any amounts paid by the Tenant.

ARTICLE 6 - PERSONAL PROPERTY TAXES

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

ARTICLE 7 - POSSESSION AND USE

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

7.2 Permitted 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 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 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.

Tenant may not display or sell merchandise, or allow carts, tables, aerials, antenna, receivers, dishes, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways without Landlord's written consent. Tenant shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects. Promptly upon demand of Landlord, Tenant shall reimburse Landlord for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Tenant will not solicit, in any manner, in the Common Areas of the Center.

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

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Landlord's Responsibilities. Landlord shall be responsible for payment of water, gas, electricity and sewer services used in or upon or furnished to the Premises. 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.

8.2 Tenant's Responsibilities. Tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, for janitorial and any other service or utility not included in Landlord's Responsibilities above, 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 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. 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 Indemnity by Tenant. Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Tenant or any other person thereon or holding under said Tenant. Tenant will indemnify and hold Landlord and City harmless 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 (iii) any act omission or negligence by Tenant, its employees, agents, subtenants, invitees, or licensees and (iv) any failure by Tenant to comply or secure compliance with any of the terms or conditions of this Lease. Tenant shall not be liable for damages or injury occasioned solely by the negligence of Landlord and its designated agents, servants or employees unless covered by insurance Tenant is required to provide.

9.2 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.

9.3 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:

9.3.1 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 authorized representatives, agent, and employees arising out of and in connection with Tenant's use or occupancy of the Premises. All such public and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions of Article 9.1 above.

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

9.3.3 Tenant Improvements. Insurance covering all of Tenant's tenant improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time 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, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof. Currently, neither the City of San Diego nor Landlord's Lender requires Landlord to carry earthquake or flood insurance and therefore Landlord is not requiring Tenant to do so. However, if such requirement is imposed upon Landlord in the future, Landlord reserves the right to alter this provision and impose the same requirement on Tenant at Tenant's sole cost and expense.

9.3.4 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.

9.3.5 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, its servants, agents, and employees, 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 9.3, 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.

9.4 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 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.

9.5 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 either 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 therefor, 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 ("Alteration"). In no event may Tenant make any alterations to the exterior or structure of the Premises. Tenant shall be responsible for the entire cost and expense of all such permitted Alterations and shall provide a performance and completion bond, from any insurance company acceptable to Landlord, in a sum equal to one hundred twenty-five percent (125%) of the cost of the Alterations, guaranteeing completion free and clear of liens and charges, and in accordance with the approved plans and specifications. All Alterations shall be under the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Landlord before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Landlord, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such Alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including, without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such Alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Tenant in the Center. Upon completion of such work, Tenant shall file for record in the office of the San Diego County Recorder a Notice of Completion as permitted by law.

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 all materials and supplies furnished therewith, and Tenant will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify, defend and save Landlord free and harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant.

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

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

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

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

ARTICLE 13 - SIGNS

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

Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Tenant, or to Tenant's agent, or to any other person. Tenant shall not distribute in the Center any handbills or other advertising devices. Tenant further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Landlord's prior written consent.

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 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right upon termination or expiration of the term of this Lease, provided Tenant is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property 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 any interest of Tenant's rights and duties in the Lease or the Premises, including Tenant's right to use, occupy and possess the Premises, or (b) sublease of Tenant's right to use, occupy and possess the Premises, in whole or in part;

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

15.1.3 "Change of Control" means the transfer by sale, assignment, 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 Tenant. 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 (including but not limited to a management or operation agreement) 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;

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

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

Within three (3) business days of request of Landlord, Tenant shall provide Landlord with all documentation related to any Occupancy Transaction or the appearance of same, so that Landlord can assess the nature and extent of leasehold rights and duties Tenant has granted to any other person or entity. In the event Tenant has no documentation related to any Transfer, Tenant shall so inform Landlord in writing within three (3) days of Landlord's request for documentation. Failure to respond or produce the required information shall give rise to the inference that Tenant has made an Occupancy Transaction, constituting a material breach under the Lease which results in the automatic termination the Lease. Landlord need not prove that it has experienced any loss as a result of such unpermitted Transfer, it being understood that Landlord has the right to determine who occupies the Premises and who holds an interest in its leasehold.

15.3 Remaining Term.

15.3.1 After the first two (2) years of the term hereof, Tenant shall not enter into any Occupancy Transaction, with respect to any of Tenant's interest in and to the Premises, without first procuring (i) the written consent of Landlord, which shall not be unreasonably withheld and, (ii) if Landlord so elects, the written consent of City. Any attempted Occupancy Transaction without Landlord's and, if required by Landlord, City's, written consent, shall be void and confer no rights upon any third person. Landlord reserves

the right to refuse to give such consent unless Tenant remains fully liable during the unexpired term of the Lease. The consent by Landlord or City to any assignment or subletting shall not be construed as relieving Tenant or any Transferee of this lease from complying with the terms of this Article 15 with respect to any further Occupancy Transaction.

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

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

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

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

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

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

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

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

15.4 Procedures.

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

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

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

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

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

15.4.2 Subject to Section 15.5 below, within thirty (30) days after receipt by Landlord of the information required by subsection 15.4.1 above, Landlord may either:

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

15.4.2.2 Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Landlord is entitled to without its consent; or

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

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

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

15.7 Consideration to Landlord.

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

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

15.7.1.1.1 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

15.7.1.1.2 The then fair market annual rent as reasonably determined by Landlord. The new Minimum Monthly Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

15.7.2 In no event shall the Minimum Monthly Rent and Percentage Rent as adjusted, be less than the Minimum Monthly 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: Easter through Labor Day 10:00 a.m. to 11:00 p.m. seven days a week; All other times 11:00 a.m. to 7:00 p.m seven days a week. Tenant may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day, or in the event of rain or wind in excess of twenty five (25) miles per hour, or temperatures below 55° for a period of in excess of four (4) hours during an operating day.

After the installation of the permanent Flow Ride Sheet Wave and Children's Wave referred to in paragraph 5.1.4, Tenant shall operate one hundred percent (100%) of the Premises during the entire term of this Lease with due diligence and efficiency. Subject to inability by reason of strikes or labor disputes, Tenant shall carry at all times in the Premises a complete stock of merchandise. 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 Bank Americard, Master Charge, Visa and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.2 New Locations. During the term of this Lease, neither Tenant nor any individual, firm or corporation that controls Tenant or is controlled by Tenant shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Landlord's remedies, if Tenant violates this covenant, Landlord may, at its option and for so long as

Tenant is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

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 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.

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

ARTICLE 18 - RECONSTRUCTION

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

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

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

ARTICLE 19 - COMMON AREAS

19.1 Definition. The term "Common Areas" as used in this Lease shall not include that area designated in the Fundamental Lease Provisions, Article 3.2, and shown on Exhibit B, for the operation of the Flow Rider but 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, 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, (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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance and management of the Center and Common Areas. The Management Fee, as used above, refers to administrative costs, including but not limited to accounting costs, shall initially be established to be equal to five percent (5%) of all gross receipts collected by the property management company from Center operations, from any source whatsoever. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. 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.

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 taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges by 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 any 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 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.

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

19.6 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith,

Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and 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.

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

If, in the opinion of Landlord, unauthorized persons are using any of said areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall 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 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.

21.1.1 The vacation or abandonment of the Premises by Tenant. Vacation of the Premises

shall include the failure to occupy the Premises for a continuous period of sixty (60) days or more, whether or not the Rent is paid.

21.1.2 The breach of Tenant of any of the covenants, conditions or provisions of paragraphs 11 (alterations), 15 (assignment or subletting), 21.1.1 (vacation or abandonment), 20 (insolvency), 21.1.6 (false statement), 26.3 (estoppel certificate), 26.1 (subordination), 7.2 (auctions), or 5.2 (Net Sales), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by Landlord to Tenant thereof.

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 serve Tenant with a Notice to pay Rent 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 2.1.2 and 2.1.3 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) 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 hereunder, was materially false.

21.2 Landlord's Rights and Remedies. Should Tenant at any time be in default hereunder, with respect to any Rent payments or other charges payable by Tenant hereunder, and should such default continue for a period of three (3) days after written notice from Landlord to Tenant, or should Tenant be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained, including, without limitation, and to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance, or should Tenant vacate or abandon the Premises, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Landlord hereunder and provided by law, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

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

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

Lease.

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

Should Landlord have re-entered the Premises under the provisions of subparagraph 21.1.2 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 statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election to be evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owners or owners thereof.

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

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

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

21.3.3 The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

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, 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 21.2.1 and 21.2.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.2.3 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 of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

22.2.3 No service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);

22.2.4 No partner 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 of Landlord;

22.2.6 Any judgment taken against any partner 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 of Landlord;

22.2.8 These covenants and agreements are enforceable both by Landlord and also by any partner of Landlord.

ARTICLE 23 - EMINENT DOMAIN

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

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

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

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

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

ARTICLE 24 - ATTORNEYS' FEES

24.1 Attorneys' Fees. In the event that at any time during the term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the actual attorneys' fees and actual costs and disbursements incurred therein by the successful party. The parties agrees 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, ATTORNMENT 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. The provisions of this Article to the contrary notwithstanding and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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

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

26.4 Estoppel Certificate.

26.4.1 Each party (as "responding party") shall at any time upon not less than ten (10) days prior written notice from the other party ("requesting party") execute, acknowledge an 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.

26.4.3 If Landlord desires to refinance, 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 default under this Lease.

ARTICLE 28 -TENANT ADVERTISING

Tenant agrees not to produce any advertising which is not in good taste or which may injure the Center or other Tenants 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.

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 then 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.

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 - SECURITY DEPOSIT

32.1 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 Monthly 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 Monthly Rent.

32.2 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 Term.

32.3 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.

32.4 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 33 - 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.

33.1 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 plus applicable Percentage Rent.

33.2 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 34 - LIQUOR LICENSE

34.1 Exclusive Option to Purchase Liquor License. Tenant will not cease daily operation or use of its liquor license at the Premises ("Liquor License"), nor will it sell, hypothecate, pledge, assign or otherwise transfer its Liquor License without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion

Tenant also grants Landlord an exclusive option ("Option") to purchase Tenant's Liquor License at the price set forth below. Landlord shall have one (1) year from the Effective Date to exercise its Option ("Option Period"). During the Option Period, Tenant shall not sell, hypothecate, pledge, assign or otherwise transfer its

Liquor License without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion. The Effective Date shall commence on the date any one of the following events occurs:

upon expiration of the Lease;
upon surrender of the Liquor License to the Department of Alcoholic Beverage Control ("ABC");
upon a mutually agreed termination date of the Lease; or
upon cessation of Tenant's daily operations on the Premises or use of the Liquor License.

In the event Tenant surrenders its Liquor License to ABC, or ceases daily operations on the Premises, or use of the Liquor License, Tenant shall notify Landlord of the same within 24 hours.

Should Landlord exercise its option, Tenant shall, within ten (10) days of being notified of the same: (1) open the required escrow account wherein the proceeds of the sale shall be deposited; and (2) complete and execute the required escrow documents and ABC paperwork to effect the transfer of its Liquor License to Landlord.

34.2 Warranties. Tenant warrants that it will maintain and pay when due the renewal fees for its existing Liquor License in accordance with the requirements of California Department of Alcoholic Beverage Control and all other applicable ordinances, codes, regulations, or other laws, so as not to impair the value of or jeopardize the Liquor License. Tenant further agrees that it will not engage in any activity that would render or threaten to render the Premises unlicenseable

34.3 Purchase Price. Landlord shall pay Tenant the Fair Market Value for Tenant's Liquor License as determined by the average of the five most recent double transfers (i.e., a change of person and location) for Type 47 licenses in San Diego County.

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. 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.

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

35.5 Right to Lease. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests

of the Center. Tenant does not rely on the fact, and Landlord does not represent, that any specific Tenant or number of Tenants shall, during the term of this Lease, occupy any space in the Center.

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

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

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

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

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

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

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

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

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

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

35.14 Rules and Regulations. Tenant and its employees, agents, licensees and visitors will at all

times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit D. 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.

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, which is not in compliance with San Diego County Department of Public Health or any other governmental agency.

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 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.

35.24 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.

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

35.26 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 pursuant to paragraph 4.2, then Landlord shall have, in addition to any and all remedies hereinafter provided, the right to immediately cancel and terminate this Lease.

35.27 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.

35.28 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.

35.29 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.

35.30 Further Assurances. Each and every party to this Lease shall execute any further documents and accomplish such acts as may be necessary 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

PARS BELMONT PARK, LLC,
a California limited liability company

By: _____
Name: Firouz D. Memarzadeh
Title: Manager

TENANT

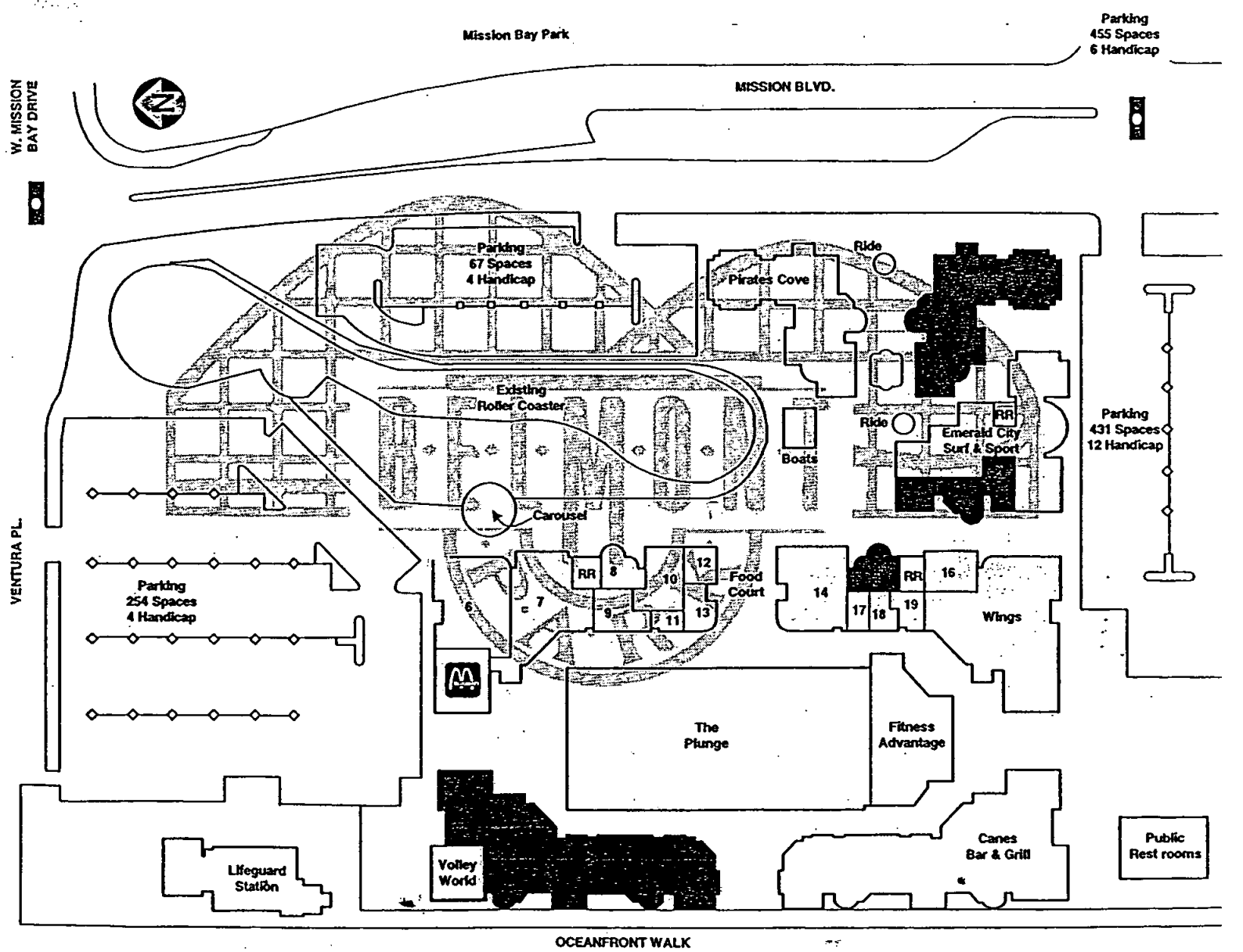
WAVE HOUSE SAN DIEGO, LLC
a California limited liability company

By: _____
Name: Thomas Lochtefeld
Title: Manager

By: _____
Name:
Title:

EXHIBIT A

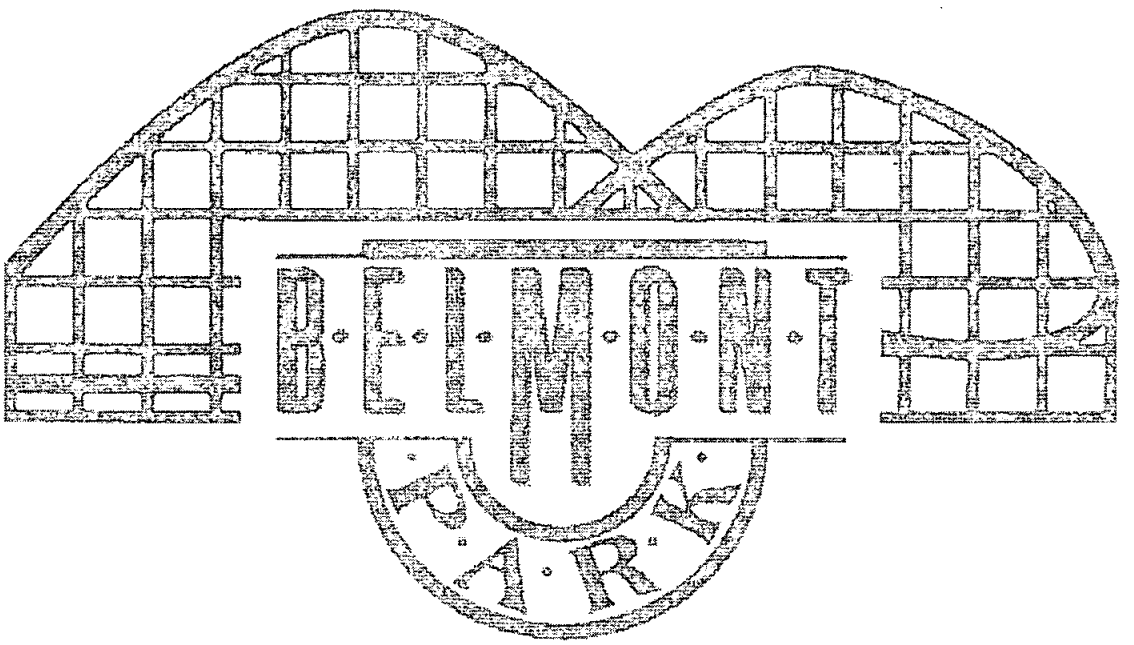
SITE PLAN OF THE CENTER



DISCLAIMER: This drawing is for general information purposes only. Any and all features, matters and other information depicted hereon or contained herein are for illustrative purposes only, are subject to modification without notice, are not i
o be relied upon by any party and are not intended to constitute representations and warranties as to the size and nature of improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any oc
reof.

EXHIBIT B — PAGES 1 THROUGH 3 ATTACHED

FLOOR PLAN SHOWING THE PREMISES



Initials: _____

EXHIBIT C

TENANT IMPROVEMENT AGREEMENT

(Tenant to Construct)

Landlord and Tenant are executing simultaneously with this Tenant Improvement Agreement ("Agreement"), a written lease ("Lease") covering those certain premises more particularly described in Exhibit B to the Lease ("Premises"), in the Center more particularly described in the Lease. Landlord and Tenant agree that Tenant shall improve and prepare the Premises for Tenant's occupancy, on the terms and conditions set forth in this Agreement. To induce Landlord and Tenant to enter into the Lease and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant mutually agree as follows:

1. General. The purpose of this Agreement is to set forth how the interior improvements in the Premises as set forth in the Construction Documents, as defined below in Section 2.3 ("Tenant Improvements"), are to be constructed, who will be responsible for the construction of the Tenant Improvements, and the time schedule for the construction and completion of the Tenant Improvements.

1.1 Defined Terms. Except as defined in this Agreement to the contrary, all terms utilized in this Agreement shall have the same meaning as the defined terms in the Lease.

1.2 Incorporation of Lease. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Agreement, are hereby incorporated into this Agreement.

2. Tenant Improvement Plans. Tenant shall retain either a licensed architect or a space planner ("Space Planner") to prepare a preliminary space plan layout and improvement plans ("Space Plan") to be utilized in the preparation of final working drawings and specifications for the Tenant Improvements as more particularly described below. Tenant's selection of Space Planner shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

2.1 Space Plan. If Tenant has not previously delivered a Space Plan to Landlord prior to the date of this Agreement, Tenant shall, within ten (10) business days after the date of this Agreement, deliver the Space Plan to Landlord. The Space Plan shall show the configuration of the proposed Tenant Improvements and contain a "finish schedule" and all information necessary for Tenant to have the mechanical, electrical and engineering drawings (collectively "Engineering Plans") prepared at Tenant's expense, the cost of which will be deducted from the Tenant Improvement Allowance. Such information submitted as part of the Space Plan shall be in sufficient detail to show locations, types and requirements for all heat loads, people loads, floor loads, power and plumbing, regular and special HVAC needs, telephone communications, telephone and electrical outlets, lighting, light fixtures and related power, and electrical and telephone switches. Landlord shall approve, or disapprove for reasonable reasons, the Space Plan within five (5) business days after Landlord receives the completed Space Plan and, if disapproved, Landlord shall return the Space Plan to Tenant, who shall make all necessary revisions within five (5) business days after Tenant's receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Space Plan. When approved, the Space Plan, as modified, shall be deemed the "Final Preliminary Plans."

2.2 Engineering Plans. If required by applicable building regulations, Tenant shall select as the mechanical and electrical engineer a qualified and licensed company, experienced in shopping center Tenant improvements in San Diego County, California,("Engineer") to prepare Engineering Plans based on the Final Preliminary Plans. Tenant's selection of the Engineer shall be subject to the prior written approval of Landlord, which approval will not be unreasonably withheld or delayed. For purposes of the preparation of the Engineering Plans, the Engineer may assume that the Final Preliminary Plans are precise, correct and in compliance with applicable laws and codes. Upon completion of the Engineering Plans, they will be submitted to Landlord and Space Planner for approval. Landlord shall approve, or disapprove for reasonable reasons, the Engineering Plans within five (5) business days after Landlord receives the Engineering Plans and, if disapproved, return the Engineering Plans to Tenant who shall cause the Engineer to make all necessary revisions within five (5) business days after Landlord's receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Engineering Plans. When approved, the Engineering Plans, as modified, shall be deemed the "Final Engineering Plans".

2.3 Construction Documents. Within ten (10) business days following Landlord's approval of the Final Preliminary Plans and the Final Engineering Plans (if any), Tenant shall cause Space Planner to prepare final plans and specifications ("Final Tenant Plans") for completion of the Tenant Improvements. Tenant shall then deliver the Final Tenant Plans to Landlord. Landlord shall approve, or disapprove for reasonable reasons, the Final Tenant Plans within five (5) business days after Landlord receives the Final Tenant Plans and, if disapproved, Landlord shall return the Final Tenant Plans to Tenant who shall cause Space Planner to make all necessary revisions within five (5) business days after Tenant's receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Final Tenant Plans. When approved, the Final Tenant Plans, as modified, shall be deemed the "Construction Documents". Any and all costs incurred by Tenant in the preparation of the Construction Documents shall be deducted from the Tenant Improvement Allowance set forth below in Section 6. All deliveries of the Space Plan, Final Preliminary Plans, and Final Tenant Plans shall be delivered by messenger service, by personal hand delivery or by overnight parcel service.

2.4 Landlord's Approval of Plans. Tenant specifically acknowledges that although Landlord has the right to approve the Space Plan, Final Preliminary Plans, Final Engineering Plans, and Final Tenant Plans, Landlord's sole interest in doing so is to protect the Center and Landlord's interests. Accordingly, Tenant shall not rely upon Landlord's approvals and Landlord shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such Space Plan, Final Preliminary Plans, Final Engineering Plans or Final Tenant Plans, or the compliance thereof with applicable laws, and Landlord shall incur no liability of any kind by reason of granting such approvals.

3. Approvals/Fees/Compliance with Laws. Promptly following Landlord's approval of the Construction Documents, Tenant shall apply, at Tenant's sole cost and expense, for all governmental approvals ("Approvals") required for construction of the Tenant Improvements. Upon receipt of the Approvals, Contractor (defined below) shall commence construction of the Tenant Improvements.

Tenant's failure to commence such construction within thirty (30) days of Tenant's receipt of the Approvals shall constitute a material default by Tenant under this Agreement and the Lease and shall entitle Landlord to terminate this Agreement and the Lease. In addition, Tenant shall, at Tenant's sole cost and expense, be responsible for the payment of (i) all "impact fees" or exactions which may be imposed or assessed as a condition to the issuance of the building permit for the construction of the Tenant Improvements, and all (ii) utility hook-up fees for water, sewer, gas, electric, telephone and any other utility facilities necessary for tenant's use of the Premises, provided, however, Tenant may, upon written notice to Landlord, request that all of the foregoing expenses be deducted from the Tenant Improvement Allowance. Tenant acknowledges that Tenant shall be solely responsible for investigation of all requirements necessary for obtaining a building permit for the Tenant Improvements, including, without limitation, all requirements for the payment of impact fees and exactions and utility fees and hook-up charges. Tenant shall undertake all steps necessary to insure that the construction of the Tenant Improvements is accomplished in strict compliance with all state or local laws, ordinances, rules and regulations applicable to such construction and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease.

4. Construction. Tenant shall employ an outside contractor or contractors of Tenant's choice ("Contractor") to construct the Tenant Improvements in substantial conformance with the Construction Documents; provided, however, that the Contractor and construction contracts between Tenant and Contractor and Tenant's subcontractors shall be subject to Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed), and provided further, that the Contractor and the performance of the work shall be subject to the following conditions:

4.1 Licensing Requirements/Experience. Contractor shall be duly licensed and experienced in the construction of tenant improvements in similar premises.

4.2 Notice of Commencement. Tenant or Contractor shall provide Landlord with at least five (5) days prior written notice of commencement of construction so that Landlord may post appropriate Notice of Non-responsibility upon the Premises.

4.3 Insurance - OSHA Compliance. In addition to the requirements of the Lease, and without any

limitation thereof, Contractor and each subcontractor retained by Contractor or Tenant shall, with respect to the work to be performed by Contractor or each such subcontractor, (a) comply with all governmental rules and regulations, including applicable OSHA standards, and (b) carry Builder's Risk insurance, workers compensation and public liability insurance (including property damage), with limits and in a form approved in advance by Landlord and issued by insurance companies approved in advance by Landlord. With the exception of Worker's Compensation insurance, Landlord shall be named as an additional insured on each policy. Prior to commencement of the Tenant Improvements, Tenant and/or contractor shall deliver to Landlord certificates evidencing all of the foregoing insurance coverages together with endorsements evidencing that Landlord has been added as an additional insured.

4.4 Contractor's Warranty. Tenant shall ensure that Contractor and each subcontractor used by Contractor to perform the work hereunder, shall guarantee that the portion thereof for which he is responsible, or which he performs, shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion of the Tenant Improvements. The correction work shall include, without limitation, all expenses and corrections to or in connection with the structure, of which the Tenant Improvements are a part, or any common area, should such structure or common area be damaged or affected by such defective work or by the repair or replacement of such defective work. All such warranties or guarantees as to materials or workmanship with respect to the Tenant Improvements shall be contained in Tenant's agreement with the Contractor, and Tenant shall require Contractor to include such warranties or guarantees in each subcontract, and all such warranties or guarantees shall be so written so that the same shall inure to the benefit of both Tenant and Landlord, as their respective interests may appear. Tenant hereby covenants to give to Landlord any assignment or other assurance necessary to perfect the right to direct enforcement by Landlord.

4.5 Material Storage. Contractor and each subcontractor retained by Tenant or by Contractor shall obtain prior written approval from Landlord to use any space outside of the Premises and within the Center to use for storage, handling, or moving or materials or equipment.

4.6 Debris Removal. Contractor and each subcontractor retained by Tenant or by Contractor, shall remove and dispose of, at least once a week or more frequently as Landlord may direct, or as shall be required by OSHA standards or other applicable laws or regulations, all debris and rubbish caused by, or resulting from, or related to, the Tenant Improvements, and upon completion of the Tenant Improvements, shall remove all temporary structures, surplus materials, debris and rubbish remaining within the Center, which has been brought in or created by or in connection with the same. If Contractor or any subcontractor shall neglect, refuse, or fail to remove any such debris, rubbish, surplus material or temporary structures within five (5) calendar days after notice to Tenant from Landlord, Landlord may remove or cause same to be removed, and Tenant shall bear the expense of removal and hold Landlord harmless therefor.

4.7 Bond. Landlord shall have the right, in Landlord's sole discretion, to require Tenant to furnish a bond or other security, in form satisfactory to Landlord, to assure the prompt, complete and faithful performance of the Tenant Improvements.

4.8 Landlord's Inspection Rights. Landlord or Landlord's agents shall have the right to inspect the construction work to be conducted by Tenant during the progress thereof, it being the intent of the parties hereto that Landlord shall be reasonable in its inspection of the construction work conducted by Tenant and that Landlord shall recognize, to the extent commercially reasonable and practicable, the necessity of field changes based on field conditions. If Landlord shall give notice to Tenant of faulty construction or any other deviation from the Construction Documents, Tenant shall cause Contractor to promptly make corrections. However, neither the privilege herein granted to Landlord to make such inspections, nor the making of such inspections by Landlord, shall operate as a waiver of any rights of Landlord to require good and workmanlike construction and improvements erected in accordance with the Construction Documents.

4.9 Liens. Tenant shall be required to settle and/or bond against any mechanic's or materialman's liens, or other liens, filed against the Premises and/or the Center as a result of the Tenant Improvements in accordance with the provisions relating to liens in the Lease. Tenant shall further reimburse Landlord in full, and indemnify, defend and hold Landlord harmless from and against, any liability, cost or expenses incurred by Landlord in connection with any such liens. Tenant shall, within ten (10) working days, after completion of the Tenant Improvements, execute and record a Notice of Completion with respect thereto, in a form complying

with the applicable provisions of California Civil Code (and in particular specifying the name of the Contractor and the kind of work done and/or materials furnished under the construction contract), and shall furnish a copy thereof to Landlord promptly following recordation in the Official Records of the San Diego County Recorder.

5. Tenant Improvement Allowance. Landlord will pay an amount equal to Forty Five Thousand and 00/100 Dollars ($45,000.00) toward the cost of the design, permitting and fees (only to the extent set forth herein) and construction of the Tenant Improvements and for no other purpose. In addition, upon execution of the Lease, Tenant shall deposit with Landlord in a dedicated interest bearing account in the name of PARS Belmont Park, LLC for the benefit of Wave House Tenant Improvements, the sum of Three Hundred Thousand and 00/100 Dollars ($300,000.00) ("Tenant Deposit") for the payment of Tenant Improvements and FF&E for the Premises to be constructed by Tenant subject to Landlord's approval (the $45,000 and $300,000 shall be collectively referred to as the "Tenant Improvement Allowance"). Ten Thousand and 00/100 Dollars ($10,000.00) from the Tenant Deposit shall be placed in a bank account to be used by Tenant for petty cash. The following three persons shall be signatories on this petty cash account: Tom Lochtefeld, Firouz Memarzadeh and Susan Heinrich-Wells; however, only one signature is required to disburse funds from said petty cash account. Upon presentation of receipts from approved disbursements, Landlord shall replenish the petty cash account to Ten Thousand and 00/100 Dollars ($10,000.00) within three (3) days of receipt by Landlord of Tenant receipts. Tenant shall contract with Contractor for the construction of the Tenant Improvements and FF&E. Landlord shall make payments to Contractor from the Tenant Improvement Allowance only in progress payments net twenty (20) days upon receipt by Landlord of invoices from Contractor and unconditional mechanics' lien releases (which mechanics' lien releases shall be executed by subcontractors, labor suppliers and materialmen, in addition to Contractor). Payment shall first be made from the $45,000; then from the $300,000. In the event any sums remain after completion of Tenant improvements and FF&E, such sums shall be reimbursed to Tenant within thirty (30) days from the later of July 1, 2000 or completion of the Tenant Improvements and FF&E and certification of occupancy for the Premises. At such time as the entire $345,000 has been expended by Landlord for Tenant improvements and FF&E, Tenant shall be responsible for payment of any and all additional amounts owing under the Contract or otherwise directly to the Contractor. Landlord shall post a notice of nonresponsibility in the Premises upon commencements of the Tenant improvements.

5.1 Engineering. The cost of all electrical, mechanical, and structural engineering, including all permits, licenses, and fees relative to the construction of the Tenant Improvements (including, without limitation, the fees identified in Section 4 above) shall be paid by Tenant, but may be deducted from the Tenant Improvement Allowance.

5.2 Change Orders. In the event that Tenant requests (in writing) any changes to the Construction Documents (each being a "Change Order"), Landlord shall not unreasonably withhold its consent to any such Change Order, provided the Change Order does not affect the structure, systems, equipment or appearance of the Premises or the Building. If such Change Orders, as approved by Landlord, increase the cost of constructing the Tenant Improvements in excess of the Tenant Improvement Allowance, Tenant shall pay such increased costs at the time of Landlord's approval of such Change Order.

5.3 Construction Materials. Tenant will utilize, for the construction of the Tenant Improvements, the items and materials specified in the Construction Documents. However, whenever Tenant determines in its reasonable judgment that it is not practical or efficient to use such materials, Tenant shall have the right, upon receipt of prior written approval of Landlord, which approval will not be unreasonably withheld or delayed, to substitute comparable items and materials.

5.4 Prompt Construction/General Responsibility for Costs. Tenant shall instruct Contractor to build the Tenant Improvements as soon as reasonably possible. Since Landlord's sole economic responsibility is to pay the Tenant Improvement Allowance, all of the Tenant Improvements shall be designed and constructed at Tenant's sole and entire cost, with Landlord being obligated only to disburse the Tenant Improvement Allowance pursuant to the terms of this Agreement.

6. Description of Tenant Improvements. The Tenant Improvements shall include the purchase, installation and performance of the restaurant facility.

7. Default. Any default by Tenant under the terms of this Agreement shall constitute a default under the

Lease and shall entitle Landlord to exercise all remedies set forth in the Lease. Tenant shall have any and all rights to remedy such default pursuant to the provisions of the Lease.

8. Reasonable Diligence. Both Landlord and Tenant agree to use reasonable diligence in performing all of their respective obligations and duties under this Agreement and in proceeding with the construction and completion of the Tenant Improvements.

9. Conflicts. In the event of any conflict between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

LANDLORD

PARS Belmont Park, LLC,
a California limited liability company

By_____
Name: Firouz D. Memarzadeh
Title: Manager

TENANT

Wave House San Diego, LLC
a California limited liability company

By:_____
Name: Thomas Lochtefeld
Title: Manager

Initials:____

EXHIBIT D

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.

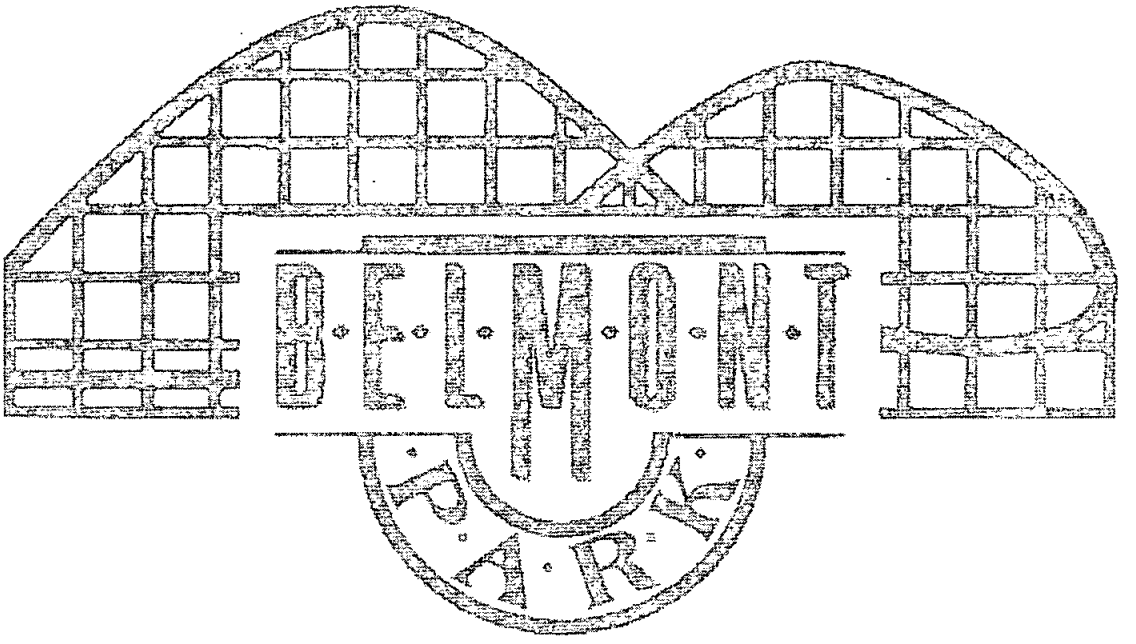
7. No Tenant's premises shall be used for manufacturing or for the storage of merchandise, except as such storage may be incidental to the use of the premises as permitted by Landlord. No Tenant shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this 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.



Initials:

EXHIBIT E

GUARANTEE OF LEASE

WHEREAS, Wave House San Diego, LLC ("Tenant"), with an address of 3125 Oceanfront Walk, San Diego, California 92109, desires to enter into a Lease, dated of even date herewith ("Lease") of certain premises located in the City of San Diego, County of San Diego, California, described on Exhibit B which is attached hereto; and

WHEREAS. the undersigned desires and requests that Lesser enter into the Lease with Tenant; and

WHEREAS, PARS BELMONT PARK, LLC, a California limited liability company ("Landlord"), with an address at 3146 Mission Boulevard, Suite F, San Diego, California, as a condition to its execution of said Lease, requires that the undersigned guarantee the Lease in the manner set forth herein;

NOW, THEREFORE, to induce Landlord to enter into said Lease, the undersigned, Thomas Lochtefeld ("Guarantor"), with an address at 210 Westbourne La Jolla CA hereby agrees to the following:

1. Guarantor unconditionally guaranties to Landlord, and to Landlord's successors and assigns, the payment by Tenant of the rental and all other charges which accrue under the Lease in the manner and at the time prescribed therein, and the full and punctual performance and observance, by Tenant, of all the terms, covenants and conditions contained in the Lease. Guarantor waives notice of any breach or default by Tenant.

2. If Guarantor is more than one person or entity, Guarantor's obligations under this Guarantee of Lease ("Guarantee") are joint and several. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Tenant, or all. Guarantor's obligations under this Guarantee are independent of Tenant's obligations.

3. If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both, or Landlord can enforce against Guarantor or Tenant, or both, any rights that it has under the Lease or pursuant to applicable laws. If the Terminates and Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either of them.

4. This Guarantee shall not be released, extinguished, modified or in any way affected by failure on the part of Landlord to enforce any or all of the rights or remedies of Landlord whether pursuant to the terms of the Lease or in law or equity.

5. This Guarantee is a continuing one and shall terminate only upon payment by Tenant of all rental and other charges which accrue under the Lease and performance by Tenant of each and every term, covenant and condition contained in the Lease.

6. Guarantor's liability hereunder shall not be affected by the following:

6.1 The release or discharge of Tenant in any creditors, receivership, bankruptcy, or other proceedings.

6.2 The impairment, limitation, or modification of the liability of Tenant's estate in bankruptcy, or of any remedy for enforcement of Tenant's liability under said Lease, resulting from the operation of any present or future provision of the bankruptcy law or other statute or from the decision in any court.

6.3 The rejection or disaffirmance of the Lease in any such proceedings.

6.4 The assignment or transfer of the Lease by Tenant.

6.5 Any disability or other defense of Tenant.

6.6 The cessation of Tenant's liability from any cause whatsoever.

Initials: TL

7. Until Tenant has completely performed and observed all terms, covenants, and conditions of the Lease, Guarantor shall:

7.1 Have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor in compliance with Guarantor's obligations under the Guarantee.

7.2 Waive any right to enforce any remedy that Guarantor now or hereafter shall have against Tenant by reason of any payments or acts of performance in compliance with Guarantor's obligations hereunder.

7.3 Subordinate any liability or indebtedness of Tenant now or hereafter held by Guarantor to Tenant's obligations to Landlord under said Lease.

8. This Guarantee shall apply to the Lease, any extension or renewal thereof, and to any holdover term following the term provided in the Lease or any extension or renewal of such holdover term.

9. This Guarantee may not be changed, modified, discharged, or terminated orally or in any manner except an agreement in writing signed by Guarantor and Landlord.

10. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guarantee.

11. Landlord, or Landlord's successors or assigns, may waive any term, covenant or condition of said Lease, expressly or by course of conduct, or give consent to any matter relating to said Lease, or grant Tenant extensions of time or other indulgences without prior notice to Guarantor and without releasing Guarantor's duties hereunder.

12. Guarantor's obligations under the Guarantee shall not be released by Landlord's receipt, application, or release of security given for Tenant's performance and observance of the terms, covenants and conditions of said Lease, nor by any amendment to or modification of said Lease. However in the event of such amendment or modification, Guarantor's liability shall be deemed modified in accordance with the terms of any such amendment or modification of the Lease.

13. Guarantor waives all presentments, demand for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guarantee and other suretyship formalities, and waives all notices of the existence, creation, or incurring of new or additional obligations hereunder.

14. In the event any portion of this Guarantee shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Guarantee, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Guarantee.

15. The use of the singular herein shall include the plural. This Guarantee shall be governed by, and construed in accordance with, the laws of the State of California, and venue for any action under this Guarantee shall be the appropriate court in San Diego, California.

16. Guarantor agrees to pay the reasonable attorneys' fees, and all costs and other expenses incurred by Landlord, or Landlord's successors or assigns, in enforcement of Guarantor's obligations hereunder.

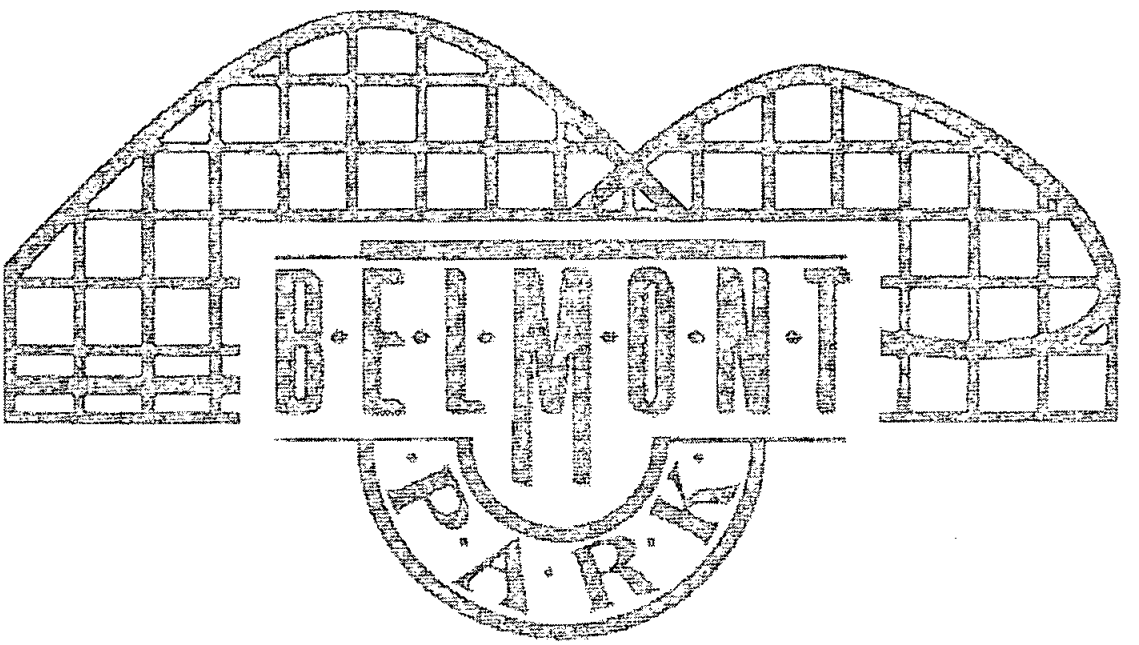
17. Guarantor's obligations under this Guarantee shall be binding on the heirs. successors, assigns, representatives, and administrators of Guarantor and shall not be impaired or affected by the death of Guarantor.

Initials: _____

18. This Guarantee may be assigned by Landlord without notice, which assignment shall not affect or impair the obligation of Guarantor hereunder.

IN WITNESS WHEREOF, the undersigned has caused this Guarantee to be executed effective the date set forth at the beginning hereof.

Thomas Lochtefeld
Social Security No. 552-97-5460



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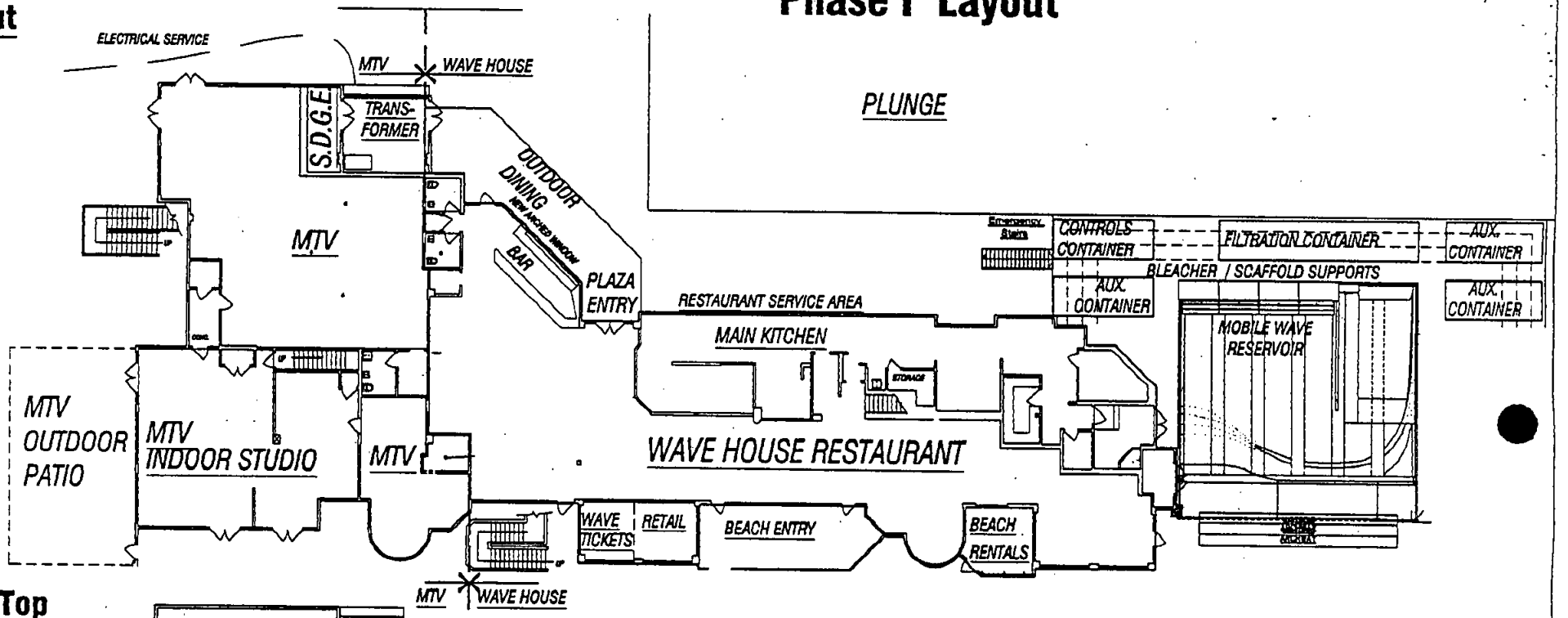
Phase I Layout



Roof Top Layout

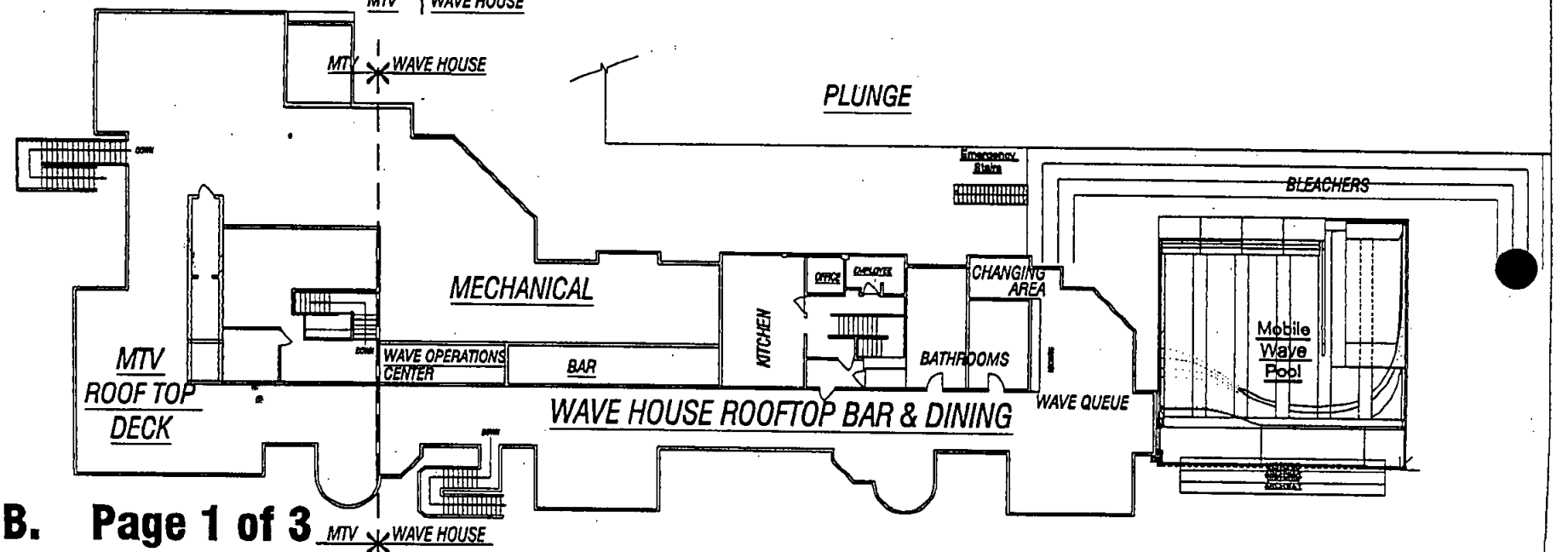
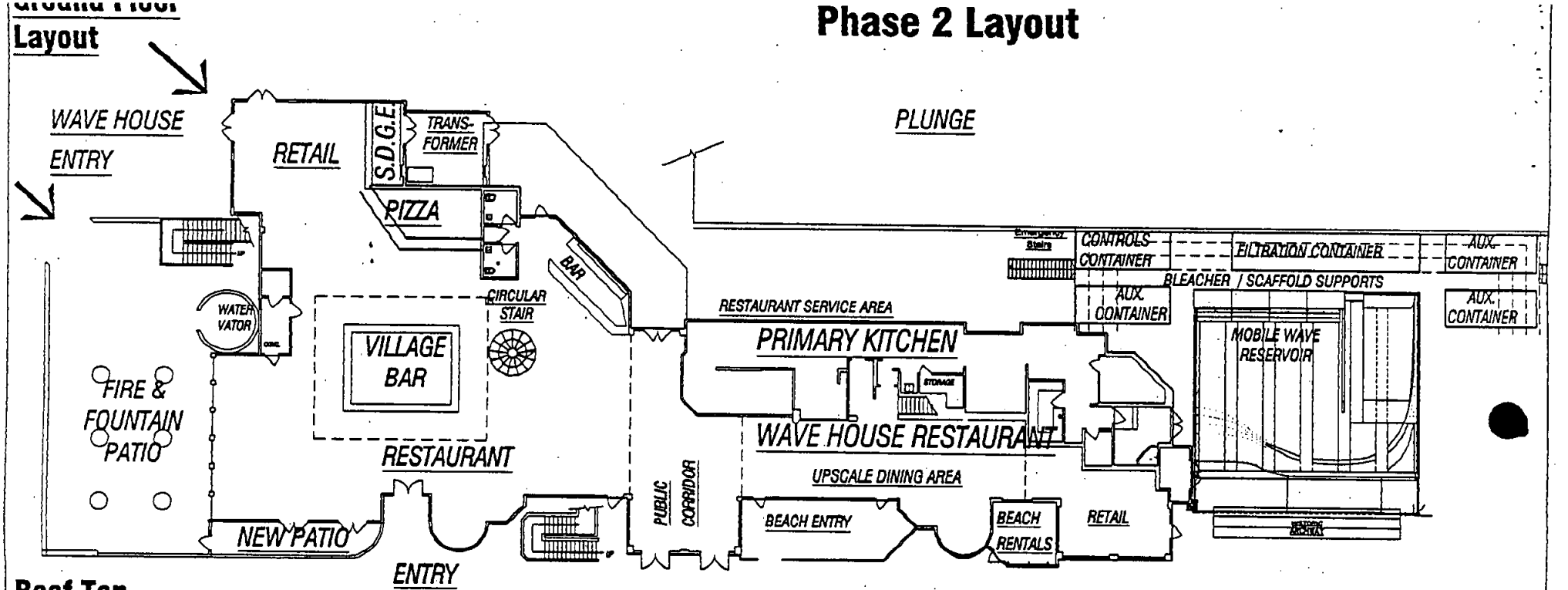


Exhibit B. Page 1 of 3

Wave House San Diego

Phase 2 Layout



Roof Top Layout

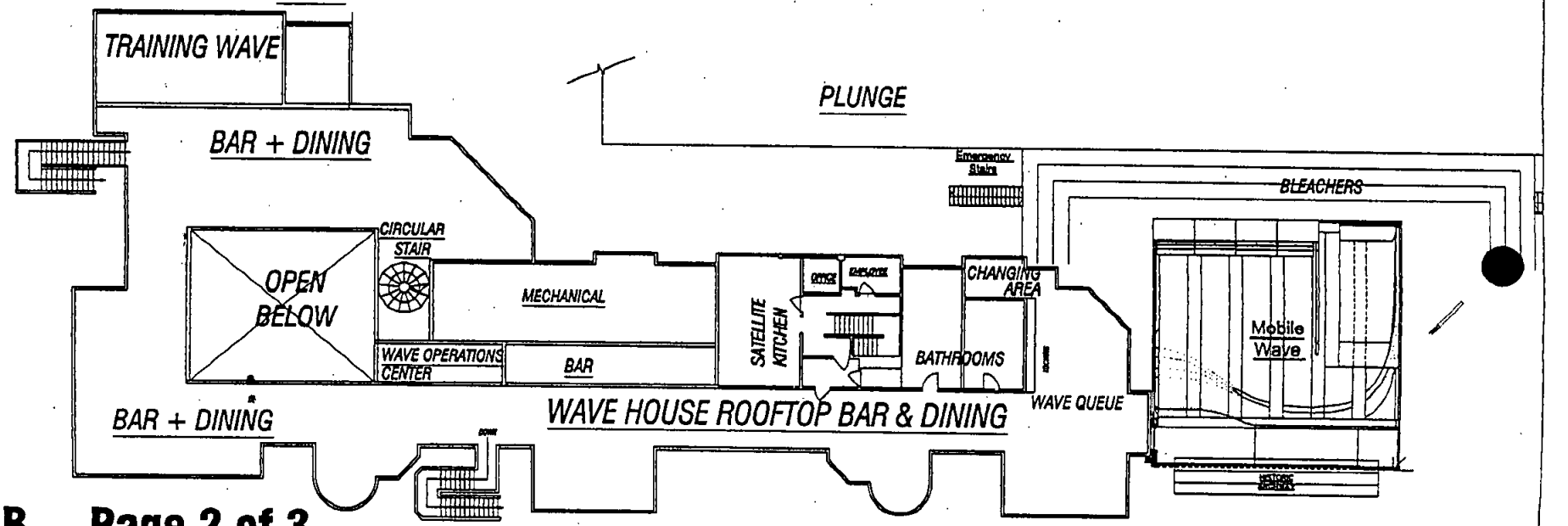
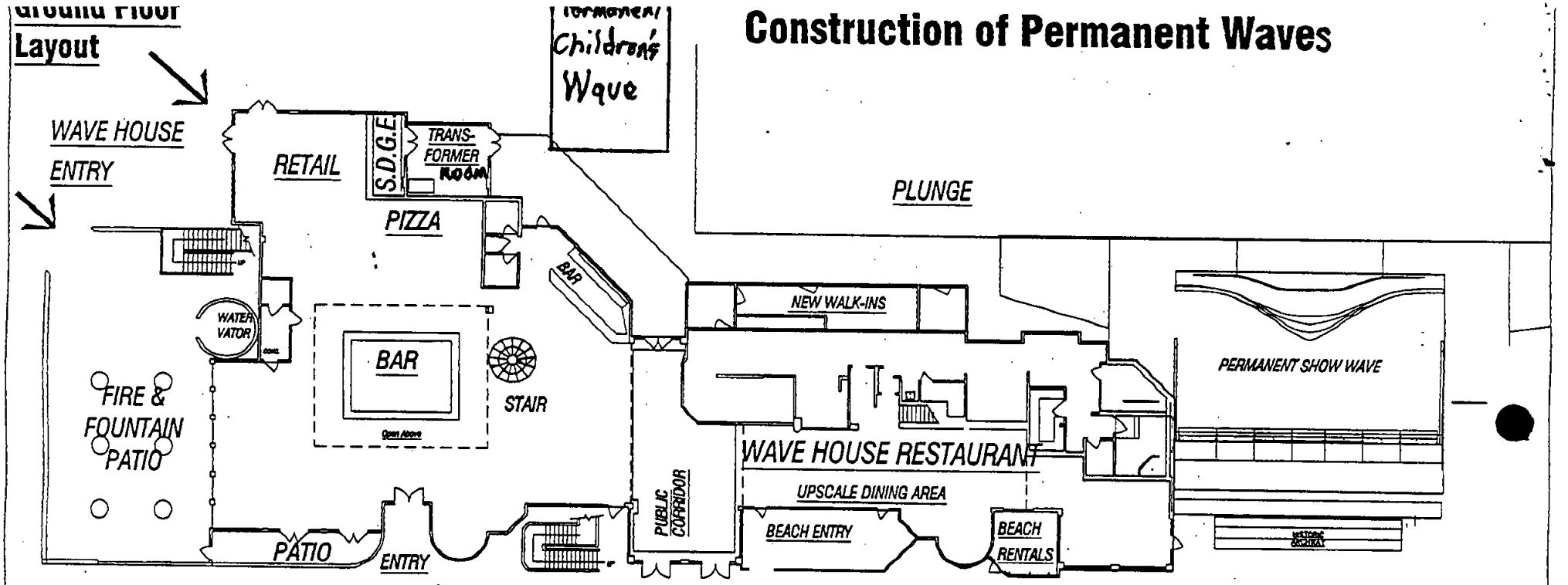


Exhibit B. Page 2 of 3
Wave House San Diego

Ground Floor Layout

Construction of Permanent Waves



Roof Top Layout

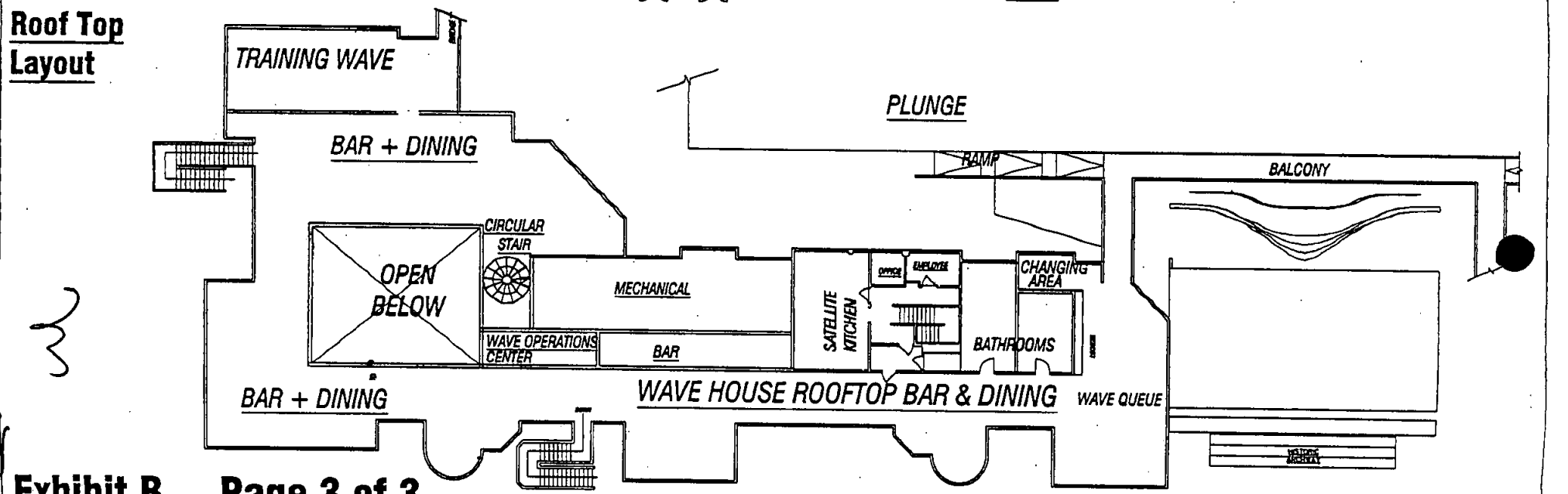


Exhibit B. Page 3 of 3
Wave House San Diego

EXHIBIT G

STORM WATER

BEST MANAGEMENT PRACTICES

Prepared by:

I. Belmont Park's Planning and Organization Committee

Thomas Lochtefeld	Managing Director
Fred Bradley	Construction Manager
Steven Egbert	Property Manager (Enforcement Official)
Patrick Crain	Maintenance Enforcement Supervisor

II. Belmont Park's Reference Phone Listing

Name	Phone	Contact
Belmont Park's Admin Office	858-488-0668	Steve Egbert
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

Reference	Reference Code
-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

Description	Typical Quantity	Location
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 depose 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.

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement ("Master Lease") entered into with

BELMONT PARK ASSOCIATES,
a California Limited partnership

and filed in the Office of the City Clerk as Document 266064, and assigned to

PARS BELMONT PARK, LLC,
a California Limited Liability Company

(LESSEE) on December 1, 1995, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

WAVE HOUSE SAN DIEGO, LLC,
a California Limited Liability Company

(SUBLESSEE) dated April 4, 2000 and amended on June 15, 2000. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. In consideration for the CITY of San Diego's consent to the Sublease, which consent is hereby given, the parties to the Lease agree that both SUBLESSOR and CITY shall have the right to monitor and enforce the conditions and restrictions imposed by the Alcoholic Beverage Control Board ("ABC") as long as alcohol is served on the Premises.

2. SUBLESSEE'S failure to comply with said conditions and restrictions shall constitute a material default under the Sublease warranting the initiation of unlawful detainer proceedings pursuant to Section 1159, *et seq.* of the *California Code of Civil Procedure.*

3. The Parties agree that the CITY of San Diego shall have the standing to bring a direct action for unlawful detainer against SUBLESSEE in the event of SUBLESSEE'S noncompliance with the conditions and restrictions imposed by the ABC upon SUBLESSEE'S liquor license.

THE CITY OF SAN DIEGO

Dated 6/23/00

By Linda M. Fierro
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 6/23/00

By Lori W. Gerard
Deputy City Attorney

LMF/jmj
06/23/00
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FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to that Lease Agreement dated April 4, 2000 ("Lease") by and between **PARS BELMONT PARK, LLC**, a California limited liability company ("Landlord"), and **WAVE HOUSE SAN DIEGO, LLC,** a California limited liability company ("Tenant") ("First Amendment") is dated June 15, 2000, for reference purposes only.

RECITALS

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated April 4, 2000 (the "Lease");

WHEREAS, Tenant desires to obtain a Class 47 liquor license for the Premises and to give both Landlord and the City of San Diego the right to monitor and enforce Tenant's compliance with the conditions and restrictions imposed upon such license.

WHEREAS, City of San Diego desires to consent to the Lease between Landlord and Tenant.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed that the Lease is hereby modified, amplified, and amended in the following respects, effective June 15, 2000.

AGREEMENT

NOTWITHSTANDING anything to the contrary in the Lease, the following shall be in effect:

1. In consideration for the City of San Diego's consent to the Lease, which consent is hereby given, the Parties to the Lease agree that both Landlord and the City of San Diego shall have the right to monitor and enforce the conditions and restrictions imposed by the Alcoholic Beverage Control Board ("ABC") as long as alcohol is served on the Premises.

2. Tenant's failure to comply with said conditions and restrictions shall constitute a material default under the Lease warranting the initiation of unlawful detainer proceedings pursuant to Section 1159, *et seq.* of the *California Code of Civil Procedure*.

3. The Parties agree that the City of San Diego shall have standing to bring a direct action for unlawful detainer against Tenant in the event of Tenant's non-compliance with the conditions and restrictions imposed by the ABC upon Tenant's liquor license.

PARS
ASSETS
LLC

Initials _____

4. All other portions of the Lease not affected by this First Amendment shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant, the parties hereto, have duly executed this First Amendment to be effective as of the day and year set forth herein.

LANDLORD:

PARS Belmont Park, LLC
a California limited liability company

By: _____
Name: Firouz D. Memarzadeh
Title: Manager

TENANT:

Wave House San Diego, LLC
a California limited liability company

By: _____
Name: Thomas J. Lochtefeld
Title: Managing Member

PARS ASSETS LLC

ATTACHMENT TO FIRST AMENDMENT TO LEASE AGREEMENT

CONSENT TO LEASE (Consisting of 1 page)

FILE: CORRESPONDENCE BELMONT PARK 9-16-92

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: September 11, 1992

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: Pirate's Hideaway, Inc., a California corporation.

Lessee's Trade Name: Pirate's Hideaway.

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 10,202 square feet ("Floor Area") as outlined on Exhibit B.

Permitted Use: Lessee shall include the amusement, feeding, entertainment and supervised play of children primarily in the age group one to twelve years and their parents. Adult use shall be permitted at specified times. Use shall include birthday parties, food services, redemption arcade games and indoor play space. Food sales are limited to whole 7" pizzas, hot dogs, deli sandwiches, deli salads, soft drinks, fruit drinks, coffee and tea.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Chicken "schwarma" sandwiches;

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Seven (7) years, plus one (1) Seven (7) year Renewal Option in accordance with Article 33 below.

Commencement Date: Subject to the Fixturization Period, the Commencement Date shall be deemed to occur on the earlier of (i) the date on which Lessee opens for business in the Premises, or (ii) November 1, 1992. The anticipated Commencement Date is July 10, 1992.

Fixturization Period: Ninety (90) days.

Annual Rent Percentage Only: Percentage Rent shall be payable by Lessee as follows:

(i) Thirty-five percent (35%) of the first $1,000,000 of Lessees net sales (as defined in Section 5.3); plus

(ii) Forty-five percent (45%) of Lessee's net sales in excess of $1,000,000.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

RECEIVED
SEP 15 1992
PROPERTY DEPT.

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 - Work Letter Agreement.

Exhibit D - Rules and Regulations.

Exhibit E - Loan Guarantee.

Exhibit F - Furniture, Fixtures and Equipment.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Percentage Rent. Lessee shall pay to Lessor the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's net sales computed each month. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee (totaled for calendar year to date) within ten (10) days after the close of each year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent and Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep at the Premises 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net Sales Category. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee

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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

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

9.2.3 Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.2.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City , or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Except as otherwise specifically provided in the Security Agreement entered into between Lessor and Lessee which is described in Article 34 of this Lease, any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the lease, Lessee 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 Lessee 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 Lessee must be new or like new condition when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

15.2.1 Lessee shall not enter into any Occupancy Transaction, with respect to any of Lessee's interest in and to the Premises, without first procuring (i) the written consent of Lessor, which shall not be unreasonably withheld and, (ii) if Lessor so elects, the written consent of City. Any attempted Occupancy Transaction without Lessor's and, if required by Lessor, City's, written consent, shall be void and confer no rights upon any third person. Lessor reserves

the right to refuse to give such consent unless Lessee remains fully liable during the unexpired term of the Lease. The consent by Lessor or City to any assignment or subletting shall not be construed as relieving Lessee or any Transferee of this lease from complying with the terms of this Article 15 with respect to any further Occupancy transaction.

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the elective date of any such transaction, and shall provide Lessor 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 Lessor may reasonably request;

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

15.5 Documentation and Expenses. Each Occupancy Transaction to which Lessor has consented shall be evidenced by an instrument made in such written form as is satisfactory to Lessor and City and executed by Lessee and Transferee. By such instrument, Transferee shall assume and promise to perform the terms, covenants and conditions of this Lease which are obligations of Lessee including the payment of all monies due or to become due under this Lease directly to Lessor. Lessee shall remain fully liable to perform all duties and obligations under the Lease following the

Occupancy Transaction. Lessee shall, on demand of Lessor, reimburse Lessor for Lessor's reasonable costs, including attorneys' fees, incurred in obtaining advice and preparing documentation for each Occupancy Transaction to which Lessor has consented.

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease.

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 7:00 p.m. seven days a week. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall conduct and operate its business with due diligence and efficiency in a manner reasonably calculated to produce a maximum amount of gross sales. Lessee shall adequately staff its premises with sufficient personnel, well trained and appropriately dressed, to operate its business. Lessee's business and inventory, within the Premises and on display in the windows, shall be operated and merchandised in a professional manner consistent with standards found in first class shopping centers such as the Santa Cruz Beach Boardwalk in Santa Cruz, California. Lessor's reasonable determination as to the foregoing matters shall be conclusive.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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.

19.4 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

19.6 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.7 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings.

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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund"). Lessee's contribution to the marketing fund are calculated as part of the percentage and shall not be billed separately.

28.2 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 Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.3 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.4 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - CONDITION OF PREMISES

32.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

32.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 33 - RENEWAL OPTION

33.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default existing under this Lease, and provided further that Lessee furnishes current financial statements satisfactory to Lessor which reflect that no material adverse change in the financial condition of Lessee has occurred since the Commencement Date, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for one (1) additional period of eighty-four (84) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal.

ARTICLE 34 - LOAN AND SECURITY AGREEMENT

Lessor agrees to provide Lessee with a loan ("Loan), of up to to be used by Lessee to purchase fixtures and equipment for use in connection with operation by Lessee of the family fun center business upon the Premises as described in this Lease. The Loan shall be evidenced by a Secured Promissory Note ("Note"), Security Agreement ("Security Agreement") and California Commercial Code form UCC-1 Financing Statement ("UCC-1") executed by Lessee concurrent with execution of this Lease.

Within thirty (30) days from the date of this Lease and prior to disbursement of any funds from the Loan, Lessee shall provide Lessor with a schedule ("Schedule") setting forth the Fixtures and Equipment ("Equipment") to be purchased by Lessee with the Loan. The Schedule shall include such information as Lessor may reasonably request, including but not limited to, the make, model, identification number, vendor and cost of each item to be purchased by Lessee with the Loan. The Schedule and all Equipment to be purchased by Lessee with the Loan shall be subject to the approval of Lessor.

Disbursements from the Loan shall be made in the following manner. Upon receipt of an invoice from each vendor for Equipment purchased by Lessee and described in the Schedule, and provided (i) Lessee is not in default under this Lease, the Note or the Security Agreement, and no event has occurred that would constitute a default under any such documents and (ii) Lessee has otherwise fully complied with all conditions to disbursements provided in this Lease, Lessor shall disburse to the vendor, not more than fifty percent (50%) of the approved purchase price which disbursement shall be a fully refundable deposit to Lessor until the Equipment has been delivered to the Premises. Upon delivery of the Equipment to the Premises, Lessor shall disburse the balance due directly to the vendor. If Lessee is unable to negotiate a fully refundable deposit in favor of Lessor, Lessee shall pay the deposit out of its own funds and, upon delivery of the Equipment to the Premises, Lessor shall disburse to Lessee an amount equal to the deposit paid by Lessee and the balance of the purchase price to the vendor directly. Lessor's obligation to disburse funds from the Loan shall end thirty (30) days after the Commencement Date of this Lease.

As a material inducement for Lessor entering into the Lease, Lessee has agreed to secure Lessee's performance of the provisions of the Lease and repayment of the Loan by giving Lessor a security interest in the Equipment to be purchased by Lessee with the Loan (the "Collateral"). Lessee represents and warrants to Lessor that Lessee will have title to the Collateral and that no other person has or will have any right, title, lien encumbrance, adverse claim or interest in the Collateral.

Lessor's security interest in the Collateral shall be perfected by the execution of the Security Agreement and the filing of the UCC-1 with the Secretary of State and the County Recorder of San Diego County, California. In addition, at Lessor's request, Lessee shall execute any further documents necessary to carry out the purposes of this Section of the Lease, including, without limitation, Continuation Statements (UCC-2). If Lessee fails to execute any such additional documents within ten (10) days after Lessor's request, Lessee authorizes and empowers Lessor to act as Lessee's attorney-in-fact to execute such documents. Upon payment in full of the Note by Lessee, and provided Lessee is not in default under this Lease, Lessor shall return the original Note to Lessee marked "PAID" and shall executed and deliver to Lessee a UCC-3 Termination Statement for filing by Lessee.

Lessee acknowledges and agrees that a breach or default of any of the provisions, warranties or representations of the Security Agreement by Lessee shall be deemed a default under this Lease and a failure of Lessee to perform any of its obligations under this Lease shall be deemed a default under the Security Agreement.

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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such

modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees by repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet by all lessees receiving benefits therefrom.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

35.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

By: Phase One Development, Inc.
a California corporation
(Sole General Partner)

By: _____
Name: Donald C. White
Title: Director

Lessee:

PIRATE'S HIDEAWAY, INC.,
a California corporation

By: _____
Name: BARRY WATKINS
Title: PRESIDENT

By: _____
Name: _____
Title: Vice President

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

LEASE AGREEMENT

BELMONT PARK ASSOCIATES
a California Limited Partnership
(Lessor)

Larry Kraus and David Myers,
individuals dba
EMERALD CITY SURF & SPORT, INC.
a California Corporation
(Lessee)

EMERALD CITY SURF & SPORT
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BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: December 12, 1994

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: Emerald City Surf & Sport, Inc. a California Corporation

Lessee's Trade Name: Emerald City Surf & Sport

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 6,449 square feet ("Floor Area") as outlined on Exhibit B.

Permitted Use: Retail sale of swim suits, surfboards, skateboards, boogie boards and other related surf and sportswear apparel. No other lessee in the Center shall, during the term of this Lease, be permitted to sell more than fifteen percent (15%) of their business volume in swim suits.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Mexican style food;

(b) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(c) Volleyballs and/or volleyball nets;

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

Lease Term: Ten (10) years, plus one (1) Ten (10) year Renewal Option in accordance with Article 33 below.

Commencement Date: March 1, 1995.

Minimum Annual Rent: One Hundred Forty-One Thousand and Thirty-Six Dollars ($141,036.00) per annum payable in twelve (12) equal monthly installments of Eleven Thousand Seven Hundred Fifty-Three and 00/100 ($11,753.00) per month.

Percentage Rent: Eight percent (8%) of Lessee's net sales as defined in Section 5.3.

Security Deposit: Two Thousand Nine Hundred Seventy-Nine Dollars ($2,979.00).

Marketing Fund Contribution: Twenty-Five Thousand Five Hundred Thirty-Eight and 04/100 dollars ($25,538.04) per annum, payable in twelve (12) equal monthly installments of Two Thousand One Hundred Twenty-Eight and 17/100 dollars ($2,128.17) per month.

Termination of Prior Lease: Landlord and Tenant are parties to that certain existing lease as amended for the Premises dated June 1, 1993. Landlord and Tenant hereby agree that upon the Commencement Date of this Lease, and provided Tenant is not then in default under this Lease or the Existing Lease, the Existing Lease shall terminate.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

Emerald City Surf & Sport, Inc.
3126 Mission Blvd., Suite G
San Diego, California 92109

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 - Intentionally Omitted.

Exhibit D - Rules and Regulations.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Rent. Lessee agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, in twelve (12) monthly installments during each year, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Lease Term the amount specified in Section 5.1.1 below, based upon year-to-date amounts. At the end of each calendar year, any excess rent which Lessee paid to Lessor shall be credited to the next amounts due Lessor hereunder, paid directly to Lessee within thirty (30) days of such termination, and any deficiency shall immediately be paid by Lessor to Lessee. Upon execution of this Lease, Lessee shall pay the Security Deposit to Lessor. Upon delivery of possession of the Premises by Lessor to Lessee, Lessee shall pay its first month's Minimum Annual Rent. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.1.1 Minimum Annual Rent. Minimum Annual Rent shall be payable by Lessee to Lessor in accordance with the Minimum Annual Rent Section of the Fundamental Lease Provisions. Monthly installments of Minimum Annual rent for any partial month shall be prorated at the rate of 1/30th of the monthly installment per day. Minimum Annual Rent shall never be less than the Minimum Annual Rent payable during the immediately preceding period.

(a) Minimum Annual Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Lease Term to reflect any change in the cost of living with a minimum adjustment of two percent (2%) and a maximum adjustment of five percent (5%). The adjustment shall be calculated by multiplying the Minimum Annual Rent payable during the immediately preceding calendar year by a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items) (1982-84 = 100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Annual Rent for each calendar year is determined, Lessor shall give Lessee written notice of the amount thereof. The Minimum Annual Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. If the Index is discontinued or revised during the Lease Term, such other government Index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Lessee shall continue to pay the Minimum Annual Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Lessee, concurrently with the next monthly Rent payment, shall pay to Lessor, the difference between the new Minimum Annual Rent, including the cost of living increase, for the period commencing with the first month of such calendar year and the Minimum Annual Rent already paid for such period.

5.1.2 Percentage Rent. The Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Lessee made from or upon the Premises. Percentage Rent shall be computed monthly. Lessee shall pay to Lessor the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's net Sales during said period exceeds the installments of the greater of Minimum Monthly Rent paid by Lessee during such period. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee within ten (10) days after the close of each period. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent and Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by an officer of the company. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep at the Premises or Lessee's main office 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee for a period of three (3) 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 Lessor to determine Lessee's Net Sales and Net 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 Net 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. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary.

The receipt by Lessor of any statement of Net Sales or any payment of Minimum Annual Rent or Percentage Rent for any period shall not bind Lessor as to the correctness of the statement or the payment. Within three (3) years after receipt of any such statement, Lessor and City, or their agents, at any time shall be entitled to an inspection and audit of the business of Lessee, its agents, sublessees, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for Lessor and City to provide, at Lessee's expense, any necessary data reasonably available to Lessee to enable Lessor and City to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises and Lessee's conduct of business thereon. Such data will include, if required, a detailed breakdown of Lessee's receipts and expenses.

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within ten (10) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when

such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises and allow possession by Lessee upon execution of the Lease, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee shall not, without the prior written consent of Lessor sell merchandise from vending machines or allow any coin operated vending or gaming machines, except for juke boxes, on the Premises. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

9.2.2 Plate Glass. Full coverage plate glass insurance on the Premises or Lessee shall be responsible for replacement.

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

9.2.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee agrees that it will not knowingly 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City , or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 nonresponsiblity, or such other notices which Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. Until termination or expiration of the lease, Lessee 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 Lessee shall continuously conduct the Permitted Use specified in the Fundamental Lease Provisions. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

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

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least thirty (30) days before the elective date of any such transaction, and shall provide Lessor with the following:

15.3.1.1 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;

15.3.1.2 Any further information relevant to the transaction which Lessor may reasonably request;

15.3.1.3 A statement that Lessee intends to consummate the transaction if Lessor, and, if required, City, consent thereto.

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the minimum Rent required to be paid by Lessee, pursuant to this Lease.

15.6.2 The Percentage Rent shall be increased on the effective date of such Occupancy Transaction to the Percentage Rent payable by the Transferee to the Lessee if such amount is greater than the Percentage Rent specified in this Lease.

15.7 Transfer by Lessee (Franchisee) to Franchisor

15.7.1 Notwithstanding all of the above in this Section 15, Lessee may transfer interest in Premises to the Johnny Rocket Franchisor.

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 7:00 p.m. seven days a week. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall operate 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, Lessee 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. To keep the premises suitable for the conduct of Lessee's business, Lessee shall not remove any of its trade fixtures or other personal property, without the immediate replacement thereof with fixtures or property of similar quality.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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 Lessor or its lender with respect to the Common Areas, Premises, or Lessor's interest therein, (c) roof, building and signage repairs, (d) parking lot resurfacing, line painting, restriping, sweeping and cleaning, (e) lighting utility systems, all utility charges for the Common Areas and the Center, (f) sanitary control, pest control, janitorial services and removal of trash, rubbish, garbage and other refuse, (g) reasonable reserves for replacements and repairs, (h) bookkeeping, the cost of personnel to implement such Common Area services, to direct parking, to police the center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the lessees 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' Programs), (m) costs and expenses pertaining to the security alarm system for the lessees 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, and (p) any other charge allocable to the operation, maintenance and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to four percent (4%) of all Rent collected by the property management company. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego. Lessor may cause any or all of said services to be provided by an independent contractor or contractors. The parties hereto agree that Lessor 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 Lessor's agent (hereinafter the "Manager of the Center"). Lessor may cause the Manager of the Center to render services to Lessee, other lessees and occupants, required or permitted to be performed by Lessor, pursuant to this Lease, in connection with the maintenance, repair, management and operation of the Common Areas.

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, against any legal or equitable interest of Lessor in the Master Lease, the Premises or the real property of which the Premises constitute a part;

19.3.2 Any tax on Lessor's right to rent or on other income from the Premises or Center or as against Lessor'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 Lessee and Lessor 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 taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges by 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 Lessee of the Premises, the Center or any portion thereof.

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

19.3.6 Any tax upon this transaction or any document to which Lessee is a party, creating or transferring any interest or an estate in the Premises, and any and all assessments Lessor 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 Lessor's federal or state income, franchise, inheritance or estate taxes.

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

19.4.1 From and after the Commencement Date, Lessee shall pay Lessor, on the first day of each calendar month of the Lease Term, Lessee's pro rata share of Common Area Expenses, as hereinafter defined. Should Lessee fail to make any payment to Lessor of Lessee's pro rata share of Common Area Expenses, including the quarterly or yearly payments required pursuant to subparagraph 19.4.2 below, by the fifteenth (15th) day following the date on which such payment becomes due, Lessee shall pay interest thereon at the Lease Interest Rate plus a Late Fee of ten percent (10%) of Lessee's pro rata share of such Expense. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by Law. Lessor may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Lessor's experience and reasonably anticipated costs. Lessee shall have right to audit the common area expenses during business hours upon twenty-four hour notification at Lessor's place of business at Lessee's expense.

19.4.2 Within (30) days following the end of each calendar quarter or, at Lessor's option, each calendared year, Lessor shall furnish a statement covering the calendar quarter of year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total operating costs, the amount of Lessee's pro rata share of Common Area Expenses for such calendar year, and the payment made by Lessee with respect to such period. If Lessee's pro rata share of Common Area Expenses exceeds Lessee's payments so made, Lessee shall pay Lessor the deficiency within fifteen (15) days after receipt of such statement. If said payments exceed Lessee's pro rata share of Common Area Expenses, Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor as set forth in subparagraph 19.4.1. Lessee'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, excluding that portion of the Center attributable to the indoor public swimming pool and attached support facilities as determined by Lessor. Notwithstanding anything to the contrary, in no event shall Common Area Expense to lessee exceed fifty (50) percent of the base rent.

19.5 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor 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 Lessor for any loss of, or damage to, motor vehicles of customers or employees or for loss of property from within such motor vehicle. Lessee acknowledges that if Lessor provides security guards for the Common Areas, Lessor does not represent or guarantee that Lessee will be secure from losses caused by the illegal acts of third parties and does not assume responsibility to prevent any such illegal acts. To induce Lessor to provide such security guards, if any, as Lessor deems reasonable, appropriate and economically feasible, Lessee hereby waives any present or future claim Lessee may have against Lessor, 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 Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.8 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of five (5) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings. Lessee 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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund").

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

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living with a maximum adjustment rate not to exceed seven percent (7%). The adjustment, if any, shall be calculated upon the basis of the Index, as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items (1982-84 = 100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.5 Lessor's Right to Change Marketing Fund Contribution Format. Lessor reserves the right to change Lessee's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Lessee be required to pay in any calendar year an amount that exceeds Lessee's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial beginning of a calendar year and upon giving Lessee at least three (3) months advance written notice. Lessor shall notify Lessee in writing of the amount of the Marketing Fund Contribution for each calendar year and of Lessee's pro rata share thereof, and Lessee shall pay Lessor 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, Lessor shall furnish Lessee a statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total amount of Marketing Fund Contribution payments made by Lessee with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Lessee exceeds the limitations set forth above. If Lessee shall have made any such excess payments, then Lessee shall be entitled to offset the excess against the payment next thereafter to become due Lessor for Marketing Fund Contribution payments as set forth herein. If, however, Lessee's Marketing Fund Contribution payments during the applicable calendar year do not equal Lessee's Marketing Fund Contribution for such calendar year, the mortgage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Lessor. There shall be an appropriate adjustment of Lessee's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

compared to the portion remaining; and (c) Lessor shall be entitled to receive the total award or compensation in such proceedings. Lessee 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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund").

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

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living with a maximum adjustment rate not to exceed seven percent (7%). The adjustment, if any, shall be calculated upon the basis of the Index, as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items (1982-84 = 100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.5 Lessor's Right to Change Marketing Fund Contribution Format. Lessor reserves the right to change Lessee's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Lessee be required to pay in any calendar year an amount that exceeds Lessee's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial beginning of a calendar year and upon giving Lessee at least three (3) months advance written notice. Lessor shall notify Lessee in writing of the amount of the Marketing Fund Contribution for each calendar year and of Lessee's pro rata share thereof, and Lessee shall pay Lessor 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, Lessor shall furnish Lessee a statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total amount of Marketing Fund Contribution payments made by Lessee with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Lessee exceeds the limitations set forth above. If Lessee shall have made any such excess payments, then Lessee shall be entitled to offset the excess against the payment next thereafter to become due Lessor for Marketing Fund Contribution payments as set forth herein. If, however, Lessee's Marketing Fund Contribution payments during the applicable calendar year do not equal Lessee's Marketing Fund Contribution for such calendar year, the mortgage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Lessor. There shall be an appropriate adjustment of Lessee's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

28.6 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.7 Late Charge. Should Lessee fail to make any payment to Lessor for its share of Marketing Fund 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. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder, or as provided by law.

28.8 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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 not be deemed to have open given until actually delivered or unless delivery is refused.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - SECURITY DEPOSIT

32.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this Lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor.

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

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

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

ARTICLE 33 - CONDITION OF PREMISES

33.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

33.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 34 - RENEWAL OPTION

34.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term there is no continuing and uncured default existing under this Lease, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for One

Hundred Twenty (120) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal. The Minimum Monthly Rent payable during the First Renewal Term shall be the last monthly rent preceding the beginning of the Renewal Term.

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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees by repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

35.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

By: Phase One Development, Inc.
a California corporation
(Sole General Partner)

By: _____
Name: Donald C. White
Title: Director

Lessee:

Emerald City Surf & Sport, Inc.
a California Corporation

By: _____
Name: Larry Kraus, Vice President

By: _____
Name: David Myers, President

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

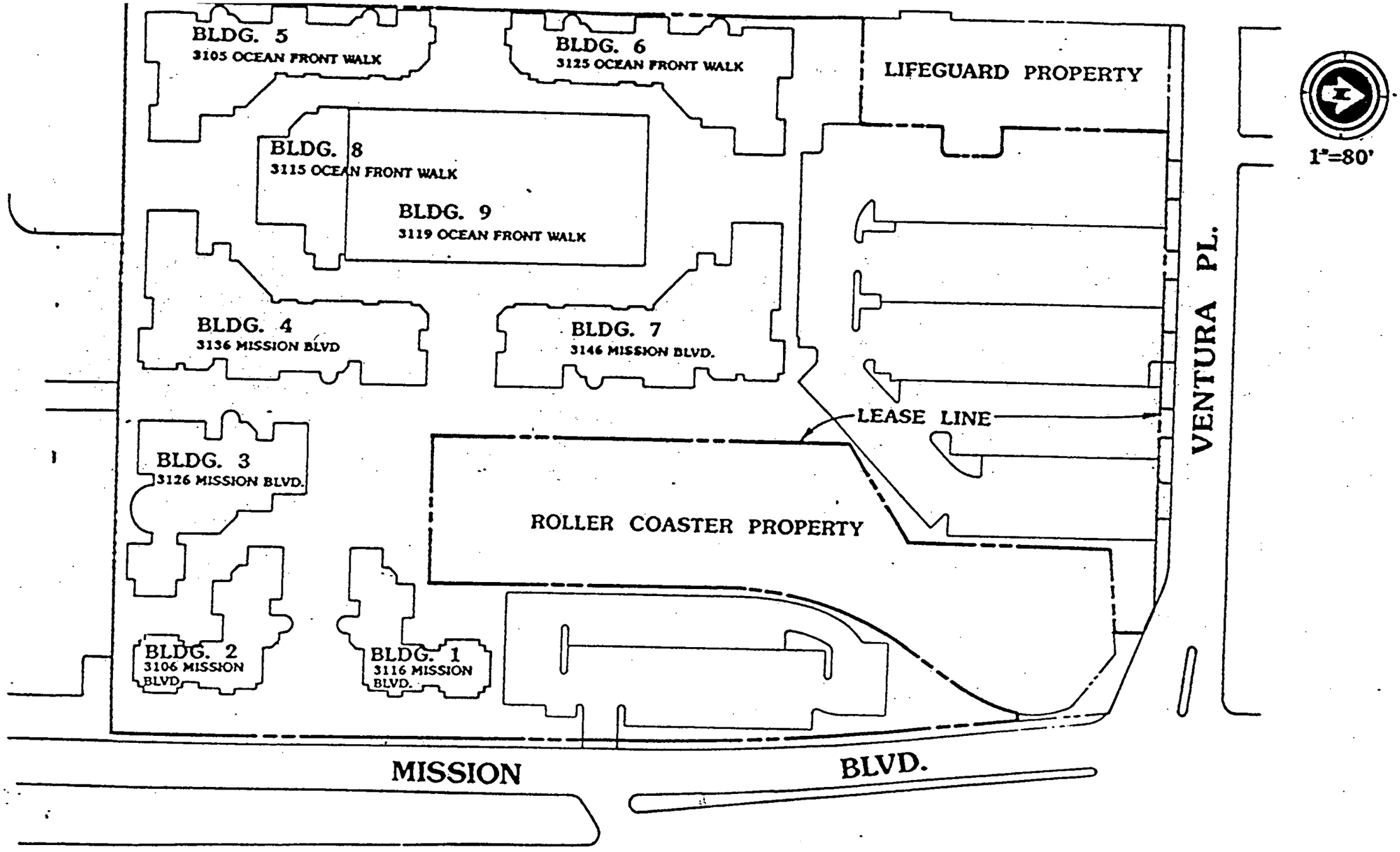
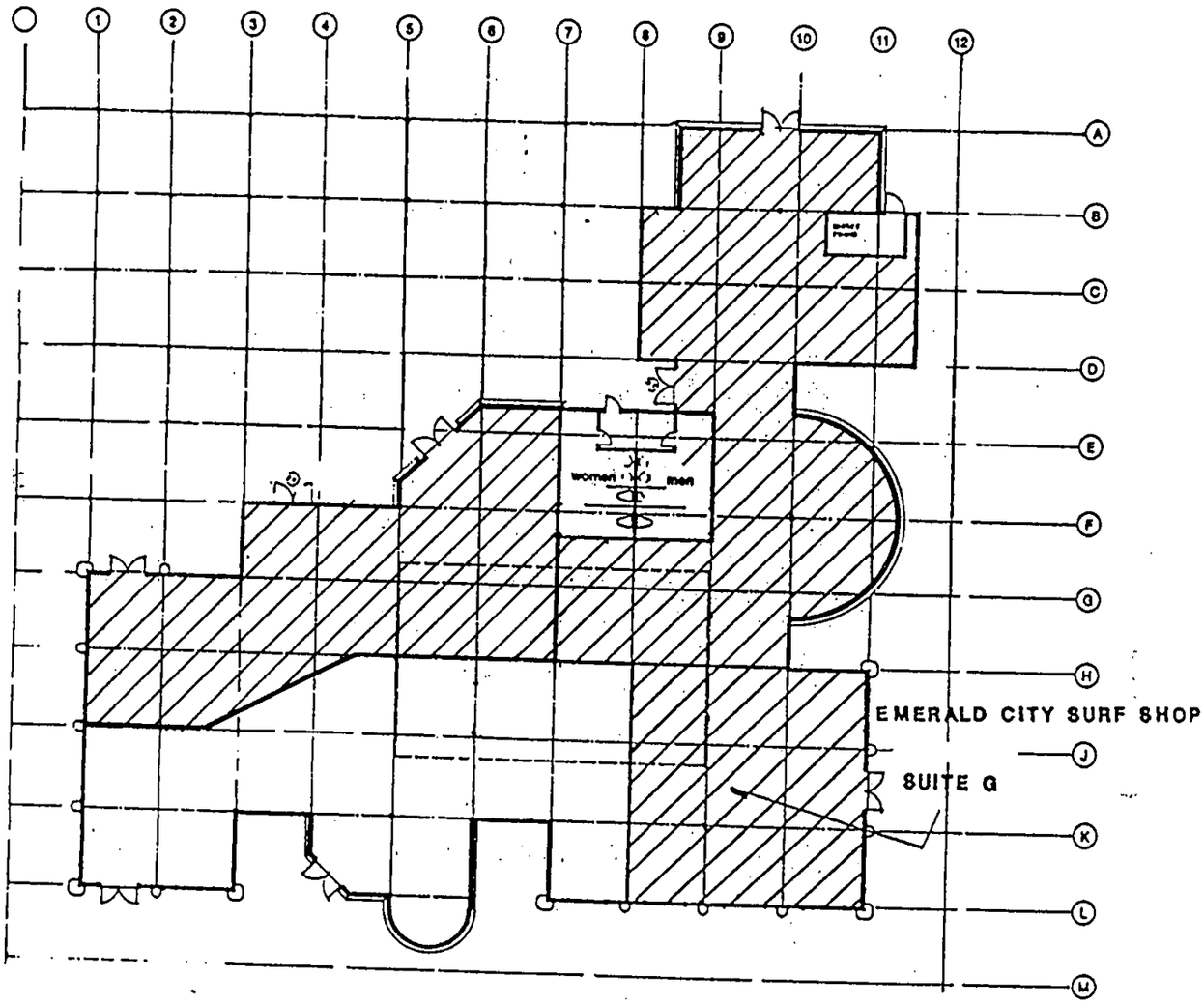


EXHIBIT A

BELMONT PARK COMMERCIAL RECREATIONAL CENTER



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BUILDING NO. 3

EXHIBIT B

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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EXHIBIT "C"

WORK LETTER AGREEMENT
(Exposed Shell)

Gentlemen:

Larry Krause and David Myers, Individuals, dba Emerald City Surf and Sport ("Lessee") and BELMONT PARK ASSOCIATES, a California limited partnership ("Lessor") are executing, simultaneously with this Work Letter Agreement (the "Agreement"), a written lease (the "Lease") covering those certain premises more particularly described in Exhibit "B" to the Lease (the "Premises"), in the commercial recreational center (the "Center") known as "Belmont Park" as depicted on Exhibit "A" to the Lease, located in San Diego, California. To induce Lessee to enter into the Lease (which is hereby incorporated by reference to the extent that the provisions of this Agreement may apply thereto) and in consideration of the mutual covenants hereinafter contained, Lessor and Lessee mutually agree as follows:

General.

1.1 Leasehold Improvement Procedure. Within ten (10) working days of Lessee's receipt of a copy of Lessor's plans and specifications for the work to be performed by Lessor, pursuant to Section 2 of this Exhibit "C", Lessee shall notify Lessor in writing of any request for modification to said plans and specifications, and shall submit architectural working drawings, setting forth in detail said modifications, for Lessor's approval, which may be withheld for any reason. In the event Lessee fails to so notify Lessor within said period of time, Lessee shall be deemed to have approved said plans and specifications. In the event that Lessee requests any modifications to said plans and specifications within said ten (10) days, Lessor may, but shall not be obligated to, furnish and construct the improvements as modified. Within ten (10) days of Lessor's receipt of said notice, Lessor shall, if Lessor elects to construct said modifications, provide Lessee with a written estimate of the cost of such modifications. Within five (5) days of Lessee's receipt of said notice, Lessee shall advise Lessor in writing of its election to either proceed with such modifications (in which event Lessee shall accompany said notice with payment for the costs of said modifications) or its election not to proceed with said modifications. Should Lessor elect not to construct said modifications, Lessor shall, within five (5) days of Lessor's receipt of Lessee's notice, so notify Lessee in writing. Thereafter, Lessee may procure its own contractor to perform said modifications, subject to Lessor's prior written consent of the contractor selected by Lessee (which approval shall not be unreasonably withheld).

1.2 Plans and Specifications of Lessee's Work. Within said ten (10) working days after delivery of Lessor's plans and specifications to Lessee, and/or if the modifications referred to in Section 1.1 and the procedure set forth for resolution of same are satisfied, Lessee shall, at Lessee's expense: (a) retain, subject to Lessor's approval, a licensed architect and/or recognized interior designer; and (b) submit to Lessor for Lessor's approval three (3) sets of preliminary design drawings for the Leasehold Improvements prepared by Lessee's architect or interior designer, which drawings shall indicate Lessee's specific requirements, including, without limitation, fully dimensioned interior partition plans, trade fixture plans, lighting and electrical plans, reflected ceiling plans and plumbing plans, and all other improvements to be performed by Lessee pursuant to Section 3 of this Exhibit "C" ("Lessee's Work"). Lessee shall accompany such submittal with a payment to Lessor in the amount of Five Hundred Dollars ($500.00), representing the cost to review the preliminary and final plans and specifications. Lessor's Work shall conform to building improvements standards (as hereinafter defined) established by Lessor in Lessor's sole discretion ("Lessee Improvement Standards") which Lessee acknowledges having received a copy of.

1.3 Lessor's Preliminary Approval. Lessor shall approve or disapprove Lessee's preliminary design drawings within ten (10) working days after Lessor's receipt thereof. If disapproved, Lessor shall indicate the reasons and/or corrections required for approval.

1.4 Lessee's Final Plans and Specifications. Within twenty (20) working days after Lessor's approval of Lessee's preliminary design drawings, and subject to Lessee's field measurement of the Premises, Lessee shall, at Lessee's expense, submit to Lessor for approval three (3) sets of blueprints and one set of sepias of fully detailed architectural working drawings and specifications of Lessee's work (hereinafter "Lessee's Final Plans") describing improvements to be completed in the Premises prepared by Lessee's architect or interior designer, including, without limitation, interior partition plans, trade fixture plans, lighting and electrical plans, reflected ceiling plans, plumbing fixture plans and such other matters as are referred to in "Description of Lessee's Work" hereinafter set forth in Section 3 of this Exhibit "C". Lessee shall also furnish as-built drawings to Lessor within ten (10) working days after completion of the work described in Lessee's Final Plans.

1.5 Lessor's Approval of Final Plans. Lessor shall have fifteen (15) working days after receipt of same within which to examine and to reasonably approve or disapprove Lessee's Final Plans. Failure of Lessor to approve or disapprove Lessee's Final Plans, in writing, specifying the reasons for disapproval, within said fifteen (15) days shall be deemed an approval thereof. Lessee shall promptly and diligently modify said Final Plans until same have been reasonably approved by Lessor. Construction of the improvements specified on Lessee's Final Plans shall not commence until Lessee's Final Plans have been so approved.

1.6 Construction of Improvements. The interior of the Premises shall, as soon as practicably possible, be constructed by Lessee at Lessee's expense, in accordance with Lessee's approved Final Plans. Lessor and Lessee agree to pursue the necessary construction work with respect to the Premises diligently to completion, complying with all applicable City, County, State and Federal laws, ordinances, rules, codes and regulations relating thereto.

1.7 Licensed Contractors. Lessee shall use only licensed contractors and subcontractors to perform all work and shall submit the name of each such contractor and subcontractor, as well as a copy of Lessee's contract and budget with its general

contractor, to Lessor for approval prior to commencement of any work by such contractor and subcontractor. Lessor hereby approves Phase One Construction, Inc. as a general contractor. Lessee agrees to solicit a bid from Phase One Construction, Inc. to act as general contractor for the performance of Lessee's Work hereunder, and to consider the bids submitted by Phase One Construction, Inc., if any, in good faith.

1.8 Changes and Additions. Any additional charges, expenses or costs (including architects' fees and attorneys' fees) arising by reason of any subsequent change, modification or alteration of Lessee's Final Plans and Specifications, made at the request of Lessee, shall be at the expense of Lessee. Lessor shall be reimbursed the amount of any such additional expense it may have incurred as a result of any such change, modification or alteration (including architects' fees and attorneys' fees) and no change, modification, or alteration in Lessee's Final Plans and Specifications shall be made without the prior written consent of Lessor.

1.9 Acceptance of Premises. Lessee agrees that Lessee's acceptance of the Premises after completion of Lessor's Work (as hereinafter defined) shall constitute Lessee's approval of same, except as to items for which Lessee has provided Lessor with written notice within five (5) days of the acceptance. Except as described in such notice, Lessee hereby waives any right to a claim or action of any kind albeit direct or indirect, latent or patent, against Lessor, arising out of the condition of the Premises, appurtenances thereto, the improvements thereon or the equipment thereof, and Lessor shall have no liability therefor, provided, however, Lessor shall warrant the Premises against defects in workmanship in connection with "Lessor's Work", for a period of one (1) year from the date of completion thereof. Lessee shall not refuse to accept delivery of the Premises as a result of a "punch list".

1.10 Conflict With Plans or Lease. Where Lessee's Final Plans and Specifications are in conflict with this Exhibit "C", the provisions of this Exhibit "C" shall control. Where the Lease is in conflict with this Exhibit "C", the provisions of the Lease shall control.

1.11 Contractor's Warranty. Lessee shall ensure that each contractor and subcontractor, used by Lessee's contractor to perform work hereunder, shall guarantee that the portion thereof for which he is responsible, or which he performs, shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion of the Leasehold Improvements described in Lessee's Final Plans and shall ensure that each such contractor and subcontractor shall replace or repair, without additional charge, all work for which he is responsible or which he performs which is or becomes defective within one (1) year after completion of the Premises. The correction of such work shall include, without limitation, all expenses and corrections to or in connection with the structure, of which the Premises are a part, or any common area, should such structure or common area be damaged or affected by such defective work or by the repair or replacement of such defective work. All such warranties or guarantees as to materials or workmanship with respect to Lessee's Work shall be contained in Lessee's agreement with each contractor, and Lessee shall require each contractor to include such warranties or guarantees in each subcontract, and all such warranties or guarantees shall be so written so that same shall inure to the benefit of both Lessee and Lessor, as their respective interests may appear, and so that same may be directly enforced by Lessee or Lessor. Lessee hereby covenants to give to Lessor any assignment or other assurance necessary to perfect such right to direct enforcement by Lessor.

1.12 Lessor's Inspection. Lessor's prior inspection and written approval shall be a condition precedent to Lessor's acceptance of Lessee's Work as being complete and in accordance with the approved Final Plans. Said approval shall be based upon the good faith determination of Lessor's architect or engineer and shall be conclusive as to Lessee. Lessee shall give Lessor at least five (5) working days prior written notice of the anticipated completion date of Lessee's Work. Lessee shall be required to settle and/or bond against any mechanic's or materialman's liens, or other similar liens, filed against the Center property as a result of Lessee's Work in accordance with the provisions relating to such liens in the Lease. Lessee shall further reimburse Lessor in full, and indemnify, defend and hold Lessor harmless from and against, any liability, cost or expenses incurred by Lessor in connection therewith.

1.13 Notices of Completion. Lessee shall, within ten (10) working days after completion of Lessee's Work, execute and file a notice of completion with respect thereto, in a form complying with the applicable provisions of the California Civil Code (and in particular specifying the name of Lessee's contractor and the kind of work done and/or materials furnished under the contract), and shall furnish a copy thereof to the Lessor upon recordation. If Lessee so fails to do, Lessee hereby appoints Lessor as Lessee's attorney-in-fact for the purpose of executing and filing same on behalf of Lessee. Said power, being coupled with an interest in the Lease, is irrevocable.

1.14 No Delay. Lessee's Work shall be coordinated under Lessor's direction with all other work being performed or to be performed at or in connection with the Center so that Lessee's Work does not interfere with or delay the completion of such other work and so that such work may be coordinated to the maximum extent possible.

1.15 Material Storage. Each contractor and subcontractor retained by Lessee or by Lessee's contractors or subcontractors shall obtain prior written approval from Lessor to use any space outside of the Premises and within the Center to use for storage, handling, or moving of materials and equipment, as well as for the location of any field office or facilities for personnel. Small construction vehicles shall be prohibited from parking on the Premises.

1.16 Debris Removal. Each contractor and subcontractor retained by Lessee, or by Lessee's contractor, shall remove and dispose of, at least once a week or more frequently as Lessor may direct, or as shall be required by OSHA standards or other applicable laws or regulations, all debris and rubbish caused by, or resulting from, or related to, Lessee's Work, and upon completion of such Work, shall remove all temporary structures, surplus materials, debris and rubbish remaining within the Center, which has been brought in or created by or in connection with such work. If any contractor or subcontractor shall neglect, refuse, or fail to remove any such debris, rubbish, surplus material or temporary structures within five (5) calendar days after

notice to Lessee from Lessor, Lessor may remove or cause same to be removed, and Lessee shall bear the expense of removal and hold Lessor harmless therefor.

1.17 Utility Service. Lessee shall obtain and transmit copies to Lessor of all permits and/or approvals with respect to Lessee's Work required or given by any utility service, unless Lessor shall have already done so or elects to supply utility service itself.

1.18 Insurance - OSHA Compliance. In addition to the requirements of the Lease, and without any limitation thereof, each contractor and subcontractor retained by Lessee or by Lessee's contractor shall, with respect to the work to be performed by each such contractor or subcontractor, (1) comply with all governmental rules and regulations, including applicable OSHA standards, and (2) carry workers' and public liability insurance (including property damage), with limits and in a form approved in advance by Lessor and issued by insurance companies approved in advance by Lessor. Lessor, Lessee, and the contractor or subcontractor procuring the insurance, shall be named insured (or named as additional insureds) in each policy of said liability insurance, which policy shall have a cross-liability endorsement or its equivalent. Certificates evidencing all of the foregoing insurance shall be delivered to Lessor before any work is commenced by any such contractor or subcontractor or before his equipment is moved onto the Center.

1.19 Bond. Lessor shall have the right, in Lessor's sole discretion, to require Lessee to furnish a bond or other security, in form satisfactory to Lessor covering the prompt and faithful performance of Lessee's Work.

1.20 Structure. Any alterations, additions or reinforcements to structure in the Center, required to accommodate Lessee's Work shall be Lessee's responsibility and shall be subject to the prior written approval of Lessor's architect.

1.21 Roof. No load shall be placed anywhere on the roof of any structure in the Center without the prior written consent of Lessor. Any load, penetration or installation which is permitted by Lessor shall be at Lessee's expense and engineered and installed in accordance with the approved Final Plans approved in writing by Lessor. Flashing, counter-flashing and roofing repairs shall conform to the project roofing specifications. Such work shall be paid for by Lessee and shall be performed by Lessor's roofing subcontractor.

1.22 Floors. Flooring in storefront entry areas shall be approved in advance, in writing, by Lessor or his designated representative. Carpeting or other quality floor, such as glazed or unglazed pavers or wood parquet shall be used in Lessee's public areas.

1.23 Ceiling. The ceiling shall be approved in advance by Lessor or his designated representative.

1.24 Lessor's Liability. No approval by Lessor of Lessee's drawings, or any work or installation of any character whatever to be made by Lessee shall constitute a warranty or representation by Lessor that Lessee's drawings, work or installations comply with the requirements of any applicable governmental law, rule or regulation, or are safe, sound, merchantable or fit for any purpose. Lessor shall have no liability to Lessee in the event Lessee is required to change its drawings, work or installation, after the approval thereof by Lessor, on account of the failure of such drawings, work or installations to meet applicable governmental requirements or in the event that such drawings, work or installation, directly or indirectly, are defective or cause injury to persons or property.

2. Description of Lessor's Work.

The following is a description of the work with respect to the Premises which shall be performed by Lessor at its expense ("Lessor's Work"). Where two or more types of materials or structures are indicated, the option of selection shall be with Lessor. Lessor shall, at all times, have the option, in its sole discretion, of replacing or changing materials or structures, with comparable or like quality or kind, without prior notice to Lessee. All of the foregoing provisions of this Exhibit "C" shall, as applicable, apply in full to the following description of Lessor's Work.

2.1 Structure. Lessor shall construct and complete the structure of which the Premises are a part. Said structure shall be designed by Lessor's architect and shall conform generally to the following requirements.

2.1.1 Foundations, bearing walls, columns, beams and shear walls.

2.1.2 Four-ply built up or single ply Rubber type roof system.

2.1.3 Exterior walls, including necessary finish.

2.1.4 Concrete floor slab on grade, except where deleted, to accommodate future plumbing requirements.

2.1.5 Exits complying with governing codes, as designed for shell use.

2.1.6 Doors in exterior walls (where applicable) provided with cylinder locks.

2.1.7 Storefront designed by Lessor's architect, of a design and composition assuring aesthetic continuity throughout the Center. Deviations or variances from the standard storefront provided by Lessor will not be permitted.

2.2 Interior Finishes. The Center's interior finishes shall conform generally to the following requirements.

2.2.1 All floors within the interior of the Premises shall be concrete with smooth cement finish, except to accommodate future plumbing needs. Floors to be level and on a single plane without deepened sections, depressions or raised areas, except that in certain areas, floors may be "split-level" as deemed appropriate by Lessor's architect.

2.2.2 Party walls between leased areas will be framed to accommodate Lessee's electrical and other requirements or taped and/or textured in accordance with Lessor's specifications. Interior of exterior walls will not be drywalled to accommodate Lessee's electrical, plumbing and/or other requirements in such walls. Any cross partitions shall not be a part of Lessor's Work. Lessee shall be responsible for taping and finishing Lessee's side of party walls as part of its Premises.

2.2.3 Insulation in exterior walls and on or under roof deck to be provided in accordance with Lessor's plans. No thermal or sound insulation shall be provided in the party walls.

2.3 Utilities and Services. The utilities and services in the Center shall conform generally to the following requirements:

2.3.1 Any vent piping and installation required for Lessee installed facilities to be provided by Lessee to Lessor's specifications and, if Lessor so desires, by Lessor's roofing subcontractor.

2.3.2 Exterior fire hydrants to be installed as required by law and fire sprinklers will be stubbed into buildings 4, 5, 6, 7, 8, and 9 of the Center.

2.3.3 Heating, ventilating and air conditioning equipment as designed by Lessor's engineer to be provided, including a cooling tower and two pipe distributors stubbed into the Premises. Fan coil units, duct distribution and final hook-up shall be installed by Lessee.

2.3.4 Lessor shall provide empty telephone conduit from the terminal board to the Premises, unless the Premises abut the service area where the terminal board is located and no conduit is needed from the terminal board to the Premises.

2.3.5 Lessor shall furnish a main electrical panel and socket at the Premises and an empty conduit to the central distribution point in the electrical room in the Building in which the Premises are located. Lessor's obligation with respect to such panel and to electrical service to such panel shall be limited to 110/208 3 phase power.

2.3.6 Water and sewer service shall be brought to the Premises.

2.3.7 An automatic sprinkler service shall be installed in accordance with Lessor's Plans.

2.3.8 Common trash storage area shall be located as set forth on Lessor's plans.

3. Description of Lessee's Work.

The work to be done by Lessor in satisfying its obligation to construct the Premises shall be limited only to that described in the foregoing paragraphs, unless otherwise expressly approved by Lessor in writing. All other items of work shall be performed by Lessee at Lessee's expense in accordance with Lessee's final plans and specifications as approved by Lessor. All of the foregoing provisions of this Exhibit "C" shall, as applicable, apply in full to the following description of Lessee's Work. Lessee's Work shall include, but shall not be limited to, the purchase, installation and performance of the following:

3.1 All interior partitions and curtain walls within the Premises, including drywall on exterior walls.

3.2 All ceilings.

3.3 All interior painting, wallpaper and other finishes.

3.4 All floor covering and floor finishes and preparation of surfaces to receive same, and all special reinforcing, raised areas or depressions in concrete floors.

3.5 All fixtures and accessories, toilets, water heater, water treatment systems and drinking fountains with plumbing thereto connected to facilities provided by Lessor.

3.6 Lessee shall install all plumbing fixtures and rough in plumbing except as provided in Section 2.2.6. Lessee's plumbing contractor shall provide approved receptacles for Lessor's air conditioning condensation drains and water heater overflow. Grease traps will be required for all food preparation areas having pot sinks or other grease producing appliances that discharge into the waste system. Lessee shall maintain said equipment in accordance with applicable law. Grease traps shall be cleaned at least once a month by a qualified service contractor. Lessee shall provide Lessor, within ten (10) days after the Commencement Date, with a copy of Lessee's contract with said service contractor.

3.7 All internal communications and alarm systems.

3.8 All store fixtures and furnishings, including without limitation, plumbing fixtures and rough-in.

3.9 All dumb waiters, chutes, conveyors, pneumatic tubes and their shafts, doors and other components, including the electrical hookup and service, if any, from facilities provided by Lessor.

3.10 All show window finishes and Lessee's signs, interior and exterior.

3.11 In addition to the heating, cooling and ventilating equipment to be provided by Lessor as set forth above, all heating, cooling or ventilating equipment and ducting, including that required by Code or otherwise for show windows, dressing rooms, toilet rooms and stock rooms, in accordance with plans approved by Lessor.

3.12 Telephone conduit, cabinets and outlets within the Premises as required by the telephone company, including wiring from the terminal/board provided by Lessor. All telephone service and equipment, including conduit between the terminal board and the Premises, shall be installed and thereafter maintained and used at the expense of Lessee.

3.13 All electrical work and equipment, including lighting, not expressly stated herein as being provided by Lessor, including separate circuits and time clocks for interior show window and ceiling lighting necessary to provide illumination of show window areas during non-daylight periods.

3.14 All additions and modifications to, or relocation of, the sprinkler system installed by Lessor in accordance with Lessee's approved plans and applicable building code sections.

3.15 Lessee's Work shall be at Lessee's expense, and shall be done diligently and in a first-class manner, and shall not damage the Premises or the Center. The design and installation of Lessee's Work shall be subject to the prior approval of Lessor and shall be in accordance with all applicable City, County, State and Federal ordinances, rules and regulations.

If the foregoing correctly sets forth our understanding, kindly sign where indicated.

Lessee: Larry Krause and David Myers,
dba Emerald City Surf and Sport

Larry Krause, an Individual

David Myers, an Individual

Lessor:

BELMONT PARK ASSOCIATES,
a California limited partnership

By: Phase One Development, Inc.
a California corporation
(Managing General Partner)

By: Gary Hollenbeck
Gary Hollenbeck, President

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

BELMONT PARK

FIRST AMENDMENT TO LEASE

This First Amendment to Lease (the "Amendment") is entered into as of October 27, 1989, by and between BELMONT PARK ASSOCIATES, a California limited partnership ("Lessor") and LARRY KRAUS AND DAVID MYERS, individuals (dba "Emerald City Surf and Sport") ("Lessee").

RECITALS

A. Lessor and Lessee are parties to that certain Lease Agreement dated May 20, 1988 (the "Existing Lease"), pursuant to which Lessor leased to Lessee approximately 1,324 square feet of real property (the "Existing Premises") consisting of a portion of the building designated as "Bldg. 3" on attached Exhibit A (the "Building") located at 3126 Mission Boulevard, San Diego, California 92109 in Lessor's project known as Belmont Park.

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, additional space in the Building on the terms and conditions set forth in this First Amendment. Such additional space consists of approximately 1598 square feet of floor area of the Building shown crosshatched on attached Exhibit A (the "Expansion Space").

C. Lessor and Lessee also desire to make certain other amendments to the Existing Lease as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Amendment, Lessor and Lessee hereby agree as follows:

1. Continued Effectiveness of Lease. Except to the extent modified by or inconsistent with the provisions of this Amendment, (a) the Existing Lease remains in full force and effect with respect to the Existing Premises, and (b) all capitalized terms used in this Amendment shall have the same meanings as they have in the Existing Lease, except as otherwise set forth in this Amendment. The definition of "Lease" is hereby amended for all purposes to refer to the Existing Lease, as amended by this Amendment.

2. Lease of Expansion Space. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Expansion Space which Lessor and Lessee agree contains approximately 1598 square feet of Floor Area. The definition of "Premises" under the Lease is hereby amended for all purposes to refer collectively to the Existing Space and Expansion Space. Lessor and Lessee agree that Lessee's lease of the Expansion Space shall be upon the terms and conditions set forth in this Amendment, together with all terms and conditions of the Existing Lease to the extent not modified by or inconsistent with the provisions of this Amendment.

3. Commencement as to Expansion Space. The Lease Term shall commence with respect to the Expansion Space upon the earlier of (a) substantial completion of construction of the Tenant Improvements or (b) Lessee's opening for business in all or any portion of the Expansion space. Upon commencement of the Lease as to the Expansion Space, Lessor and Lessee shall execute a written acknowledgement of such date of commencement.

4. Additional Lease Option and Term. The description of "Lease Term" in Article I of the Existing Lease is deleted in its entirety and replaced by the following:

Lease term: Sixty (60) months, with three (3) five-year options to renew."

All provisions of the Existing Lease pertaining to the expiration, termination or renewal of the Lease shall apply equally to the Existing Space and the Expansion Space such that the initial term of Lessee's lease of the Existing Space and Expansion Space shall expire together on July 31, 1993, subject to the provisions of the Lease.

5. Minimum Annual Rent and City Rent for Expansion Space. Minimum Annual Rent for the Expansion Space shall be Forty-Three Thousand One Hundred Forty-Six Dollars ($43,146.00). The City Rent for the Expansion Space shall be Twenty-Seven Thousand Six Hundred Thirteen Dollars ($27,613.00) plus the percentage of Lessee's Net Sales of various categories as specified in Section 5.1.2 of the Existing Lease. All provisions of the Lease pertaining to the time or manner of payment or escalation of Minimum Annual Rent or City Rent shall apply equally to the Existing Space and Expansion Space such that Minimum Annual Rent and City Rent payable with respect to the Expansion Space shall be paid and escalated at the same time and in the same manner as Minimum Annual Rent and City Rent, respectively, are paid with respect to the Existing Space. The definition of "Minimum Annual Rent," "Fixed City Rent" and "City Rent" in the Existing Lease are hereby amended to include the amount of rent payable by Lessee pursuant to the preceding provisions of this Section. In the event the Lease commences with respect to the Expansion Space other than on the first day of a calendar month, Annual Minimum Rent and City Rent payable with respect to the Expansion Space shall be

prorated on a daily basis, and the amount payable as to the partial calendar month during which commencement occurs shall be paid prior to the date of commencement.

6. Percentage Rent. The description of "Percentage Rent" in Article I of the Lease is deleted in its entirety and replaced by the following:

"C. Percentage Rent: Eight percent (8%) of Lessee's Net Sales as defined in Section 5.3."

All of the provisions of the Lease pertaining to Percentage Rent shall apply equally to the Existing Space and Expansion Space such that Percentage Rent for the Existing Space and Expansion Space shall be paid at the same time and in the same manner as it is paid with respect to the Existing Space.

7. Improvements to the Expansion Space. Lessor and Lessee agree that Lessee shall improve the Expansion Space. Lessee shall cause working drawings to be completed and submitted to Lessor for approval. Lessor shall contribute an amount not to exceed Twenty Dollars ($20) per square foot of rentable area in the Premises (i.e. up to $31,960.00) for Improvements ("Improvement Allowance"). No portion of said Improvement Allowance may be used for furnishings and/or trade fixtures, or anything else, that may be removable by Lessee upon the expiration of the term of this Lease. Lessor's contribution shall be paid on a pro rata basis as construction progresses and in a timely manner after bills are rendered. Lessors pro rata share shall be that percentage of the total cost of construction.

8. No Defaults. Lessor and Lessee each acknowledge and agree that, to its correct actual knowledge, the other is not in default under the Lease and that no circumstance exists which, with the passing of it or the giving of notice, will constitute a default by the other. Lessor and Lessee each specifically waives and releases the other from all liability it may have in respect of past or existing breaches of the Lease or other duties pertaining to the Premises arising from facts of which the releasing party has current actual knowledge.

9. Counterparts. This Amendment may be executed in the counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment.

LESSOR:

BELMONT PARK ASSOCIATES, a
California limited partnership

By: Donald C White

LESSEE:

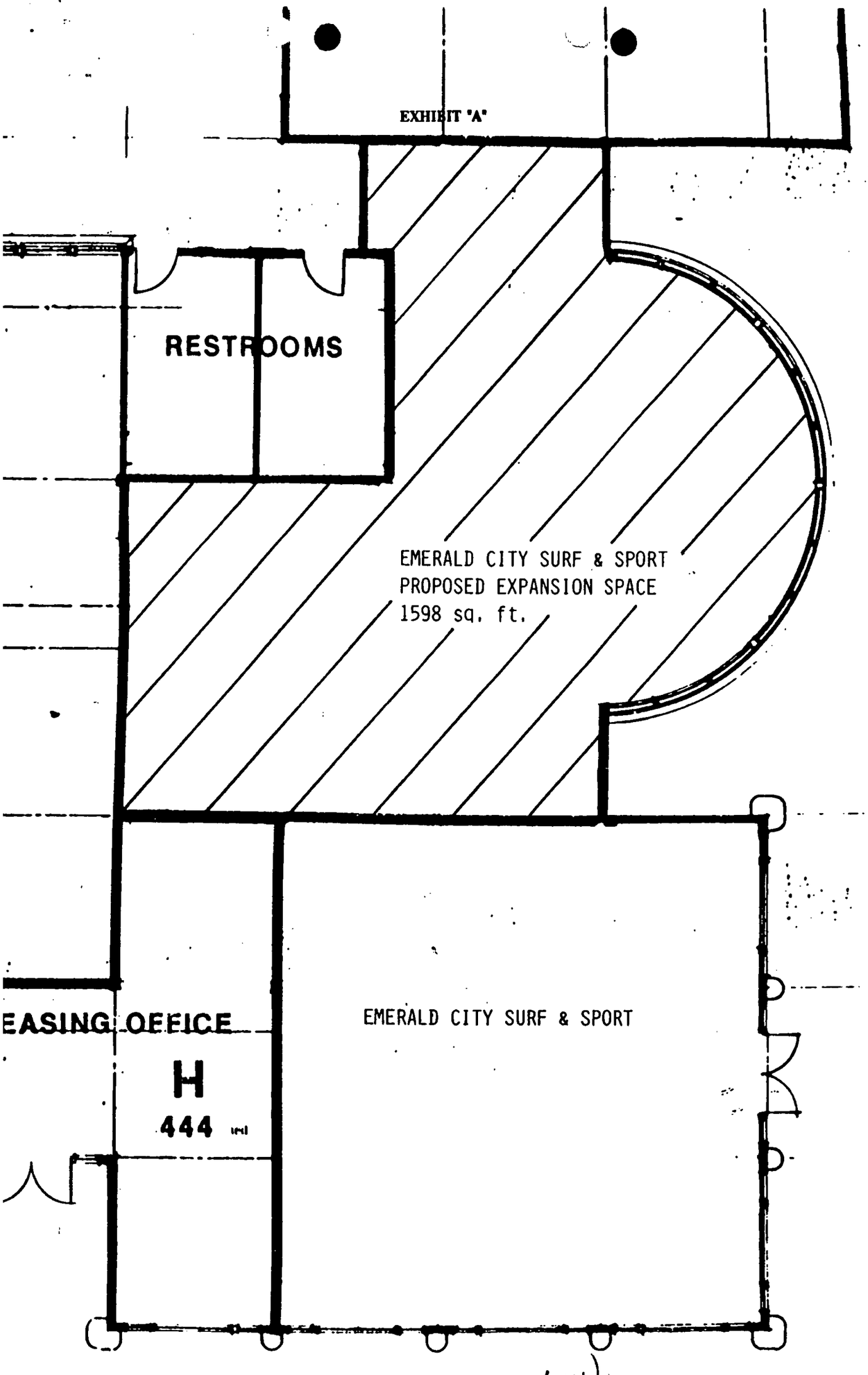
EMERALD CITY SURF AND SPORT

Larry Kraus

David Myers

EXHIBIT "A"

EXHIBIT "A"



BUILDING 3

EXHIBIT "B"

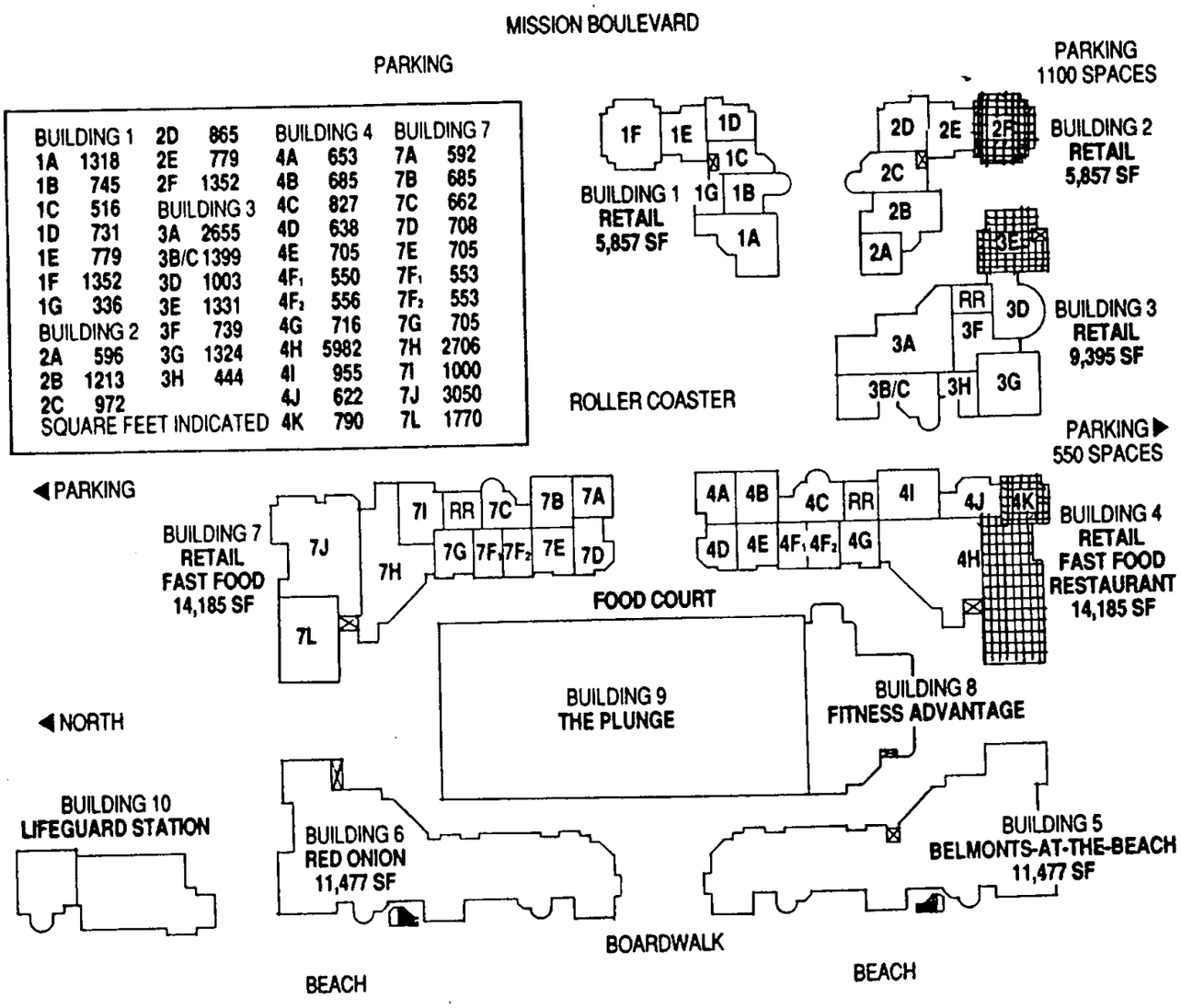

MISSION BOULEVARD
PARKING
PARKING
1100 SPACES
BUILDING 1 2D 865
1A 1318 2E 779
1B 745 2F 1352
1C 516 BUILDING 3
1D 731 3A 2655
1E 779 3B/C 1399
1F 1352 3D 1003
1G 336 3E 1331
BUILDING 2 3F 739
2A 596 3G 1324
2B 1213 3H 444
2C 972
SQUARE FEET INDICATED
BUILDING 4
4A 653
4B 685
4C 827
4D 638
4E 705
4F1 550
4F2 556
4G 716
4H 5982
4I 955
4J 622
4K 790
BUILDING 7
7A 592
7B 685
7C 662
7D 708
7E 705
7F1 553
7F2 553
7G 705
7H 2706
7I 1000
7J 3050
7L 1770
1F 1E 1D 1C 1G 1B 1A
BUILDING 1
RETAIL
5,857 SF
2D 2E 2F
2C
2B
2A
BUILDING 2
RETAIL
5,857 SF
3E
RR 3D
3F
3A
3B/C 3H 3G
BUILDING 3
RETAIL
9,395 SF
ROLLER COASTER
PARKING
550 SPACES
PARKING
BUILDING 7
RETAIL
FAST FOOD
14,185 SF
7J
7I RR 7C 7B 7A
7H
7G 7F1 7F2 7E 7D
7L
4A 4B 4C RR 4I 4J 4K
4D 4E 4F1 4F2 4G
4H
BUILDING 4
RETAIL
FAST FOOD
RESTAURANT
14,185 SF
FOOD COURT
BUILDING 9
THE PLUNGE
BUILDING 8
FITNESS ADVANTAGE
NORTH
BUILDING 10
LIFEGUARD STATION
BUILDING 6
RED ONION
11,477 SF
BUILDING 5
BELMONTS-AT-THE-BEACH
11,477 SF
BOARDWALK
BEACH
BEACH

EXHIBIT "C"

PROHIBITED LINES

O'Neil
Gotcha
Quick Silver
Rusty
Billabonic
Stussy
RipCurl
Body Glove
Instinct
Speedo

PB 1/02

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BELMONT PARK ASSOCIATES, a California Limited Partnership

(LESSEE) and filed in the Office of the City Clerk as Document 267648, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

PACIFIC BELL MOBILE SERVICES, a California Corporation

(SUBLESSEE) dated September 1, 1995. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: Either SUBLESSOR or SUBLESSEE may assign this sublease at any time upon notice to other party. However, SUBLESSEE shall not assign this lease or sublet the premises or any part thereof without written consent of CITY. Said consent by CITY shall not be unreasonably withheld. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises by SUBLESSEE or any negligent act or omission or the willful misconduct of SUBLESSEE, his agents and invitees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be $1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with CITY and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, SUBLESSEE agrees to pay all legal costs in connection therewith, including a reasonable sum of as attorney's fees provided LESSEE or CITY is the prevailing party in any such legal proceeding.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain lease agreement dated February 9, 1987, Document 267648, as amended between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

ON AIR COMPATIBILITY TESTS: SUBLESSEE agrees to abide by the terms of the "On-Air Compatibility Tests" as outlined in Exhibit B attached hereto and by reference made part of this agreement. SUBLESSEE agrees to notify the Communications and Electrical Departments of the City of San Diego and of any changes in licensed frequencies to be used at the site.

NON-EXCLUSIVE USE: The use of this site shall be non-exclusive and CITY reserves the right to allow other communications providers to locate on the property, so long as such use does not interfere with SUBLESSEE.

CONSIDERATION: Consideration to the CITY shall be Three Hundred Dollars ($300.00) per month payable to the CITY for the term of this sublease.

THE CITY OF SAN DIEGO

Dated 2-10-97

By _____
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 2.18.97

By _____
Deputy

AV:csn-s-n
I:\WPO\1997\VANNORMA\F-BELMN.78

CINGULAR

ORIGINAL

COMMUNICATIONS SITE SUBLEASE AGREEMENT

THIS COMMUNICATIONS SITE SUBLEASE AGREEMENT ("Sublease") is dated this 1ST day of SEPTEMBER 199 5, by and between PACIFIC BELL MOBILE SERVICES, a California corporation ("Sublessee") whose address is 4420 Rosewood Drive, Building 2, 4th Floor, Pleasanton, California 94588, and Southern California Fitness Inc. dba Fitness Advantage, a corporation ("Sublessor") whose address is 3115 Ocean Front Walk, San Diego, California 92109.

Sublessor warrants that it has entered into a certain written lease agreement as defined in Exhibit "D-1" (the "Master Lease") with Master Lessor as defined in Exhibit "D-1" for the leasing of that certain property defined in the Master Lease, including the Premises (as defined in Section 1 below). Sublessor warrants that a true and correct copy of the Master Lease is attached as Exhibit "D-2."

This Sublease is subject and subordinate to the Master Lease. Except to the extent that the terms of the Master Lease are inconsistent with the terms of this Sublease, the terms and conditions of the Master Lease are incorporated into this Sublease. Notwithstanding anything to the contrary contained in the Master Lease, all liabilities, costs and expenses under the Master Lease shall be the sole responsibility of Sublessor unless expressly set forth in this Sublease.

The parties hereto agree as follows:

1. Premises. Sublessor leases the real property legally described in Exhibit "A" commonly known as 3115 Ocean Front Walk, San Diego, California 92109 (Assessor's Parcel Number 760-217-07-00). Subject to the following terms and conditions, Sublessor subleases to Sublessee that portion of Sublessor's property depicted in Exhibit "B", including any applicable easements for access and utilities (the "Premises").

2. Use. The Premises may be used by Sublessee for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of communications facilities. Sublessor agrees, at no expense to Sublessor, to cooperate with Sublessee, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Sublessee's intended use of the Premises.

3. Conditions Precedent.

(a) This Sublease is conditioned upon:

(i) Sublessee, or Sublessee's assigns, obtaining all governmental permits and approvals enabling Sublessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

(ii) Sublessor delivering to Sublessee, a written consent to this Sublease signed by the Master Lessor in form attached hereto as Exhibit "E" or such other form as may be subsequently approved by Sublessee in the exercise of its prudent business judgment provided such consent of Master Lessor is required under the Master Lease; and

(iii) Sublessor securing with all reasonable efforts from Master Lessor, an Attornment and Non-Disturbance Agreement in form attached hereto as Exhibit "F" or such other form as may be subsequently approved by Sublessee in the exercise of its prudent business judgment.

4. Term. The term of this Sublease ("Term") shall commence with the issuance of a local building permit allowing Sublessee to construct its mobile/wireless communications facilities on the Premises, or August 1, 1996, whichever is earlier ("Commencement Date"), and expiring on March 31, 2002, the expiration date of the Master Lease, provided, however, that if the term of the Master Lease is extended, Sublessee shall have the right to extend the Term of this Sublease for two (2) additional terms ("Renewal Term") of five (5) years each or to the extent the Master Lease is extended. The terms and conditions for each renewal term shall be the same terms and conditions

of this lease, except that Rent shall be increased as set forth hereinbelow. This Sublease shall automatically be extended for each successive five (5) year Renewal Term unless Sublessee notifies Sublessor in writing of Sublessee's intention not to extend this Sublease at least thirty (30) days prior to the expiration of the original Term or Renewal Term.

5. Rent.

(a) Upon the Commencement Date, Sublessee shall pay Sublessor, as rent, the sum of three hundred Dollars ($300.00) ("Rent") per month. Rent shall be payable on the 1st day of each month, in advance, to Sublessor's address specified in Paragraph 17, Miscellaneous.

(b) If the Commencement Date is other than the first day of a calendar month, Sublessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences; and thereafter, Sublessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Sublease, or if this Sublease is terminated before the expiration of any month for which Rent should have been paid.

(c) Upon each anniversary of the Commencement Date, Rent shall be increased to the extent of any percentage increase which has occurred since the Commencement Date in the Consumer Price Index All Items, Base 1982 - 1984 Index as published by the United States, Department of Labor Bureau of Labor Statistics for all Urban Consumers in the San Diego area, provided that in no event shall Rent be increased by more than six percent (6%) of the Rent paid during the previous year.

6. Improvements; Access.

(a) Sublessee shall have the right (but not the obligation) at any time following the full execution of this Sublease and prior to the Commencement Date to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Sublessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Sublessee's Facilities. During any Tests or pre-construction work, Sublessee will have insurance as set forth in Section 12, Insurance, and will notify Sublessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Sublessor. If Sublessee determines that the Premises are unsuitable for Sublessee's contemplated use, then Sublessee will notify Sublessor and this Sublease will terminate.

(b) Subject to Sublessor's prior approval as to the location of such facilities, Sublessor's approval not to be unreasonably withheld, Sublessee has the right to construct, maintain and operate on the Premises radio communications facilities, including but not limited to radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and supporting structures and improvements ("Sublessee's Facilities"). In connection therewith, Sublessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Sublessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Sublessee's construction and installation work shall be performed at Sublessee's sole cost and expense and in a good and workmanlike manner. Title to the Sublessee's Facilities and any equipment placed on the Premises by Sublessee shall be held by Sublessee. All of Sublessee's Facilities shall remain the property of Sublessee and are not fixtures. Sublessee has the right to remove all Sublessee's Facilities at its sole expense on or before the expiration or termination of this Sublease.

(c) Sublessor shall provide access to Sublessee, Sublessee's employees, agents, contractors and subcontractors to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Sublessee, provided however that Sublessee will access the roof Premises by ladder only after business hours. Sublessor represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Sublessee to the extent required to construct, maintain, install and operate Sublessee's Facilities on the Premises.

(d) Sublessee shall have the right to install utilities, at Sublessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Sublessor's approval of the location, which approval shall not be unreasonably withheld, Sublessee shall have the right to place utilities on (or to bring utilities across) Sublessor's properties in order to service the Premises and Sublessee's Facilities. Upon Sublessee's request, Sublessor shall execute easement(s) evidencing this right.

(e) Sub-metering of Utilities — If required by PBMS, the building jurisdiction, the Sublessor, or the Utility, Sublessor agrees to allow PBMS to install PBMS equipment on existing Sublessor utility service(s). PBMS agrees to install, at PBMS' cost, the required equipment, meters and connections and will reimburse the Sublessor for utilities used at a rate equal to the Sublessor's unit cost for the utilities plus ten percent (10%) for handling fees. "PBMS" IS SUBLESEE (SM) (RM)

(f) Sublessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Sublessee's Facilities.

(g) Upon the expiration, cancellation or termination of this Sublease, Sublessee shall surrender the Premises to Sublessor in good and broom clean condition, less ordinary wear and tear.

7. Interference with Communications. Sublessee shall meet and comply with all non-interference rules of the Federal Communications Commission ("FCC"). With regard to the placement of Sublessor's heating, cooling, or dehumidifying equipment on the roof, Sublessee shall coordinate with Sublessor, its contractors or agents regarding the placement of such equipment to avoid interference by either party with the other party's equipment and/or facilities. Such interference shall be deemed a material breach by Sublessor, and Sublessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Sublessee, and therefore Sublessee shall have the right to bring action to enjoin such interference or to terminate the Sublease immediately upon notice to Sublessor.

8. Taxes. Sublessee shall pay personal property taxes assessed against the Sublessee's Facilities and Sublessor shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises and this Sublease.

9. Termination. This Sublease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Sublessee for any reason or for no reason, provided Sublessee delivers written notice of termination to Sublessor prior to the Commencement Date; (iii) by Sublessee if it does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operation of Sublessee's Facilities; or (iv) by Sublessee if Sublessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (v) by Sublessee if Sublessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength or interference.

10. Destruction of Premises. If the Premises or the Sublessee's Facilities are destroyed or damaged so as in Sublessee's or Sublessor's judgment hinder the effective use of Sublessee's Facilities, either party may elect to terminate this Sublease as of the date of the damage or destruction by so notifying the other party no more than 30 days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Sublease shall cease as of the date of the damage or destruction.

11. Condemnation. If a condemning authority takes all of the Premises, or a portion which in Sublessee's opinion is sufficient to render the Premises unsuitable for the Sublessee's use, then this Sublease shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for

Sublessee shall include, the value of its Sublessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

12. Insurance.

(a) Sublessee shall maintain the following insurance: (1) Commercial General Liability with limits of $5,000,000.00 per occurrence, (2) Automobile Liability with a combined single limit of $1,000,000.00 per accident, (3) Workers Compensation as required by law, and (4) Employers Liability with limits of $1,000,000.00 per occurrence.

(b) Each party to this Sublease shall each maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering the tenant's improved space. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance and each party shall require such insurance policies to contain a waiver of recovery against the other. Sublessee shall name Sublessor as an additional insured with respect to the above Commercial General Liability insurance. Sublessee shall have the right to self-insure with respect to any of the above insurance.

13. Assignment. Either Sublessor or Sublessee may assign this Sublease at any time upon notice to the other party.

14. Title and Quiet Enjoyment.

(a) Sublessor warrants that it has full right, power, and authority to execute this Sublease. Sublessor further warrants that Sublessee shall have quiet enjoyment of the Premises during the Term of this Sublease or any Renewal Term.

(b) Sublessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Sublessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Sublessee's use of the Premises, Sublessee shall have the right to terminate this Sublease immediately upon written notice to Sublessor.

(c) Sublessor warrants: (i) that the Master Lease is in full force and effect; (ii) that Sublessor has not assigned any of its rights under the Master Lease to any third parties; (iii) to the best of Sublessor's knowledge, neither Master Lessor under the Master Lease nor Sublessor is, or with the giving of notice, or passage of time (or both), will be in default under any of the terms or conditions of the Master Lease; (iv) that the Master Lease attached as Exhibit "D-2" constitutes the entire agreement between the Master Lessor and Sublessor regarding the Premises, and there are no written or oral amendments thereto; (v) that during the Term of this Sublease, Sublessor shall not modify, amend or terminate the Master Lease in such a way that would materially affect the provisions of this Sublease without the prior written consent of Sublessee; and (vi) upon request of Sublessee, Sublessor shall use all reasonable efforts to cause the Master Lessor under the Master Lease to observe and/or perform its obligations under the Master Lease. If Sublessor fails, after using all reasonable efforts to cause the Master Lessor under the Master Lease to observe and/or perform its obligations, Sublessor shall cooperate in all reasonable respects with Sublessee's efforts (including without limitation, any legal or equitable claim brought by Sublessee) to accomplish such purpose.

(d) Sublessor shall timely perform and comply with all of the terms, covenants and conditions of the Master Lease, and not do or permit anything that would result in a default under or cause the Master Lease to be terminated. Sublessor shall timely deliver any and all notices required under the Master Lease to extend the term during the Term of this Sublease unless otherwise notified in writing by Sublessee. Sublessor shall immediately provide to Sublessee a copy of any and all notices or other correspondence whether sent or received by Sublessor in connection with the Master Lease.

(e) Master Lease — Sublessor covenants that its right with regard to the Premises are set forth under the terms and provisions of the Master Lease, a complete copy of which is attached hereto as Exhibit "D-2."

Sublessee acknowledges receipt of a copy of the Master Lease and agrees to keep the terms thereof confidential and not to disclose the same to third parties, except to its legal counsel in connection with the negotiation or enforcement of this Sublease.

(f) Sublessor acknowledges that the performance of Sublessor hereunder is conditioned upon due performance by Master Lessor of its corresponding obligations under the Master Lease, and that Sublessor does not assume the obligations of Master Lessor under the Master Lease. However, Sublessor shall exercise diligence in attempting to cause Master Lessor to perform its obligations under the Master Lease. This Sublease is subject to all of the terms and provisions of the Master Lease, and Sublessee shall not violate or permit the violation of any of the terms and provisions of the Master Lease. Sublessee agrees to indemnify Sublessor against and to hold Sublessor harmless from all liability by reason of a breach of the Master Lease which occurs as a result of any action or inaction by Sublessee or its employees, contractors or agents (whether or not such action or inaction is consented to by Sublessor); and Sublessee agrees, if requested by Sublessor, to undertake the defense of any action brought by Master Lessor as a consequence of such breach or alleged breach of the Master Lease. Sublessee agrees that, notwithstanding any other provision of this Sublease, in the event the Master Lease is terminated before the expiration of the term of this Sublease, then this Sublease and all of the rights and obligations of the parties hereto shall also terminate as of the date of termination of the Master Lease. Notwithstanding the foregoing, if this Sublease terminates as a result of a breach by Sublessor under the provisions of the Master Lease, and such breach was not due to a failure of Sublessee to observe or perform its obligations hereunder, then Sublessor will be deemed to be in default of this Sublease, and Sublessor shall be liable to Sublessee for all damages Sublessee has suffered as a result of such termination.

(g) Provided Sublessee is not in default hereunder, Sublessor agrees not to elect to terminate the Master Lease pursuant to the provisions thereof or to enter into an agreement with Master Lessor to terminate the Master Lease without first obtaining Sublessee's consent.

(h) As long as Sublessee is not in default of any provision of the Sublease, Sublessor shall be obligated to perform its obligations under the Master Lease, and during the term of this Sublease, Sublessee shall have quiet enjoyment of the Premises.

15. Repairs. Sublessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Sublessee, its employees, agents, contractors or subcontractors.

16. Environmental. Sublessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Sublessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises, except for chlorine, muriatic acid and other chemicals used in the operation and maintenance of Sublessor's pool. Notwithstanding any other provision of this Sublease, Sublessee relies upon the representations stated herein as a material inducement for entering into this Sublease.

17. Miscellaneous.

(a) If any provision of the Sublease is invalid or unenforceable with respect to any party, the remainder of this Sublease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

(b) This Sublease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) Any notice or demand required to be given herein shall be made by certified or registered mail, fax, return receipt requested, or reliable overnight mail to the address of the respective parties set forth below:

EXHIBIT B

DESCRIPTION OF PREMISES

The location of the Premises within the Sublessor's property together with access, ingress, egress, easements and utilities are more particularly described or depicted as follows:

[approximately two hundred (200) square feet of leasable space on the roof of the building, no space anywhere else]

A final drawing or copy of a property survey depicting the above will replace this Exhibit "B" when initialed by Sublessor.

Notes

1. This Exhibit may be replaced by a land survey or Site Plan of the Premises once it is received by Sublessee.
2. Setback of the Premises from the Sublessor's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.

INITIAL

EXHIBIT C

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

Pacific Bell Mobile Services
4420 Rosewood Dr., Bldg. 2, 4th Floor
Pleasanton, California 94588

Attention:

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE ("Memorandum") is executed as of SEPTEMBER 15, 199 5, by and between Southern California Fitness Inc. dba Fitness Advantage, a corporation ("Sublessor"), and **PACIFIC BELL MOBILE SERVICES**, a California corporation ("Sublessee").

RECITALS

WHEREAS, Sublessor and Sublessee have executed that certain Communications Site Sublease Agreement ("Sublease") dated as of SEPTEMBER 15, 199 5, covering certain premises and related improvements ("Premises") in certain buildings situated on certain real property located in the City of San Diego, County of San Diego, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Sublessor and Sublessee desire to record notice of the Sublease in the Official Records of San Diego County, California;

NOW, THEREFORE, in consideration of the foregoing, Sublessor and Sublessee hereby declare as follows:

1. **Demise.** Sublessor has leased the Premises to Sublessee and Sublessee has hired the Premises from Sublessor, subject to the terms, covenants and conditions contained in the Sublease.

2. **Expiration Date.** The term of the Sublease ("Term") is scheduled to commence on or about August 1, 1996 and shall expire seven (7) years thereafter, subject to Sublessee's option to extend the Term pursuant to Section 4 of the Sublease for two (2) additional terms of five (5) years each.

3. **Sublease Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the Sublease. In the event of conflict between the terms of the Sublease and this Memorandum, the terms of the Sublease shall control.

[SIGNATURE PAGE FOLLOWS]

INITIAL

EXHIBIT A

LEGAL DESCRIPTION OF SUBLESSOR'S PROPERTY

The Sublessor's property of which Premises are a part is legally described as follows:

Property Address: 3115 Ocean Front Walk
San Diego, California 92109

Assessor's Parcel Number: 760-217-07-00

(e.g., Legal Description from Title Report description)

INITIAL

IN WITNESS WHEREOF, Sublessor and Sublessee have executed this Memorandum of Sublease as of the date and year first written above.

ATTEST WITNESS

_____

Date: _____

"SUBLESSOR" Southern California Fitness Inc. dba Fitness Advantage, a corporation

By: _____

Name: Richard D. Meyer

Title: President

ATTEST WITNESS

_____

Date: _____

"SUBLESSEE"
PACIFIC BELL MOBILE SERVICES, A CALIFORNIA CORPORATION

By: Denelle S Harris

Name: Denelle S Harris

Title: Secretary

STATE OF CALIFORNIA)
COUNTY OF San Diego)

On 9/1/95 before me, Charlotte Mitchell, personally appeared Richard D. Meyer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Charlotte Mitchell

CHARLOTTE MITCHELL
COMM. #1000659
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
My Comm. Expires DEC. 4, 1997

STATE OF CALIFORNIA)
COUNTY OF San Diego)

On October 10 1995 before me, Sheryl Hudson personally appeared Denelle S. Harris, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Sheryl Hudson

SHERYL HUDSON
Comm. # 1039646
NOTARY PUBLIC - CALIFORNIA
San Diego County
My Comm. Expires Sept. 25, 1998

INITIAL

EXHIBIT D-1

MASTER LEASE BASIC INFORMATION

Master Lessor: (Insert full legal name of Landlord/Lessor)

BELMONT PARK ASSOCIATES

Written Lease Agreement: (Insert complete name of document [including any amendments] and date signed)

EXHIBIT D-2

MASTER LEASE

Attached hereto is a true and correct copy of the Master Lease by and between the Master Lessor and Sublessor

Certified by Sublessor this 1ST day of September, 199 5.

SUBLESSOR Southern California Fitness Inc.
dba Fitness Advantage, a corporation

By _____

Name Richard D. Meyer

Its President

INITIAL

EXHIBIT E

CONSENT TO SUBLEASE

The under signed is the Master Lessor under that certain lease dated 3/24, 1992, and referred to as the "Master Lease" in the Sublease to which this consent is attached. The undersigned hereby consents to the Sublease upon the terms and conditions set forth in such Sublease. Master Lessor certifies that to the best of its knowledge, and as of the date of Master Lessor's execution of this Consent to Sublease, Sublessor is not in default or breach of any of the provisions of the Master Lease and that the Master Lease, a true and correct copy of which is attached to the Sublease, has not been amended or modified except as described in such Sublease.

"MASTER LESSOR"

BELMONT PARK ASSOC.

By Donald C White

Name Donald C. White

Its Ex V.P.

Date Sept 11, 1995

Master Lessor Information
For Notices

Address:
3146 Mission Blvd. Ste. F
San Diego, CA 92109

Telephone:
(619) 488-0668

Telefax:
(619) 488-6658

INITIAL

EXHIBIT F

NONDISTURBANCE AND ATTORNMENT AGREEMENT

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS CONCLUSIVELY ACKNOWLEDGED, THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT is made on September 6th, 19 95, by and between Pacific Bell Mobile Services, a California corporation ("Sublessee") and Belmont Park Associates ("Master Lessor").

RECITALS

A. Pacific Bell Mobile Services, a California corporation ("Sublessee") and Southern California Fitness Inc., dba Fitness Advantage, a corporation ("Sublessor") have entered into a sublease of certain premises (the "Premises") owned by Belmont Park Associates ("Master Lessor") pursuant to that certain sublease dated 3/24, 199 5 ("Sublease"). The Premises form a portion of Master Lessor's property.

B. Sublessee desires to possess the Premises for the Term set forth in the Sublease without disturbance in the event the Master Lease is terminated for any reason (other than with the written consent of Sublessee).

C. Subject to the terms and conditions set forth below, Master Lessor is willing to grant Sublessee the quiet enjoyment of the Premises during the term of the Sublease in the event the Master Lease is terminated for any such reason.

The parties agree as follows:

1. During the term of the Sublease, Master Lessor shall promptly deliver to Sublessee copies of any and all correspondence whether sent or received by Master Lessor, regarding any threatened or actual notice of default against Sublessor under the Master Lease.

2. In the event the Master Lease is terminated for any reason (other than with the written consent of Sublessee), Sublessee agrees to attorn to Master Lessor and to recognize Master Lessor as the sublessor under the Sublease, upon the terms and conditions and at the rental rate specified in the Sublease, and for the then remaining term of the Sublease.

4. Sublessee agrees to execute and deliver upon request of Master Lessor, any instrument in commercially reasonable form which may be necessary to evidence such attornment.

5.

(a) In the event the Master Lease is terminated, Master Lessor shall succeed to the interest of sublessor under the Sublease and the Sublease shall remain in full force and effect for the full term thereof except that Master Lessor shall not be bound by any provision of the Sublease which materially increases Master Lessor's duties or obligations to Sublessee beyond those owed by Master Lessor to Sublessor under the Master Lease. (For purposes of the preceding sentence, the parties conclusively acknowledge that the continuation of Sublessor's right to possession of the Premises notwithstanding the termination of the Master Lease is not a material increase in Master Lessor's duties or obligations under the Master Lease.)

(b) If Sublessee's right to extend the term of the sublease becomes ineffectual as a result of Sublessor's failure to exercise an option to extend the Master Lease, Sublessee, subject to the provisions set forth in this paragraph, can give notice to Master Lessor and obtain a lease in substantially the same form and content as the sublease. If an option to extend the Master Lease is permitted to lapse as a result of Sublessor's failure to exercise the option, Master Lessor shall notify Sublessee of the lapse, and within thirty (30) days after notice, Sublessee can notify Master Lessor of its election to enter into a lease with Master Lessor. Master Lessor and Sublessee

WITH

immediately shall enter into a written agreement with the same provisions as those in the sublease, except for any changes that are necessary because of the substitution of Master Lessor in the place of Sublessor. Sublessee shall have no rights under this paragraph if it fails to give notice within the thirty (30) day period.

6. Master Lessor will not be:

a. liable for any act or omission of Sublessor or any predecessor of Sublessor;

b. subject to any offsets or defenses that Sublessee may have against Sublessor or any predecessor of Sublessor;

c. bound by any rent, additional rent or advance rent that Sublessee may have paid in advance to Sublessor or any predecessor of Sublessor, and all such rent will remain due and owing without regard to such advance payment;

7. All notices under this agreement will be in writing and will be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or if personally delivered to the intended addressee, or by prepaid telegram. Notice by mail will be effective two (2) days after deposit in the United States mail. Notice given in any other manner will be effective when received by the addressee. For purposes of notices, the addresses of Master Lessor and Sublessor are:

If to Master Lessor: Belmont Park Associates
3146 Mission Blvd Ste F
San Diego, CA 92109

If to Sublessee: Pacific Bell Mobile Services
4420 Rosewood Drive, Building 2, 4th Floor
Pleasanton, CA 94588

Master Lessor or Sublessee may change its address for notice to any other location within the continental United States by the giving of at least thirty (30) days' notice in the manner set forth in this paragraph.

"Master Lessor":

Donald C White
(signature)

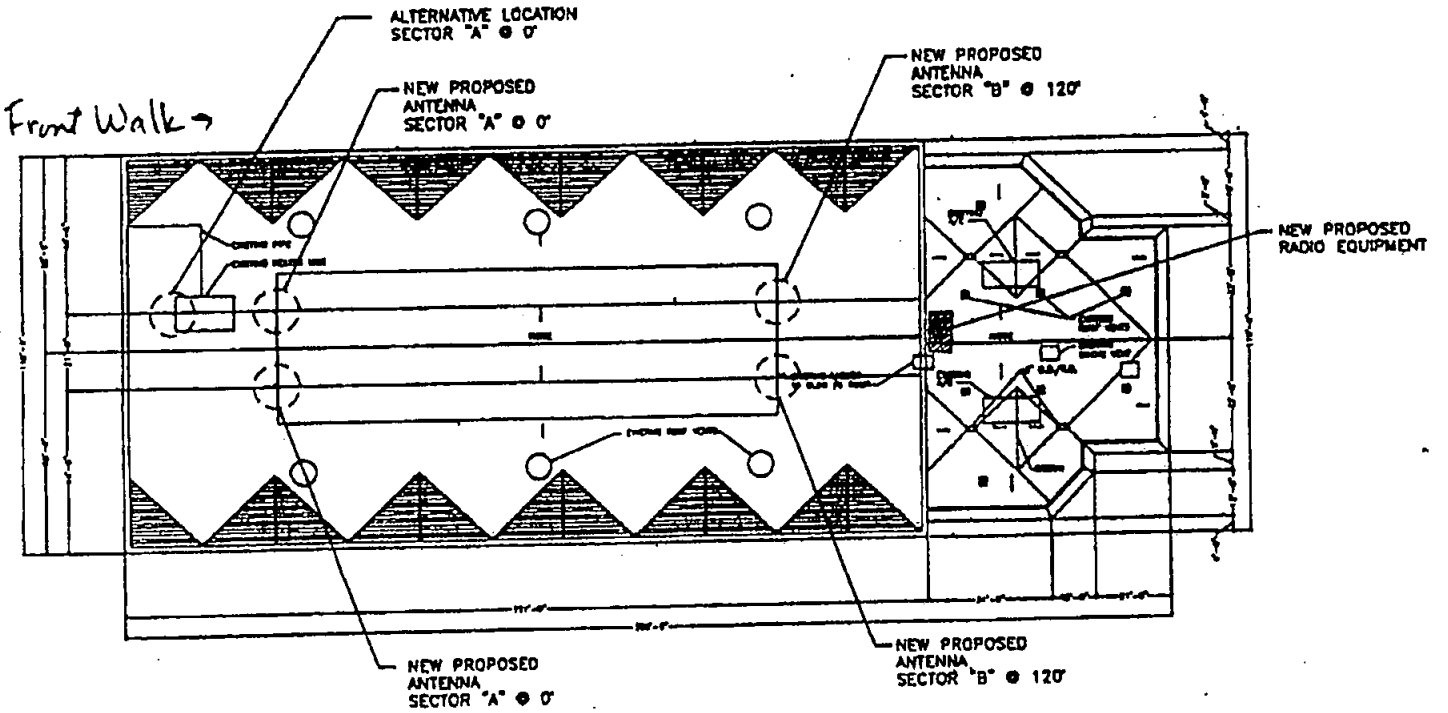
By: Belmont Park Associates
Name: Donald C. White
Title: Exec. V.P.
Date: 9-11-91

"Sublessee":

PACIFIC BELL MOBILE SERVICES, A CALIFORNIA CORPORATION

By: [signature]
Name: Denelle S. Harris
Title: SOM
Date: 10/10/95

INITIAL



ROOF PLAN

Alvar
IDG

PACIFIC BELL

THE PLUNGE

ROOF PLAN,

A-1

PACIFIC BELL® Mobile Services

THE PLUNGE
MISSION BEACH
3115 OCEAN FRONT WALK, SAN DIEGO, CA.
SD-162-03

ABBREVIATIONS

LEGEND

VICINITY MAP

KEY MAP

SHEET INDEX

ARCHITECTURAL

T-1 TITLE SHEET, PROJECT DATA, CONTACT, VICINITY MAP AND KEY MAP.
A-1 ROOF PLAN.
A-2 EAST AND WEST ELEVATIONS.
A-3 NORTH AND SOUTH ELEVATIONS.
A-4 PLAN/ELEVATION SYS UNITS, ANTENNA (TYPICAL SEPARATION).

CONTACTS

ARCHITECTS

UTILITY CONSULTANTS

ELECTRICAL ENGINEERS

CIVIL ENGINEERS

PROJECT SUMMARY

APPLICANT

PROPERTY OWNER

PROJECT DESCRIPTION

EXISTING PROPERTY INFORMATION

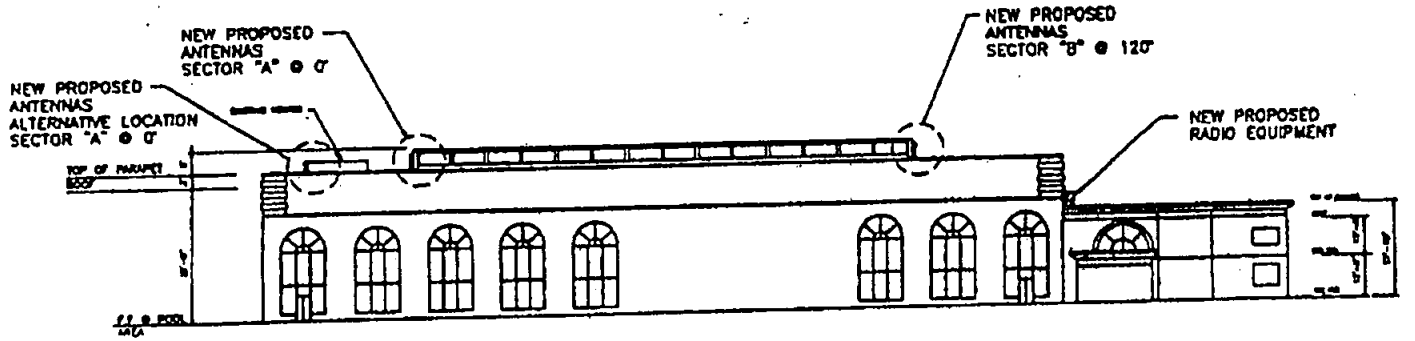
Alvar IDG

PACIFIC BELL Mobile Services

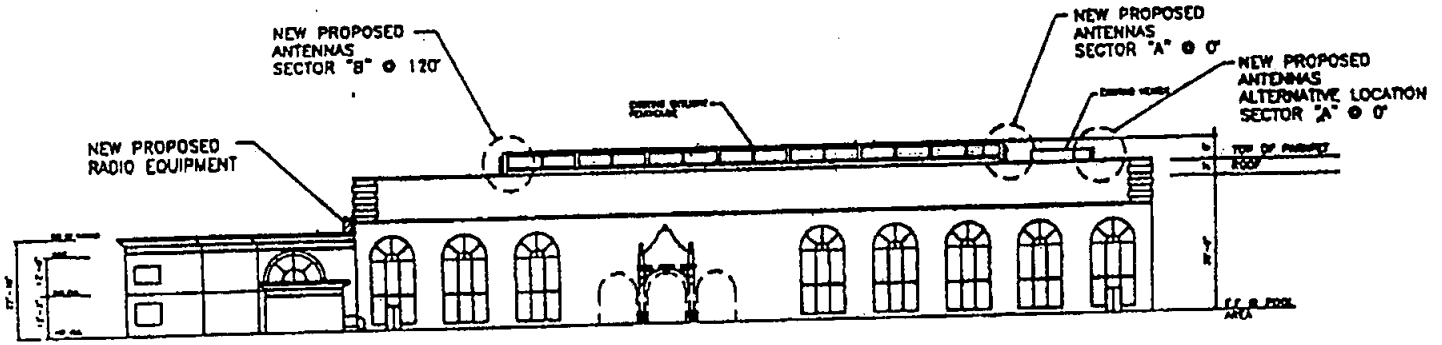
THE PLUNGE

TITLE SHEET, PROJECT DATA CONTACTS, VICINITY MAP, KEY MAP.

T-1



WEST ELEVATION



EAST ELEVATION

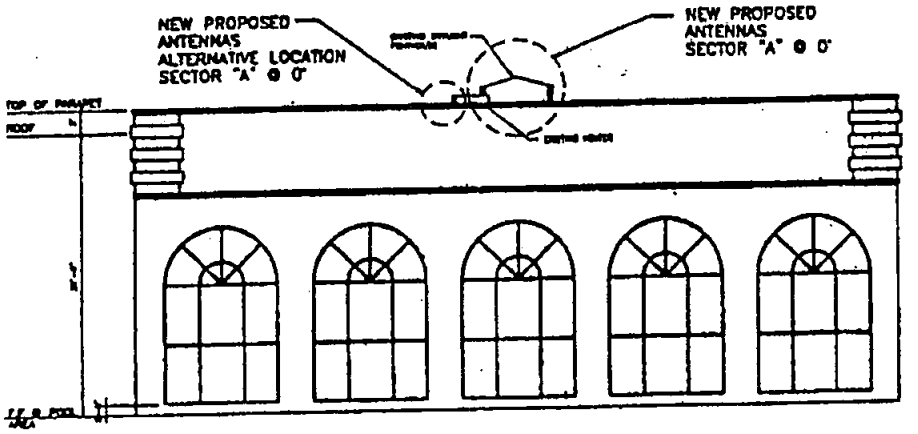
Alvar IDG

PACIFIC BELL

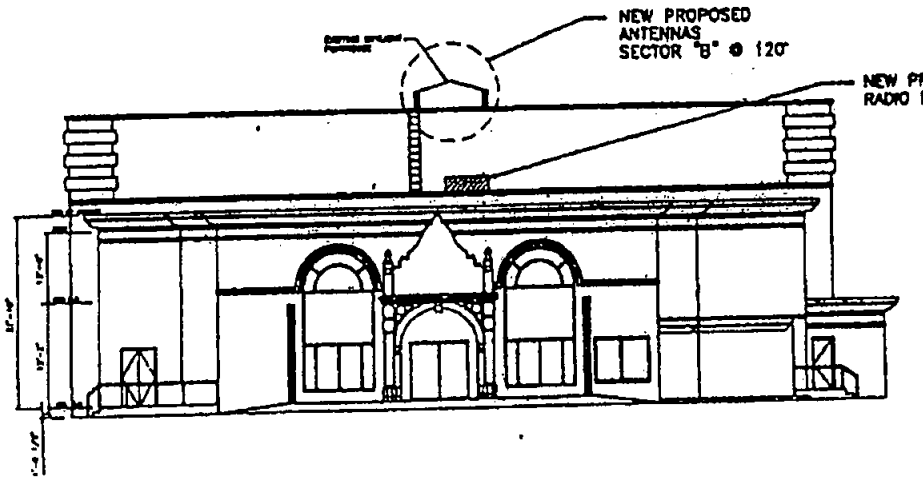
THE PLUNGE

EAST AND WEST ELEVATIONS

A-2



NORTH ELEVATION



SOUTH ELEVATION

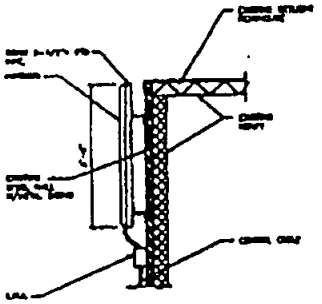
Alvar
INC.

PACIFIC BELL

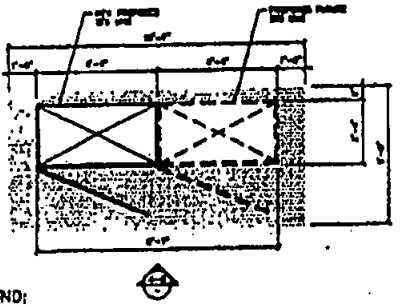
THE PLUNGE

NORTH
AND
SOUTH
ELEVATIONS

A-3

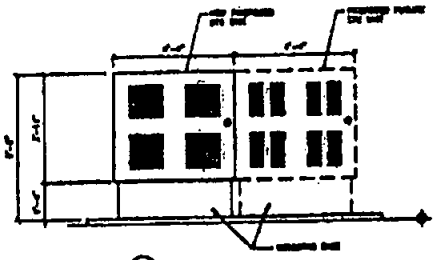


ANTENNA MOUNTING DETAIL



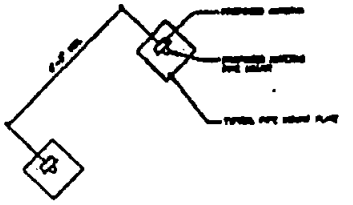
LEGEND:

PLAN VIEW



ELEVATION

PLAN/ELEVATION RADIO EQUIPMENT CABINET (BTS UNITS)



ANTENNA (TYPICAL SEPARATION)

Alvar IDG

PACIFIC BELL

THE PLUNGE

PLAN/ELEV BTS UNITS ANTENNA (TYP. SEPARATION). MOUNT DET.

A-4

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with,

Pars Belmont Park, LLC

(LESSEE) and filed in the Office of the City Clerk as Document **266064**, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

Mission Beach Bar & Grill, Inc., a California corporation
Trade name: Hurricane's

(SUBLESSEE) dated **January 22, 1996.** Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. The Sublessee, prior opening for business, shall provide the City a copy of a certificate of public liability insurance, naming the City as "additional insured"and in the amount stated in the sublease agreement.

THE CITY OF SAN DIEGO

Dated 6-7-96

By _____
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 6/10/96

By _____
Deputy

Sublessee

Dated 8/4/96

By _____

___:sb
Date
FORM 78

BELMONT PARK
LEASE AGREEMENT

PARS BELMONT PARK, LLC,
a California limited liability company

(Landlord)

MISSION BEACH BAR & GRILL, INC.,
a California corporation d.b.a. Hurricane's

(Tenant)

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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: January 22, 1996

Landlord PARS BELMONT PARK, LLC, a California limited liability company

Tenant: MISSION BEACH BAR & GRILL, INC., a California corporation

Tenant's Trade Name: Hurricane's

Premises: The commercial space In Belmont Park Commercial/Recreational Center ("Center") containing approximately 11,477 square feet ("Floor Area") as outlined on Exhibit B.

The Premises shall be deemed to include the all permanently affixed furniture, fixtures and equipment owned by Landlord ("Landlord's FF&E") presently located upon the Premises which is described on Exhibit E attached to this Lease. Landlord's FF&E shall at all times remain the property of Landlord. Tenant shall, at Tenant's sole cost and expense, maintain Landlord's FF&E in good condition and repair and shall return Landlord's FF&E to Landlord upon the expiration or earlier termination of this Lease in the same condition as existed on the Commencement Date, reasonable wear and tear excepted. Tenant shall not remove any of Landlord's FF&E from the Premises.

Permitted Use: Full service restaurant and bar serving lunch and dinner including pastas, salads, pizza, appetizers, alcoholic beverages and other food items approved by Landlord. As an incidental use, Tenant shall also be permitted to offer live music and dancing.

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 sell or offer for sale the following merchandise:

(a) Swimwear;

(b) T-shirts, sweatshirts or other apparel with the words "San Diego" printed thereon unless such apparel also prominently bears Tenant's Trade Name;

(c) Volleyball equipment;

(d) Chocolate fudge;

(e) Take out ice cream, ice cream cones and other frozen ice cream products.

(f) Any other exclusive rights granted existing tenant's of the Centre prior to the date of this Lease.

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

Term: Sixty (60) months, plus two (2) options to renew the initial Term of this Lease for additional periods of sixty (60) months each in accordance with Article 35 of this Lease.

Commencement Date: April 1, 1996. Should Tenant complete the Tenant Improvements described on Exhibit C attached to this Lease and otherwise be able to open for business prior to the April 1, 1996, then notwithstanding anything contained to the contrary in this Lease, Tenant may open for business in the Premises provided that the Term and Tenant's obligation to pay Rent and other charges due under this Lease shall not commence until April 1, 1996.

Fixturization Period (if any): Seventy (70) days commencing January 22, 1996.

Rental shall be the greater of:

A. Minimum Annual Rent: Minimum Annual Rent shall be payable in monthly installments as set forth on the schedule forth below:

Month of Term	Monthly Installment of Minimum Annual Rent
04/01/96 - 05/31/96	$6,270.00
06/01/96 - 09/30/96	$12,600.00
10/01/96 - 03/31/97	$6,300.00
04/01/97 - 09/30/97	$13,200.00
10/01/97 - 03/31/98	$6,600.00
04/01/98 - 09/30/98	$13,800.00
10/01/98 - 03/31/99	$6,900.00
04/01/99 - 09/30/99	$14,400.00
10/01/99 - 03/31/00	$7,200.00
04/01/00 - 09/30/00	$15,000.00
10/01/00 - 03/31/01	$7,600.00

B. City Rent: ~~_____ Dollars ($_____) per annum payable in twelve (12) equal monthly installments~~ of _____ Dollars ($_____) ~~per month during each year of the Term ("Fixed City Rent"), plus the percentage of Tenant's Net Sales of various categories as specified in Section 5.1.2.~~ ***Intentionally Deleted**

C. Percentage Rent: Six percent (6%) of Tenant's Net Sales as defined In Section 5.3 for months one (1) through six (6) following the Commencement Date and seven percent (7%) of Tenant's Net Sales thereafter until expiration of the Lease Term

Address for Notices: To Landlord:

PARS BELMONT PARK, LLC
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Tenant:

Mission Beach Bar & Grill, Inc.
3105 Mission Boulevard
San Diego, CA 92109

Security Deposit: The Thousand Dollars ($10,000.00) payable one-half upon Tenant's execution of this Lease and one-half on the Commencement Date.

Marketing Fund Contribution The sum of Forty-four Thousand Seventy-one and 00/100 Dollars ($44,071.00) per annum, payable in twelve (12) equal monthly installments of Three Thousand Six Hundred Seventy-two and 58/100 Dollars (3,672.58) per month during each year of the Term. *** SEE Section 28.2**

Real Estate Broker: (if any) None

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center.

Exhibit B - Floor Plan Showing the Premises.

Exhibit C - Work Letter Agreement.

Exhibit D - Rules and Regulations.

Exhibit E - Landlord's Furniture, Fixtures & Equipment

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 ("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.

ARTICLE 4 - TERM

4.1 Term. The Term shall be for the number of months specified in the Fundamental Lease Provisions and shall commence on the Commencement Date.

4.2 Confirmation of Commencement Date. Tenant agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Landlord which shall confirm the Commencement Date.

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

ARTICLE 5 - RENT

5.1 Rent. Tenant agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, in twelve (12) monthly installments during each year, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Term the greater of the amounts specified in Sections 5.1.1, 5.1.2 and 5.1.3 below, based upon year-to-date amounts. Upon execution of the Lease, Tenant shall pay its first months Minimum Annual Rent and Security Deposit. At the end of each calendar year, any excess rent which Tenant paid to Landlord shall be credited to the next monthly installment of rent due (or upon termination of this Lease and subject to offset by Landlord for any amounts due Landlord hereunder, paid directly to Tenant within thirty (30) days of such termination, and any deficiency shall immediately be paid by Landlord to Tenant).

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

5.1.1.1 ~~Minimum Annual Rent shall be adjusted upward as of the expiration of the end~~ of each calendar year during the Term to reflect any change in the cost of living. The adjustment shall be calculated by multiplying the Minimum Annual Rent payable during the immediately preceding calendar year by a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items (1982-84 = 100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Annual Rent for each calendar year is determined, Landlord shall give Tenant written notice of the amount thereof. The Minimum Annual Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. It the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Tenant shall continue to pay the Minimum Annual Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Tenant, concurrently with the next monthly Rent payment, shall pay to Landlord, the difference between the new Minimum Annual Rent, including the cost of living increase, for the period commencing with the first month of such calendar year and the Minimum Annual Rent already paid for such period.

5.1.1.2 The Minimum Annual Rent shall also be adjusted upward as of the expiration of the third full or partial calendar year, and as of the expiration of every third calendar year thereafter during the Term (i.e., if the Commencement Date is June 1, 1996, the first adjustment under this subparagraph 5.1.1.2 will be on January 1, 1999, the second adjustment will be on January 1, 2002, and so on.) Such adjustment of the Minimum Annual Rent shall produce a new Minimum Annual Rent equal to the greater of (I) the cost of living increase required under Section 5.1.1.1 above or (ii) eighty percent (80%) of the annual average of the total rent (including Minimum Annual Rent, City Rent and Percentage Rent) paid pursuant to this Section 5.1 by Tenant to Landlord for the preceding three year period (or portion thereof as to the first adjustment).

5.1.2 City Rent. The Fixed City Rent specified in the Fundamental Lease Provisions plus three percent (3%) of all Tenant's Net Sales (as defined in Section 5.3) in the food and Specialty Shop Sales category, five percent (5%) of all Tenant's Net Sales in the alcoholic beverage sales and game room operations category, and seven percent (7%) of all Tenant's Net Sales in the category of all other sales and operations for such month. City Rent shall be computed by Tenant each calendar month immediately following the close of the preceding month and for the calendar year to date. Tenant shall pay to Landlord the amount, if any, by which the City Rent amount set forth in the Fundamental Lease provisions exceeds the installments of the greater of the Minimum Annual Rent or City Rent paid by Tenant during such period. Tenant shall pay the City Rent no later than ten (10) days following the close of the preceding month. The classification of Tenant's Net Sales by category ("Net Sales Category") shall be determined at the end of each calendar month by Tenant who shall provide Landlord with a copy of such classification at the same time Net Sales are determined. Tenant shall provide such records as may be required from time to time by the City under the Master Lease.

5.1.2.1 In the event the Minimum Annual Rent increases, the Fixed City Rent shall ~~increase in the same proportion and at the same time.~~

5.1.2.2 ~~"Specialty Shop Sales" shall mean sales of novelty items, sporting goods, sports~~ equipment rental, apparel, art, flowers, books, cards, party supplies, travel services and other services and items ~~normally associated with visitor oriented commercial and recreational uses~~. ***Intentionally Deleted**

5.1.3 Percentage Rent. The Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Tenant made from or upon the Premises during each calendar month. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month and for the calendar year to date. Tenant shall pay to Landlord the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's net Sales during said period exceeds the installments of the greater of Minimum Annual Rent or City Rent paid by Tenant during such period. Tenant shall make payments of Percentage Rent to Landlord no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month.

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

5.2 Statement of Net Sales. Tenant agrees to furnish or cause to be furnished to Landlord a statement of monthly Net Sales of Tenant (totaled for calendar year to date) within ten (10) days after the close of each calendar month, and an annual statement of Net Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent, Percentage Rent, and City Rent for the preceding month and calendar year to date, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, or by a corporate officer if Tenant is a corporation and annual statements shall, in addition, 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, Net 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 Net Sales and Net 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 Net 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 Net Sales in each Category, the monthly and annual statements of Net 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 Net Sales or any payment of Minimum Annual Rent, City Rent or Percentage Rent for any period shall not bind Landlord as to the correctness of the statement or the payment. Within five (5) years after receipt of any such statement, Landlord and City, or their agents, at any time shall be entitled to an inspection and audit of the business of Tenant, its agents, subtenants, concessionaires and licensees operating on and in connection with the Premises as necessary and appropriate for Landlord and City to determine the amounts of Rent due Landlord in compliance with this Lease. At Landlord's request, Tenant shall provide, at Tenant's expense, any necessary data reasonably available to Tenant to enable Landlord and City to fully comply with all requirements of the state or federal government for lease information or reports concerning the Premises and Tenant's conduct of business thereon. Such data will include, if required, a detailed breakdown of Tenant's receipts and expenses.

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, City Rent or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Landlord is entitled to any additional City Rent or Percentage Rent as a result thereof 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") of ten percent (10%) of the amount of the deficiency which amount 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 Net 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, the in addition to any other rights of Landlord under this Lease, Landlord may terminate this Lease. 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 a late payment, or prevent Landlord from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Net Sales. The term "Net 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. Net 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 Net Sales for the purpose of fixing the City Rent and 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. Net 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 Net 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 Net 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. Net 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 Net Sales.

5.4 Additional Rent. Tenant shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Tenant under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, City Rent, Percentage Rent and Additional Rent are 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 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.

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.

5.5 Failure to Pay. If Tenant fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Tenant and Landlord agree that Landlord will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Tenant so fail to pay Rent, Landlord should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. 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) one percent (1%) per day of the amount due beginning on the due date and continuing until paid ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate. 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. Landlord shall have the right to require that Tenant pay monies due 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's Minimum Net Sales in any calendar year are less than the amount set forth in Article 1 as Tenant's Minimum Net Sales Requirement, adjusted as provided for herein.~~ ***Intentionally Deleted**

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

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

Then:

5.8.4 If the condition in subparagraph 5.8.1 exists, Landlord may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Tenant thirty (30) days' written notice; or

5.8.5 In the case of a default under subparagraph 5.8.2 or 5.8.3, 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.

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.

5.5 Failure to Pay. If Tenant fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Tenant and Landlord agree that Landlord will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Tenant so fail to pay Rent, Landlord should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. 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) one percent (1%) per day of the amount due beginning on the due date and continuing until paid ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate. 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. Landlord shall have the right to require that Tenant pay monies due 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's Minimum Net Sales in any calendar year are less than the amount set forth in Article 1 as Tenant's Minimum Net Sales Requirement, adjusted as provided for herein.~~ ***Intentionally Deleted**

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

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

Then:

5.8.4 If the condition in subparagraph 5.8.1 exists, Landlord may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Tenant thirty (30) days' written notice; or

5.8.5 In the case of a default under subparagraph 5.8.2 or 5.8.3, 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.

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.

~~The amount of Tenant's Minimum Net Sales Requirement specified in Article 1 shall be adjusted upward~~, after the expiration of each calendar year of this Lease to reflect any increase in the cost ~~of living.~~ The adjustment, if any, shall be calculated upon the basis of Index, as defined in ~~Section 5.1.1.1~~. Tenants Minimum Net Sales Requirement shall be set by multiplying the ~~amount thereof~~ applicable in the immediately preceding year by a fraction, the numerator of which ~~shall be the~~ Extension Index and the denominator of which shall be the Beginning Index as ~~defined in Section~~ 5.1.1.1. In no event shall Tenant's Minimum Net Sales Requirement be less than that ~~for the previous year~~. ***Intentionally Deleted**

ARTICLE 6 - PERSONAL PROPERTY TAXES

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

ARTICLE 7 - POSSESSION AND USE

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

7.2 Permitted 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 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 notice of Landlord, sell any food (or beverage) as fast food or take out food to be consumed in the Common Areas of the Center unless it is specified to be sold as fast food under Permitted Use in the Fundamental Lease Provisions. If a Permitted Use, restaurants shall be permitted to use one (1) counter window to the exterior of the Premises and a maximum of 1,000 sq. ft. of floor area for the purpose of preparing and selling fast food or take out food. If a Permitted Use, Tenant shall indicate such window and preparation areas clearly on floor plans, to be approved in writing by Landlord prior to the sale of such food. 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.

Tenant may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Tenant shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Landlord or Landlord shall be entitled to remove said objects. Promptly upon demand of Landlord, Tenant shall reimburse Landlord for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Tenant will not solicit, in any manner, in the Common Areas of the Center.

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

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Tenant's Responsibilities. Tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for water, gas, electricity, telephone, 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 Indemnity by Tenant. Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Tenant or any other person thereon or holding under said Tenant. Tenant will indemnify and hold Landlord and City harmless 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 (iii) any act omission or negligence by Tenant, its employees, agents, subtenants, invitees, or licensees and (iv) any failure by Tenant to comply or secure compliance with any of the terms or conditions of this Lease.

9.2 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.

9.3 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:

9.3.1 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 One Million Dollars ($1,000,000.00) insuring Tenant on an occurrence basis against all liability of Tenant and Landlord and their authorized representatives, agent, and employees arising out of and in connection with Tenant's use or occupancy of the Premises. All such public and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions of Article 9.1 above.

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

9.3.3 Tenant Improvements. Insurance covering all of Tenant's tenant improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than one hundred percent (100%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof. Notwithstanding the foregoing, Landlord agrees that Tenant shall not initially be required to carry earthquake or flood insurance as required above. If, however, during the Term a casualty involving either earthquake or flood occurs and Tenant fails, in Landlord's sole and absolute discretion, to timely and properly repair all damage occasioned by such casualty which Tenant is obligated to repair under this Lease, Landlord reserves the right to require Tenant to obtain earthquake and flood insurance as stated above.

9.3.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Landlord for a period of up to one (1) year if Tenant is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.3.5 Policy Form. All policies of insurance to be obtained by Tenant shall be issued in the names of Landlord (including Landlord's Manager and Members), 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, its servants, agents, and employees, 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 9.3, 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.

9.4 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 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.

9.5 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 either 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 therefor, 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 may any alterations to the exterior or structure of the Premises. Tenant shall be responsible for the entire cost and expense of all such permitted Alterations and shall provide a performance and completion bond, from any insurance company acceptable to Landlord, in a sum equal to one hundred twenty-five percent (125%) of the cost of the Alterations, guaranteeing completion free and clear of liens and charges, and in accordance with the approved plans and specifications. All Alterations shall be under the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Landlord before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Landlord, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such Alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including, without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such Alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Tenant in the Center. Upon completion of such work, Tenant shall file for record in the office of the San Diego County Recorder, a Notice of Completion as permitted by law.

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 mechanic's 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 aid Landlord against such claim of lien, Landlord may (but shall not be so required to) pay the said claim and any costs, and the amount so paid, together with reasonable attorneys' fees Incurred In connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord with interest at the Lease Interest Rate from the date(s) of Landlord's payments.

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

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

ARTICLE 13 - SIGNS

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

No advertising medium shall be utilized by Tenant which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Tenant, or to Tenant's agent, or to any other person. Tenant shall not distribute in the Center any handbills or other advertising devices.

Tenant further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Landlord's prior written consent.

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 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Tenant not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right upon termination or expiration of the term of this Lease, provided Tenant is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Landlord's option, Tenant shall have the obligation to remove all trade fixtures and personal property 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;

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 incompetency, 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 Tenant. 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;

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

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

15.3 Remaining Term.

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

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

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

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

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

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

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

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

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

15.3.2.8 Less than twelve (12) months remain on the Term of the Lease.

15.4 Procedures.

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

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

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

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

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

15.4.2 Subject to Section 15.5 below, within thirty (30) days after receipt by Landlord of the information required by subsection 15.4.1 above, Landlord may either:

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

15.4.2.2 Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Landlord is entitled to without its consent; or

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

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

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

15.7 Consideration to Landlord.

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

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

15.7.1.1.1 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

15.7.1.1.2 The then fair market annual rent as reasonably determined by Landlord. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

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

ARTICLE 16 - TENANT'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Tenant shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 10:00 a.m. to 9:00 p.m. seven days a week. Tenant may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Tenant shall operate one hundred percent (100%) of the Premises during the entire term of this Lease with due diligence and efficiency so as to produce all of the Net Sales which may be produced by such manner of

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

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

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

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

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

Tenant agrees to accept Bank Americard, Master Charge, Visa and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.2 New Locations. During the term of this Lease, neither Tenant nor any individual, firm or corporation that controls Tenant or is controlled by Tenant shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Landlord's remedies, if Tenant violates this covenant, Landlord may, at its option and for so long as Tenant is operating such other business, include Net Sales of such other business for the purpose of computing City Rent or Percentage Rent due hereunder.

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 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 a 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.

17.2 Landlord's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Landlord shall keep in good condition and repair the foundations and exterior walls and roof of the Premises, except for any damage caused by any act or negligence of Tenant or Tenant's employees, agents, invitees, licensees or contractors which damage Landlord shall repair at Tenant's sole cost and expense.

ARTICLE 18 - RECONSTRUCTION

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

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

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

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, 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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the Tenants of the Center, directional signs and other markers and bumpers including, without limitation, shuttle service for employees of tenants and occupants of the Center from outlying parking areas to the Center, (k) Taxes (as hereafter defined) (l) merchandising audits and Confidential Shoppers' Program(s), (m) costs and expenses pertaining to the security alarm system for the Tenants in the Center, (n) depreciation and maintenance of operating machinery and equipment (if owned) and rent paid for such machinery and equipment (if rented) (o) reasonable rental cost and maintenance of a management office in the Center, (p) capital improvements or additions to the Center or Common Areas and any machinery or equipment installed therein which are required by any governmental authority or which have the effect of reducing the expenses included in Common Area Expenses, and (q) any other charge allocable to the operation, maintenance and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to four percent (4%) of all Rent collected by the property management company. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego. Landlord may cause any or all of said services to be provided by an independent contractor or contractors. 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 Areas 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 taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges by 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 any 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 Food Fair Expenses. Notwithstanding anything to the contrary contained herein, all of the costs and expenses specifically and exclusively incurred or attributed by Landlord from time to time as a result of the maintenance and operation of the common fast food resting and/or dining areas and other Common Areas in or adjacent to the Center, which are used by customers of fast food Tenants for eating and/or dining ("Food Fair"), which result primarily from the operations of the fast food Tenants in the Center (as opposed to the maintenance and operation of such areas as Common Area) ("Food Fair Expenses"), shall be paid only by said fast food Tenants to Landlord, monthly, as Additional Rent, in addition to the Common Area Expenses. Each fast food Tenant shall pay that proportion of the Food Fair Expenses in the same proportion which the floor area of each fast food Tenant bears to the total number of leasable square feet occupied and open for business by all fast food Tenants in the Center, or at Landlord's sole discretion, in the same proportion as each fast food Tenant's Net Sales in any calendar year is to the total fast food Net Sales of all fast food Tenants in the Center.

Restaurant Tenants which sell fast food or take-out food which is consumed or disposed of in the Food Fair shall share the costs of the Food Fair expenses as though they were fast food Tenants. Landlord shall determine the floor area of each restaurant Tenant selling fast food or takeout food for the purpose of determining said restaurant Tenant's prorata share of Food Fair Expenses. Said restaurants shall include a separate breakdown of fast food and takeout food Net Sales, as specified in Section 5.2, in the event Landlord prorates the Food Fair Expenses on a Net Sales Basis.

Food Fair Expenses shall include, without limitation: (1) salaries, wages, and benefits, and other costs of bus-boys and other personnel employed for cleaning and servicing the Food Fair, (2) garbage and waste collection and disposal; (3) rental of equipment and signs; (4) the cost of repairs or replacements to, and maintenance and operation of, the furniture, fixtures and furnishings in, or serving, the Food Fair; (5) depreciation or amortization and interest on the cost of any repairs or replacements, the cost of which is not charged in full in the lease year in which it is incurred; (6) the additional cost of securing, policing, and supervising the Food Fair; (7) the cost of cleaning, resealing and/or resurfacing outdoor sailing areas used primarily by Food Fair customers; and (8) a management fee to be initially established to equal four percent (4%) of the Food Fair Expenses. Said rate may be increased by Landlord from time to time to a rate which is usual and customary for such services in the City of San Diego.

Landlord shall have the right from time to time to relocate or rearrange the Food Fair and the Center, or either of them, including designating other portions of Common Areas immediately adjacent to the Food Fair as part of the Food Fair and, in such event, the provisions of this Article shall apply. Landlord shall also have the right to designate other portions of the Center as Food Fair and fast food areas and to make Rules and Regulations and policies, standards and directions governing the overall operation of such Food Fair and fast food areas. In addition, Landlord shall have the right to lease space to a fast food restaurant or any other restaurant anywhere in the Center.

Tenant acknowledges and agrees that it is a condition of the Lease that Landlord reserves the right to formulate, determine and enforce such policies, standards and practices for the Food Fair and the Center and for the more efficient and proper operation of the Food Fair and the Center, and to designate the name or names by which the Food Fair is to be referred. Tenant agrees to be bound by, and to comply with, such policies, standards and practices and to refer to the Food Fair only by the name or names designated by Landlord in its advertising and the conduct of its business in the Premises.

Without limitation, fast food Tenants shall, at all times during the Term, in operation of their business, abide by all Rules and Regulations and directions of Landlord relating to: (1) the health and sanitary conditions of the Premises, the Food Fair and its employees; (2) standards and quality of merchandise; (3) customer relations and resolution of complaints; (4) such other matters as Landlord determines applicable from time to time with respect to the operation of the Food Fair.

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

19.5.1 From and after the Commencement Date, Tenant shall pay Landlord, on the first day of each calendar month of the 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 subsection 19.5.2 below, by the tenth (10th) day following the date on which such payment becomes due, Tenant shall pay interest thereon at the Lease Interest Rate plus a Late Fee equal to the greater of (i) $100.00 or (ii) one percent (1%) per day of the amount due beginning on the due date and continuing until paid. 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.

Notwithstanding anything contained to the contrary in subsection 19.5.1 above, Tenant's pro rata share of Common Area Expenses in any calendar year shall not exceed an amount equal to one-half of the combined Minimum Annual Rent and Percentage Rent payable by Tenant under this Lease during such calendar year. To illustrate the foregoing, assume that Tenant's total Minimum Annual Rent for the calendar year in question is $125,000.00 and Tenant's total Percentage Rent for such calendar year is determined to be $10,000.00. In such case, Tenant's pro rata share of Common Area Expenses for such calendar year could not exceed $67,500.00.

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

19.6 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.

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

19.8 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas, and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and 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.

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

If, in the opinion of Landlord, unauthorized persons are using any of said areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall 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 breach of this lease by Tenant.

ARTICLE 21 - DEFAULT BY TENANT

21.1 Tenant's Default; Landlord's Rights and Remedies. Should Tenant at any time be in default hereunder, with respect to any Rent payments or other charges payable by Tenant hereunder, and should such default continue for a period of three (3) days after written notice from Landlord to Tenant, or should Tenant be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained, including, without limitation, the obligation to maintain the level of Net Sales as required by Section 5.8 and to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance, or should Tenant vacate or abandon the Premises, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Landlord hereunder and provided by law, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

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

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

21.1.3 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 21.1.2 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 statute 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.

21.2 Landlord's Damages. Should Landlord elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Landlord may recover from Tenant as damages:

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

21.2.2 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.

21.2.3 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.

21.2.4 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, or any other costs necessary or appropriate to relet the Premises.

21.2.5 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 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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 Annual 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.

21.3 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.

21.4 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.

21.5 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 of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

22.2.3 No service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);

22.2.4 No partner 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 of Landlord;

22.2.6 Any judgment taken against any partner 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 of Landlord;

22.2.8 These covenants and agreements are enforceable both by Landlord and also by any partner of Landlord.

ARTICLE 23 - EMINENT DOMAIN

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

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

of written notice that said Premises have been Condemned. In the event of termination, both Landlord and Tenant shall thereupon be released from any liability accruing hereunder.

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

23.3 Partial Taking. If neither Landlord nor Tenant terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Tenant shall continue to occupy that portion of the Premises which shall not have been Condemned as herein provided and the parties will proceed as follows: (a) at Landlord's cost and expense and as soon as reasonably possible, Landlord will reasonably restore the Premises (b) the Minimum Annual 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 agrees 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, ATTORNMENT 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. The provisions of this Article to the contrary notwithstanding and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Estoppel Certificate. Within ten (10) days after written request therefor by Landlord, Tenant agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Landlord or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Landlord certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Tenant. If Tenant fails to deliver the certificate within ten (10) days after written request therefor, Tenant irrevocably constitutes and appoints Landlord as us special attorney-in-fact to execute and deliver the certificate to any third party.

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 Annual 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 Annual 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 default ~~under this Lease.~~ ***Intentionally Deleted**

ARTICLE 28 -MARKETING FUND

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

28.2 Method of Payment. From and after the Commencement Date, Tenant shall pay to Landlord on the last 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.

Notwithstanding the foregoing paragraph, provided there shall be no continuing and uncured default by Tenant existing under this Lease, Tenant shall be entitled to a credit ("Marketing Fund Credit") of up to One Hundred percent (100%) of Tenant's Marketing Fund Contribution for amounts spent by Tenant to advertise its business in the Premises which advertising specifically and prominently mentions the name of the Center or contains the Center's identifying logo. The Marketing Fund Credit shall be administered on a monthly basis and any Marketing Fund Credit not used by Tenant in the current calendar month shall not be carried over into the next calendar month. To be entitled to the Marketing Fund Credit, Tenant must furnish Landlord with a written statement ("Advertising Statement") showing the amounts spent by Tenant on advertising its business in the Premises during the calendar month in question together with copies of canceled checks or invoices marked "PAID" for all such expenditures. Upon Landlord's receipt of Tenant's Advertising Statement and copies of canceled checks and paid invoices, and provided the advertising meets the requirements of Section 28.7 below, Landlord shall credit Tenant's installment of Marketing Fund Contribution for such calendar month in an amount equal to One Hundred percent (100%) of

Tenant's advertising expenses for the calendar month not to exceed Tenant's monthly installment of Marketing Fund Contribution.

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any, shall be calculated upon the basis of the Index, as defined in Section 5.1.1.1. The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Landlord, and two (2) representatives who shall be elected by Tenants 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 Fund 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 any, 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 mortgage 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 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 Tenants 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 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 then 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed 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.

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 - SECURITY DEPOSIT

32.1 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.

32.2 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 Term.

32.3 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.

32.4 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 33 - MISCELLANEOUS

33.1 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.

33.2 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.

33.3 Warranty of Authority. 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.

33.4 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.

33.5 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.

33.6 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.

33.7 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.

33.8 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.

33.9 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.

33.10 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.

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

33.12 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.

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

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

33.14 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 D. 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.

33.15 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.

33.16 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.

33.17 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.

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

33.19 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.

33.20 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.

33.21 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.

33.22 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.

33.23 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.

33.24 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.

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

33.26 Post Extermination. Tenant shall use at its cost such post extermination contractor as Landlord may direct and at such intervals as Landlord may require.

33.27 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.

33.28 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.

33.29 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.

33.30 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.

33.31 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Lease and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments thereto.

33.3 Judicial Interpretation. Should any provision of this Lease require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against any party by means of the rule of construction that a document is to be construed strictly against the party who itself or through its agent prepared the same.

ARTICLE 34 - ADDITIONAL PROVISIONS

34.1 Additional Provisions. Landlord and Tenant acknowledge that Articles 35, 36 and 37 are attached hereto and made a part hereof.

ARTICLE 35 - RENEWAL OPTIONS

35.1 First Renewal Option. Provided that at the time of the required notice and at the commencement of the First Renewal Term (defined below), there is no continuing and uncured default by Tenant existing under this Lease, and provided further that Tenant furnishes current financial statements satisfactory to Landlord which reflect that no material adverse change in the financial condition of Tenant has occurred since the Commencement Date, Tenant shall have the option to renew ("First Renewal Option") the Term of this Lease for an additional period of sixty (60) months ("First Renewal Term") which First Renewal Option shall be exercised by written notice given by Tenant to Landlord no later than One Hundred Eighty (180) days prior to the date of expiration of the initial Lease Term. Any termination of this Lease or any Transfer of this Lease or subletting of all or a portion of the Premises shall terminate the First Renewal Option. Tenant acknowledges that TIME IS OF THE ESSENCE with respect to Tenant's exercise of the First Renewal Option. During the First Renewal Term all of the terms and provisions of this Lease shall apply except that Minimum Annual Rent payable during the First Renewal Term shall be Landlord's then prevailing asking rental rate for the Center as determined by Landlord in Landlord's sole discretion, not taking into account any downward adjustment to reflect tenant improvement allowance, brokerage commissions, premises vacancy time or any other offset.

35.2 Second Renewal Option. Provided Tenant has properly exercised the First Renewal Option and provided further that at the time of the required notice and at the commencement of the Second Renewal Term (defined below), there is no continuing and uncured default by Tenant existing under this Lease, and provided further that Tenant furnishes current financial statements satisfactory to Landlord which reflect that no material adverse change in the financial condition of Tenant had occurred since the commencement of the First Renewal Term, Tenant shall have the option to renew ("Second Renewal Option") the Term of this Lease for a period of sixty (60) months ("Second Renewal Term") which Second Renewal Option shall be exercised by written notice given by Tenant to Landlord no later than One Hundred Eighty (180) days prior to the date of expiration of the First Renewal Term. Any termination of this Lease or any Transfer of this Lease or subletting of all or a portion of the Premises shall terminate the Second Renewal Option. Tenant acknowledges that TIME IS OF THE ESSENCE with respect to Tenant's exercise of the Second Renewal Option. During the Second Renewal Term all of the terms and provisions of this Lease shall apply except that Minimum Annual Rent payable during the Second Renewal Term shall be Landlord's then prevailing asking rental rate for the Center as determined by Landlord in Landlord's sole discretion, not taking into account any downward adjustment to reflect tenant improvement allowance, brokerage commissions, premises vacancy time or any other offset.

ARTICLE 36 - LEASE CONTINGENCIES

36.1 Lease Contingencies. This effectiveness of this Lease, and each party's obligations hereunder shall be contingent upon each of the following:

(a) Tenant's having obtained, within sixty (60) days from the date of this Lease, all necessary governmental permits and approvals (including Class 47 liquor license and building permits) to operate Tenant's business in the Premises as specified in the Permitted Use section of the Fundamental Lease Provisions. If Tenant has not obtained all such permits and approvals within the sixty (60) day period specified above, this Lease shall be deemed canceled and Landlord shall, upon receipt of a written acknowledgment of cancellation from Tenant, return all funds deposited by Tenant with Landlord.

(b) Approval of this Lease by City within twenty (20) days following execution of this Lease by Landlord.

ARTICLE 37 - LIQUOR LICENSE

37.1 Liquor License: Tenant covenants and agrees that it will not sell, pledge, hypothecate, assign or otherwise transfer Tenant's liquor license for the Premises without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion. ONE (1) YEAR PRIOR TO DEFAULT, OR TRANSFER

Tenant also grants Landlord the option ("Option") to purchase Tenant's liquor license for the Premises at its "fair market value" upon the expiration or earlier termination of this Lease. Landlord's must exercise the Option, if at all, within ~~thirty (30) days~~ following the date of expiration, or earlier termination of this Lease. The "fair market value" shall mean the price which a willing buyer would pay to a willing seller for a Class 47 liquor license in the Pacific Beach/Mission Beach area of San Diego County taking into account such factors as the actual transfer price of the license and any requirement of the seller of the license that the buyer acquire other tangible or intangible assets together with the license as a condition of the seller's agreement to sell the license.

If Landlord exercises the Option, then for a period of ten (10) days Landlord and Tenant shall negotiate in good faith to attempt to reach an agreement as to the "fair market value" of the liquor license. If after such ten (10) day period, Landlord and Tenant are unable to agree on the "fair market value" of the liquor license, the matter shall be submitted to an independent business broker ("Broker") appointed by Landlord who shall have at least five (5) years experience as a licensed business broker in the San Diego metropolitan area specializing in restaurant sales. Landlord and Tenant's determination of the "fair market value" shall be submitted to Broker who shall then select either Landlord or Tenant's determination whichever determination Broker determines to be closest to the "fair market value" of the liquor license in Broker's opinion. Broker shall not establish his own "fair market value". If, upon receiving Broker's determination, Landlord does not agree with Broker's determination, Landlord may rescind its exercise of the Option in which case Tenant may sell the liquor license to any other party and the Option shall be of no further force or effect. All costs associated with the foregoing procedure shall be borne equally by the parties. * SEE Insert 1.

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

Landlord:

PARS BELMONT PARK, LLC,
a California limited liability company

By: _____
Name: _____
Title: Manager

By: _____
Name: _____
Title: _____

Tenant:

MISSION BEACH BAR & GRILL, INC.,
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: ERIC LEITSTEIN
Title: V.P.

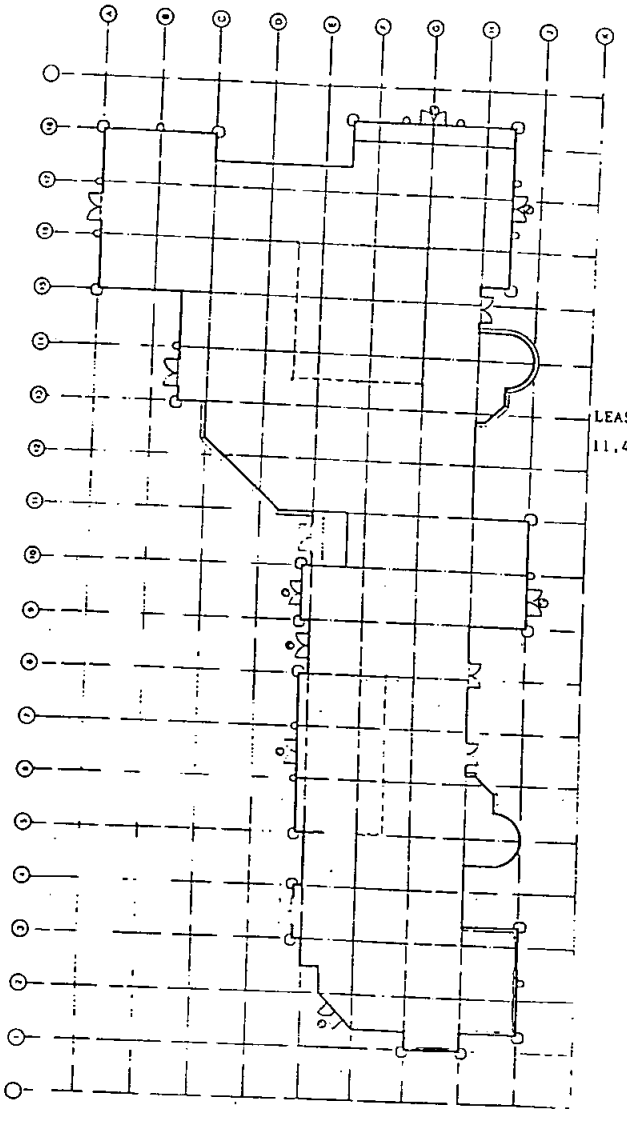
If Tenant is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

Insert 1

If at any time during the one (1) year option period Tenant receives a bona fide offer from a third party to purchase Tenant's liquor license, Tenant shall provide Landlord with a copy of said bona fide offer (which shall include all terms thereof) and Landlord shall have thirty (30) days to elect to exercise its Option to purchase the liquor license at the price and on the terms of the bona fide offer. If Landlord does not elect to exercise the Option within the thirty (30) day period, Tenant may sell the liquor license to the third party offeror on the terms contained in the offer as presented to Landlord.

BELMONT PARK COMMERCIAL RECREATIONAL
MISSION
BLVD.
BLDG. 2
3106 MISSION BLVD.
BLDG. 3
3126 MISSION BLVD.
BLDG. 4
3136 MISSION BLVD.
BLDG. 1
3116 MISSION BLVD.
BLDG. 5
3105 OCEAN FRONT WALK
BLDG. 8
3115 OCEAN FRONT WALK
BLDG. 9
3119 OCEAN FRONT WALK
BLDG. 6
3125 OCEAN FRONT WALK
BLDG. 7
3146 MISSION BLVD.
ROLLER COASTER PROPERTY
LEASE LINE
LIFEGUARD PROPERTY
VENTURA PL.
1"=80'

EXHIBIT A



N

BUILDING NO. 5

EXHIBIT B

EXHIBIT C

WORK LETTER AGREEMENT

(Tenant to Construct)

Landlord and Tenant are executing simultaneously with this Work Letter Agreement ("Agreement"), a written lease ("Lease") covering those certain premises more particularly described in Exhibit B to the Lease ("Premises"), in the Center more particularly described in the Lease. Landlord and Tenant agree that Tenant shall improve and prepare the Premises for Tenant's occupancy, on the terms and conditions set forth in this Agreement. To induce Landlord and Tenant to enter into the Lease and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant mutually agree as follows:

1. General. The purpose of this Agreement is to set forth how the interior improvements in the Premises as set forth in the Construction Documents, as defined below in Section 2.3 ("Tenant Improvements"), are to be constructed, who will be responsible for the construction of the Tenant Improvements, and the time schedule for the construction and completion of the Tenant Improvements.

1.1 Defined Terms. Except as defined in this Agreement to the contrary, all terms utilized in this Agreement shall have the same meaning as the defined terms in the Lease.

1.2 Incorporation of Lease. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Agreement, are hereby incorporated into this Agreement.

2. Tenant Improvement Plans. Tenant shall retain a space planner ("Space Planner") to prepare preliminary space plans ("Space Plan") to be utilized in the preparation of final working drawings and specifications for the Tenant Improvements as more particularly described below. Tenant's selection of Space Planner shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed.

2.1 Space Plan. If Tenant has not previously delivered a Space Plan to Landlord prior to the date of this Agreement, Tenant shall, within ten (10) business days after the date of this Agreement, deliver the Space Plan to Landlord. The Space Plan shall show the configuration of the proposed Tenant Improvements and contain a "finish schedule" and all information necessary for Tenant to have the mechanical, electrical and engineering drawings (collectively "Engineering Plans") prepared at Tenant's expense, the cost of which will be deducted from the Tenant Improvement Allowance. Such information submitted as part of the Space Plan shall be in sufficient detail to show locations, types and requirements for all heat loads, people loads, floor loads, power and plumbing, regular and special HVAC needs, telephone communications, telephone and electrical outlets, lighting, light fixtures and related power, and electrical and telephone switches. Landlord shall approve, or disapprove for reasonable reasons, the Space Plan within five (5) business days after Landlord receives the completed Space Plan and, if disapproved, Landlord shall return the Space Plan to Tenant, who shall make all necessary revisions within five (5) business days after Tenant's receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Space Plan. When approved, the Space Plan, as modified, shall be deemed the "Final Preliminary Plans."

2.2 Engineering Plans. If required by applicable building regulations, Tenant shall select as the mechanical and electrical engineer a qualified and licensed company, experienced in shopping center Tenant improvements in San Diego County, California,("Engineer") to prepare Engineering Plans based on the Final Preliminary Plans. Tenant's selection of the Engineer shall be subject to the prior written approval of Landlord, which approval will not be unreasonably withheld or delayed. For purposes of the preparation of the Engineering Plans, the Engineer may assume that the Final Preliminary Plans are precise, correct and in compliance with applicable laws and codes. Upon completion of the Engineering Plans, they will be submitted to Landlord and Space Planner for approval. Landlord shall approve, or disapprove for reasonable reasons, the Engineering Plans within five (5) business days after Landlord receives the Engineering Plans and, if disapproved, return the Engineering Plans to Tenant who shall cause the Engineer to make all necessary revisions within five (5) business days after Landlord's receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Engineering Plans. When approved, the Engineering Plans, as modified, shall be deemed the "Final Engineering Plans".

2.3 Construction Documents. Within ten (10) business days following Landlord's approval of the Final Preliminary Plans and the Final Engineering Plans (if any), Tenant shall cause Space Planner to prepare final plans and specifications ("Final Tenant Plans") for completion of the Tenant Improvements. Tenant shall then deliver the Final Tenant Plans to Landlord. Landlord shall approve, or disapprove for reasonable reasons, the Final Tenant Plans within five (5) business days after Landlord receives the Final Tenant Plans and, if disapproved, Landlord shall return the Final Tenant Plans to Tenant who shall cause Space Planner to make all necessary revisions within five (5) business days after Tenant's

receipt thereof. This procedure shall be repeated until Landlord ultimately approves the Final Tenant Plans. When approved, the Final Tenant Plans, as modified, shall be deemed the "Construction Documents". Any and all costs incurred by Tenant in the preparation of the Construction Documents shall be deducted from the Tenant Improvement Allowance set forth below in Section 6. All deliveries of the Space Plan, Final Preliminary Plans, and Final Tenant Plans shall be delivered by messenger service, by personal hand delivery or by overnight parcel service.

2.4 Landlord's Approval of Plans. Tenant specifically acknowledges that although Landlord has the right to approve the Space Plan, Final Preliminary Plans, Final Engineering Plans, and Final Tenant Plans, Landlord's sole interest in doing so is to protect the Shopping Center and Landlord's interests. Accordingly, Tenant shall not rely upon Landlord's approvals and Landlord shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such Space Plan, Final Preliminary Plans, Final Engineering Plans or Final Tenant Plans, or the compliance thereof with applicable laws, and Landlord shall incur no liability of any kind by reason of granting such approvals.

3. Permits/Fees. Tenant shall be responsible, at Tenant's sole cost and expense, for obtaining all governmental approvals of the Construction Documents to the full extent necessary for the issuance of a building permit for the Tenant Improvements. Thereafter, Tenant shall also cause to be obtained all other necessary approvals and permits from all governmental agencies having authority over the construction and installation of the Tenant Improvements in accordance with the approved Construction Documents and shall undertake all steps necessary to insure that the construction of the Tenant Improvements is accomplished in strict compliance with all state or local laws, ordinances, rules and regulations applicable to such construction and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease. In addition, Tenant shall, at Tenant's sole cost and expense, be responsible for the payment of (I) all "impact fees" or exaction's which may be imposed or assessed as a condition to the issuance of the building permit or other approvals necessary for the construction of the Tenant Improvements; and (ii) all utility hook-up fees and meter setting fees for water, sewer, gas, electric, telephone and any other utility facilities necessary for Tenant's use of the Premises; provided however, Tenant may, upon written notice to Landlord, request that all of the foregoing expenses be deducted from the Tenant Improvement Allowance. Tenant acknowledges that Tenant shall be solely responsible for investigation of all requirements necessary for obtaining a building permit for the Tenant Improvements, including, without limitation, all requirements for the payment of impact fees and exaction's and utility fees and hook-up charges.

4. Construction. Tenant shall employ an outside contractor or contractors of Tenant's choice ("Contractor") to construct the Tenant Improvements in substantial conformance with the Construction Documents; provided, however, that the Contractor and construction contracts between Tenant and Contractor and Tenant's subcontractors shall be subject to Landlord's prior written approval (which approval shall not be unreasonably withheld or delayed), and provided further, that the Contractor and the performance of the work shall be subject to the following conditions:

4.1 Licensing Requirements/Experience. Contractor shall be duly licensed and experienced in the construction of tenant improvements in similar retail premises.

4.2 Landlord's Inspection Rights. Landlord or Landlord's agents shall have the right to inspect the construction work to be conducted by Tenant during the progress thereof, it being the intent of the parties hereto that Landlord shall be reasonable in its inspection of the construction work conducted by Tenant and that Landlord shall recognize, to the extent commercially reasonable and practicable, the necessity of field changes based on field conditions. If Landlord shall give notice to Tenant of faulty construction or any other deviation from the Construction Documents, Tenant shall cause Contractor to promptly make corrections. However, neither the privilege herein granted to Landlord to make such inspections, nor the making of such inspections by Landlord, shall operate as a waiver of any rights of Landlord to require good and workmanlike construction and improvements erected in accordance with the Construction Documents.

5. Insurance and Indemnity. Tenant shall not permit Tenant's Contractor or any subcontractors to commence any work until all required insurance has been obtained by Tenant and certificates evidencing such coverage have been delivered to and approved by Landlord. Tenant shall secure, pay for and maintain or cause to be maintained during construction of the Tenant Improvements, the following insurance, which shall be issued in the names of Landlord (including Landlord's Manager and Members), City, Tenant, and any other person or entity designated by Landlord:

(a) Workers' Compensation Insurance in such amounts as required by California law;

(b) Commercial General Liability insurance in accordance with Subsection 9.3.1 of the Lease.

Tenant agrees to indemnify, defend and hold harmless Landlord (including its Manager and Members) and City from and against all claims, liabilities, losses, damages and expenses of whatever nature including those to the person or property of Landlord (including its Manager and Members),its employees, agents, invitees, licensees and others arising out of or in conjunction with Tenant's construction of the Tenant Improvements except to the extent that the same may arise out

of Landlord's negligence, it being understood that the foregoing indemnity shall be in addition to the insurance requirements set forth above and shall not be in discharge of or in substitution for same.

6. Tenant Improvement Allowance. Landlord will pay an amount equal to Zero Dollars ($0) ("Tenant Improvement Allowance") toward the cost of the design, permitting and fees (only to the extent set forth herein) and construction of the Tenant Improvements and for no other purpose. Landlord shall make payments to Tenant from the Tenant Improvement Allowance only in progress payments not more frequently than once per month and only after receipt by Landlord of unconditional mechanics' lien releases and receipted bills marked "paid" (which mechanics' lien releases shall, at Landlord's option, be executed by subcontractors, labor suppliers and materialmen, as reasonably determined by Landlord, in addition to Contractor). Landlord shall also withhold ten percent (10%) of the Tenant Improvement Allowance until the lien-free expiration of the time for the filing of any mechanics' liens claimed or which might be filed on account of any work ordered by Tenant or Contractor or any subcontractor of Tenant. Upon completion of the Tenant Improvements, Tenant shall provide Landlord with a copy of a Notice Of Completion, which shall have been timely recorded in the Official Records of the San Diego County Recorder. All retention required under Tenant's contract with Contractor shall be included within the ten percent (10%) retention provided for herein. In the event the cost of construction of the Tenant Improvements exceeds the available amount of the Tenant Improvement Allowance, Tenant shall pay such excess cost to Landlord within ten (10) business days after Tenant's execution of the construction contract with Contractor, which amount shall be disbursed by Landlord prior to the disbursement of any portion of the Tenant Improvement Allowance.

6.1 Engineering. The cost of all electrical, mechanical, and structural engineering, including all permits, licenses, and fees relative to the construction of the Tenant Improvements (including, without limitation, the fees identified in Section 4 above) shall be paid by Tenant, but may be deducted from the Tenant Improvement Allowance.

6.2 Change Orders. In the event that Tenant requests (in writing) any changes to the Construction Documents (each being a "Change Order"), Landlord shall not unreasonably withhold its consent to any such Change Order, provided the Change Order does not affect the structure, systems, equipment or appearance of the Premises or the Building. If such Change Orders, as approved by Landlord, increase the cost of constructing the Tenant Improvements in excess of the Tenant Improvement Allowance, Tenant shall pay such increased costs at the time of Landlord's approval of such Change Order.

6.3 Construction Materials. Tenant will utilize, for the construction of the Tenant Improvements, the items and materials specified in the Construction Documents. However, whenever Tenant determines in its reasonable judgment that it is not practical or efficient to use such materials, Tenant shall have the right, upon receipt of prior written approval of Landlord, which approval will not be unreasonably withheld or delayed, to substitute comparable items and materials.

6.4 Landlord's Fee. Landlord shall be paid a fee in connection with Landlord's obligations set forth in Section 2 with respect to reviewing and approving the design and construction of the Tenant Improvements for the Premises in the amount of Zero Dollars ($0) which amount shall be deducted from the Tenant Improvement Allowance.

6.5 Prompt Construction/General Responsibility for Costs. Tenant shall instruct Contractor to build the Tenant Improvements as soon as reasonably possible. Since Landlord's sole economic responsibility is to pay the Tenant Improvement Allowance, all of the Tenant Improvements shall be designed and constructed at Tenant's sole and entire cost, with Landlord being obligated only to disburse the Tenant Improvement Allowance pursuant to the terms of this Agreement.

7. Default. Any default by Tenant under the terms of this Agreement shall constitute a default under the Lease and shall entitle Landlord to exercise all remedies set forth in the Lease. Tenant shall have any and all rights to remedy such default pursuant to the provisions of the Lease.

8. Reasonable Diligence. Both Landlord and Tenant agree to use reasonable diligence in performing all of their respective obligations and duties under this Agreement and in proceeding with the construction and completion of the Tenant Improvements.

9. Conflicts. In the event of any conflict between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

Landlord

PARS Belmont Park, LLC,
a California limited liability company

By _____
Name: _____
Title: Manager

By _____
Name: _____
Title: _____

Tenant

MISSION BEACH BAR & GRILL, INC.
a California corporation

By: _____
Name: _____
Title: Vice President

By: _____
Name: ERIC LEITSTEIN
Title: V.P.

E.L.

EXHIBIT D

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.

2. 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. Any antennas or serial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Landlord to the end that others shall not be distribute or annoyed.

EXHIBIT E

LANDLORD'S FURNITURE, FIXTURES AND EQUIPMENT

INVENTORY OF EQUIPMENT LOCATED IN 3105 OCEAN FRONT WALK
1/24/96

Through-out Building	
~~Bar stools~~	~~225~~
Black metal chairs	56
High tables	50
Low tables	13
~~Large fans~~	~~4~~
Take-out Area	
Large hood	
Small hood	
Steam/prep station	
~~Soda dispenser~~	
Hand sink	
Prep sink	
Refrigerator cabinet	9
Bar	
~~Large sink - 3 wells~~	~~2~~
~~Wet sink~~	~~5~~
~~Beverage refrigerator~~	4
Ice machine	
Walk-in cooler	2
Front Kitchen	
Prep station - built in	3
~~Stove with double oven~~	
Hood	2
~~Deep fryer~~	
~~Large single free-standing burner~~	
Side/side refrigerator	

INVENTORY OF EQUIPMENT LOCATED IN 3105 OCEAN FRONT WALK
1/24/96

Back Kitchen

Ice machine	2
Hand sink	
Prep station	2
~~Scale~~	
Prep sink	
Shelves (metal)	4
Refrigerator	
Large sink - 2 wells	
~~Large commercial dishwasher with counters~~	
Dishwasher sink	
Prep counter with sink	
~~Pizza oven - small~~	
Walk-in cooler	2

North Bar

~~Soda dispenser with sink~~	2
~~3 door beverage refrigerator~~	2
~~Large sink - 3 wells~~	

Restaurant

Lighted display case	
~~Booth with table~~	~~4~~
Wall lights	16
Hanging lights	7
~~Chandeliers~~	~~5~~

Upstairs

~~Safe~~	
Filing cabinets	2

Roof Deck Bar

Prep counter with sink	
Prep sink	2
Ice machine	

Roof

HVAC equipment - condition unknown

E.L. J.J.M.

PLEASE SIGN AND RETURN

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BELMONT PARK ASSOCIATES, a California Limited Partnership

(LESSEE) and filed in the Office of the City Clerk as Document 266064, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

SAN DIEGO COASTER COMPANY, a California Corporation

(SUBLESSEE) dated March 28, 1995. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. The attached Minimum Standard Sublease Conditions.
2. The Sublessee providing the City a certificate of insurance, in the amount stated in the lease, **naming the City as additional insured.**
3. The Sublessee shall furnish the Real Estate Assets Department two sets of "D Sheet" size drawings for any utility installations required to service the proposed rides, including their location on the site.
4. The Sublessee shall obtain all necessary permits to install the rides and shall abide by applicable height restrictions.

THE CITY OF SAN DIEGO

Dated 4-5-95

By _____
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 4/5/95

By _____
Deputy

The undersigned hereby agree to the terms and conditions set forth in this Consent to Sublease Agreement.

Dated 4-6-95

By Donald C White
Belmont Park Associates

Dated 4-6-95

By Ed Hutton
San Diego Coaster Company

MINIMUM STANDARD SUBLEASE CONDITIONS
(Required in all subleases prior to City Manager approval)

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessee and the City of San Diego, hereinafter, "City". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Sublessee, his agents and invitees.

INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be $1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated R-266064 dtd. March 5, 1987, as amended between the sublessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

LMF:rc
2/1/95

I:\WPO\FIERRO\MIN.STA

DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO | DEP FILE NO.: 95-0176 | DATE: February 13, 1995

Action/Permit(s): MANAGER'S APPROVAL | Permit No.: N/A

Description of Activity:
Allow the installation and operation of five new amusement park rides and relocation of the existing carousel at Belmont Park within an existing leasehold.

Location of Activity:
Belmont Park, west side of Mission Boulevard between West Mission Bay Drive and San Fernando Place in the Mission Beach community, City and County of San Diego.

1. [ ] This activity is **EXEMPT FROM CEQA** pursuant to:

   [ ] Section 15061(b)(1) of the Sate CEQA Guidelines (the activity is not a project as defined in Section 15378).

   [X] Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").

2. [ ] This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)

	Sec.	Short Name
[ ]	15301 1	Existing Facilities
[ ]	15302 2	Replacement or Reconstruction
[ ]	15303 3	New Construction or Conversion of Small Structures
[ ]	15304 4	Minor Alterations to Land
[ ]	15305 5	Minor Alterations in Land Use Limitations
[ ]	15306 6	Information Collection
[ ]	15311 11	Accessory Collection
[ ]	15312 12	Surplus Environmental Property Sales
[ ]	15315 15	Minor Land Divisions
[ ]	15317 17	Open Space Contracts or Easements
[ ]	15319 19	Annexation of Existing Facilities and Lots for Exempt Facilities
[ ]	15325 25	Transfer of Ownership of Interest in Land to Preserve Open Space

ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)

	Sec.	Short Name
[ ]	15261	Ongoing Project
[ ]	15262	Feasibility and Planning Studies
[ ]	15265	Adoption of Coastal Plans and Programs
[ ]	15268	Ministerial Projects
[ ]	15269	Emergency Projects

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

2/13/95
Environmental Analysis Section

Distribution:
Exemption or Project file
Responsible Departments:

Stew Cerveny, READ

RECEIVED
MAR 10 1995
REAL ESTATE ASSETS

Mission Beach Precise Planning Board
A Community Planning Group for the City of San Diego

John T. Ready
Chairman
3829 Mission Boulevard
San Diego, CA 92109

Telephone (619)488-1300
fax (619)488-2176

March 8, 1995

City of San Diego
Property Department
1200 3rd Street #1700
San Diego, CA 92101

Attn.: Stewart Cerveny

Dear Mr. Cerveny,

At the request of Wendy Crane of the BD Coaster Company, I am writing to inform you of our recent vote on the proposal for improving Belmont Park with new amusement rides directed toward young children and families. The Board voted on the proposal and approved of it with a vote of 5-3-0.

I am enclosing a copy of our minutes of the meeting of February 21, 1995 which refers to the vote taken. These minutes have not been approved so they are not official. They will be up for approval at our next meeting scheduled for March 21st.

Please call if you have any questions.

Sincerely,

Lawrence F. Hodge

Lawrence F. Hodge, Secretary

MISSION BEACH TOWN COUNCIL
P.O. BOX 9842, SAN DIEGO, CALIFORNIA 92169

January 20, 1995

RECEIVED
JAN 23 1995
REAL ESTATE ASSETS

CITY OF SAN DIEGO
Property Department
1200 3rd Avenue, Suite 1700
San Diego, CA 92101

ATT: Stewart Cerveny

Dear Mr. Cerveny:

The Mission Beach Town Council received a presentation by the San Diego Coaster Company at the regular meeting on January 11, 1995, concerning their proposal for development of additional amusements at Belmont Park. The Mission Beach Town Council supports their development proposal and urges the city to implement it.

Very truly yours,

MARC B. GELLER, President
Mission Beach Town Council

MBG/sjh

cc: James L. Spotts,
Director Assets Department

San Diego Coaster Company

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: March 28, 1995

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Coaster Company, a California Corporation

Lessee's Trade Name:

Premises: Two outdoor locations as shown on Exhibit "B".

Permitted Use: Operation of a "Carousel" and a "Children's Circular Ride" or similar attractions. Lessee shall have an exclusive right to operate all non-simulator rides at Belmont Park.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Fudge - all flavors

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Two Hundred Sixteen (216) months.

Commencement Date: The Commencement Date shall be deemed to occur when installation is completed and ready to operate but in any event no later than October 1, 1995.

Security Deposit: Two Thousand Dollars ($2,000.00).

Percentage Rent Only: Twenty percent (20%) of Lessee's net sales as defined in Section 5.3.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

SAN DIEGO COASTER CO.
450 McQuaide Drive
La Selva Beach, California 95076

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 and outdoor locations.

Exhibit C - Intentionally Omitted

Exhibit D - Rules and Regulations.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Percentage Rent. Lessee shall pay to Lessor the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's monthly net sales. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee within ten (10) days after the close of each month. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent and

Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net Sales Category. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor and such books, records and accounts shall be available for review by Lessor at the premises upon Seventy-Two (72) hours advance notice.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and

after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

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

9.2.3 Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.2.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City , or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as Improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the lease, Lessee 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 Lessee 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 Lessee must be new or like new condition when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

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

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the elective date of any such transaction, and shall provide Lessor 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 Lessor may reasonably request;

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

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

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease.

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 6:00 p.m. weekends, national holidays, and every day during the period beginning with the Saturday of Memorial Day weekend and continuing thru the Monday of Labor Day. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall conduct and operate its business with due diligence and efficiency in a manner reasonably calculated to produce a maximum amount of gross sales. Lessee shall adequately staff its premises with sufficient personnel, well trained and appropriately dressed, to operate its business. Lessee's business and inventory, within the Premises and on display in the windows, shall be operated and merchandised in a professional manner consistent with standards found in first class amusement parks such as the Santa Cruz Beach Boardwalk in Santa Cruz, California. Lessor's reasonable determination as to the foregoing matters shall be conclusive.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good

repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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. Lessee's contribution to any common area fees are calculated as part of the rent and shall not be billed separately.

19.4 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

against Lessor, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.6 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.7 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, the parking spaces thereon, driveways, 4 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, Improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have

the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings.

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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund"). Lessee's

PLEASE SIGN AND RETURN

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BELMONT PARK ASSOCIATES, a California Limited Partnership

(LESSEE) and filed in the Office of the City Clerk as Document 266064, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

SAN DIEGO COASTER COMPANY, a California Corporation
Trade Name: Pirate's Cove

(SUBLESSEE) dated May 1, 1995. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. The attached Minimum Standard Sublease Conditions.
2. The Sublessee providing the City a certificate of insurance, in the amount stated in the lease, **naming the City as additional insured.**
3. The Sublessee shall furnish the Real Estate Assets Department two sets of "D Sheet" size drawings for any utility installations required to service the proposed rides, including their location on the site.
4. The Sublessee shall obtain all necessary permits to install the rides and shall abide by applicable height restrictions.

THE CITY OF SAN DIEGO

Dated 4-5-95

By _____
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 4/5/95

By _____
Deputy

The undersigned hereby agree to the terms and conditions set forth in this Consent to Sublease Agreement.

Dated 4-6-95

By _____
Belmont Park Associates

Dated 4-6-95

By _____
San Diego Coaster Company

MINIMUM STANDARD SUBLEASE CONDITIONS
(Required in all subleases prior to City Manager approval)

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessee and the City of San Diego, hereinafter, "City". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Sublessee, his agents and invitees.

INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be $1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated R-266064 dtd. March 5, 1987, as amended between the sublessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

LMF:rc
2/1/95

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DISASTER

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: May 1, 1995

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Coaster Company, a California Corporation

Lessee's Trade Name: Pirate's Cove.

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 11,714 square feet ("Floor Area") plus two (2) ourtdoor locations as shown on Exhibit "B".

Permitted Use: Lessee shall include the following: Soft Play Equipment and Arcade Equipment for recreational use and birthday parties. Food preparation of a fast food nature and pizza. Food service will not include any grilling, frying or deep fat frying preparation. Outdoor locations shall include a "Childrens Boat Ride" and a ride known in the trade as "Himalaya", or similar rides, and food service patio. Indoor facility may be modified to include Lazer Tag or any other indoor attraction consistent with the Lessor's Master Lease and not in violation of the restrictions shown below.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Fudge - all flavors

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Two Hundred Sixteen (216) months. plus 84 month option To renew

Commencement Date: The Commencement Date shall be deemed to occur on May 1, 1995.

Security Deposit: Eleven Thousand Two Hundred Forty-Two Dollars. ($11,242.00).

Minimum Annual Rent: Ninety-Eight Thousand One Hundred Sixty Dollars ($98,160) per annum payable in twelve (12) equal monthly installments of Eight Thousan One Hundred Eighty Dollars ($8,180) per month.

Percentage Rent: Ten percent (10%) of Lessee's net sales in excess of $1,100,000. Amendment 7

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

SAN DIEGO COASTER CO.
450 McQuaide Drive
La Selva Beach, California 95076

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 and outdoor locations.

Exhibit C - Intentionally Omitted

Exhibit D - Rules and Regulations.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Percentage Rent. Lessee shall pay to Lessor the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's monthly net sales. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee within ten (10) days after the close of each month. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent and

Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net Sales Category. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor and such books, records and accounts shall be available for review by Lessor at the premises upon Seventy-Two (72) hours advance notice.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

Landlord can be reimbursed for all costs + expenses relating to Premises eg. Real Prop taxes, security but not non-exclusive areas.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways.. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and

after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

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

9.2.3 Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.2.4 Business Interruption Insurance. Business interruption insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City, or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the lease, Lessee 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 Lessee 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 Lessee must be new or like new condition when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

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

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the elective date of any such transaction, and shall provide Lessor 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 Lessor may reasonably request;

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

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

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease.

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 6:00 p.m. weekends, national holidays, and every day during the period beginning with the Saturday of Memorial Day weekend and continuing thru the Monday of Labor Day. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall conduct and operate its business with due diligence and efficiency in a manner reasonably calculated to produce a maximum amount of gross sales. Lessee shall adequately staff its premises with sufficient personnel, well trained and appropriately dressed, to operate its business. Lessee's business and inventory, within the Premises and on display in the windows, shall be operated and merchandised in a professional manner consistent with standards found in first class amusement parks such as the Santa Cruz Beach Boardwalk in Santa Cruz, California. Lessor's reasonable determination as to the foregoing matters shall be conclusive.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good

repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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. Lessee's contribution to any common area fees are calculated as part of the rent and shall not be billed separately.

19.4 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

against Lessor, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.6 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.7 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, the parking spaces thereon, driveways, 4 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1. Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have

the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings.

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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund"). Lessee's

contribution to the marketing fund are calculated as part of the rent and shall not be billed separately.

28.2 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 Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.3 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.4 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - CONDITION OF PREMISES

32.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

32.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 33 - RENEWAL OPTION

33.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default existing under this Lease, and provided further that Lessee furnishes current financial statements satisfactory to Lessor which reflect that no material adverse change in the financial condition of Lessee has occurred since the Commencement Date, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for one (1) additional period of eighty-four (84) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal.

ARTICLE 34 - SECURITY DEPOSIT

34.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor.

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

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

34.4 Transfer of Security Deposit. Lessor may deliver the funds deposited hereunder by Lessee to the purchaser of Lessor's interest in the Premises in the event that such interest be sold and thereupon lessor 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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet by all lessees receiving benefits therefrom.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.) re prior lease

35.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

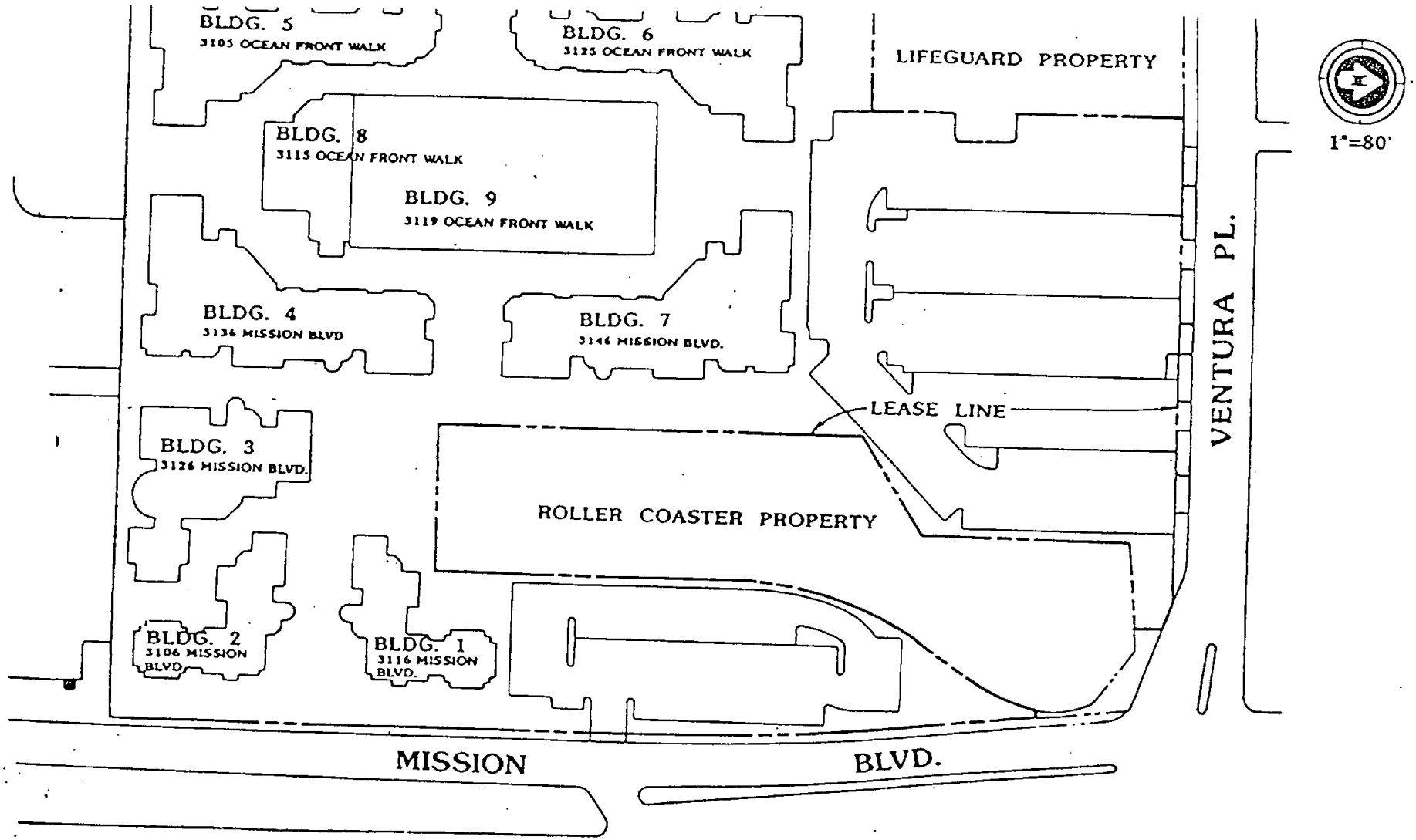
By: Phase One Development, Inc.
a California corporation
(Sole General Partner)
By: Donald C White
Name: Donald C. White
Title: Director

Lessee:

Coaster
SAN DIEGO ~~SEASIDE~~ COMPANY,
a California corporation

By: Jim H. Mong
Name:
Title: Pres
By:
Name:
Title: CFO

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.



BELMONT PARK COMMERCIAL RECREATIONAL CENTER

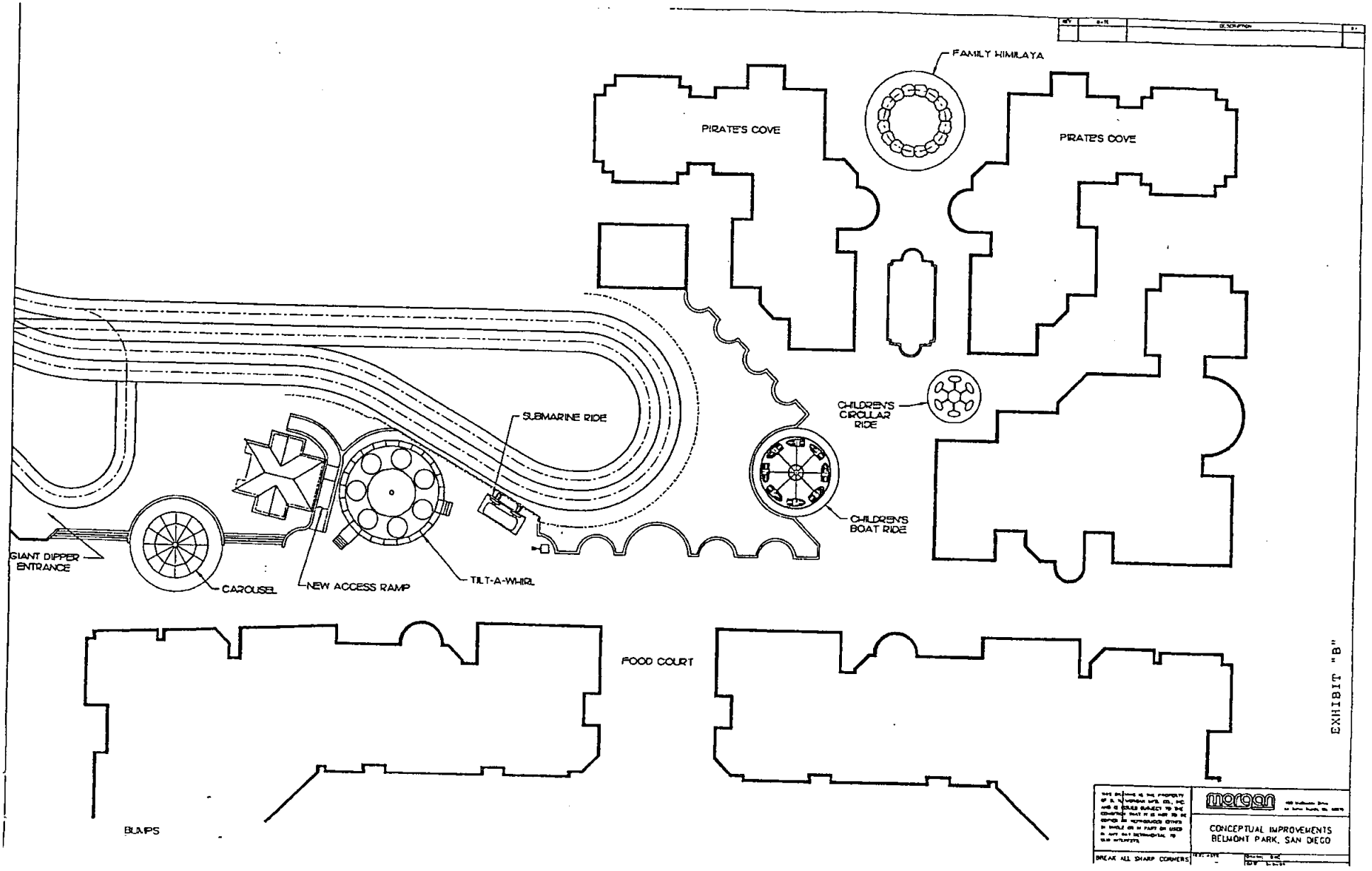

FAMILY HIMILAYA
PIRATE'S COVE
PIRATE'S COVE
CHILDREN'S CIRCULAR RIDE
SUBMARINE RIDE
CHILDREN'S BOAT RIDE
GIANT DIPPER ENTRANCE
CAROUSEL
NEW ACCESS RAMP
TILT-A-WHIRL
FOOD COURT
BUMPS
EXHIBIT "B"
morgan
CONCEPTUAL IMPROVEMENTS
BELMONT PARK, SAN DIEGO
BREAK ALL SHARP CORNERS

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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contribution to the marketing fund are calculated as part of the rent and shall not be billed separately.

28.2 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 Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.3 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.4 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - CONDITION OF PREMISES

32.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

32.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 33 - RENEWAL OPTION

33.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default existing under this Lease, and provided further that Lessee furnishes current financial statements satisfactory to Lessor which reflect that no material adverse change in the financial condition of Lessee has occurred since the Commencement Date, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for one (1) additional period of eighty-four (84) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal.

ARTICLE 34 - SECURITY DEPOSIT

34.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor.

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

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

34.4 Transfer of Security Deposit. Lessor may deliver the funds deposited hereunder by Lessee to the purchaser of Lessor's interest in the Premises in the event that such interest be sold and thereupon lessor 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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet by all lessees receiving benefits therefrom.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

35.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

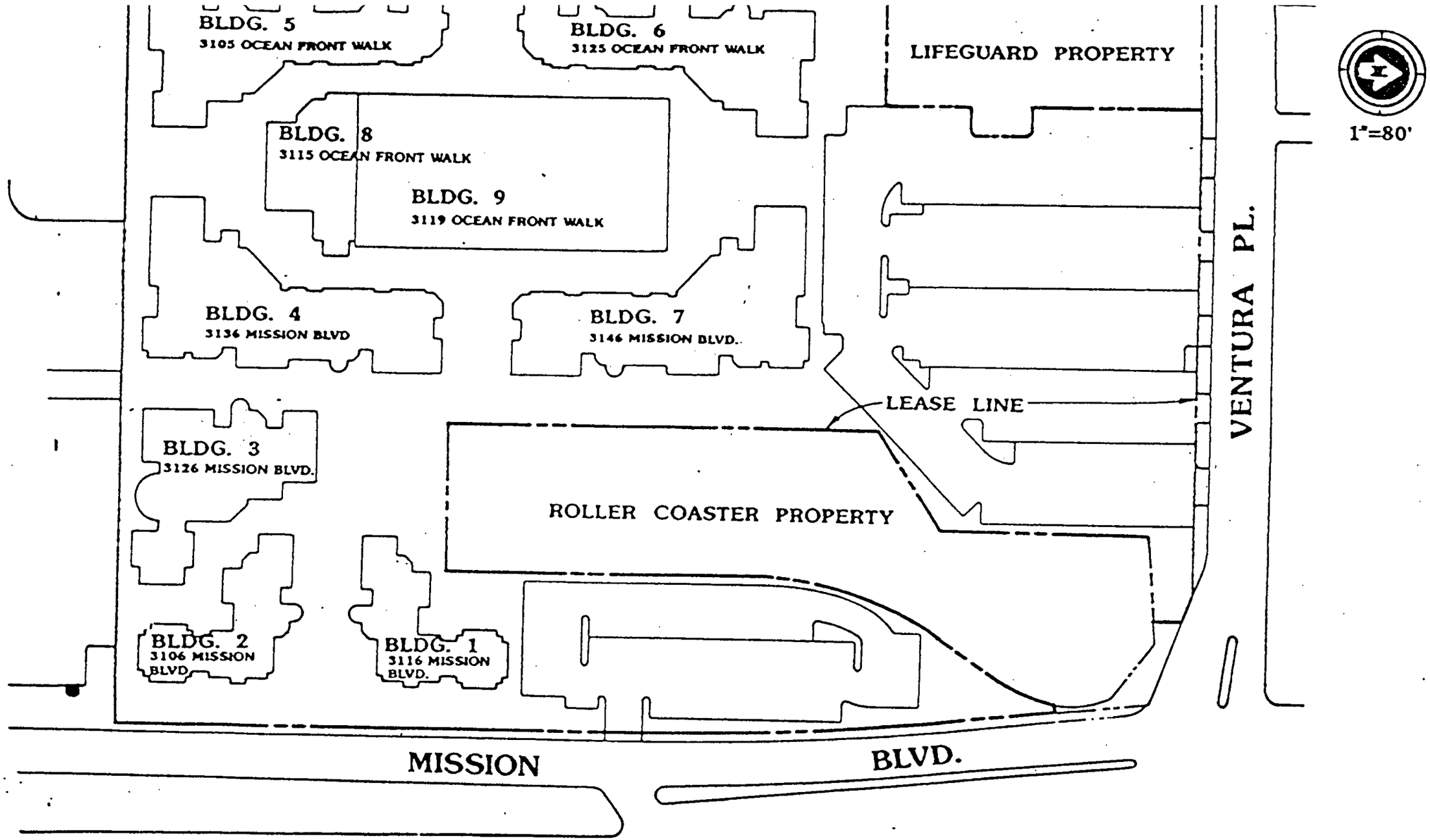
By: Phase One Development, Inc.
a California corporation
(Sole General Partner)
By: Donald C White
Name: Donald C. White
Title: Director

Lessee:

SAN DIEGO ~~SEASIDE~~ Coaster COMPANY,
a California corporation

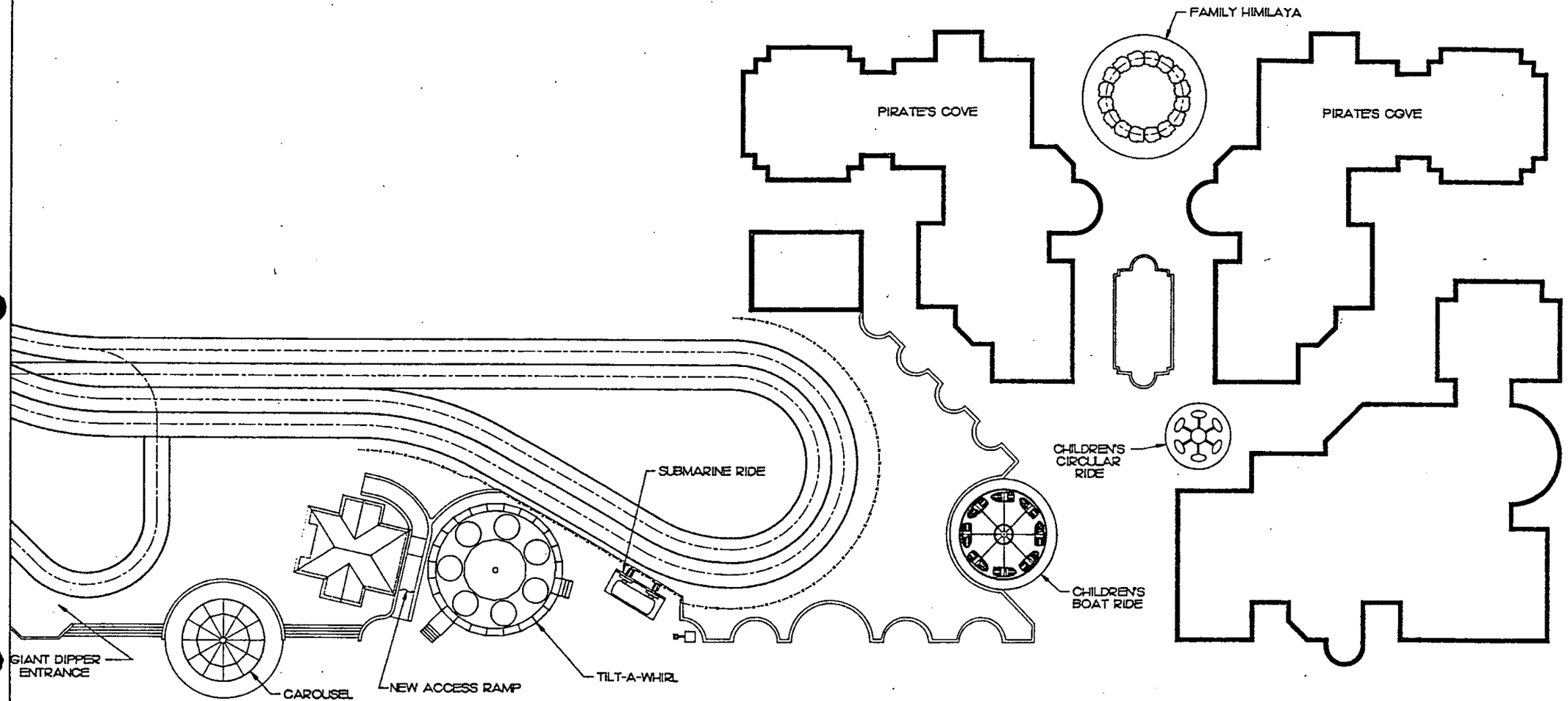
By: Peter H. Mayer
Name:
Title: Pres.
By:
Name:
Title: CFO

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.



BELMONT PARK COMMERCIAL RECREATIONAL CENTER

REV	DATE	DESCRIPTION	BY



FOOD COURT

BUMPS

EXHIBIT "B"

THIS DRAWING IS THE PROPERTY OF D. H. MORGAN MFG. CO., INC. AND IS ISSUED SUBJECT TO THE CONDITION THAT IT IS NOT TO BE COPIED OR REPRODUCED EITHER IN WHOLE OR IN PART OR USED IN ANY WAY DETRIMENTAL TO OUR INTERESTS.

BREAK ALL SHARP CORNERS

DO NOT SCALE DRAWING

morgan

CONCEPTUAL IMPROVEMENTS
BELMONT PARK, SAN DIEGO

NEXT ASSY: -

SCALE: 1:200

DRAWN: DWC

DATE: 3-8-93

DWG NO. D-1398G

REV

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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BELMONT PARK

LEASE AGREEMENT

Lessor: BELMONT PARK ASSOCIATES,
a California Limited Partnership

Lessee: San Diego Coaster Company, a
California corporation, dba
Belmont Park Remote-A-Boat

(Revised 7/15/88)

BELMONT PARK
LEASE AGREEMENT
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ADDENDUM TO LEASE

This Addendum to Lease ("Addendum") is made to Lease dated as of May 14, 1991 ("Lease"), by and between Belmont Park Associates, a California limited partnership ("Lessor") and San Diego Coaster Company, a California corporation dba _____ ("Lessee").

Lessor and Lessee hereby agree that notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be a part of the Lease and shall supersede, to the extent appropriate, any contrary provision in the Lease. All references in the Lease and in this Addendum to "Lease" shall be construed to mean the Lease, as amended and supplemented by this Addendum. All capitalized terms used in this Addendum unless specifically defined in this Addendum shall have the same meaning as the terms used in the Lease.

ARTICLE 1 - Fundamental Lease Provisions

1. Premises: The Premises are located at 3146 Mission Boulevard, Suite 7L, San Diego, CA 92109

2. Permitted Use: The following shall be deemed added to the Lease as Lessee's Permitted Use:

Permitted Use: The operation of an indoor bumper car amusement.

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, notwithstanding anything contained to the contrary in the foregoing paragraph, Lessee shall be prohibited from selling or offering for sale the following merchandise:

(a) Sunglasses and/or swimwear which occupies more than fifteen percent (15%) of Lessee's Floor Area;

(b) Mexican style food;

(c) Hot dogs, hamburgers or a chicken "schwarma" sandwich;

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them;

(e) Volleyballs and/or volleyball nets;

(f) Specialty bath products including, but not limited to, of bath soaps, bath gifts and potpourri which occupies more than fifteen (15%) of Lessee's Floor Area;

(g) Fudge, fudge/caramel/chocolate dipped apples (and other similarly dipped fruits) and bulk wrapped candy (i.e. sold in large bins).

Lessee acknowledges and agrees that Lessee shall not be permitted to sell or offer for sale any of the foregoing merchandise. Lessee's failure to comply with the foregoing shall constitute a material default by Lessee under this Lease.

3. Fixturization Period: The following shall be deemed added to the Lease as Lessee's Fixturization Period:

Fixturization Period: Lessee shall have up to forty- five (45) days following Lessor's delivery of the Premises to Lessee to install Lessee's trade fixtures, equipment and other improvements in the Premises, all of which shall be subject to the prior approval of Lessor.

4. City Rent: Notwithstanding anything in this Lease to the contrary, no City Rent shall be payable by Lessee during the initial sixty (60) month term of this Lease.

Article 4 - Term

5. Renewal Option: The following is deemed added to Article 4 of the Lease as Section 4.4:

4.4. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default in existence under this Lease, and provided further that Tenant furnishes current financial statements to Landlord with such notice which reflects no material adverse change in financial condition Tenant has incurred since the Commencement Date, Tenant shall have the option to renew (the "Renewal Option") for one (1) additional term of sixty (60) months (such additional term hereinafter referred to as the "Renewal Term"). To exercise the Renewal Option, Tenant must deliver written notice of exercise to Landlord during the sixth (6) month prior to the date of expiration of the initial Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a part of the Premises by Tenant shall terminate the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply except there shall be no further right of renewal. The Rent payable during the Renewal Term shall be determined in accordance with the following provisions:

The Rent payable during the Renewal Term shall be the greater of the following: (A) the Minimum Annual Rent in effect for the calendar year immediately preceding the Renewal Term increased to reflect any change in the cost of living in the manner provided in Section 5.1.1 of the Lease (and thereafter subject to upward adjustment during the Renewal Term as provided in Section 5.1.1); or (B) the City Rent specified in the fundamental Lease Provisions plus the percentage of Lessee's Net Sales of various categories as specified in Section 5.1.2 of the Lease; or (C) Percentage Rent specified in the Fundamental Lease Provisions and as defined in Section 5.3.

Article 5 - Rent

6. In the second sentence of Section 5.1, the phrase "first months Minimum Annual Rent" shall be deemed deleted. Additionally, notwithstanding anything contained to the contrary in this Lease, Lessee shall be conditionally excused from payment of Minimum Annual Rent and City Rent during the first twelve (12) full months following the Commencement Date ("Abatement Period") and Lessee shall pay, as Rent for the Premises during the Abatement Period, Percentage Rent of ten percent (10%) only. If Lessee is in a material and uncured default of the Lease at any time, all such conditionally excused Minimum Annual Rent, City Rent and Percentage Rent shall be immediately due and payable.

7. Section 5.1.3, shall be deemed deleted in its entirety and the following shall be deemed inserted therein:

"Percentage Rent. The amount, if any, by which the Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Lessee made from on upon the Premises during each partial or complete calendar year exceed the Minimum Annual rent and City Rent payable by Lessee during each calendar year. Percentage Rent shall be computed each calendar year immediately following the last month of the calendar year. Lessee shall make its annual payment of Percentage Rent (if any) within thirty (30) days after the expiration of the preceding calendar year."

8. In the first sentence of the second paragraph of Section 5.2, the phrase "at the Premises or within the City of San Diego" shall

be deemed deleted and the phrase "and make available at the Premises for Lessor's review within forty-eight (48) hours of Lessor's request" shall be deemed inserted in place thereof.

9. In the first sentence of Section 5.5, the phrase "five (5)" shall be deemed deleted and the phrase "ten (10)" shall be deemed inserted in place thereof.

10. Subsection 5.8.1 shall be deemed deleted.

11. The last paragraph of Section 5.8 shall be deemed deleted.

Article 9 - Indemnity and Insurance

12. In Section 9.3.1 the phrase "One Million Dollars ($1,000,000.00) shall be deemed deleted and the phrase "Two Million Dollars ($2,000,000.00)" shall be deemed inserted in place thereof.

Article 16 - Lessee's Conduct of Business

13. In the first sentence of Section 11.1, the words "10:00 a.m." shall be deemed deleted and the words "11:00 a.m." shall be deemed inserted in place thereof.

Article 27 - Quiet Possession and Relocation

14. Relocation: Section 27.2 is deemed deleted.

Article 28 - Grand Opening and Marketing Fund

15. Grand Opening: Section 28.6 is deemed deleted in its entirety.

EXHIBIT C - Work Letter Agreement

16. In Section 4.1 of Exhibit C, wherever the phrase "three (3)" appears, it shall be deemed deleted and the phrase "ten (10)" shall be deemed inserted in place thereof. Additionally, wherever the phrase "one (1)" appears, it shall be deemed deleted and the phrase "three (3)" shall be deemed inserted in place thereof.

17. In the last sentence of Section 4.2, the phrase "three (3)" shall be deemed deleted and the phrase "five (5)" shall be deemed inserted in place thereof.

18. Except as and to the extent modified by this Addendum, all provisions of the Lease shall remain in full force and effect.

LESSOR	**LESSEE**
Belmont Park Associates, a California limited partnership	San Diego Coaster Company, a California Corporation dba _____
By: Phase One Development, Inc. a California Corporation (Sole General Partner)	By: Ed Hutton Name: ED HUTTON Title: PRESIDENT
By: Donald C White Name: Title: E.V.P.	By: Dana H. Morgan Name: Dana H. Morgan Title: Vice President

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Addendum must be executed by the President or Vice President and the Secretary or Assistant Secretary, unless the bylaws or a resolution of the Board of Directors of Lessee shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be,

must be furnished. If Lessee is a partnership, all general partners must sign on behalf of the partnership.

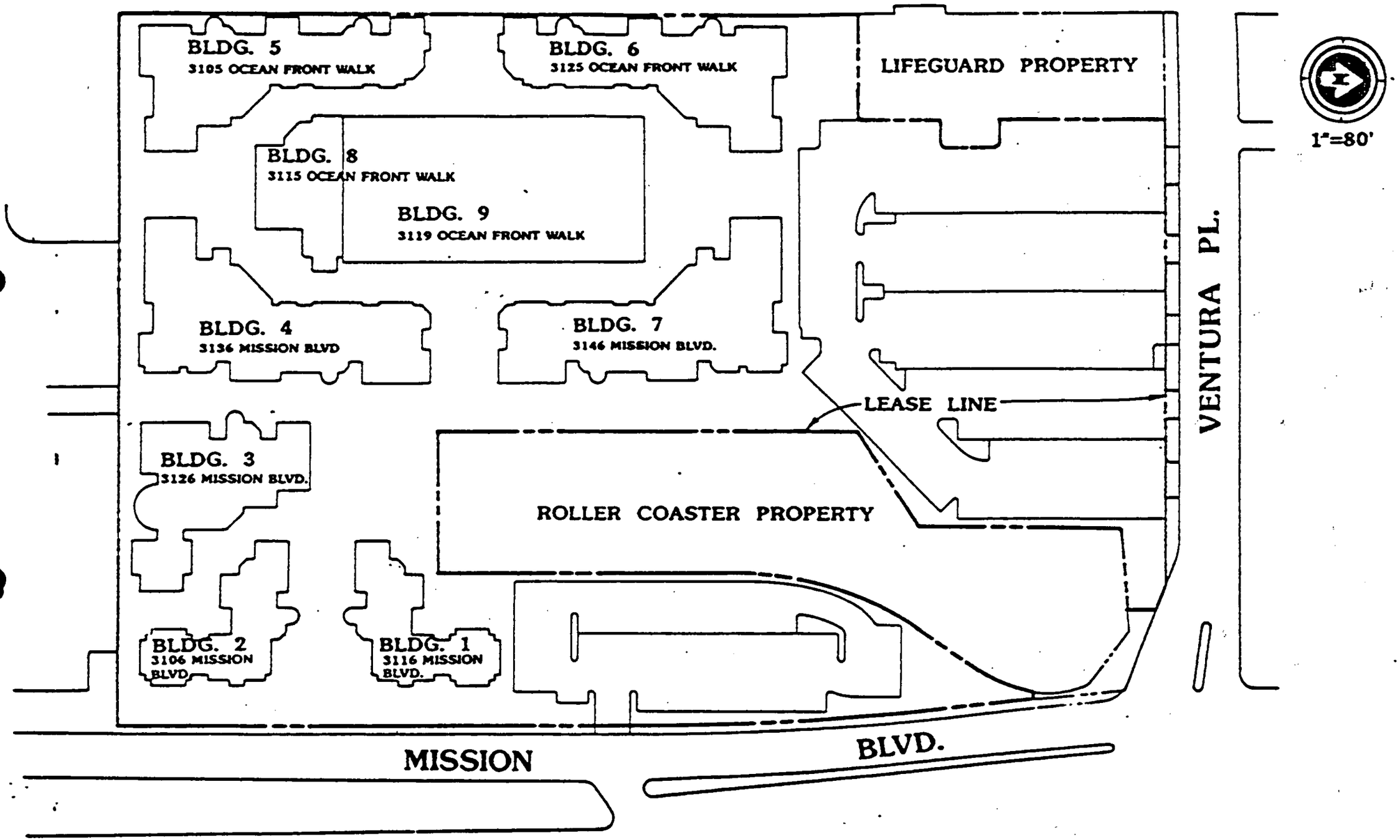


EXHIBIT A

BELMONT PARK COMMERCIAL RECREATIONAL CENTER

EXHIBIT B

FLOOR PLAN SHOWING THE PREMISES

EXHIBIT C

WORK LETTER AGREEMENT

(Lessor to Construct)

Lessor and Lessee are executing simultaneously with this Work Letter Agreement ("Agreement"), a written lease ("Lease") covering those certain premises more particularly described in Exhibit B to the Lease ("Premises"), in the center more particularly described in Exhibit A to the Lease ("Center"). Lessor and Lessee agree that Lessor shall improve and prepare the Premises on Lessee's behalf and for Lessee's occupancy, on the terms and conditions set forth in this Agreement. To induce Lessor and Lessee to enter into the Lease (which is hereby incorporated by reference to the extent that the provisions of this Agreement may apply thereto) and in consideration of the mutual covenants hereinafter contained, Lessor and Lessee mutually agree as follows:

1. **Representatives and Definitions**

Lessor appoints Lessor's Representative to act for Lessor and Lessee appoints Lessee's Representative to act for Lessee in all matters covered by this Agreement. All inquiries, requests, instructions, authorizations and other communications with respect to the matters covered by this Agreement will be made to Lessor's Representative or Lessee's Representative, as the case may be. Lessee will not make any inquiries of or requests to, and will not give any instructions or authorizations to, any other employee or agent of Lessor, including Lessor's architect, engineers and contractors or any of their agents or employees, with regard to matters covered by this Agreement. Either party may change its Representative under this Agreement at any time with three (3) business days, prior written notice to the other party.

Lessee's Representative: Edward Hutton

Lessor's Representative: Skip White

Lessor's Space Planner ("Space Planner"): Conceptual Edge

Lessor's Contractor ("Contractor"): To be selected by Lessor.

2. **Plans and Specifications.**

2.1 Within five (5) business days following execution of the Lease, ("Submission Date") Lessee shall cooperate with and submit to Space Planner complete information ("Lessee Information") necessary for Space Planner to prepare a space layout and improvement plan for the Premises ("Space Plan") including architectural, mechanical, plumbing and electrical layout plans and specifications required for the performance of the work to construct leasehold improvements for the Premises ("Leasehold Improvements"). Such plans shall include but not be limited to partition layout, reflected ceiling plans, electrical outlets and switches and telephone outlets and locations. To the extent Lessor is charged consultant or subcontractor design fees related to the Leasehold Improvements said fees shall be charged against the Leasehold Improvements Allowance described in Section 10 of this Agreement. If Lessee fails to deliver the Lessee Information to Lessor by the Submission Date, then, in addition to any other rights which it may have on account of that failure, Lessor may consider each day following the Submission Date until receipt of the Lessee Information to be a day of Lessee Delay as defined in Section 7 of this Agreement.

2.2 Lessor, Lessee and Contractor shall cooperate to the best of their ability to provide all information required for coordination of architectural, mechanical, electrical, and plumbing drawings.

2.3 All plans and specifications are subject to the Lessor's approval, which the Lessor agrees shall not be unreasonably withheld.

3. **Lessor's Approval.**

Lessor may withhold its approval of any Space Plan including any revisions requested by Lessee, Working Drawings, Lessee Extra Work or Change Orders which require work which:

3.1 exceeds or affects the structural integrity of the building of which the Premises are a part ("Building"), or any part of the heating, ventilating, air conditioning, plumbing, mechanical, electrical, communication or other systems of the Building;

3.2 is not approved by the holder of any Mortgage encumbering the Building and/or the Center at the time the work is proposed;

3.3 would not be approved by a prudent owner of property similar to the Center;

3.4 violates any agreement which affects the Center or which binds Lessor;

3.5 Lessor reasonably believes will increase the cost of operation or maintenance of any of the systems of the Center;

3.6 Lessor reasonably believes will reduce the market value of the Center at the end of the Term;

3.7 does not conform to applicable building code or is not approved by any governmental authority with jurisdiction over the Premises and/or the Center; or

3.8 does not conform to the Center Leasehold Improvement Standards prepared by Lessor unless otherwise approved by Lessor.

4. **Schedule of Leasehold Improvement Activities.**

4.1 Space Planner shall prepare the Space Plan in accordance with Section 2 of this Agreement. Lessee shall approve or disapprove the Space Plan in writing within ~~three (3)~~* business days of receipt from Space Planner ("Space Plan Approval Date"). If Lessee disapproves the Space Plan, Lessor and Lessee shall, within ~~one (1)~~* business day following Lessor's receipt of Lessee's disapproval, meet and revise the Space Plan to the reasonable satisfaction of Lessee. The failure of Lessee to approve or disapprove the Space Plan in writing within such ~~three (3)~~* business day period or the failure of Lessee to reasonably approve the revised Space Plan within such ~~one (1)~~* business day period shall be a Lessee Delay. * See Addendum

4.2 After Lessee's approval of the Space Plan, Lessor or Contractor shall promptly prepare a preliminary estimate of the cost of the Leasehold Improvements ("Preliminary Cost Estimate") described in the Space Plan. If the Preliminary Cost Estimate is less than the Leasehold Improvement Allowance described in Section 10 of this Agreement, the Preliminary Cost Estimate shall be deemed approved without notice to Lessee.

If the Preliminary Cost Estimate is more than the Leasehold Improvement Allowance, Lessor shall so notify Lessee in writing and Lessee shall, within ~~three (3)~~* business days of receipt thereof either: * See Addendum

(i) agree in writing to pay the amount by which the Preliminary Cost Estimate exceeds the Leasehold Improvement Allowance as though that amount were Lessee Extra Work subject to Section 5 of this Agreement, or

(ii) revise the Lessee Information so that the Space Plan can be modified to assure that the Preliminary Cost Estimate is either (a) no more than the Leasehold Improvement Allowance or (b) in excess of the Leasehold Improvement Allowance by an amount which Lessee agrees to pay pursuant to clause (i) immediately above. The failure of Lessee to respond within such three (3) business day period shall be a Lessee Delay. Upon Lessee's fulfillment of its obligations in either (i) or (ii), the Preliminary Cost Estimate shall be deemed approved.

4.3 After approval of the Preliminary Cost Estimate, Space Planner shall prepare and deliver to Lessee and Contractor working drawings for the Premises ("Working Drawings"). Contractor shall prepare from the Working Drawings a final cost proposal ("Final Pricing") for construction of the Leasehold Improvements in accordance with Working Drawings. If the Final Pricing is more than the greater of (i) the Leasehold Improvement Allowance or (ii) the sum of the Leasehold Improvement Allowance plus any amount which Lessee has agreed to pay pursuant to clause (i) of Section 4.2 immediately above (such greater amount being defined as the "Maximum Approved Cost"), Lessor shall so notify Lessee in writing and Lessee shall within three (3) business days following receipt of such notice either (i) agree in writing to pay the amount by which the Final Pricing exceeds the Maximum Approved Cost as though the additional amount were Lessee Extra Work subject to Section 5 of this Agreement, or (ii) notify Lessor to revise the Working Drawings to assure that the Final Pricing is no more than the Maximum Approved Cost. The failure of Lessee to respond within such three (3) business day period shall be a Lessee Delay.

5. Payment for Lessee Extra Work.

"Lessee Extra Work" means the amount by which the Leasehold Improvement cost exceeds the Leasehold Improvement Allowance. Lessee shall pay to Lessor, within five (5) business days of Lessor's written request therefor, the total amount payable by Lessee for Lessee Extra Work.

6. Change Orders.

Lessee may authorize changes in the work during construction, only by written instructions from Lessee's Representative to Lessor's Representative on a form approved by Lessor. All such changes shall be subject to Lessor's prior written approval in accordance with Section 3 of this Agreement. Prior to commencing any change, Lessor shall prepare and deliver to Lessee, for Lessee's approval, a change order (the "Change Order") setting forth the total cost of such change, which will include associated architectural, engineering and construction contractor's fees, and the cost of Lessor's overhead at the rate of fifteen percent (15%) of the amount of the Change Order. If Lessee fails to approve such Change Order within five (5) business days after delivery by Lessor, Lessee shall be deemed to have withdrawn the proposed Change Order and Lessor shall not proceed to perform the change. Upon Lessor's receipt of Lessee's approval, Contractor shall proceed to perform the change and Lessee shall pay for such Change Order at the time Contractor starts work on such Change Order.

7. Completion and Rental Commencement Date.

It is agreed that Lessee's obligation for the payment of Rent under the Lease shall not occur until the earlier to occur of (i) Substantial Completion of the Leasehold Improvements; or (ii) the date Lessee opens for business in the Premises; provided however, if Lessor shall be delayed in substantially completing the Leasehold Improvements as a result of a Lessee Delay, the Commencement Date shall be accelerated by the number of days of such Lessee Delay. Each of the following events shall be deemed a "Lessee Delay":

7.1 Lessee's failure to furnish Lessee Information, approve pricing or otherwise perform in accordance with the time frames specified above;

7.2 Lessee's request for materials, finishes, or installations other than as provided for in the Leasehold Improvement Standards manual;

7.3 Lessee's changes in the Space Plan after the Space Plan Approved Date; or

7.4 Lessee's failure to perform any act or obligation imposed on Lessee by this Lease or this Agreement;

As used in this Lease and this Agreement, the term "Substantial Completion of the Leasehold Improvements" shall mean that (i) Lessor has procured an Authorization to Occupy/Certificate of Occupancy (or an equivalent from the City for such work) and (ii) such work has been performed substantially in accordance with this Agreement except for finishing details of construction, decoration, mechanical, and other adjustments and other items of the type commonly found on an architectural "punch list", none of which materially interfere with Lessee's use or occupancy of the Premises for normal business operations.

8. Construction of the Premises.

Contractor shall construct the Leasehold Improvements within the Premises under contract with the Lessor. Following approval of the Working Drawings and the Final Pricing by Lessor and Lessee, Contractor will cause application to be made to the appropriate governmental authorities for necessary approvals and building permits. Upon receipt of the necessary approvals and permits and subject to receipt of the payment required under Section 5 of this Agreement, Contractor shall begin construction.

9. Tenant's Punch List.

9.1 Once the Leasehold Improvements are substantially completed and prior to the Lessor's delivery of the Premises to Lessee, Lessor shall give Lessee three (3) business days prior notification of a meeting for Lessee to inspect the Leasehold Improvements. Lessee's representative shall completely examine the Premises and prepare with Lessor's representative and Contractor a list of all visible items to be completed by Contractor to finish the Leasehold Improvements. The list shall be signed by both Lessor, Lessee and Contractor and all items shall be completed as soon as possible.

9.2 Any items damaged during Lessee's move in or occupancy shall be repaired or replaced by Contractor at Lessee's sole cost and expense and not as part of the Leasehold Improvement Allowance.

10. **Leasehold Improvements at Lessor's Cost and Expense.**

Lessor agrees to provide Lessee a Leasehold Improvement Allowance in an amount not to exceed Thirty five thousand four hundred Dollars ($ 35,400.00) ("Leasehold Improvement Allowance"). The Leasehold Improvement Allowance shall include without limitation any and all costs of construction, city permits, space planning, engineering and the cost of Lessor's overhead at the rate of fifteen percent (15%) of the cost of the Leasehold Improvements. Any costs in excess of the Leasehold Improvement Allowance shall be the sole responsibility of Lessee.

11. **Building Standard.**

Lessee shall utilize Lessor's Leasehold Improvement Standards as set forth in the Leasehold Improvement Standards Manual prepared by Lessor, a copy of which Lessee hereby acknowledges having received.

12. **Shell Construction.**

12.1 Lessor shall provide as part of the initial construction of the Premises the following items: (i) finished concrete floor (except where deleted to accommodate Lessee's future plumbing requirements) on a single plane without depression or raised areas; (ii) outside walls, structural columns, demising walls with exposed studs to accommodate Lessee's future electrical requirements; (iii) 110/208 3 phase power supplied to a central location within the Building, together with one (1) electrical sub-panel in the Premises; (iv) sprinkler system for the Building shell (if required by law) which shall not be deemed to include Lessee's interior sprinkler system; and (v) HVAC system piping capped at the demising wall.

12.2 Lessor will also have made the following improvements to the Premises:

(a) Not applicable

(b) Not applicable

(c) Not applicable

The cost of the improvements set forth in Section 12.2 is zero dollars ($ -0-) and that cost will be deducted from the Leasehold Improvement Allowance.

13. **Miscellaneous.**

In the event of any conflict between the terms of this Work Letter Agreement and the Lease, the terms of this Work Letter Agreement shall control.

LESSOR:

Belmont Park Associates,
a California Limited Partnership

By: Phase One Development, Inc.
~~Name~~: a California Corporation
~~Title~~: Sole General Partner

By: _____
Name: _____
Title: _____

LESSEE:

San Diego Coaster Company,
a California Corporation

By: Ed Hutton
Name: Ed Hutton
Title: President

By: Dave H. Morgan
Name: Dave H. Morgan
Title: Vice President

EXHIBIT D

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. Lessee 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 Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the lose of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor 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 Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or serial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be distribute or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

of creditors, or any other person without the prior written consent of Lessor and the City. Any transfer in violation of the provisions of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained, including, without limitation, the obligation to maintain the level of Net Sales as required by Section 5.8 and to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonably avoided.

21.2.4 Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee'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 Lessor 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, or any other costs necessary or appropriate to relet the Premises.

21.2.5 At Lessor'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 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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 Annual 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.

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor's

EXHIBIT E

GUARANTY OF LEASE

[INTENTIONALLY OMITTED]

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: MARCH 8, 19 91

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Coaster Company, a California corporation

Lessee's Trade Name: Belmont Park Remote-A-Boat

Premises: ~~The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately _____ square feet ("Floor Area") as outlined on Exhibit B.~~ See: Addendum Paragraph 1.

Permitted Use: See Addendum Paragraph 2

Lease Term: Sixty (60) months

Commencement Date: April 1, 1991

Fixturization Period (if any): See Addendum Paragraph 3

Rental shall be the greater of:

A. Minimum Annual Rent: Not Applicable Dollars ($ Ø) per annum payable in twelve (12) equal monthly installments of _____ Dollars ($ Ø) per month during each year of the Lease Term.

B. City Rent: Not Applicable Dollars ($ Ø) per annum payable in twelve (12) equal monthly installments of _____ Dollars ($ Ø) per month during each year of the Lease Term ("Fixed City Rent"), plus the percentage of Lessee's Net Sales of various categories as specified in Section 5.1.2.

C. Percentage Rent: Fifteen percent (15 %) of Lessee's Net Sales as defined in Section 5.3.

Lessee's Minimum Net Sales Requirement: Not Applicable Dollars ($ Ø) per year.

Address for Notices: To Lessor:
BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
9665 Chesapeake Drive, Suite 401
San Diego, California 92123

To Lessee:
San Diego Coaster Company
450 McQuaide Dr.
LaSelva Beach, CA 95076
Telephone: (408) 724-8686

Security Deposit: Not Applicable Dollars ($ Ø).

Marketing Fund Contribution: The greater of (i) Not Applicable Dollars ($ Ø per annum, payable in twelve (12) equal monthly installments of _____ Dollars ($ Ø) per month during each year of the Lease Term, or (ii) _____ percent (_____%) of Lessee's Net Sales for the calendar year to date.

Grand Opening Contribution: Not Applicable Dollars ($ Ø)

Real Estate Broker: (If any) None

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center.

Exhibit B ~~- Floor Plan Showing~~ the Premises.

Exhibit C - Work Letter Agreement. [Intentionally Omitted]

Exhibit D - Rules and Regulations.

Exhibit E - Guarantee of Lease. [Intentionally Omitted]

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("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 Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 Lessor makes no representation as to the exact square footage.~~ See Addendum Paragraph 4

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the the "Commencement Date". The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided however that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession, and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (8) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease.

by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date. *See Addendum Paragraph 5

ARTICLE 5 - RENT

5.1 Rent. Lessee agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, in twelve (12) monthly installments during each year, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Lease Term the greater of the amounts specified in Sections 5.1.1, 5.1.2 and 5.1.3 below, based upon year-to-date amounts. Upon execution of the Lease, Lessee shall pay its first months Minimum Annual Rent and Security Deposit. At the end of each calendar year, any excess rent which Lessee paid to Lessor shall be credited to the next monthly installment of rent due (or upon termination of this Lease and subject to offset by Lessor for any amounts due Lessor hereunder, paid directly to Lessee within thirty (30) days of such termination, and any deficiency shall immediately be paid by Lessor to Lessee).

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

(a) Minimum Annual Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Lease Term to reflect any change in the cost of living. The adjustment shall be calculated by multiplying the Minimum Annual Rent payable during the immediately preceding calendar year by a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items) (1982-84=100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Annual Rent for each calendar year is determined, Lessor shall give Lessee written notice of the amount thereof. The Minimum Annual Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. If the Index is discontinued or revised during the Lease Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Lessee shall continue to pay the Minimum Annual Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Lessee, concurrently with the next monthly Rent payment, shall pay to Lessor, the difference between the new Minimum Annual Rent, including the cost of living increase, for the period commencing with the first month of such calendar year and the Minimum Annual Rent already paid for such period.

(b) The Minimum Annual Rent shall also be adjusted upward as of the expiration of the third full or partial calendar year, and as of the expiration of every third calendar year thereafter during the Lease Term (i.e., if the Commencement Date is June 1, 1988, the first adjustment under this subparagraph (b) will be on January 1, 1991, the second adjustment will be on January 1, 1994, and so on.) Such adjustment of the Minimum Annual Rent shall produce a new Minimum Annual Rent equal to the greater of (i) the cost of living increase required under Section 5.1.1 (a) above or (ii) eighty percent (80%) of the annual average of the total rent (including Minimum Annual Rent, City Rent and Percentage Rent) paid pursuant to this Section 5.1 by Lessee to Lessor for the preceding three year period (or portion thereof as to the first adjustment).

5.1.2 City Rent. The Fixed City Rent specified in the Fundamental Lease Provisions plus three (3) percent of all Lessee's Net Sales (as defined in Section 5.3) in the food and Specialty Shop Sales category, five (5) percent of all Lessee's Net Sales in the alcoholic beverage sales and game room operations category, and seven (7) percent of all Lessee's Net Sales in the category of all other sales and operations for such month. City Rent shall be computed by Lessee each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee shall pay to Lessor the amount, if any, by which the City Rent amount set forth in the Fundamental Lease provisions exceeds the installments of the greater of the Minimum Annual Rent or City Rent paid by Lessee during such period. Lessee shall pay the City Rent no later than ten (10) days following the close of the preceding month. The classification of Lessee's Net Sales by category ("Net Sales Category") shall be determined at the end of each calendar month by Lessee who shall provide Lessor with a copy of such classification at the same time Net Sales are determined. Lessee shall provide such records as may be required from time to time by the City under the Master Lease.

(a) In the event the Minimum Annual Rent increases, the Fixed City Rent shall increase in the same proportion and at the same time.

(b) "Specialty Shop Sales" shall mean sales of novelty items, sporting goods, sports equipment rental, apparel, art, flowers, books, cards, party supplies, travel services and other services and items normally associated with visitor ~~oriented commercial and recreational uses.~~ See Addendum Paragraph 6

5.1.3 Percentage Rent. The Percentage Rent specified in the Fundamental Lease Provisions being that specified percentage of Net Sales of Lessee made from or upon the Premises during each calendar month. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee ~~shall pay to Lessor the amount, if any, by which the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's Net Sales during said period exceeds the installments of the greater of Minimum Annual Rent or City Rent paid by Lessee during such period.~~ Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately following the first full month. See Addendum Paragraph 7

5.1.4 ~~Increase in City Rent and Percentage Rent.~~ ~~In the event of an increase in the rate of percentage rent that Lessor is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Lessee pays Lessor pursuant to Section 5.1.2 shall automatically increase at the same time and by the same amount.~~ See Addendum Paragraph 8

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee (totaled for calendar year to date) within ten (10) days after the close of each calendar month, and an annual statement of Net Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent, Percentage Rent, and City Rent for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net 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 Net 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, Lessee shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets, both issued and unissued. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, City Rent or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional City Rent or Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor 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 Lessee's statements shall be found to have understated Net Sales by more than five percent (5%), or if Lessee has failed to maintain complete and true records, accounts, and supporting source documents in strict accordance with Article 5, then in addition to any other rights of Lessor under this Lease, Lessor may terminate this Lease. Acceptance of the Understatement Fee or any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to a late payment, or prevent Lessor from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Net Sales. The term "Net Sales" as used herein is hereby defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net 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, together with the amount of all orders taken or received at the Premises, whether such orders be filled 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the City Rent and Percentage Rent payable hereunder all 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 Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee 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 Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, City Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within ~~five (5)~~ * days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fee"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor 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) Lessee 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 Lessor, and may be applied by Lessor, 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 Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

*See Addendum Paragraph 9

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

5.7 Returned Checks. Lessee 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 Lessor for Lessor's related costs.

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

(a) ~~Lessee's Minimum Net Sales in any calendar year are less than the amount set forth in Article 1 as Lessee's Minimum Net Sales Requirement, adjusted as provided for herein,~~ *See Addendum Paragraph 10

(b) at any time during the Lease Term the products which Lessee sells, or the services which Lessee provides, on or from the Premises are not, in Lessor's opinion, of the highest quality; or

(c) Lessee substantially or continually fails to observe the Rules and Regulations and policies and directions made or promulgated by Lessor,

Then:

(d) If the condition in subparagraph (a) exists, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice; or

(e) In the case of a default under subparagraph (b) or (c), Lessor may give written notice to Lessee, 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, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice.

If this lease is so terminated, Lessee covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Lessor 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 Lessee pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Lessee shall be discharged from its obligations hereunder and under the Lease, and Lessee shall have no recourse against Lessor 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 Lessee.

~~The amount of Lessee's Minimum Net Sales Requirement specified in Article 1 shall be adjusted upward, after the~~ expiration of each calendar year of this Lease to reflect any increase in the cost of living. ~~The adjustment,~~ If any, shall be calculated upon the basis of the Index, as defined in Section 5.1.1(a). ~~Lessees~~ Minimum Net Sales Requirement shall be set by multiplying the amount thereof applicable ~~in the immediately~~ preceding year by a fraction, the numerator of which shall be the Extension Index ~~and the denominator~~ of which shall be the Beginning Index as defined in Section 5.1.1(a). In no event shall ~~Lessee's Minimum Net Sales Requirement be less than that for the previous year.~~ *See Addendum Paragraph 11

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee acknowledges that it 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. Lessee shall not, without the prior written notice of Lessor, sell any food (or beverage) as fast food or take out food to be consumed in the Common Areas of the Center unless it is specified to be sold as fast food under Permitted Use in the Fundamental Lease Provisions. If a Permitted Use, restaurants shall be permitted to use one (1) counter window to the exterior of the Premises and a maximum of 1,000 sq. ft. of floor area for the purpose of preparing and selling fast food or take out food. If a Permitted Use, Lessee shall indicate such window and preparation areas clearly on floor plans, to be approved in writing by Lessor prior to the sale of such food. Lessee shall not, without the prior written consent of Lessor sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Lessee 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 Lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

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

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, tables, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In the event the fees, deposits or charges for any such services are not individually metered or billed to Lessee, Lessor shall apportion such charges among lessees in the Center receiving such utilities or services, based upon an equitable apportionment to be determined by Lessor. Lessee shall pay its apportioned share to Lessor as Additional Rent. In determining such equitable apportionment, Lessor may cause surveys of Lessee's usage of such services to be made by an independent consultant selected by Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this Lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees and (iv) any failure by Lessee to comply or secure compliance with any of the terms or conditions of this Lease. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

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

9.3 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A+3A" in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

(a) Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person and per occurrence, insuring against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof. All such public and property damage liability insurance shall specifically insure the performance by Lessee of the indemnity provisions of Article 9.1 above.

(b) ~~Plate Glass. Full coverage plate glass insurance on the Premises.~~ *

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

(d) ~~Business Interruption Insurance. Business interruption insurance insuring that the Rent will be paid to Lessor~~ for a period of up to two (2) years if Lessee is unable to operate its business at the Premises for any reason other than ~~termination of this Lease~~. *See Addendum Paragraph 12

(e) Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.3, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.4 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.5 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City, or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee 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 Lessor, in a sum equal to 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of the San Diego County Recorder, a Notice of Completion as permitted by law.

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

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Premises, and Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the Lease, Lessee 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 Lessee 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 Lessee must be new when so installed or attached. Lessee, 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 Lease 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:

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

(b) "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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, license, concession, or other security arrangement;

(c) "Change of Control" means the transfer by sale, assignment, death or incompetency, mortgage, trust, operation of law, or otherwise, of any shares, voting rights or ownership interests (including partnership interests), which will result in a change in the identity of the person or persons exercising, or who may exercise, effective control of Lessee, 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 Lessee. If Lessee 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;

(d) "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;

(e) "Transferee" means the proposed assignee, sublessee, mortgagee, pledgee, or other recipient of Lessee's interest, rights or duties in this Lease or the Premises in an Occupancy Transaction.

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

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

15.3 Remaining Term.

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

(b) By way of example and without limitation, Lessor and Lessee hereby agree that it shall be reasonable for Lessor to withhold its consent if any of the following situations exist or may exist:

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

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

(iii) In Lessor's judgment, the present net worth of the Transferee is less than the greater of Lessee's net worth at the Commencement Date or Lessee's net worth at the date of Lessee's request for consent to the Occupancy Transaction;

(iv) In Lessor's judgment, the Percentage Rent under Article 5 that Lessor reasonably anticipates receiving from the Transferee will be less than that which Lessor has received or reasonably expects to receive from Lessee;

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

(vi) Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

(vii) In Lessor's judgment, the quality of the merchandising operation or tenant mix in the Center would or could be adversely affected.

15.4 Procedures.

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

(i) 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;

(ii) 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;

(iii) Any further information relevant to the transaction which Lessor may request;

(iv) A statement that Lessee intends to consummate the transaction if Lessor, and, if required, City, consent thereto.

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

(i) Consent to the Occupancy Transaction, subject to Section 15.7 below, if, pursuant to Section 15.2 or 15.3 above, Lessor is not entitled to withhold its consent; or

(ii) Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Lessor is entitled to withhold its consent; or

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

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

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

15.7 Consideration to Lessor.

(a) In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease, provided, however:

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

(A) An amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or

(B) The then fair market annual rent as reasonably determined by Lessor. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the ~~following minimum hours: 10:00 a.m. to 9:00 p.m. seven days a week;~~* Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day. *See Addendum Paragraph 13

Lessee 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, Lessee 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. Lessee shall install and maintain at all times displays of merchandise in the display windows (if any) of the Premises. Lessee 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 Lessee's business, Lessee shall not remove any of its trade fixtures or other personal property, without the immediate replacement thereof with fixtures or property of similar quality.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of $50.00 per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expenses, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

Lessee agrees to accept Bank Americard, Master Charge, Visa and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates this covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing City Rent or Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of Lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of the State of California.

17.2 ~~Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense.~~ See Addendum Paragraph 14

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 Lessor with respect to the Center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option (i) to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (ii) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee'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 Lessor 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 Lessee. Lessee shall give written notice to Lessor 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 Lessor from time to time for the general use, convenience and benefit of Lessor, lessees 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 Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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 Lessor or its lender with respect to the Common Areas, Premises, or Lessor's interest therein, (c) roof, building and signage repairs, (d) parking lot resurfacing, line painting, restriping, sweeping and cleaning, (e) lighting, utility systems, all utility charges for the Common Areas and the Center, (f) sanitary control, pest control, janitorial services and removal of trash, rubbish, garbage and other refuse, (g) reasonable reserves for replacements and repairs, (h) bookkeeping, the cost of personnel to implement such Common Area services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the lessees 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 lessees 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 and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to four percent (4%) of all Rent collected by the property management company. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego. Lessor may cause any or all of said services to be provided by an independent contractor or contractors. The parties hereto agree that Lessor 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 Lessor's agent (hereinafter the "Manager of the Center"). Lessor may cause the Manager of the Center to render services to Lessee, other lessees and occupants, required or permitted to be performed by Lessor, 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 Areas Expenses.

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

(a) 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 Lessor in the Master Lease, the Premises or the real property of which the Premises constitute a part;

(b) Any tax on Lessor's right to rent or on other income from the Premises or Center or as against Lessor's business of leasing the Premises;

(c) 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 Lessee and Lessor 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 Lessee and Lessor 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;

(d) 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 Lessee of the Premises, the Center or any portion thereof;

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

(f) Any tax upon this transaction or any document to which Lessee is a party, creating or transferring an interest or an estate in the Premises; and any and all assessments Lessor 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;

(g) Taxes shall not include Lessor's federal or state income, franchise, inheritance or estate taxes.

19.4 Food Fair Expenses. Notwithstanding anything to the contrary contained herein, all of the costs and expenses specifically and exclusively incurred or attributed by Lessor from time to time as a result of the maintenance and operation of the common fast food resting and/or dining areas and other Common Areas in or adjacent to the Center, which are used by customers of fast food lessees for eating and/or dining ("Food Fair"), which result primarily from the operations of the fast food lessees in the Center (as opposed to the maintenance and operation of such areas as Common Area) ("Food Fair Expenses"), shall be paid only by said fast food lessees to Lessor, monthly, as Additional Rent, in addition to the Common Area Expenses. Each fast food lessee shall pay that proportion of the Food Fair Expenses in the same proportion which the floor area of each fast food lessee bears to the total number of leasable square feet occupied and open for business by all fast food lessees in the Center, or at Lessor's sole discretion, in the same proportion as each fast food lessee's Net Sales in any calendar year is to the total fast food Net Sales of all fast food lessees in the Center.

Restaurant lessees which sell fast food or take-out food which is consumed or disposed of in the Food Fair shall share the costs of the Food Fair expenses as though they were fast food lessees. Lessor shall determine the floor area of each restaurant lessee selling fast food or takeout food for the purpose of determining said restaurant lessee's prorata share of Food Fair Expenses. Said restaurants shall include a separate breakdown of fast food and takeout food Net Sales, as specified in Section 5.2, in the event Lessor prorates the Food Fair Expenses on a Net Sales Basis.

Food Fair Expenses shall include, without limitation: (1) salaries, wages, and benefits, and other costs of bus-boys and other personnel employed for cleaning and servicing the Food Fair; (2) garbage and waste collection and disposal; (3) rental of equipment and signs; (4) the cost of repairs or replacements to, and maintenance and operation of, the furniture, fixtures and furnishings in, or serving, the Food Fair; (5) depreciation or amortization and interest on the cost of any repairs or replacements, the cost of which is not charged in full in the lease year in which it is incurred; (6) the additional cost of securing, policing, and supervising the Food Fair; (7) the cost of cleaning, resealing and/or resurfacing outdoor sailing areas used primarily by Food Fair customers; and (8) a management fee to be initially established to equal four percent (4%) of the Food Fair Expenses. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego.

Lessor shall have the right from time to time to relocate or rearrange the Food Fair and the Center, or either of them, including designating other portions of Common Areas immediately adjacent to the Food Fair as part of the Food Fair and, in such event, the provisions of this Article shall apply. Lessor shall also have the right to designate other portions of the Center as Food Fair and fast food areas and to make Rules and Regulations and policies, standards and directions governing the overall operation of such Food Fair and fast food areas. In addition, Lessor shall have the right to lease space to a fast food restaurant or any other restaurant anywhere in the Center.

Lessee acknowledges and agrees that it is a condition of the Lease that Lessor reserves the right to formulate, determine and enforce such policies, standards and practices for the Food Fair and the Center and for the more efficient and proper operation of the Food Fair and the Center, and to designate the name or names by which the Food Fair is to be referred. Lessee agrees to be bound by, and to comply with, such policies, standards and practices and to refer to the Food Fair only by the name or names designated by Lessor in its advertising and the conduct of its business in the Premises.

Without limitation, fast food lessees shall, at all times during the Lease Term, in operation of their business, abide by all Rules and Regulations and directions of Lessor relating to: (1) the health and sanitary conditions of the Premises, the Food Fair and its employees, (2) standards and quality of merchandise; (3) customer relations and resolution of complaints; (4) such other matters as Lessor determines applicable from time to time with respect to the operation of the Food Fair.

19.5 Method of Payment. Lessee shall pay to Lessor as Additional Rent Lessee's pro rata share of Common Area Expenses in the following manner:

(a) From and after the Commencement Date, Lessee shall pay Lessor, on the first day of each calendar month of the Lease Term, Lessee's pro rata share of Common Area Expenses, as hereinafter defined. Should Lessee fail to make any payment to Lessor of Lessee'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, Lessee shall pay interest thereon at the Lease Interest Rate plus a Late Fee of ten percent (10%) of Lessee's pro rata share of such Expense. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law. Lessor may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Lessor's experience and reasonably anticipated costs.

(b) Within thirty (30) days following the end of each calendar quarter or, at Lessor's option, each calendar year, Lessor shall furnish Lessee a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total operating costs, the amount of Lessee's pro rata share of Common Area Expenses for such calendar quarter or year, and the payments made by Lessee with respect to such period. If Lessee's pro rata share of Common Area Expenses exceeds Lessee's payments so made, Lessee shall pay Lessor the deficiency ~~within ten (10) days after receipt of such statement. If said payments exceed Lessee's pro rata share of Common Area Expenses,~~

~~Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor as set forth in subparagraph~~ (a). Lessee'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 Lessor.~~
See Addendum Paragraph 15

19.6 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

19.8 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor may offer parking free, or at reduced rates for specified periods, to customers of Lessee who present parking tickets validated by Lessee for such periods. Lessee agrees to purchase from Lessor validation stamps (or other evidence of validation issued by Lessor) for such purpose, and agrees to deliver them to customers in consideration for purchases by the customers from Lessee, pursuant to rules and regulations promulgated by Lessor from time to time. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.9 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulations established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas and parking structure, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

If, in the opinion of Lessor, unauthorized persons are using any of said areas by reason of the presence of Lessee in the Premises, Lessee, upon demand of Lessor, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Lessor 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 Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment, action, appointment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer in violation of the provisions of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained, including, without limitation, the obligation to maintain the level of Net Sales as required by Section 5.8 and to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

(a) The right of Lessor to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or thereunder.

(b) The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

(c) The right of Lessor, even though it may have re-entered the Premises, to thereafter elect to terminate this Lease and all of the rights of Lessee in or to the Premises.

Should Lessor have re-entered the Premises under the provisions of subparagraph (b) above, Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that it has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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 owner or owners thereof.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, Lessor may recover from Lessee as damages:

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

(b) 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 Lessee proves could have been reasonably avoided.

(c) The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Lessee proves could be reasonably avoided.

(d) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee'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 Lessor 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, or any other costs necessary or appropriate to relet the Premises.

(e) At Lessor'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 subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph (c) 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 Annual 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.

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

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

(a) The sole and exclusive remedy shall be against the Lessor's interest in the Center;

(b) No partner of Lessor shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

(c) No service of process shall be made against any partner of Lessor (except as may be necessary to secure jurisdiction of the partnership);

(d) No partner of Lessor shall be required to answer or otherwise plead to any service of process;

(e) No judgment will be taken against any partner of Lessor;

(f) Any judgment taken against any partner of Lessor may be vacated and set aside at any time nunc pro tunc;

(g) No writ of execution will ever be levied against the assets of any partner of Lessor;

(h) These covenants and agreements are enforceable both by Lessor and also by any partner of Lessor.

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises, upon giving notice in writing of such election within thirty (30) days after receipt by Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability thereafter accruing hereunder.

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

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonably possible, Lessor will reasonably restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings. Lessee 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 Lessor or Lessee 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of it rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as its special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION AND RELOCATION

27.1 Quiet Possession. Lessor agrees that Lessee, 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. Lessor shall have the right at any time, upon at least one hundred twenty (120) days written notice to~~ Lessee, to relocate Lessee to new space in the Center provided the Premises to which Lessee shall be relocated (the "New Premises") shall have the same approximate Floor Area as is contained in the existing Premises. Lessor's notice shall be accompanied by a floor plan of the New Premises. The New Premises shall be leased to Lessee 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 Annual Rent. Lessee shall submit to Lessor, within thirty (30) days following the date Lessee completes renovation and opens for business in the New Premises, an affidavit signed and verified by Lessee setting forth the costs and expenses (accompanied with copies of paid receipts for each item) reasonably incurred by Lessee in connection with the relocation. Within thirty (30) days following Lessor's approval of Lessee's list of expenses, Lessor shall reimburse Lessee for such expenses. Expenses of relocation may include moving expenses, the unamortized cost of Lessee's leasehold improvements to the existing Premises and trade fixtures (to the extend paid for by Lessee and to the extent such leasehold improvements and trade fixtures cannot be used in the New Premises), and the sums expended by Lessee for new leasehold improvements and trade fixtures required solely as a result of such relocation. Except as provided above, Lessor shall not be liable or responsible in any way for any costs, expenses, damages or injuries suffered by Lessee pursuant to a relocation in accordance with the provisions of this Article 27, including, but not limited to, loss of goodwill, business or profits. Lessee agrees that all of the obligations of this Lease, including the payment of Rent, shall continue ~~throughout the period of relocation. Lessee shall, not later than the date specified in Lessor's notice, vacate and surrender the~~

existing Premises, relocate to the New Premises, and prepare the New Premises for occupancy, all at Lessee's sole cost and expense, subject to the reimbursement provisions set forth above. Lessee 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 Lessee, Lessor and Lessee shall execute a supplemental agreement specifying the location of the New Premises and the new Minimum Annual 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 Lessee to relocate in accordance with the provisions of this Lease shall constitute a default under this Lease. See Addendum Paragraph 16

ARTICLE 28 - GRAND OPENING AND MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund").

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

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

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center. Lessor 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 Lessor in Lessor's sole discretion.

28.5 Lessor's Right to Change Marketing Fund Contribution Format. Lessor reserves the right to change Lessee's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Lessee be required to pay in any calendar year an amount that exceeds Lessee's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial calendar year. Lessor 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 Lessee at least three (3) months' advance written notice. Lessor shall notify Lessee in writing of the amount of the Marketing Fund Contribution for each calendar year and of Lessee's pro rata share thereof, and Lessee shall pay Lessor 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, Lessor shall furnish Lessee a statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total amount of Marketing Fund Contribution payments made by Lessee with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Lessee exceeds the limitations set forth above. If Lessee shall have made any such excess payments, then Lessee shall be entitled to offset the excess against the payment next thereafter to become due Lessor for Marketing Fund Contribution payments as set forth herein. If, however, Lessee's Marketing Fund Contribution payments during the applicable calendar year do not equal Lessee'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 Lessor. There shall be an appropriate adjustment of Lessee's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

28.6 Grand Opening. Lessee shall pay to Lessor, as Additional Rent, a sum equal to the Grand Opening Contribution as set forth in the Fundamental Lease Provisions to defray the promotional and advertising expenses incurred in connection with the Grand Opening of the Center ("Grand Opening"). This sum shall be paid by Lessee within fifteen (15) days of receipt of a bill for same. The use and disbursement of such funds shall be determined by Lessor in Lessor's sole discretion.

28.7 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.8 Late Charge. Should Lessee fail to make any payment to Lessor 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. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and

damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder, or as provided by law.

28.9 No Interest in Marketing Fund. Lessee shall at no time have any right, title or interest in or to the Marketing Fund or any part or portion thereof. See Addendum Paragraph 17

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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the words "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed 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.

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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

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

ARTICLE 32 - SECURITY DEPOSIT

32.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this Lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor. 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.

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

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

32.4 ~~Transfer of Security Deposit. Lessor may deliver the funds deposited hereunder by Lessee to the purchaser of Lessor's interest in the Premises in the event that such interest be sold and thereupon Lessor shall be discharged from any further liability with respect to such deposit; and this provision shall also apply to any subsequent transferees.~~ See Addendum Paragraph 18

ARTICLE 33 - MISCELLANEOUS

33.1 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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party.

33.2 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.

33.3 Warranty of Authority. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

33.4 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 Lessor to Lessee 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.

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

33.6 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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.

33.7 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 Lessee pursuant to this Lease.

33.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee agrees 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 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.

33.9 Seasonal Activities. Lessee 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 Lessor from time to time.

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

33.11 Shoplifting. Lessee will cooperate in all procedures and programs calculated to discourage shoplifting in the Center.

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

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

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

33.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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.

33.15 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. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet occupied and open for business by all lessees receiving benefits therefrom.

33.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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.

33.17 Flammables and Toxic Waste. Neither Lessee, nor any of Lessee'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.

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

33.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

33.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, covenant or averment of any nature whatsoever concerning the 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

33.21 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 Lessee 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 sublessees of Lessee.

33.22 San Diego Convention and Visitors Bureau. If required by Lessor, Lessee agrees to join and maintain membership in the San Diego Convention and Visitors Bureau during the term of this Lease.

33.23 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

33.24 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

33.25 Interior Lighting. Lessee agrees to install permanent interior 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.

33.26 Pest Extermination. Lessee shall use at its cost such pest extermination contractor as Lessor may direct and at such intervals as Lessor may require.

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

33.28 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

33.29 Real Estate Broker. Lessee 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. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

ARTICLE 34 - ADDITIONAL PROVISIONS

34.1 Additional Provisions. By insertion of numbers in the following blank, Lessor and Lessee acknowledge that Article(s) * is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 34.1, it is conclusive that no additional provisions are a part of this Lease. * See Addendum attached.

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

Lessee:

San Diego Coaster Company, a California corporation

By: Ed Hutton
Name: ED HUTTON
Title: PRESIDENT
By: Dana H. Morgan
Name: Dana H. Morgan
Title: Vice Pres.

Lessor:

BELMONT PARK ASSOCIATES, a California limited partnership

By: Phase One Development, Inc.
a California corporation
(Managing General Partner)

By: Donald Carl Reto
Name:
Title: E.V.P.

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

ADDENDUM TO LEASE

This Addendum to Lease ("Addendum") is made to Lease dated as of March 1, 1991 ("Lease"), by and between Belmont Park Associates, a California limited partnership ("Lessor") and San Diego Coaster Company, a California corporation, dba Belmont Park Remote-A-Boat ("Lessee").

Lessor and Lessee hereby agree that notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be a part of the Lease and shall supersede, to the extent appropriate, any contrary provision in the Lease. All references in the Lease and in this Addendum to "Lease" shall be construed to mean the Lease, as amended and supplemented by this Addendum. All capitalized terms used in this Addendum unless specifically defined in this Addendum shall have the same meaning as the terms used in the Lease.

ARTICLE 1 - Fundamental Lease Provisions

1. Premises: The Premises consist of the reflecting pond located at the south end of the Roller Coaster as shown in the area crosshatched on Exhibit A.

2. Permitted Use: The following shall be deemed added to the Lease as Lessee's Permitted Use:

Permitted Use: The operation of a "Remote-A-Boat" amusement and change machine. Lessee shall also be permitted to install a maximum of six (6) controls on the concrete railing adjacent to the reflecting pond subject to the prior written approval of Lessor.

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, notwithstanding anything contained to the contrary in the foregoing paragraph, Lessee shall be prohibited from selling or offering for sale the following merchandise:

(a) Sunglasses and/or swimwear which occupies more than fifteen percent (15%) of Lessee's Floor Area;

(b) Mexican style food;

(c) Hot dogs, hamburgers or a chicken "schwarma" sandwich;

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them;

(e) Volleyballs and/or volleyball nets;

(f) Specialty bath products including, but not limited to, of bath soaps, bath gifts and potpourri which occupies more than fifteen (15%) of Lessee's Floor Area.

(g) Fudge products.

Lessee acknowledges and agrees that Lessee shall not be permitted to sell or offer for sale any of the foregoing merchandise. Lessee's failure to comply with the foregoing shall constitute a material default by Lessee under this Lease.

3. Fixturization Period: The following shall be deemed added to the Lease as Lessee's Fixturization Period:

> Fixturization Period: Lessee shall have until April 1, 1991 to install Lessee's trade fixtures (if any), equipment and other improvements approved by Lessor in the Premises.

Article 3 - Commercial/Recreational Center and Premises

4. Premises: The last sentence of Section 3.2 is deemed deleted.

Article 4 - Term

5. Renewal Option: The following is deemed added to Article 4 of the Lease as Section 4.4:

4.4 Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default in existence under this Lease, and provided further that Tenant furnishes current financial statements to Landlord with such notice which reflects no material adverse change in financial condition of Tenant has ocurred since the Commencement Date, Tenant shall have the option to renew (the "Renewal Option") the term of this Lease for one (1) additional term of sixty (60) months (such additional term hereinafter referred to as the "Renewal Term"). To exercise the Renewal Option, Tenant must deliver written notice of exercise to Landlord during the sixth (6th) month prior to the date or expiration of the initial Term. Any termination of this Lease and any assignment of this Lease of subletting of all or a part of the Premises by Tenant shall terminate the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply except there shall be no further right of renewal. The Rent payable during the Renewal Term shall be the same Rent payable during the initial Term.

Article 5 - Rent

6. Minimum Annual Rent/City Rent: Sections 5.1.1 and 5.1.2 of the Lease are deemed deleted. Additionally, wherever it may appear in the Lease, the terms "Minimum Annual Rent and "City Rent" shall be deemed to have no force or effect.

7. Percentage Rent: The third sentence of Section 5.1.3 is deemed deleted and replaced with the following: Lessee shall pay to Lessor, the Percentage Rent in the amount set forth in the Fundamental Lease Provisions.

8. Increase in City Rent and Percentage Rent: Section 5.1.4 is deemed deleted in its entirety.

9. In the first sentence of Section 5.5, the phrase "five (5)" shall be deemed deleted and the phrase "ten (10)" shall be deemed inserted in place thereof.

10. Subsection 5.8(a) shall be deemed deleted.

11. The last paragraph of Section 5.8 shall be deemed deleted.

Article 9 - Indemnity and Insurance

12. Subsections 9.3(b) and (d) shall be deemed deleted.

Article 16 - Operating Covenants; Days and Hours

13. In Section 16.1, the phrase "following minimum hours: 10:00 a.m. to 9:00 p.m. seven days a week." shall be deemed deleted and the following shall be deemed inserted in place thereof: "same

hours as the Giant Dipper Roller Coaster located adjacent to the Center."

Article 17 - Repairs and Maintenance

14. Lessor's Obligations: Section 17.2 is deemed deleted.

Article 19 - Common Areas

15. Common Area Expenses: Sections 19.3. 19.4 and 19.5 are deemed deleted in their entirety.

Article 27 - Quiet Possession and Relocation

16. Relocation: Section 27.2 is deemed deleted.

Article 28 - Grand Opening and Marketing Fund

17. Article 28 is deemed deleted in its entirety.

Article 32 - Security Deposit

18. Article 32 is deemed deleted in its entirety.

Article 34 - Additional Provisions

19. The following shall be deemed added to the Lease as Section 34.1:

Improvements to the Premises. The Premises shall be improved by Lessee, at Lessee's sole cost and expense, with certain improvements ("Improvements"), in accordance with plans and specifications ("Plans") approved in advance by Lessor. Lessee shall pay the contractor directly for all costs incurred in connection with the construction of the Improvements. Except as may be specifically provided otherwise in this Section 34.1, the construction of the Improvements shall be subject to all of the terms and conditions of Article 11 (Alterations) and Article 12 (Mechanic's Liens) of this Lease.

20. Except as and to the extent modified by this Addendum, all provisions of the Lease shall remain in full force and effect.

LESSOR

Belmont Park Associates
a California limited partnership

By: Phase One Development, Inc.
a California Corporation
(Sole General Partner)

By: Donald C. White
Name:
Title: Ex. V.P.

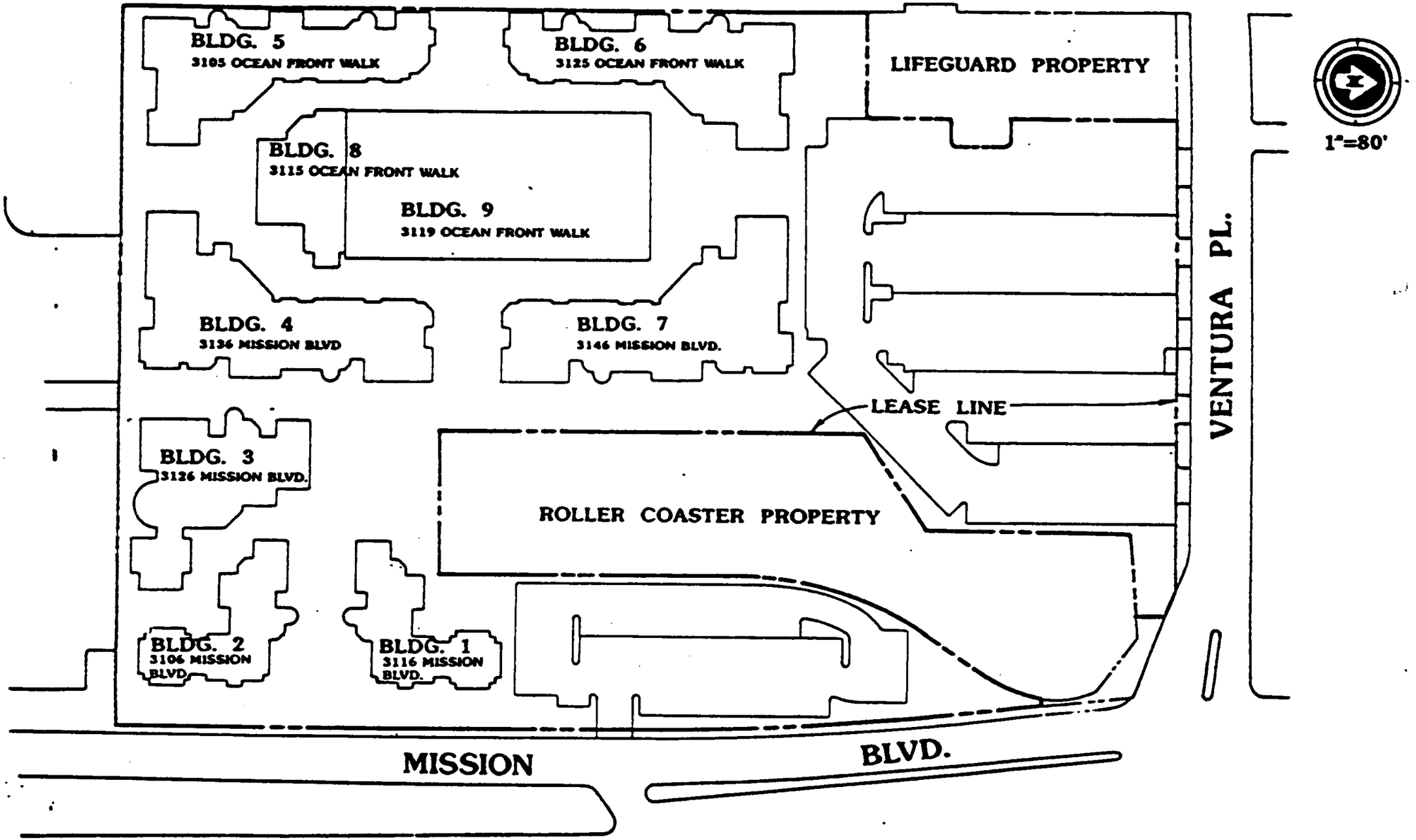
LESSEE

San Diego Coaster Company
a California Corporation

By: Ed Hutton
Name: Ed Hutton
Title: President

By: Dana H. Morgan
Name: Dana H. Morgan
Title: Vice Pres.

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Addendum must be executed by the President or Vice President and the Secretary or Assistant Secretary, unless the bylaws or a resolution of the Board of Directors of Lessee shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished. If Lessee is a partnership, all general partners must sign on behalf of the partnership.



BELMONT PARK COMMERCIAL RECREATIONAL CENTER

EXHIBIT B

~~FLOOR PLAN SHOWING~~ THE PREMISES

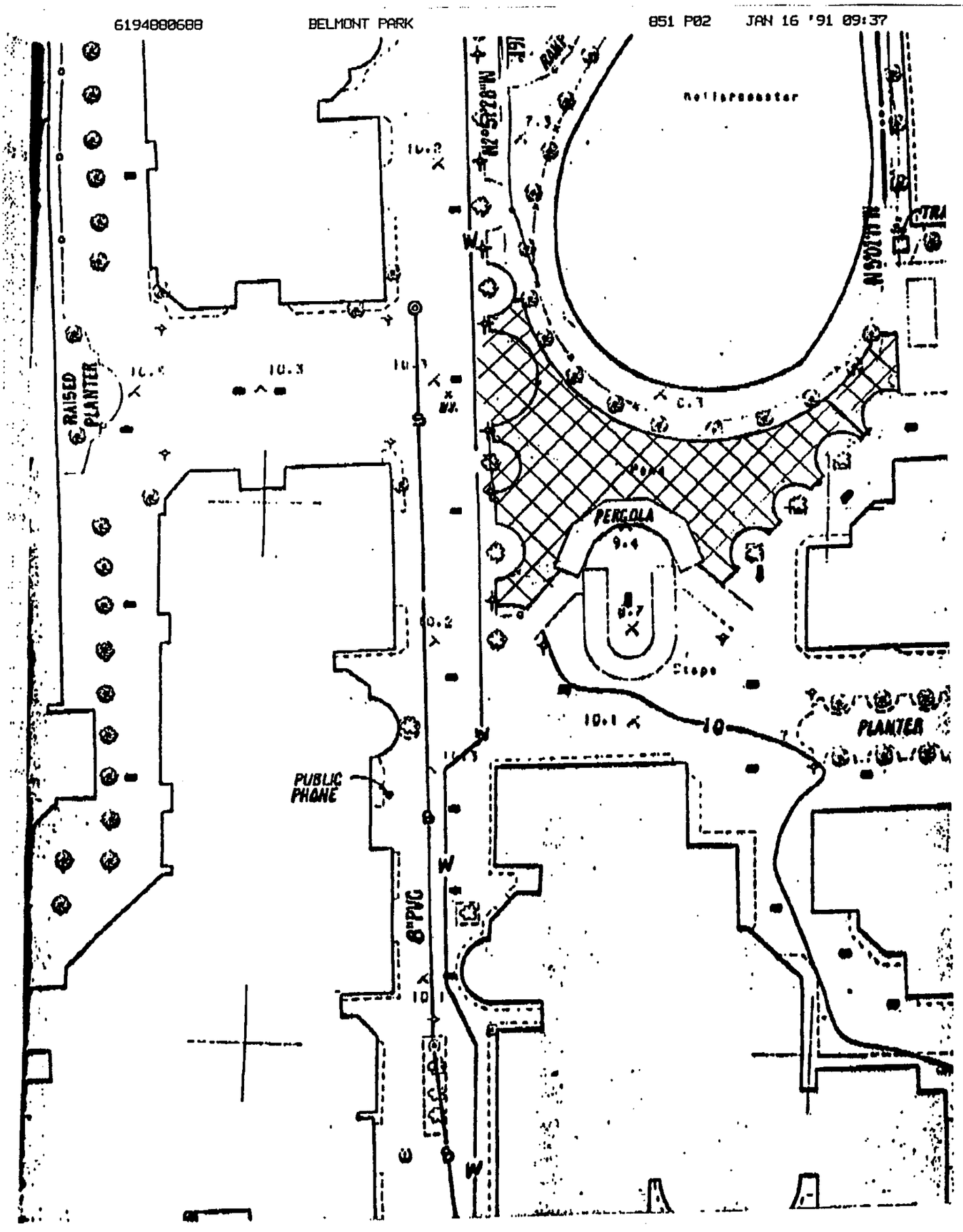


EXHIBIT C

Work Letter Agreement

[Intentionally Omitted]

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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Exhibit E

Guarantee of Lease

[Intentionally Omitted]

BELMONT PARK
LEASE AGREEMENT

Belmont Park Associates,
a California Limited Partnership
(Lessor)

San Diego Coaster Company
a California Corporation
(Lessee)

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BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: May 14, 1991

Lessor BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Coaster Company, a California Corporation

Lessee's Trade Name: To be determined by Lessee and approved by Lessor pior to the Commencement Date

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 1,770 square feet ("Floor Area") as outlined on Exhibit B.* See Addendum

Permitted Use: * See Addendum

Lease Term: Sixty (60) months subject to extension as provided in the Addendum.

Commencement Date: June 1, 1991

Fixturization Period (if any): * See Addendum

Rental shall be the greater of:

A. Minimum Annual Rent: Forty Seven thousand seven hundred ninety Dollars ($ 47,790.00) per annum payable in twelve (12) equal monthly installments of Three thousand nine hundred eighty two & 50/100 Dollars ($ 3,982.50) per month during each year of the Lease Term.

B. City Rent: Seventeen thousand eight hundred forty one & 60/100 Dollars ($ 17,841.60) per annum payable in twelve (12) equal monthly installments of One thousand four hundred eighty six & 80/100 Dollars ($ 1,486.80) per month during each year of the Lease Term ("Fixed City Rent"), plus the percentage of Lessee's Net Sales of various categories as specified in Section 5.1.2.

C. Percentage Rent: Twenty percent (20 %) of Lessee's Net Sales as defined in Section 5.3.

Lessee's Minimum Net Sales Requirement: Not applicable Dollars ($ XX) per year.

Address for Notices:

To Lessor:
BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

San Diego Coaster Company
450 McQuaide Drive
La Selva Beach, CA 95076
Telephone: (408) 724-8686

Security Deposit: Three thousand nine hundred eighty two and 50/100 Dollars ($ 3,982.50).

Marketing Fund Contribution: The greater of (i) Six thousand three hundred seventy two Dollars ($ 6,372.00) per annum, payable in twelve (12) equal monthly installments of Five hundred thirty one Dollars ($ 531.00) per month during each year of the Lease Term, or (ii) one and one-half percent (1.5 %) of Lessee's Net Sales for the calendar year to date.

Grand Opening Contribution: Not applicable Dollars ($ XX).

Real Estate Broker: (if any) none

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

ARTICLE 2 - EXHIBITS

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

Exhibit A - Site Plan of the Center.

Exhibit B - Floor Plan Showing the Premises.

Exhibit C - Work Letter Agreement.

Exhibit D - Rules and Regulations.

~~Exhibit E - Guarantee of Lease~~. [Intentionally Omitted]

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("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 Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on an day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession, and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within six (6) months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.
* See Addendum

ARTICLE 5 - RENT

5.1 Rent. Lessee agrees to pay, as rent for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, in twelve (12) monthly installments during each year, in advance, on the first day of each month, without set-off or deduction, commencing on the first day of the Lease Term the greater of the amounts specified in Sections 5.1.1, 5.1.2 and 5.1.3 below, based upon year-to-date amounts. Upon execution of the Lease, Lessee shall pay its ~~first months Minimum Annual Rent~~* and Security Deposit. At the end of each calendar year, any excess rent which Lessee paid to Lessor shall be credited to the next monthly installment of rent due (or upon termination of this Lease and subject to offset by Lessor for any amounts due Lessor hereunder, paid directly to Lessee within thirty (30) days of such termination, and any deficiency shall immediately be paid by Lessor to Lessee). * See Addendum

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

5.1.1.1 Minimum Annual Rent shall be adjusted upward as of the expiration of the end of each calendar year during the Lease Term to reflect any change in the cost of living. The adjustment shall be calculated by multiplying the Minimum Annual Rent payable during the immediately preceding calendar year by a factor equal to the increase in the Bureau of Labor Statistics, Consumer Price Index, "All Urban Consumers" (the "Index") as published by the United States Department of Labor for the Long Beach/Anaheim/Riverside metropolitan area (all items (1982-84 = 100) as last published immediately preceding the Commencement Date and the Index last published preceding the date of adjustment. As soon as the Minimum Annual Rent for each calendar year is determined, Lessor shall give Lessee written notice of the amount thereof. The Minimum Annual Rent shall not be adjusted in the event of a decrease for any calendar year in the Index. It the Index is discontinued or revised during the Lease Term, such other government index or computation with which it is replaced shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Pending the determination of the adjustment, Lessee shall continue to pay the Minimum Annual Rent in monthly installments in the same amount as the previous calendar year. When the adjustment has been determined, Lessee, concurrently with the next monthly Rent payment, shall pay to Lessor, the difference between the new Minimum Annual Rent, including the cost of living increase, for the period commencing with the first month of such calendar year and the Minimum Annual Rent already paid for such period.

5.1.1.2 The Minimum Annual Rent shall also be adjusted upward as of the expiration of the third full or partial calendar year, and as of the expiration of every third calendar year thereafter during the Lease Term (i.e., if the Commencement Date is June 1, 1988, the first adjustment under this subparagraph 5.1.1.2 will be on January 1, 1991, the second adjustment will be on January 1, 1994, and so on.) Such adjustment of the Minimum Annual Rent shall produce a new Minimum Annual Rent equal to the greater of (i) the cost of living increase required under Section 5.1.1.1 above or (ii) eighty percent (80%) of the annual average of the total rent (including Minimum Annual Rent, City Rent and Percentage Rent) paid pursuant to this Section 5.1 by Lessee to Lessor for the preceding three year period (or portion thereof as to the first adjustment).

5.1.2 City Rent. The Fixed City Rent specified in the Fundamental Lease Provisions plus three percent (3%) of all Lessee's Net Sales (as defined in Section 5.3) in the food and Specialty Shop Sales category, five percent (5%) of all Lessee's Net Sales in the alcoholic beverage sales and game room operations category, and seven percent (7%) of all Lessee's Net Sales in the category of all other sales and operations for such month. City Rent shall be computed by Lessee each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee shall pay to Lessor the amount, if any, by which the City Rent amount set forth in the Fundamental Lease provisions exceeds the installments of the greater of the Minimum Annual Rent or City Rent paid by Lessee during such period. Lessee shall pay the City Rent no later than ten (10) days following the close of the preceding month. The classification of Lessee's Net Sales by category ("Net Sales Category") shall be determined at the end of each calendar month by Lessee who shall provide Lessor with a copy of such classification at the same time Net Sales are determined. Lessee shall provide such records as may be required from time to time by the City under the Master Lease.

5.1.2.1 In the event the Minimum Annual Rent increases, the Fixed City Rent shall increase in the same proportion and at the same time.

5.1.2.2 "Specialty Shop Sales" shall mean sales of novelty items, sporting goods, sports equipment rental, apparel, art, flowers, books, cards, party supplies, travel services and other services and items normally associated with visitor oriented commercial and recreational uses.

5.1.3 Percentage Rent. ~~The Percentage Rent specified in the Fundamental Lease Provisions being~~ that specified percentage of Net Sales of Lessee made from or upon the Premises during each calendar month. Percentage Rent shall be computed each calendar month immediately following the close of the preceding month and for the calendar year to date. Lessee shall pay to Lessor the amount, if any, by which the Percentage REnt amount set forth in the Fundamental Lease Provisions ~~multiplied by~~ Lessee's net Sales during said period exceeds the installments of the greater of Minimum Annual Rent or City Rent paid by Lessee during such period. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the close of the preceding month. Sales in any fractional month in which Rent commences shall be added to the sales for the following first full month, and shall be payable on the tenth (10th) day of the calendar month immediately ~~following the first full month~~. * See Addendum

5.1.4 Increase in City Rent and Percentage Rent. In the event of an increase in the rate of percentage rent that Lessor is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Lessee pays Lessor pursuant to Section 5.1.2 shall automatically increase at the same time and by the same amount.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee (totaled for calendar year to date) within ten (10) days after the close of each calendar month, and an annual statement of Net Sales within thirty (30) days after the close of each calendar year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent, Percentage Rent, and City Rent for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net 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 Net 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, Lessee shall issue serially numbered tickets for each such admission or rental and shall keep an accurate record of said tickets, both issued and unissued. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary. * See Addendum

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, City Rent or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional City Rent or Percentage Rent as a result

thereof or if Lessee has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor 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 Lessee's statements shall be found to have understated Net Sales by more than five percent (5%), or if Lessee has failed to maintain complete and true records, accounts, and supporting source documents in strict accordance with Article 5, the in addition to any other rights of Lessor under this Lease, Lessor may terminate this Lease. Acceptance of the Understatement Fee or any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to a late payment, or prevent Lessor from exercising any of the other rights and remedies granted in this Lease.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the City Rent and 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 Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee 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 Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, City Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within ~~five (5)~~ * days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor 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) Lessee 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 Lessor, and may be applied by Lessor, 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 Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law. * See Addendum

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

5.7 Returned Checks. Lessee 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 Lessor for Lessor's related costs.

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

5.8.1 ~~Lessee's Minimum Net Sales in any calendar year are less than the amount set forth in Article 1 as Lessee's Minimum Net Sales Requirement, adjusted as provided for herein~~. * See Addendum

5.8.2 at any time during the Lease Term the products which Lessee sells, or the services which Lessee provides, on or from the Premises are not, in Lessor's opinion, of the highest quality; or

5.8.3 Lessee substantially or continually fails to observe the Rules and Regulations and policies and directions made or promulgated by Lessor.

Then:

5.8.4 If the condition in subparagraph 5.8.1 exists, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice; or

5.8.5 In the case of a default under subparagraph 5.8.2 or 5.8.3, Lessor may give written notice to Lessee, 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, Lessor may, at its option, in addition to any other rights or remedies, terminate this Lease, upon giving Lessee thirty (30) days' written notice.

If this Lease is so terminated, Lessee covenants and agrees to surrender the Premises and deliver up vacant possession thereof to Lessor 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 Lessee pursuant to this Lease (if not already paid in full) shall become accelerated and payable in full as of such date, and Lessee shall be discharged from its obligations hereunder and under the Lease, and Lessee shall have no recourse against Lessor 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 Lessee.

~~The amount of Lessee's Minimum Net Sales Requirement specified in Article 1 shall be adjusted~~ upward, after the expiration of each calendar year of this Lease to reflect any increase in the cost of living. The adjustment, if any, shall be calculated upon the basis of Index, as defined in Section 5.1.1.1. Lessees Minimum Net Sales Requirement shall be set by ~~multiplying~~ the amount thereof applicable in the immediately preceding year by a fraction, ~~the numerator~~ of which shall be the Extension Index and the denominator of which shall be ~~the Beginning~~ Index as defined in Section 5.1.1.1. In no event shall Lessee's Minimum Net Sales ~~Requirement be less than that for the previous year~~. * See Addendum

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee shall not, without the prior written notice of Lessor, sell any food (or beverage) as fast food or take out food to be consumed in the Common Areas of the Center unless it is specified to be sold as fast food under Permitted Use in the Fundamental Lease Provisions. If a Permitted Use, restaurants shall be permitted to use one (1) counter window to the exterior of the Premises and a maximum of 1,000 sq. ft. of floor area for the purpose of preparing and selling fast food or take out food. If a Permitted Use, Lessee shall indicate such window and preparation areas clearly on floor plans, to be approved in writing by Lessor prior to the sale of such food. Lessee shall not, without the prior written consent of Lessor sell merchandise from vending machines or allow any coin operated vending or gaming machines on the Premises. Lessee 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 Lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In the event the fees, deposits or charges for any such services are not individually metered or billed to Lessee, Lessor shall apportion such charges among lessees in the Center receiving such utilities or services, based upon an equitable apportionment to be determined by Lessor. Lessee shall pay its apportioned share to Lessor as Additional Rent. In determining such equitable apportionment, Lessor may cause surveys of Lessee's usage of such services to be made by an independent consultant selected by Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this Lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees and (iv) any failure by Lessee to comply or secure compliance with any of the terms or conditions of this Lease. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

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

9.3 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at lease "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.3.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than ~~One Million Dollars ($1,000,000.00)~~ per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof. All such public and property damage liability insurance shall specifically insure the performance by Lessee of the indemnity provisions of Article 9.1 above. * See Addendum

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

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

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

9.3.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interests may appear, the coverage afforded Lessor 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 Lessee does not obtain any of the insurance coverage as required in this Section 9.3, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.4 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.5 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City, or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee may any alterations to the exterior or structure of the Premises. Lessee 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 Lessor, 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of the San Diego County Recorder, a Notice of Completion as permitted by law.

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

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property aid Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the CEnter any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, umbrellas, banners, pennants, flags, posters, decorations, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this Lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the Lease, Lessee 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 Lessee 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 Lessee must be new when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

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

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

15.3 Remaining Term.

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

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

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

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

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

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

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

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

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

15.4 Procedures.

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

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

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

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

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

15.4.2 Subject to Section 15.5 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.4.1 above, Lessor may either:

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

15.4.2.2 Refuse to consent to the Occupancy Transaction if, pursuant to Section 15.2 or 15.3 above, Lessor is entitled to without its consent; or

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

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

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

15.7 Consideration to Lessor.

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

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

15.7.1.1.1 An amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease, during the twelve (12) month period immediately preceding such transaction; or

15.7.1.1.2 The then fair market annual rent as reasonably determined by Lessor. The new Minimum Annual Rent shall be increased from time to time in accordance with the procedures of Article 5.

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

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

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: ~~10:00 a.m.~~* to 9:00 p.m. seven days a week. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day. *See Addendum

Lessee 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, Lessee 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. Lessee shall install and maintain at all times displays of merchandise in the display windows (if any) of the Premises. Lessee 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 Lessee's business, Lessee shall not remove any of its trade fixtures or other personal property, without the immediate replacement thereof with fixtures or property of similar quality.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expenses, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

Lessee agrees to accept Bank Americard, Master Charge, Visa and any other credit cards generally used in retail centers at all times during the term of this Lease.

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates this covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing City Rent or Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of a any law permitting repairs by a lessee at the expense of

Lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of the State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee'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 Lessor with respect to the Center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees 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 Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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 Lessor or its lender with respect to the Common Areas, Premises, or Lessor's interest therein, (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 Ares services, to direct parking, to police the Center, and a Management Fee as hereinafter defined, (i) maintenance and repair of any fire protection systems, (j) transportation systems, including people movers, shuttle buses for customers and/or employees of the lessees 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 lessees 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 and management of the Center and Common Areas. The Management Fee, as used above, shall initially be established to be equal to four percent (4%) of all Rent collected by the property management company. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego. Lessor may cause any or all of said services to be provided by an independent contractor or contractors. The parties hereto agree that Lessor 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 Lessor's agent (hereinafter the "Manager of the Center"). Lessor may cause the Manager of the Center to render services to Lessee, other lessees and occupants, required or permitted to be performed by Lessor, 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 Areas 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 Lessor in the Master Lease, the Premises or the real property of which the Premises constitute a part;

19.3.2 Any tax on Lessor's right to rent or on other income from the Premises or Center or as against Lessor'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 Lessee and Lessor 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 taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges by 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 Lessee of the Premises, the Center or any portion thereof.

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

19.3.6 Any tax upon this transaction or any document to which Lessee is a party, creating or transferring any interest or an estate in the Premises, and any and all assessments Lessor 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 Lessor's federal or state income, franchise, inheritance or estate taxes.

19.4 Food Fair Expenses. Notwithstanding anything to the contrary contained herein, all of the costs and expenses specifically and exclusively incurred or attributed by Lessor from time to time as a result of the maintenance and operation of the common fast food resting and/or dining areas and other Common Areas in or adjacent to the Center, which are used by customers of fast food lessees for eating and/or dining ("Food Fair"), which result primarily from the operations of the fast food lessees in the Center (as opposed to the maintenance and operation of such areas as Common Area) ("Food Fair Expenses"), shall be paid only by said fast food lessees to Lessor, monthly, as Additional Rent, in addition to the Common Area Expenses. Each fast food lessee shall pay that proportion of the Food Fair Expenses in the same proportion which the floor area of each fast food lessee bears to the total number of leasable square feet occupied and open for business by all fast food lessees in the Center, or at Lessor's sole discretion, in the same proportion as each fast food lessee's Net Sales in any calendar year is to the total fast food Net Sales of all fast food lessees in the Center.

Restaurant lessees which sell fast food or take-out food which is consumed or disposed of in the Food Fair shall share the costs of the Food Fair expenses as though they were fast food lessees. Lessor shall determine the floor area of each restaurant lessee selling fast food or takeout food for the purpose of determining said restaurant lessee's prorata share of Food Fair Expenses. Said restaurants shall include a separate breakdown of fast food and takeout food Net Sales, as specified in Section 5.2, in the event Lessor prorates the Food Fair Expenses on a Net Sales Basis.

Food Fair Expenses shall include, without limitation: (1) salaries, wages, and benefits, and other costs of bus-boys and other personnel employed for cleaning and servicing the Food Fair, (2) garbage and waste collection and disposal; (3) rental of equipment and signs; (4) the cost of repairs or replacements to, and maintenance and operation of, the furniture, fixtures and furnishings in, or serving, the Food Fair; (5) depreciation or amortization and interest on the cost of any repairs or replacements, the cost of which is not charged in full in the lease year in which it is incurred; (6) the additional cost of securing, policing, and supervising the Food Fair; (7) the cost of cleaning, resealing and/or resurfacing outdoor sailing areas used primarily by Food Fair customers; and (8) a management fee to be initially established to equal four percent (4%) of the Food Fair Expenses. Said rate may be increased by Lessor from time to time to a rate which is usual and customary for such services in the City of San Diego.

Lessor shall have the right from time to time to relocate or rearrange the Food Fair and the Center, or either of them, including designating other portions of Common Areas immediately adjacent to the Food Fair as part of the Food Fair and, in such event, the provisions of this Article shall apply. Lessor shall also have the right to designate other portions of the Center as Food Fair and fast food areas and to make Rules and Regulations and policies, standards and directions governing the overall operation of such Food Fair and fast food areas. In addition, Lessor shall have the right to lease space to a fast food restaurant or any other restaurant anywhere in the Center.

Lessee acknowledges and agrees that it is a condition of the Lease that Lessor reserves the right to formulate, determine and enforce such policies, standards and practices for the Food Fair and the Center and for the more efficient and proper operation of the Food Fair and the Center, and to designate the name or names by which the Food Fair is to be referred. Lessee agrees to be bound by, and to comply with, such policies, standards and practices and to refer to the Food Fair only by the name or names designated by Lessor in its advertising and the conduct of its business in the Premises.

Without limitation, fast food lessees shall, at all times during the Lease Term, in operation of their business, abide by all Rules and Regulations and directions of Lessor relating to: (1) the health and sanitary conditions of the Premises, the Food Fair and its employees; (2) standards and quality of merchandise; (3) customer relations and resolution of complaints; (4) such other matters as Lessor determines applicable from time to time with respect to the operation of the Food Fair.

19.5 Method of Payment. Lessee shall pay to Lessor as Additional Rent Lessee's pro rata share of Common Area Expenses in the following manner:

19.5.1 From and after the Commencement Date, Lessee shall pay Lessor, on the first day of each calendar month of the Lease Term, Lessee's pro rata share of Common Area Expenses, as hereinafter defined. Should Lessee fail to make any payment to Lessor of Lessee's pro rata share of Common Area Expenses, including, without limitation, the quarterly or yearly payments required pursuant to subparagraph 19.5.2 below, by the tenth (10th) day following the date on which such payment becomes due, Lessee shall pay interest thereon at the Lease Interest Rate plus a Late Fee of ten percent (10%) of Lessee's pro rata share of such Expense. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law. Lessor may adjust the estimated monthly charge at the end of any calendar quarter on the basis of Lessor's experience and reasonably anticipated costs.

19.5.2 Within thirty (30) days following the end of each calendar quarter or, at Lessor's option, each calendared year, Lessor shall furnish a statement covering the calendar quarter or year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total operating costs, the amount of Lessee's pro rata share of Common Area Expenses for such calendar year, and the payment made by Lessee with respect to such period. If Lessee's pro rata share of Common Area Expenses exceeds Lessee's payments so made, Lessee shall pay Lessor the deficiency within ten (10) days after receipt of such statement. If said payments exceed Lessee's pro rata share of Common Area Expenses, Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor as set forth in subparagraph 19.5.1. Lessee'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 Lessor.

19.6 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

19.8 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor may offer parking free, or at reduced rates for specified periods, to customers of Lessee who present parking tickets validated by Lessee for such periods. Lessee agrees to purchase from Lessor validation stamps (or other evidence of validation issued by Lessor) for such purpose, and agrees to deliver them to customers in consideration for purchases by the customers from Lessee, pursuant to rules and regulations promulgated by Lessor from time to time. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.9 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulations established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas and parking structure, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

If, in the opinion of Lessor, unauthorized persons are using any of said areas by reason of the presence of Lessee in the Premises, Lessee, upon demand of Lessor, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Lessor 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 Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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

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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

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

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

22.2.2 No partner of Lessor shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

22.2.3 No service of process shall be made against any partner of Lessor (except as may be necessary to secure jurisdiction of the partnership);

22.2.4 No partner of Lessor shall be required to answer or otherwise plead to any service of process;

22.2.5 No judgment will be taken against any partner of Lessor;

22.2.6 Any judgment taken against any partner of Lessor 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 of Lessor;

22.2.8 These covenants and agreements are enforceable both by Lessor and also by any partner of Lessor.

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

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

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonably possible, Lessor will reasonably restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings. Lessee 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 Lessor or Lessee 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 agrees that the actual attorneys' fees and disbursements so incurred shall be deemed reasonable.

ARTICLE 25 - SALE OF PREMISES BY LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as us special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION AND RELOCATION

27.1 Quiet Possession. Lessor agrees that Lessee, 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. Lessor shall have the right at any time, upon at least one hundred twenty (120) days~~ written notice to Lessee, to relocate Lessee to new space in the Center provided the Premises to which Lessee shall be relocated (the "New Premises") shall have the same approximate Floor Area as is contained in the existing Premises. Lessor's notice shall be accompanied by a floor plan of the New Premises. The New Premises shall be leased to Lessee 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 Annual Rent. Lessee shall submit to Lessor, within thirty (30) days following the date Lessee completes renovation and opens for business in the New Premises, an affidavit signed and verified by Lessee setting forth the costs and expenses (accompanied with copies of paid receipts for each item) reasonably incurred by Lessee in connection with the relocation. Within thirty (30) days following Lessor's approval of Lessee's list of expenses, Lessor shall reimburse Lessee for such expenses. Expenses of relocation may include moving expenses, the unamortized cost of Lessee's leasehold improvements to the existing Premises and trade fixtures (to the extent paid for by Lessee and to the extent such leasehold improvements and trade fixtures cannot be used in the New Premises), and the sums expended by Lessee for new leasehold improvements and trade fixtures required solely as a result of such relocation. Except as provided above, Lessor shall not be liable or responsible in any way for any costs, expenses, damages or injuries suffered by Lessee pursuant to a relocation in accordance with the provisions of this Article 27, including, but not limited to, loss of goodwill, business or profits. Lessee agrees that all of the obligations of this Lease, including the payment of Rent,shall continue throughout the period of relocation. Lessee shall, not later than the date specified in Lessor's notice, vacate and surrender the existing Premises, relocate to the New Premises, and prepare the New Premises for occupancy, all at Lessee's sole cost and expense, subject to the reimbursement provisions set forth above. Lessee 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 Lessee, Lessor and Lessee shall execute a supplemental agreement specifying the location of the New Premises and the new Minimum Annual 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 Lessee to relocate in accordance with the provisions of this Lease shall constitute a ~~default under this Lease~~. * See Addendum

ARTICLE 28 - GRAND OPENING AND MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund").

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

28.3 Marketing Fund Contribution. The Marketing Fund Contribution specified in the Fundamental Lease Provisions shall be adjusted after the expiration of the first full calendar year of this Lease to reflect any change in the cost of living. The adjustment, if any, shall be calculated upon the basis of the Index, as defined in Section 5.1.1.1. The Marketing Fund Contribution payable during the following calendar year and until the next adjustment shall be set by multiplying the Marketing Fund Contribution by a factor equal to the increase in the Index as last published immediately preceding the Commencement Date and the Index last published immediately preceding the date of adjustment. In no event shall the Marketing Fund Contribution be less than that for the previous year.

28.4 Use of Marketing Fund. The use and disbursement of funds from the Marketing Fund shall be considered by a committee composed of three (3) persons; one (1) representative appointed by Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center. Lessor 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 Lessor in Lessor's sole discretion.

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

the payment next thereafter to become due Lessor for Marketing Fund Contribution payments as set forth herein. If, however, Lessee's Marketing Fund Contribution payments during the applicable calendar year do not equal Lessee's Marketing Fund Contribution for such calendar year, the mortgage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Lessor. There shall be an appropriate adjustment of Lessee's share of Marketing Fund Contribution payments as of the expiration of the Lease term.

28.6 Grand Opening. ~~Lessee shall pay to Lessor, as Additional Rent, a sum equal to the Grand Opening~~ Contribution as set forth in the Fundamental Lease Provisions to defray the promotional and advertising expenses incurred in connection with the Grand Opening of the Center ("Grand Opening"). This sum shall be paid by Lessee within fifteen (15) days of receipt of a bill for same. The use and disbursement of such funds shall be ~~determined by Lessor in Lessor's sole discretion~~. * See Addendum

28.7 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.8 Late Charge. Should Lessee fail to make any payment to Lessor 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. Lessee acknowledges that the foregoing charge represents a fair and reasonable estimate of the costs, expenses, and damages that Lessor will incur by reason of such failure by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder, or as provided by law.

28.9 No Interest in Marketing Fund. Lessee 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 then one person or corporation is named as Lessor or Lessee in this Lease and executes the same as such, then and in such event, the words "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed 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.

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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

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

ARTICLE 32 - SECURITY DEPOSIT

32.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this Lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor. 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.

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

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

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

ARTICLE 33 - MISCELLANEOUS

33.1 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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party.

33.2 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.

33.3 Warranty of Authority. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

33.4 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 Lessor to Lessee 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.

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

33.6 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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.

33.7 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 Lessee pursuant to this Lease.

33.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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.

33.9 Seasonal Activities. Lessee 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 Lessor from time to time.

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

33.11 Shoplifting. Lessee will cooperate in all procedures and programs calculated to discourage shoplifting in the Center.

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

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

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

33.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any

amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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.

33.15 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. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet occupied and open for business by all lessees receiving benefits therefrom.

33.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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.

33.17 Flammables and Toxic Waste. Neither Lessee, nor any of Lessee'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.

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

33.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

33.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

33.21 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 Lessee 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 sublessees of Lessee.

33.22 San Diego Convention and Visitors Bureau. If required by Lessor, Lessee agrees to join and maintain membership in the San Diego Convention and Visitors Bureau during the term of this Lease.

33.23 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

33.24 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

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

33.26 Post Extermination. Lessee shall use at its cost such post extermination contractor as Lessor may direct and at such intervals as Lessor may require.

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

33.28 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park"' is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

33.29 Real Estate Broker. Lessee 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. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

ARTICLE 34 - ADDITIONAL PROVISIONS

34.1 Additional Provisions. By insertion of numbers in the following blank, Lessor and Lessee acknowledge that Article(s) * is/are attached hereto and made a part hereof. If numbers have not been set forth in the blank in this Section 34.1, it is conclusive that no additional provisions are a part of this Lease. * See Addendum

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

By: Phase One Development, Inc.
a California corporation
(Sole General Partner)

By: Donald C White
Name:
Title: Ex V.P.

Lessee:

San Diego Coaster Company,
a California Corporation

By: Ed Hutton
Name: Ed Hutton
Title: President

By: Dana H. Morgan
Name: Dana H. Morgan
Title: Vice President

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: May 1, 1995

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Coaster Company, a California Corporation

Lessee's Trade Name: Pirate's Cove.

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 11,714 square feet ("Floor Area") plus two (2) ourtdoor locations as shown on Exhibit "B".

Permitted Use: Lessee shall include the following: Soft Play Equipment and Arcade Equipment for recreational use and birthday parties. Food preparation of a fast food nature and pizza. Food service will not include any grilling, frying or deep fat frying preparation. Outdoor locations shall include a "Childrens Boat Ride" and a ride known in the trade as "Himalaya", or similar rides, and food service patio. Indoor facility may be modified to include Lazer Tag or any other indoor attraction consistent with the Lessor's Master Lease and not in violation of the restrictions shown below.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Fudge - all flavors

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Two Hundred Sixteen (216) months.

Commencement Date: The Commencement Date shall be deemed to occur on May 1, 1995.

Security Deposit: Eleven Thousand Two Hundred Forty-Two Dollars. ($11,242.00).

Minimum Annual Rent: Ninety-Eight Thousand One Hundred Sixty Dollars ($98,160) per annum payable in twelve (12) equal monthly installments of Eight Thousan One Hundred Eighty Dollars ($8,180) per month.

Percentage Rent: Ten percent (10%) of Lessee's net sales in excess of $1,100,000.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

SAN DIEGO COASTER CO.
450 McQuaide Drive
La Selva Beach, California 95076

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: May 1, 1995

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: San Diego Seaside Company, a California Corporation

Lessee's Trade Name: Pirate's Cove.

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 11,714 square feet ("Floor Area") plus two (2) ourtdoor locations as shown on Exhibit "B".

Permitted Use: Lessee shall include the following: Soft Play Equipment and Arcade Equipment for recreational use and birthday parties. Food preparation of a fast food nature and pizza. Food service will not include any grilling, frying or deep fat frying preparation. Outdoor locations shall include a carousel and a ride known in the trade as "Himalaya", or similar rides, and food service patio. Indoor facility may be modified to include Lazer Tag or any other indoor attraction consistent with the Lessor's Master Lease and not in violation of the restrictions shown below.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Fudge - all flavors

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Two Hundred Sixteen (216) months.

Commencement Date: The Commencement Date shall be deemed to occur on May 1, 1995.

Security Deposit: Eleven Thousand Two Hundred Forty-Two Dollars. ($11,242.00).

Minimum Annual Rent: Ninety-Eight Thousand One Hundred Sixty Dollars ($98,160) per annum payable in twelve (12) equal monthly installments of Eight Thousan One Hundred Eighty Dollars ($8,180) per month.

Percentage Rent: Ten percent (10%) of Lessee's net sales in excess of $1,100,000.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

SAN DIEGO COASTER CO.
450 McQualde Drive
La Selva Beach, California 95076

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 and outdoor locations.

Exhibit C - Intentionally Omitted

Exhibit D - Rules and Regulations.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Percentage Rent. Lessee shall pay to Lessor the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's monthly net sales. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee within ten (10) days after the close of each month. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of all Minimum Annual Rent and

Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net Sales Category. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor and such books, records and accounts shall be available for review by Lessor at the premises upon Seventy-Two (72) hours advance notice.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are 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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and

after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

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

9.2.3 Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.2.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City , or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as Improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the lease, Lessee 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 Lessee 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 Lessee must be new or like new condition when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

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

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the elective date of any such transaction, and shall provide Lessor 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 Lessor may reasonably request;

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

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

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease.

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 6:00 p.m. weekends, national holidays, and every day during the period beginning with the Saturday of Memorial Day weekend and continuing thru the Monday of Labor Day. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall conduct and operate its business with due diligence and efficiency in a manner reasonably calculated to produce a maximum amount of gross sales. Lessee shall adequately staff its premises with sufficient personnel, well trained and appropriately dressed, to operate its business. Lessee's business and inventory, within the Premises and on display in the windows, shall be operated and merchandised in a professional manner consistent with standards found in first class amusement parks such as the Santa Cruz Beach Boardwalk in Santa Cruz, California. Lessor's reasonable determination as to the foregoing matters shall be conclusive.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good

repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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. Lessee's contribution to any common area fees are calculated as part of the rent and shall not be billed separately.

19.4 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

against Lessor, whether known or unknown, for bodily injury or property damage or loss arising from the performance of such security guards.

19.6 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.7 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, the parking spaces thereon, driveways, 4 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have

the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings.

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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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 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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund"). Lessee's

contribution to the marketing fund are calculated as part of the rent and shall not be billed separately.

28.2 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 Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.3 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.4 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - CONDITION OF PREMISES

32.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

32.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 33 - RENEWAL OPTION

33.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default existing under this Lease, and provided further that Lessee furnishes current financial statements satisfactory to Lessor which reflect that no material adverse change in the financial condition of Lessee has occurred since the Commencement Date, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for one (1) additional period of eighty-four (84) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal.

ARTICLE 34 - SECURITY DEPOSIT

34.1 Security Deposit. Lessee has deposited with Lessor the sum specified in the Fundamental Lease Provisions hereof as Security Deposit, receipt of which is hereby acknowledged. Said deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms of this lease by Lessee to be observed and performed. Such deposit may be commingled with other funds of Lessor. The security deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee, and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor.

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

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

34.4 Transfer of Security Deposit. Lessor may deliver the funds deposited hereunder by Lessee to the purchaser of Lessor's interest in the Premises in the event that such interest be sold and thereupon lessor 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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees be repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet by all lessees receiving benefits therefrom.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.19 Violations by Other Lessees. Lessor shall not be responsible to Lessee hereunder for the non-observance or violation of any of the provisions of any other lease of the Center by any other lessee.

35.20 No Warranties by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

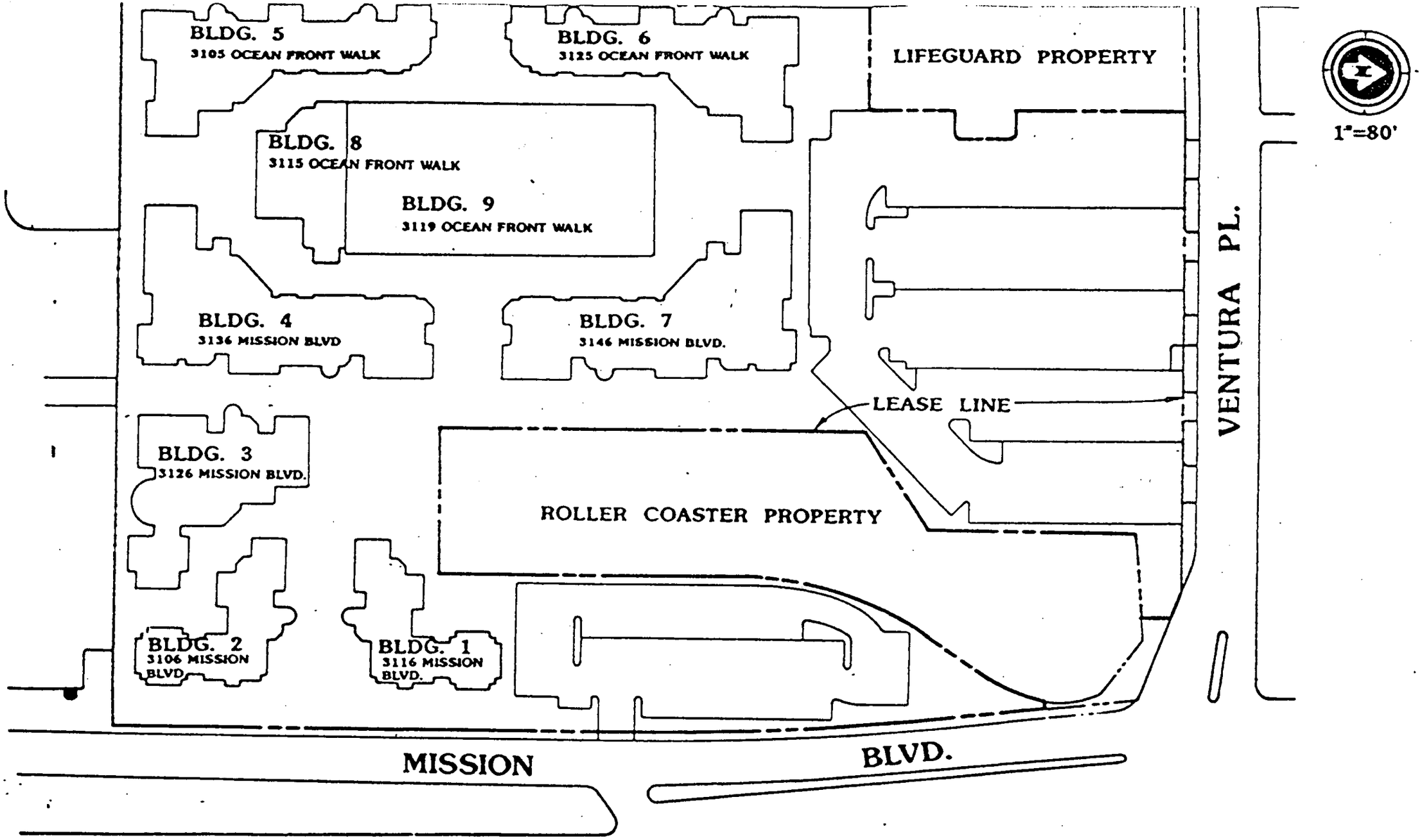
By: Phase One Development, Inc.
a California corporation
(Sole General Partner)
By: Donald C White
Name: Donald C. White
Title: Director

Lessee:

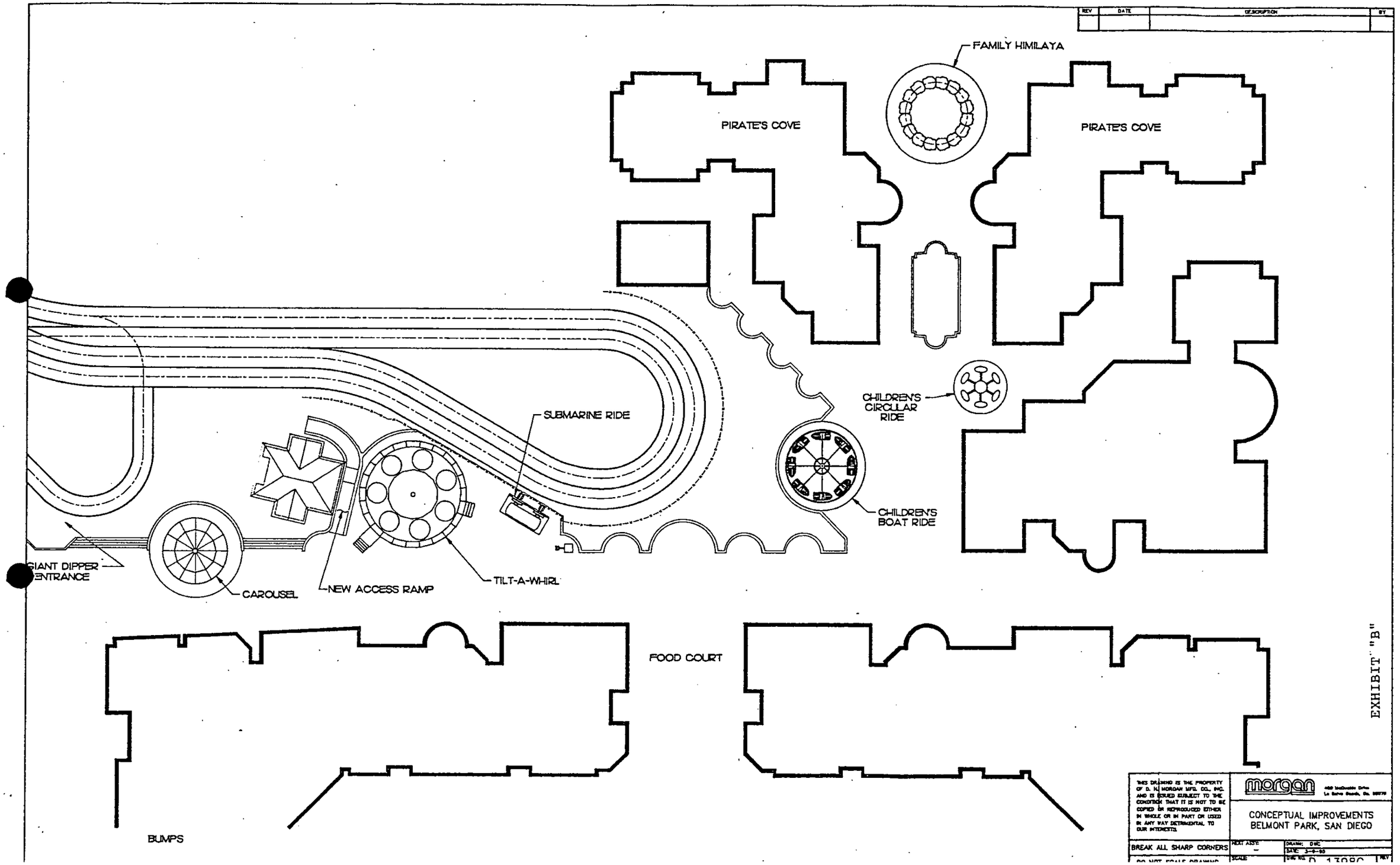
Coaster
SAN DIEGO ~~SEASIDE~~ COMPANY,
a California corporation

By: Dan H. Morgan
Name:
Title: Pres
By:
Name:
Title: CFO

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.



BELMONT PARK COMMERCIAL RECREATIONAL CENTER



REV
DATE
DESCRIPTION
BY
FAMILY HIMILAYA
PIRATE'S COVE
PIRATE'S COVE
CHILDREN'S CIRCULAR RIDE
SUBMARINE RIDE
CHILDREN'S BOAT RIDE
GIANT DIPPER ENTRANCE
CAROUSEL
NEW ACCESS RAMP
TILT-A-WHIRL
FOOD COURT
BUMPS
EXHIBIT "B"
THIS DRAWING IS THE PROPERTY OF D. H. MORGAN MFG. CO., INC. AND IS ISSUED SUBJECT TO THE CONDITION THAT IT IS NOT TO BE COPIED OR REPRODUCED EITHER IN WHOLE OR IN PART OR USED IN ANY WAY DETRIMENTAL TO OUR INTERESTS.
morgan
CONCEPTUAL IMPROVEMENTS
BELMONT PARK, SAN DIEGO
BREAK ALL SHARP CORNERS
NEXT ASSY:
DRAWN: DWC
DATE: 3-9-95
SCALE
DWG NO. D 13980
REV

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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PROMISSORY NOTE

(Secured)

$350,000.00 **May 1, 1995**
San Diego, California

FOR VALUE RECEIVED, the undersigned promises to pay to Belmont Park Associates, a California limited partnership ("BPA") or order, in lawful money of the United States, at 3146 Mission Blvd., Suite F, San Diego, California, the sum of Three Hundred Fifty Thousand Dollars ($350,000.00), or so much thereof as may have been advanced to or for the benefit of the undersigned with interest thereon from the date of advance (as evidenced by the records of BPA) on the unpaid principal balance at the annual rate of Eight percent (8%). Principal and interest are payable (i) interest only on the last day of the month following the commencement date of that undersigned as lessee of even date herewith ("First Payment Date") and (ii) principal and interest in Two Hundred Sixteen (216) equal monthly installments payable on the last day of each month commencing with the month following the First Payment Date.

There shall be no penalty for prepayment of all or part of the principal balance.

Each payment shall be credited first on interest then due, the remainder of the payment on principal, and interest shall thereupon cease upon the principal so credited. Should interest not be so paid, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law.

If the undersigned defaults in payment of any installment when due, the entire balance shall become immediately due and payable at the option of the holder of this Note ten (10) days after the holder has mailed written notice to the undersigned to cure the default to the address set out below by first class mail unless the undersigned cures such default in that same (10) day period. The entire balance shall also become due upon the occurrence of certain events set out in that Security Agreement securing this Note dated this same date in favor of Belmont Park Associates, a California limited partnership executed by the undersigned.

Should suit be commenced or an attorney employed after default to enforce payment of this Note, the undersigned agrees to pay, in addition, reasonable attorneys' fees and legal expenses.

Coaster
San Diego ~~Seaside~~ Company
a California Corporation

By: Dan H. Mong Pres.

By: CFO

SECURITY AGREEMENT

This Security Agreement ("Agreement") is made this 1 day of May, 1995, by and between BELMONT PARK ASSOCIATES, a California limited partnership ("Secured Party"), whose address is 3146 Mission Blvd., Suite F, San Diego, California 92109, and San Diego Seaside Company, a California Corporation ("Debtor"), whose address is 450 McQuaide Drive, La Selva Beach, California, 95076, who agree as follows:

RECITALS

A. Secured Party, as Lessor, and Debtor, as Lessee, are entering into a written lease dated the same date as of this Agreement ("Lease"), pursuant to which secured party leases to Debtor, and Debtor leases from Secured Party, the premises located in the City of San Diego, County of San Diego, California, more commonly described in Exhibit "A" attached to this Agreement and made a part hereof ("Premises").

B. As a material inducement for Secured Party's entering into the Lease, Debtor has agreed to secure Debtor's performance of the provisions of the Lease by giving Secured Party a security interest in certain collateral as described in this Agreement.

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. Creation of Security Interest. As security for Debtor's performance of each provision of the Lease to be performed by Debtor and payment of a promissory note ("Note") of this same date payable to Secured Party, Debtor grants to Secured Party a security interest in the items that are located at the Premises and described in Exhibit "B", which is incorporated in this Agreement by reference ("Collateral"). The security interest created by this Agreement also covers all replacements and substitutions to the Collateral, any proceeds of its sale or other disposition (as Permitted by this Agreement) until expiration or termination of this Agreement.

2. Representations. Debtor represents to Secured Party (and Secured Party relies on Debtor's representations) that no other person has or will have any right, title, lien, encumbrance, adverse claim, or interest in the Collateral.

3. Agreement of Debtor. Debtor agrees to the following:

3.1 Performance of Lease. Debtor shall perform all of the provisions of the Lease and Note required to be performed by Debtor.

3.2 Financing Statements; Additional Documents. Debtor shall execute a California Commercial Code Form, Financing Statement (UCC-1), required to protect the security interest created by this Agreement. In addition, at Secured Party's request, it shall execute any further documents necessary to carry out the purposes of the Agreement, including, without limitation, Continuation Statements (UCC-2). If Debtor fails to execute any such additional documents within ten (10) days after Secured Party's request, it authorizes and empowers Secured Party to act as its attorney-in-fact to execute such documents.

3.3 No Additional Security Interest. Debtor warrants that no financial statement or other security interest covering the Collateral is now or will be during the term of this Agreement, on file in any public office except in favor of Secured Party, and that it will defend the Collateral and Secured Party's security interest therein against any other claim or demand.

3.4 Books and Records. Debtor warrants that all books, records, and documents relating to the Collateral are and will be genuine in all respects what they purport to be, and that they will be made available at the Premises within Seventy-Two (72) hours of Lessors Request.

3.5 Location of Collateral. Debtor warrants that the Collateral will not be removed from the Premises without Secured Party's consent. Secured Party shall not unreasonably withhold such consent.

3.6 Maintenance; Lawful Use. Debtor warrants that it will (i) maintain the Collateral so that it will remain in good condition, (ii) use the Collateral lawfully, (iii) not use the Collateral so as to cause any waste or unreasonable deterioration or depreciation, and (iv) permit Secured Party to enter the Premises to inspect the Collateral at all reasonable times.

3.7 Insurance. Debtor shall keep the Collateral fully insured against all risks under policies issued by insurance companies acceptable to Secured Party in an amount sufficient to replace the Collateral. The proceeds of the insurance policy shall be payable to Secured Party. Debtor shall deliver to and deposit with Secured Party the insurance policies, or the certificates of the policies, on execution of this Agreement. In case of an insurance about to expire, Debtor shall deliver to and deposit with Secured party renewal policies not less than ten (10) days before expiration. The insurance policies shall provide that they shall not be canceled or changed in any way without at least thirty(30) days prior notice to Secured Party.

3.8 Destruction or Theft. Debtor shall notify Secured Party of any destruction or theft of the collateral, or any part of it, and shall either replace the Collateral and the condition as required by item 3.6, or replace the Collateral with like Collateral, in the condition required by item 3.6. On Debtor's completion of this obligation, Secured Party shall release to Debtor any insurance proceeds from the insurance provided for in item 3.7 in an amount not to exceed the amount necessary to compensate Debtor for its costs.

3.9 Sale of Collateral. Debtor shall not, without Secured Party's consent: exchange, sell, lease, transfer, or dispose of the Collateral or Debtor's rights to the Collateral; make any compromise, adjustments, amendment, modification, settlement, substitution, or termination, of or in connection with the Collateral; or permit anything to be done that might impair, or fail to do anything necessary or advisable to preserve, the value of the Collateral and Secured Party's security interest therein.

3.10 Taxes. Debtor shall file when due all schedules, reports, returns, or other data required by local, state, or federal authorities with respect to taxes or other charges against the Collateral, and shall pay when due all taxes claimed, accrued, or assessed against Debtor or the Collateral, and shall promptly satisfy and caused to discharged and released of record any and all taxes liens against Debtor or the Collateral.

3.11 Certificate of Title. Debtor shall caused Secured Party's name to be properly noted on any certificate of title to the Collateral, or any portion of it.

4. Default Defines; Remedies of Secured Party. The following shall constitute a default by Debtor:

4.1 Failure of Debtor to perform any of its obligations under the Lease.

4.2 Breach or default of any of the provisions, warranties or representations of this Agreement.

4.3 Commencement by or against Debtor of any proceeding

under the Bankruptcy Act, or any amendment to it, the adjudging of Debtor as insolvent, the making of an assignment for the benefit of creditors, or the levy of a writ of attachment or execution in any part of the Collateral if it is not released or satisfied within ten (10) days, or the appointment of a receiver in any proceeding or action to which Debtor is a party, if the receiver has authority to take possession of the Collateral.

4.4 On the occurrence of any default, Secured Party shall have all rights provided by the California Commercial Code. To the extent provided by law Secured Party can: (i) take possession of and protect the Collateral, (ii) if Secured Party is not then in possession of the Collateral, required Debtor or another person in possession of the Collateral to assemble it and make it available to Secured Party at a reasonable convenient place, to be designated by Secured Party, (iii) notify other interested persons of Debtor's default under this Agreement, (iv) retain the Collateral in satisfaction of the Debtor's obligations or (v) dispose of the Collateral and apply the proceeds in total or partial satisfaction of Debtor's obligations to Secured Party and for Secured Party's costs (including, without limitation, reasonable attorneys' fees) incurred in proceeding under this paragraph. Without limiting Secured Party's rights following any default, the parties agree that it shall be deemed commercially reasonable for Lessee to sell the Collateral in connection with its reletting the Premises.

4.5 At any time Debtor defaults, Secured Party can cure the default for the account of Debtor, at Debtor's cost. If Secured Party at any time, by reason of a default, is compelled to pay or elects to pay a sum of money, or to do any act that will incur the obligation to pay a sum of money, or is compelled to cure any cost, including, without limitation, reasonable attorneys' fees and instituting, prosecuting, or defending any action or proceeding to enforce Secured party's rights under this Agreement, the money paid by Secured Party, together with interest at the highest rate permitted by law, shall be repaid to Secured Party by Debtor immediately on demand.

5. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth in the introductory paragraph of this Agreement. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mail is provided in this paragraph.

6. Attorneys's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

7. Nonwaiver; Cumulative Remedies. The failure at any time to require strict performance by Debtor of any of the provisions contained in this Agreement shall not waive, affect, or demand strict compliance and performance of it. Any waiver of a default shall not waive or affect any other default, whether before or after the waiver, and whether of the same or a different type. None of the provisions of this Agreement shall be deemed to have been waived by any act or knowledge of Secured Party, its authorized representatives, unless the waiver is obtained in a written instrument, signed by the secured party, specifying the waiver. All rights, powers or remedies afforded to Secured Party, either under this Agreement or by law, shall be cumulative, not alternative; the exercise of one right, power or remedy shall not bar other rights, powers or remedies allowed by law.

8. Term of Agreement. The term of this Agreement shall commence on the date of this Agreement and shall expire on the date when Debtor has fully performed all of its obligations under the Lease.

9. Time of Essence. Time is of the essence of each provision of the Agreement.

10. Successors. This Agreement shall be binding on and inure to the benefit of the parties and the successors, subject to the limitations imposed on Debtor under item 3.9.

"Secured Party"

BELMONT PARK ASSOCIATES, a California limited partnership

By: Phase One Development, Inc.
a California corporation
(General Partner)

By: Donald C White
Title: Ex. V.P.

"Debtor"

San Diego ~~Seaside~~ Coaster Company,
a California Corporation

By: Dana H. Morgan

Name: Dana H. Morgan
Title: Pres.

BELMONT PARK

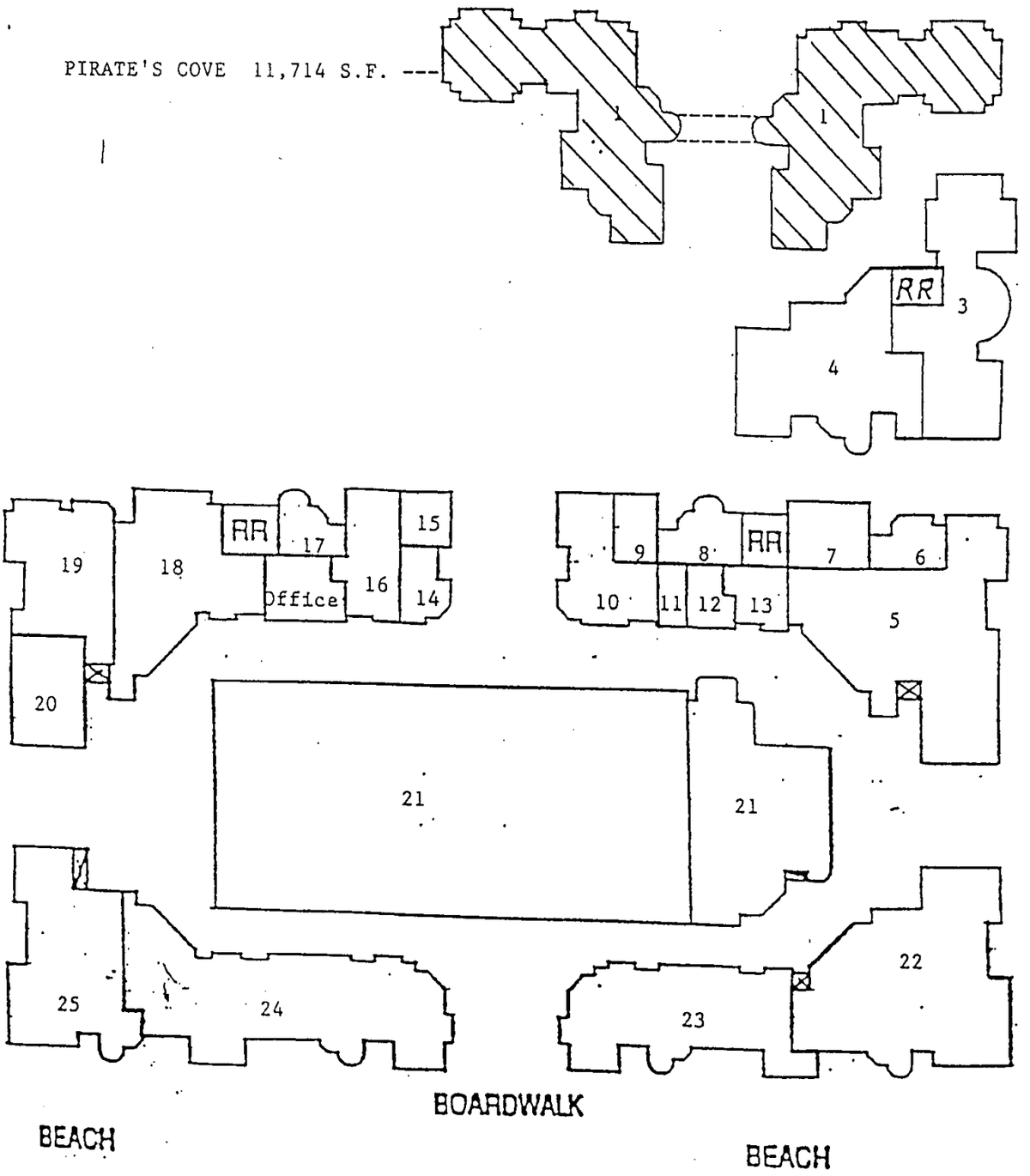

EXHIBIT "A"

COLLATERAL LIST

3	Money safes
8	Computers
3	Receipt printers
3	Cash drawers
2	Printers
12	Arcade games
1	Token machine
5	Refrigerators/freezers
1	Microwave oven
2	Trak-air ovens
1	Cash register
	Desks, chairs,

10,000 square feet of soft modular play equipment.

EXHIBIT "B"

CONSENT TO SUBLEASE AGREEMENT

ORIGINAL

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BELMONT PARK ASSOCIATES

and filed in the Office of the City Clerk as Document 266064, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

PIRATE'S COVE, INC.

Said Sublease, which is dated April 5, 1994, shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease. In addition, this Consent to Sublease Agreement is subject to the minimum Standard Sublease Conditions attached.

THE CITY OF SAN DIEGO

Dated 6-27-94

By _____
City Manager

APPROVED AS TO FORM:
JOHN W. WITT, City Attorney

Dated 6/24/94

By _____
Deputy

The undersigned hereby agrees to the terms and conditions set forth in this Consent to Sublease Agreement.

Dated 7/8/94

By _____
Belmont Park Associates

Dated 7/6/94

By _____
Pirate's Cove, Inc.

SAC/DRT/dcj-c
6/24/94

I:\WPO\CERVENY\SL-BELM.WPD

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessee and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Sublessee, his agents and invitees.

INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be $1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or cancelled without 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated February 27, 1987, as amended between the sublessor herein and The City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

Date: April 5, 1994

Lessor: BELMONT PARK ASSOCIATES, a California Limited Partnership

Lessee: Pirate's Cove, Inc. a California Corporation

Lessee's Trade Name: Pirate's Cove.

Premises: The commercial space in Belmont Park Commercial/Recreational Center ("Center") containing approximately 11,714 square feet ("Floor Area") as outlined on Exhibit B.

Permitted Use: Lessee shall include the following: Soft Play Equipment and Arcade Equipment for recreational use and birthday parties. Food preparation of a fast food nature and pizza. Food service will not include any grilling, frying or deep fat frying preparation.

Restrictions on Permitted Use:

Lessee specifically acknowledges that Lessor has granted certain exclusive rights to other lessees within the Center. Therefore, in addition to the restrictions contained in Article 7 of the Lease, Lessee shall be prohibited from selling or offering for sales the following merchandise:

(a) Sunglasses and/or swimwear;

(b) Mexican style food;

(c) Fudge - all flavors

(d) T-shirts, sweatshirts or other similar type clothing with the words 'San Diego' printed on them unless such clothing also prominently bears Lessee's trade name;

(e) Volleyballs and/or volleyball nets;

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

Lease Term: Seven (7) years, plus one (1) Seven (7) year Renewal Option in accordance with Article 33 below.

Commencement Date: Subject to the Fixturization Period, the Commencement Date shall be deemed to occur on the earlier of (i) the date on which Lessee opens for business in the Premises, or (ii) May 1, 1994. The anticipated Commencement Date is April 9, 1994.

Fixturization Period: Ninety (90) days.

Annual Rent Percentage Only: Percentage Rent shall be payable by Lessee as follows:

(i) Thirty percent (30%) of the first $1,600,000 of Lessees net sales (as defined in Section 5.3); plus

(ii) Thirty-five percent (35%) of Lessee's net sales in excess of $1,600,000.

Address for Notices:

To Lessor:

BELMONT PARK ASSOCIATES
c/o Phase One Development, Inc.
3146 Mission Boulevard, Suite F
San Diego, California 92109

To Lessee:

PIRATE'S COVE, INC.
3106 Mission Blvd., Ste. A
San Diego, California 92109

The foregoing Fundamental Lease Provisions are supplemented by and are subject to the following provisions of the Lease. In the event of conflict between these Fundamental Lease Provisions and the following provisions of the Lease, the Fundamental Lease Provisions shall control.

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 - Intentionally Omitted

Exhibit D - Rules and Regulations.

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 Lessor from the City of San Diego ("City") for a commercial/recreational center pursuant to a ground lease ("Master Lease") and generally as shown on Exhibit A. The Center and all improvements, landscaping, parking, pedestrian walkways and other features may be altered, or expanded from time to time by Lessor in Lessor'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, Lessor may designate other areas of land and improvements as part of the Center.

Lessee acknowledges and understands that the land leased by Lessor 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 uses of Mission Beach Park, as well as to the users of the adjacent beach areas. Lessee agrees to utilize the Premises for purposes consistent with the foregoing requirements.

3.2 Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, 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 27.1. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is an approximation, and Lessor makes no representation as to the exact square footage.

ARTICLE 4 - TERM

4.1 Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions. Subject to the Fixturization Period specified in the Fundamental Lease Provisions, if any, the Lease Term shall commence on the "Commencement Date." The Commencement Date shall be delayed by the number of days provided as the Fixturization Period, if any, provided, however, that in no event shall such delay continue beyond the date on which Lessee opens for business. If the Commencement Date falls on a day of the month other than the first day, then the Lease Term shall be extended by the number of days between the first day of the month and the Commencement Date. Lessee agrees not to unreasonably delay the Commencement Date. If completion of the Leasehold Improvements is delayed by Lessee's design decisions, revisions or additional work of Lessee or Lessee's agent, then the Commencement Date shall be accelerated by the number of days of said delay. The Commencement Date is specified in the Fundamental Lease Provisions.

4.2 Confirmation of Commencement Date. Lessee agrees to execute a supplemental agreement within ten (10) days after receipt in form requested by Lessor which shall confirm the Commencement Date.

4.3 Delay. If Lessor is unable to deliver possession of the Premises by the Anticipated Commencement Date as a result of causes beyond its reasonable control, Lessor shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. Lessee shall not be liable for Rent until the Commencement Date. If Lessor does not deliver possession of the Premises to Lessee within (6) six months of the Anticipated Commencement Date, Lessee can elect to terminate this Lease by giving written notice to Lessor within ten (10) days after the expiration of the six (6) month period and before the Commencement Date.

ARTICLE 5 - RENT

5.1 Percentage Rent. Lessee shall pay to Lessor the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Lessee's net sales computed each month. Lessee shall make payments of Percentage Rent to Lessor no later than ten (10) days following the billing. Lessor reserves the right, at any time, to require Lessee to pay all amounts due under this Lease by Certified or Cashier's Check.

5.2 Statement of Net Sales. Lessee agrees to furnish or cause to be furnished to Lessor a statement of monthly Net Sales of Lessee (totaled for calendar year to date) within ten (10) days after the close of each year. All monthly and annual statements shall classify, itemize and total all sales by category (Net Sales Category), include a computation of

all Minimum Annual Rent and Percentage Rent, for the preceding month and calendar year to date, and be signed by Lessee if Lessee is composed of individuals, by a general partner of Lessee if Lessee is a partnership, or by a corporate officer if Lessee is a corporation and annual statements shall, in addition, be signed by Lessee's certified public accountant. If Lessor so elects, Lessee shall provide such information in a format specified by Lessor. Lessee shall, concurrently with submittal to the State Board of Equalization, provide Lessor with a copy of all state and local sales and use tax returns filed with said State Board.

Lessee shall keep at the Premises 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, Net Sales of Lessee and of any sublessee, licensee or concessionaire in the Premises. Such books, records and accounts shall be maintained separate from all other accounts of Lessee not relating to the Premises and such books shall be retained by Lessee 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 Lessor to determine Lessee's Net Sales and Net Sales Category. Lessor 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 Lessee's Net Sales in each Category, the monthly and annual statements of Net Sales and the Rent paid to Lessor. Lessor shall have the discretion to require the installation of any additional accounting methods or controls Lessor may deem necessary.

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

If it shall be determined as a result of any audit that a deficiency exists in the payment of Minimum Annual Rent, or Percentage Rent, then such deficiency shall become immediately due and payable, 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. In addition, if Lessee's statement for the pertinent calendar year shall be found to have understated or incorrectly categorized Net Sales by more than two percent (2%) and Lessor is entitled to any additional Percentage Rent as a result thereof or if Lessee has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this Article 5, then Lessee shall pay all of Lessor's and City's costs and expenses connected with such audit, a Late Fee, plus a fee ("Understatement Fee") of ten percent (10%) of the amount of the deficiency which amount is mutually agreed by the parties hereto to be appropriate to compensate Lessor and City for loss resulting from rental delinquency, including lost interest and opportunities, legal costs, and the cost of servicing the delinquent account.

5.3 Definition of Net Sales. The term "Net Sales" as used herein defined to mean all income and gross sales of Lessee and of all licensees, concessionaires and subtenants of Lessee, 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. Net Sales shall include, less credit and discounts, 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 Lessee's business shall be sublet by Lessee or conducted by any person, firm or corporation other than Lessee, then there shall be included in Net Sales for the purpose of fixing the Percentage Rent payable hereunder all of the gross sales of such departments or divisions of Lessee's business had been conducted by Lessee itself. Net 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 Net 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 Lessee to such governmental authority, or (iv) sale of capital items such as equipment or machines. No franchise or capital stock tax and no income or similar tax based upon income or profits shall be deducted from Net 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. Net 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 Net Sales.

5.4 Additional Rent. Lessee shall pay all sums of money required to be paid pursuant to Articles 6, 19 and 28 and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as rent (collectively "Additional Rent"). Minimum Annual Rent, Percentage Rent and Additional Rent are

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 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 Lessor.

It is the purpose and intent of Lessor and Lessee that all Rent provided in this Lease shall at all times be absolutely net to Lessor, and that this Lease shall yield net to Lessor, 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 Lessee or reimbursed to Lessor, and that Lessor shall be indemnified and saved harmless by Lessee from and against the same.

5.5 Failure to Pay. If Lessee fails to pay any monthly installment of Rent within five (5) days after the same has become due, both Lessee and Lessor agree that Lessor will incur additional expenses in the form of extra collection efforts, handling costs, potential impairment of credit on loans for which this Lease is security, and potential liability and costs to City. Both parties agree that should Lessee so fail to pay Rent, Lessor should be entitled to compensation for such detriment, but that it is extremely difficult and impractical to ascertain the extent of detriment. The parties therefore agree that should Lessee fail to pay Rent when due, Lessor shall be entitled to recover from Lessee as liquidated damages the greater of (i) $100.00 or (ii) ten percent (10%) of the amount due ("Late Fees"). Such past due amounts shall bear interest at the Lease Interest Rate. Lessee further agrees to pay Lessor any costs incurred by Lessor in effecting the collection of such past due Rent, including, but not limited to, fees of an attorney or collection agency. Lessor shall have the right to require that Lessee pay monies due in the form of a cashier's check or money order if any check of Lessee is not honored upon presentment to Lessee's bank. In addition, following the second late payment of Rent in any twelve (12) month period, Lessor shall have the option to require that beginning with the first payment of Rent due following the date when such second late payment was due, Lessee 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 Lessor, and may be applied by Lessor, in the manner provided in Article 32. Notwithstanding the foregoing, the obligation to pay such Late Fee, Lease Interest Rate or additional Security Deposit shall not alter or preclude Lessor's right, prior to actual receipt of any delinquent installment of Rent, to exercise any right or remedy which Lessor may have under the terms of this Lease. Furthermore, acceptance of any such fees by Lessor shall not constitute a waiver by Lessor of Lessee's default or prevent Lessor from exercising any other rights or remedies available to Lessor as hereinafter provided or as provided by law.

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

5.7. Returned Checks. Lessee 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 Lessor for Lessor's related costs.

ARTICLE 6 - PERSONAL PROPERTY TAXES

6.1 Personal Property Taxes and Assessments. Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, and its trade fixtures, leasehold improvements, merchandise and other personal property in or upon the Premises. In the event any such items of property are assessed with property of Lessor, such assessment shall be equitably divided between Lessor and Lessee to the end that Lessee shall pay only its equitable proportion of such assessment. Lessor shall determine the basis of prorating any such assessments and such determination shall be binding upon both Lessor and Lessee. 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. Lessor shall deliver the Premises to Lessee no later than the Anticipated Commencement Date, subject to the provisions of Section 4.1. Lessee 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.

7.2 Permitted Uses. Lessee shall use the Premises solely for the Permitted Use and under Lessee's Trade Name specified in the Fundamental Lease Provisions. Lessee 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 Lessor, which consent may be withheld for any reason whatsoever. Lessee 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. Lessee 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 lease Term the Premises, and every part thereof, shall be kept by Lessee 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 Lessee.

Lessee understands that the Premises are located within dedicated public parklands and Lessee 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.

Lessee 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 lessees in the Center. Lessee 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.

Lessee shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Lessee 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 Lessee, if any, located outside the Center. Lessee 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 Lessee's business in the Premises.

Lessee may not display or sell merchandise, or allow carts, tables, aerials, antenna, portable signs, or any other objects to be stored or placed outside the exterior walls, roof, and permanent doorways of the Premises or in any hallways. Lessee shall remove any of said objects maintained in violation hereof immediately upon receipt of written notice to do so by Lessor or Lessor shall be entitled to remove said objects. Promptly upon demand of Lessor, Lessee shall reimburse Lessor for its costs and expenses in removing any of said objects, and such amounts shall be deemed Additional Rent payable hereunder. In addition, Lessee will not solicit, in any manner, in the Common Areas of the Center.

7.3 Deliveries. Lessee 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. Lessee 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. Lessor reserves the right to further regulate the activities of Lessee in regard to deliveries and servicing of the Premises, and Lessee agrees to abide by such further non-discriminatory regulations of Lessor.

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Lessee's Responsibilities. Lessee 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, telephone, 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 Lessor. In no event shall Lessor 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 Lessee or relieve Lessee from its obligations under this lease. With respect to any fees, deposits and charges which are separately metered or individually billed to Lessee, if such charges are not paid when due, Lessor 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 Lessor from Lessee as Additional Rent.

ARTICLE 9 - INDEMNITY AND INSURANCE

9.1 Indemnity by Lessee. Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person during the term of this Lease, from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Lessee or any other person thereon or holding under said Lessee. Lessee will indemnify and hold Lessor and City harmless 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 by Lessee and its facilities, (ii) any repairs or alterations which Lessee may make to the Premises (iii) any act omission or negligence by Lessee, its employees, agents, sublessees, invitees, or licensees. Lessee shall not be liable for damages or injury occasioned solely by the negligence of Lessor and its designated agents, servants or employees unless covered by insurance Lessee is required to provide.

9.2 Lessee's Insurance Obligations. Lessee agrees to apply for and obtain from insurance companies acceptable to Lessor and authorized to do business in California with a General Policyholder's rating of "A" and a financial rating of at least "A + 3A" in the most current available edition of "Best's Insurance Reports," effective from and

after the Commencement Date at Lessee's sole cost and expense, insurance coverages in the following amounts and form:

9.2.1 Public Liability and Property Damage. Comprehensive public liability and property damage insurance with a combined single limit of not less than One Million Dollars ($1,000,000.00) per person per occurrence, insurance against any and all liability and property damage of the insured with respect to the Premises, the sidewalks in front of the Premises, the business operated in the Premises and the maintenance, use and occupancy thereof.

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

9.2.3 Lessee Improvements. Insurance covering all of Lessee's leasehold improvements, alterations, additions or changes ("Additions"), trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount not less than ninety percent (90%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "All Risk Coverage," including protection against earthquake, flood, sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair and replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 18 hereof.

9.2.4 Business Interruption Insurance. Business Interruption Insurance insuring that the Rent will be paid to Lessor for a period of up to one (1) year if Lessee is unable to operate its business at the Premises for any reason other than termination of this Lease.

9.2.5 Policy Form. All policies of insurance to be obtained by Lessee shall be issued in the names of Lessor, City, Lessee, any other person or entity designated by Lessor which policies shall be for the mutual and joint benefit and protection of Lessor, City, Lessee, and such other person or entity. Executed copies of such policies of insurance or certificates thereof shall be delivered to Lessor within ten (10) days after issuance of each such policy. All policies shall contain a provision that Lessor, although named as an insured, shall nevertheless be entitled to recovery under said policies, for any loss occasioned to it, its servants, agents, and employees, by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in the manner and to like extent, and shall be delivered to Lessor at least ten (10) days prior to the expiration of the term of the existing policy. All policies of insurance delivered to Lessor must contain a provision that the company writing said policy will give Lessor 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 Lessor 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.

Lessee'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 Lessee, provided, however, that Lessor shall be named as an additional insured thereunder, as its interest may appear, the coverage afforded Lessor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and the requirements set forth herein are otherwise satisfied. If Lessee does not obtain any of the insurance coverage as required in this Section 9.2, Lessor may, but is not obligated to, obtain such insurance coverage on behalf of Lessee, and Lessor shall be entitled to reimbursement for the cost thereof (plus interest at the Lease Interest Rate) as Additional Rent.

Lessee will report in writing to Lessor 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.

9.3 Insurance Use Restrictions. Lessee 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. Lessee agrees to pay to Lessor forthwith upon demand the amount of any increase in premiums charged to Lessor, for any insurance carried by Lessor, which increase results from Lessee's violation of the foregoing restrictions, whether or not Lessor has consented to Lessee's carrying said stock or goods or to Lessee's actions. If Lessee installs on the Premises any electrical equipment which overloads the electrical lines, Lessee shall, at its own expense, make all changes to its Premises and install any fire extinguishing equipment that Lessor's insurance underwriters, or applicable fire, safety and building codes and/or regulations may require. Nothing herein contained shall be deemed to constitute Lessor's consent to such overloading.

9.4 Increases in Insurance Coverage. If, in the opinion of Lessor's lender, City , or the insurance broker retained by Lessor, the amount or type of insurance carried by Lessee from time to time is inadequate, Lessee shall increase or add the insurance coverage or type as required by either Lessor's lender, City, or Lessor'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 therefor, including, without limitation, any modification, alteration, or substitution made in connection with any expansion, redesign, financing or refinancing of the Center. Lessee 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 Lessor and at no time by Lessee. Notwithstanding the provisions of Article 4 or any other provision of this Lease, it is agreed that the Lease term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 - ALTERATIONS

11.1 Alterations. Lessee agrees that it will not make any Alterations in or to the Premises without the prior written consent of Lessor. In no event may Lessee make any alterations to the exterior or structure of the Premises. Lessee shall be responsible for the entire cost and expense of all such permitted Alterations. 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 Lessor before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Lessor, 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, Lessee shall have the work performed in such a manner as not to obstruct the access to the Premises of or interfere with the quiet enjoyment of any other Lessee in the Center. Upon completion of such work, Lessee shall file for record in the office of San Diego County Recorder, a Notice of Completion as permitted by law.

Upon the expiration or earlier termination of Lessee's leasehold estate, such Alterations shall be considered as improvements and shall not be removed by Lessee but shall become a part of the Premises and the property of Lessor. As to any or all alterations, structures, installations or improvements, title thereto shall vest in Lessor, without cost to Lessor, and without any payment to Lessee.

ARTICLE 12 - MECHANIC'S LIENS

12.1 Lessee's Covenants. Lessee 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 Lessee will keep the Premises and Center free and clear of all mechanic's liens and other liens on account of work done for Lessee or persons claiming under it. Lessee agrees to and shall indemnify, defend and save Lessor 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 Lessee or persons claiming under Lessee.

12.2 Contest of Lien. If a lien or notice of lien is filed with respect to any work done by or for Lessee, Lessee shall, within ten (10) days of the filing of such lien or notice, furnish to Lessor 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 judgement establishing the validity or existence of a lien for any amount is entered, Lessee shall pay and satisfy the same at once.

12.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanic's lien claim has been filed, and shall not have given Lessor security to protect the property and Lessor against such claim of lien, Lessor 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 Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the Lease Interest Rate from the date(s) of Lessor'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. Lessor 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 Lessor may deem to be proper for the protection of Lessor's interest in the Premises. Two (2) days before the commencement of any work which might result in any such lien, Lessee shall give to Lessor written notice of Lessee's intention to commence work to enable Lessor to post such notices.

ARTICLE 13 - SIGNS

13.1 Restrictions. Lessee 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 Lessor. Lessor's approval shall be based upon the conformance by Lessee to (i) the sign program prepared by Lessor'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 Lessor. In no event may Lessee affix any sign to the roof of the Premises.

No advertising medium shall be utilized by Lessee which can be heard or experienced outside the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or television.

Lessee shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers, or other advertising devices on any vehicle parked in the parking area of the Center, whether belonging to Lessee, or to Lessee's agent, or to any other person. Lessee shall not distribute in the Center any handbills or other advertising devices.

Lessee further agrees that no awnings, canopies, banners, pennants, flags, posters, decoration, marquees, eye-catching spinners, or other advertising devices, or any temporary signs, shall be permitted to be flown, installed, placed or erected on the Premises without Lessor's prior written consent.

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

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

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Trade Fixtures and Personal Property. Any trade fixtures and personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee, and Lessor agrees that Lessee shall have the right upon termination or expiration of the term of this Lease, provided Lessee is not in default under the terms of this lease, to remove any and all of its trade fixtures and other personal property which it may have stored or installed in the Premises. At Lessor's option, Lessee shall have the obligation to remove all trade fixtures and personal property upon termination or expiration of the lease term. Until termination or expiration of the lease, Lessee 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 Lessee 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 Lessee must be new or like new condition when so installed or attached. Lessee, 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 Lease 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 Lessee's entire interest, rights and duties in the Lease or the Premises, including Lessee's right to use, occupy and possess the Premises, or (b) sublease of Lessee's right to use, occupy and possess the Premises, in whole or in part;

15.1.2 "Encumbrance" means any conditional, contingent or deferred assignment or sublease, voluntarily or involuntarily made by Lessee, of some or all of Lessee's interest, rights or duties in the Lease or the Premises, including, without limitation, Lessee'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 incompetency, 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 Lessee, 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 Lessee. If Lessee 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;

15.2 Remaining Term.

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

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

15.2.2.1 The Transferees proposed use of the Premises is different than the use permitted in the "Use of Premises" portion of the Fundamental Lease Provisions;

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

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

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

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

15.2.2.6 Lessor cannot obtain the consent of the City when such consent is required under the Master Lease; or

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

15.3 Procedures.

15.3.1 Should Lessee desire to enter into an Occupancy Transaction, Lessee shall request, in writing, Lessor's consent to such transaction at least sixty (60) days before the elective date of any such transaction, and shall provide Lessor 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 Lessor may reasonably request;

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

15.3.2 Subject to Section 15.4 below, within thirty (30) days after receipt by Lessor of the information required by subsection 15.3.1 above, Lessor may either:

15.3.2.1 Consent to the Occupancy Transaction, subject to Section 15.6 below, if, pursuant to Section 15.2 above, Lessor is not entitled to withhold its consent; or

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

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

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

15.6 Consideration to Lessor.

15.6.1 In the event Lessor and City shall consent to an Occupancy Transaction, Transferee shall thereafter pay directly to Lessor the Rent specified in this Lease. The Minimum Annual Rent shall be, on the effective date of such Occupancy Transaction, an amount equal to one hundred percent (100%) of the total Rent required to be paid by Lessee, pursuant to this Lease.

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

ARTICLE 16 - LESSEE'S CONDUCT OF BUSINESS

16.1 Operating Covenants; Days and Hours. Lessee shall occupy the Premises within thirty (30) days after the Commencement Date and shall thereafter continuously conduct business in the Premises during the following minimum hours: 11:00 a.m. to 7:00 p.m. weekends, national holidays, and every day during the period beginning with the Saturday of Memorial Day weekend and continuing thru the Monday of Labor Day. Lessee may, however, close for business on Thanksgiving Day, Christmas Day and New Year's Day.

Lessee shall conduct and operate its business with due diligence and efficiency in a manner reasonably calculated to produce a maximum amount of gross sales. Lessee shall adequately staff its premises with sufficient personnel, well trained and appropriately dressed, to operate its business. Lessee's business and inventory, within the Premises and on display in the windows, shall be operated and merchandised in a professional manner consistent with standards found in first class amusement parks such as the Santa Cruz Beach Boardwalk in Santa Cruz, California. Lessor's reasonable determination as to the foregoing matters shall be conclusive.

Lessee agrees that all trash and rubbish of Lessee shall only be deposited within receptacles as provided by Lessor 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 Lessor at such time or times as Lessor may designate by rules and regulations adopted by Lessor in Lessor's discretion. Lessor shall cause such receptacles to be emptied and trash removed at Lessee's cost and expense. Should Lessee fail to use the trash receptacles designated by Lessor for trash deposit after twenty-four (24) hours written notice by Lessor to do so, Lessee shall pay to Lessor the sum of fifty dollars ($50.00) per day for each such failure, which amount(s) shall be payable as Additional Rent.

Lessee acknowledges that the foregoing charges for failure to use trash receptacles represent fair and reasonable estimates of the costs, expense, and damages that Lessor will incur by reason of such failures by Lessee, 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 Lessor of Lessee's default or prevent Lessor from exercising any of the other rights and remedies available to Lessor hereunder or as provided by law.

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

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

16.2 New Locations. During the term of this Lease, neither Lessee nor any individual, firm or corporation that controls Lessee or is controlled by Lessee shall, directly or indirectly, engage in any similar or competing business within a radius of three (3) miles from the outside boundary of the Center. Without limiting Lessor's remedies, if Lessee violates the covenant, Lessor may, at its option and for so long as Lessee is operating such other business, include Net Sales of such other business for the purpose of computing Percentage Rent due hereunder.

ARTICLE 17 - REPAIRS AND MAINTENANCE

17.1 Lessee's Obligations. By accepting possession of the Premises, Lessee accepts the Premises as being in the condition called for by this Lease except for such items as Lessee shall advise Lessor in writing within five (5) days from the date Lessee accepts possession of the Premises. Except as provided in Section 17.2 below, Lessee shall keep and maintain the Premises 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 Lessor 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. Lessee hereby waives the provisions of any law

permitting repairs by a lessee at the expense of lessor, including without limitation, all rights of Lessee under Articles 1941 and 1942 of the Civil Code of State of California.

17.2 Lessor's Obligations. As a Common Area Expense and subject to reimbursement under Article 19, Lessor 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 Lessee or Lessee's employees, agents, invitees, licensees or contractors which damage Lessor shall repair at Lessee's sole cost and expense. Lessor shall keep the common areas in good repair and maintain access to premises equal to that currently available.

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 Lessor with respect to the center, Lessor shall repair such damage or destruction in accordance with City requirements and this Lease shall continue in full force and effect. Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold 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, Lessor shall have the option to repair the Premises and if Lessor does so this Lease shall remain with all force and effect and Lessee, at its sole cost and expense, shall promptly repair the interior of the Premises, including all leasehold improvements, Alterations, fixtures, furniture, furnishings and equipment and replace all stock in trade, or (i) not to repair the Premises in which event Lessor shall give written notice of such determination to Lessee 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 Lessor undertakes such repair, Lessee 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 Lessee hereunder to pay Rent shall remain in full force and effect without reduction or abatement in any amount. Lessee shall not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's personal property or any inconvenience or annoyance occasioned by such damage, repair construction or restoration.

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 Lessor from time to time for the general use, conveniences and benefit of Lessor, lessees in the Center, and other authorized users. The "Common Areas" may include, without limitation, automobile parking areas, 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, bus stops, and other facilities as Lessor may designate from time to time, for the nonexclusive use and benefit of Lessor, lessees 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 Lessor, or by separate legal entities, for the benefit, in Lessor'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 Lessor and/or such other separate owner(s) or master lessor(s).

19.2 Use of Common Areas. Lessee 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 Lessor, and any reciprocal easement agreement or similar agreement affecting the Center entered into by Lessor from time to time. The Common Areas are at all times to be used for the benefit of the customers and patrons of Lessee, 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. Lessor 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.

19.4 Lessor's Rights to Determine Common Areas. Lessor 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.

Lessor 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 Lessor in connection with the repair, maintenance, and operation of such replacement parking shall be included in Common Area Expenses.

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

19.6 Charged Parking; Validation. Following reasonable notice to Lessee, Lessor may charge a fee, require validation, institute a system of controlling access to all or any portion of the automobile parking areas under Lessor's control, require Lessee and employees of Lessee to utilize shuttle bus service provided by Lessor to off-site parking areas, and institute parking controls and regulations which may be necessary in Lessor's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Lessor shall provide Lessee, at no charge to Lessee, validation stamps (or other evidence of validation issued by Lessor) for use by Lessee's employee's and customers. Lessor 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. Lessee acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Lessor to preserve this status.

19.7 Control of Common Areas. Lessor shall at all times during the term of this Lease have the right to control the use by Lessee and other authorized user of the automobile parking areas, the parking spaces thereon, driveways, 4entrances, 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 Lessee and other lessees of Lessor who make use of said areas in accordance with the rules and regulation established by Lessor from time to time with respect thereto. Lessor shall further have the right to permit lessees of the Center to occasional or minimal use of the Common Areas as Lessor deems proper. The rights of Lessee hereunder, in and to the parking areas, shall at all times be subject to the rights of Lessor as provided in this Lease, and of the City, and shall at all times be subject to the rights of Lessor and its employees, other lessees and authorized users, to use the same in common with Lessee, and it shall be the duty of Lessee to keep all of said areas free and clear of any obstructions created or permitted by Lessee, or resulting from Lessee'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 Lessee and other lessees of Lessor.

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

20.1 Right of Termination. The filing by Lessee of any petition for relief under the provisions of federal bankruptcy law, including any petition for or in reorganization, or the making by Lessee of a general assignment for the benefit of Lessee's creditors, or any action at the corporate or partnership level taken by Lessee to authorize either of the foregoing actions to be taken on behalf of Lessee, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee, or any action taken or suffered by Lessee 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 Lessee, and the continuance of such filing, assignment or taking for a period of thirty (30) days, shall constitute a breach of this Lease by Lessee and in such event Lessor may at its option terminate this Lease upon written notice to Lessee. The term "Lessee" as used in this Section 20 shall be deemed to include any parent corporation of which Lessee 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 Lessee, 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 Lessor and the City. Any transfer by Lessee in violation of the provision of this Article 20 shall constitute a breach of this lease by Lessee.

ARTICLE 21 - DEFAULT BY LESSEE

21.1 Lessee's Default; Lessor's Rights and Remedies. Should Lessee at any time be in default hereunder, with respect to any Rent payments or other charges payable by Lessee hereunder, and should such default continue for a period of three (3) days after written notice from Lessor to Lessee, or should Lessee be in default including, without limitation, the obligation to continuously operate and merchandise the Premises as required by Article 16, and should such default or breach of performance continue for more than thirty (30) days after the written notice thereof from Lessor to Lessee specifying the particulars of such default or breach of performance, or should Lessee vacate or abandon the Premises, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of Lessor hereunder and provided by law, it shall be, at the option of Lessor, without further notice or demand of any kind to Lessee or any other person:

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

21.1.2 The right of Lessor, without declaring this Lease ended, to re-enter the Premises and occupy the whole, or any part thereof, for and on account of Lessee, and to collect said Rent and any other Rent that may thereafter

become payable, provided that, if Lessor elects this remedy, then Lessee 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.

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

Should Lessor have re-entered the Premises under the provisions of subparagraph 21.1.2 above, the Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee 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 Lessor shall have notified Lessee in writing that is has so elected to terminate this Lease, and Lessee further covenants that the service by Lessor of any notice pursuant to the unlawful detainer statute of the State of California, and the surrender of possession pursuant to such notice, shall not (unless Lessor 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 Lessee) be deemed to be a termination of this Lease. In the event of any entry or taking possession of the Premises as aforesaid, Lessor 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.

21.2 Lessor's Damages. Should Lessor elect to terminate this Lease under the provisions of subparagraph 21.1.1 or 21.1.3 above, Lessor may recover from Lessee as damages:

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

21.2.2 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 Lessee proves could have been reasonably avoided.

21.2.3 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 Lessee proves could be reasonable avoided.

21.2.4 As used in subparagraph 21.1.1 and 21.1.2 above, the "worth at the time of award" is computed by allowing interest at the Lease Interest Rate. As used in subparagraph 21.1.3 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%).

21.3 Fixtures and Personal Property. In the event of default but subject to Article 11, all of Lessee's furniture, fixtures, equipment, Improvements, Alterations, and other personal property shall remain on the Premises and continuing during the length of said default, Lessor 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 Lessee to forthwith remove same.

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

21.5 No Waiver. The waiver by Lessor 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 Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor'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 Lessor unless such waiver be in writing by Lessor.

ARTICLE 22 - DEFAULT BY LESSOR

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

ARTICLE 23 - EMINENT DOMAIN

23.1 Taking Resulting in Termination. If the entire Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority ("Condemnation"), this Lease shall terminate and expire as of

the date of such taking, and Lessor and Lessee 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 Lessee, 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 Lessor or Lessee shall have the right to terminate this Lease as of the date Lessee is required to vacate such portion of the Premises upon giving notice in writing of such election within thirty (30) days after receipt of Lessee from Lessor of written notice that said Premises have been Condemned. In the event of termination, both Lessor and Lessee shall thereupon be released from any liability accruing hereunder.

23.2 Award. In the event of any Condemnation, Lessor shall be entitled to the entire award or compensation in such proceedings, but the Rent and other Charges for the last month of Lessee's occupancy shall be prorated and Lessor agrees to refund to Lessee any Rent or other charges paid in advance. Lessee's right to receive compensation or damages for the fixtures and personal property which Lessee has the right to remove shall not be affected in any manner hereby. Lessee shall receive that portion of a award attributable to the value of its business at the Premises.

23.3 Partial Taking. If neither Lessor nor Lessee terminate this Lease or if less than twenty-five percent (25%) of the Floor Area of the Premises is Condemned, Lessee 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 Lessor's cost and expense and as soon as reasonable possible, Lessor will reasonable restore the Premises (b) the Minimum Annual 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) Lessor shall be entitled to receive the total award or compensation in such proceedings.

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. Lessee shall have the right to contest at its option.

ARTICLE 24 - ATTORNEY'S FEES.

24.1 Attorney's Fees. In the event that at any time during the term of this Lease either Lessor or Lessee 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 of the actual attorney's 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 LESSOR

25.1 Release of Lessor. In the event of any sale or transfer of the Center and/or Premises by Lessor, or assignment by Lessor of its rights under the Master Lease, Lessor 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, ATTORNMENT AND ESTOPPEL CERTIFICATE

26.1 Subordination. Upon written request of Lessor or its lender, Lessee 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. The provisions of this Article to the contrary notwithstanding and so long as Lessee is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

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 Lessor covering the Premises, or in the event of the exercise of the right to terminate any ground lease or the Master Lease, Lessee shall attorn to the purchaser upon any such foreclosure, sale, or termination and recognize such purchaser as Lessor under this Lease.

26.3 Estoppel Certificate. Within ten (10) days after written request therefor by Lessor, Lessee agrees to execute and deliver, in recordable form, a certificate in the form as may be reasonably required by Lessor or its purchaser, assignee or mortgagee addressed to any such proposed purchaser, assignee or mortgagee or to Lessor certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto claimed by Lessee. If Lessee fails to deliver the certificate within ten (10) days after written request therefor, Lessee irrevocably constitutes and appoints Lessor as special attorney-in-fact to execute and deliver the certificate to any third party.

ARTICLE 27 - QUIET POSSESSION

27.1 Quiet Possession. Lessor agrees that Lessee, 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

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.

ARTICLE 28 - MARKETING FUND

28.1 Marketing Fund. Lessor may institute a program of advertising or promotional events which Lessor 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 Lessor from lessees in the Center (the "Marketing Fund"). Lessee's contribution to the marketing fund are calculated as part of the percentage and shall not be billed separately.

28.2 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 Lessor, and two (2) representatives who shall be elected by lessees in good standing within the Center. The committee shall provide suggestions to Lessor with regard to the disbursements of funds from the Marketing Fund for the promotion and advertising of the Center lessor 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 Lessor in Lessor's sole discretion.

28.3 Lessee Advertising. Lessee 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 Lessor's sole discretion, Lessee violates this covenant, Lessor may give Lessee written notice of same and Lessee shall thereafter obtain Lessor's prior written approval of all advertising for a period of six (6) months following said written notice.

28.4 No Interest in Marketing Fund. Lessee 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 TERM; 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 Lessor or Lessee in this Lease and executes the same as such, then and in such event, the works "Lessor" or "Lessee" 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. Whenever under this Lease provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, addressed to 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.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Successors. The parties hereto agree that all the provisions are to be construed as covenants and agreements as though the works 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 benefits 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 Lessee 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. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

ARTICLE 32 - CONDITION OF PREMISES

32.1 Condition of Premises. Lessee accepts the Premises in their "AS IS" condition. Lessee shall be solely responsible for all Alterations to the Premises necessary to permit Lessee to conduct its business operations in the

Premises and the cost of any and all utility hook up or connection fees, assessments or other governmentally imposed charges.

32.2 Alterations. All Alterations to the Premises shall be performed in accordance with the provisions of Article 11 of this Lease, including the requirement that Lessee submit professionally prepared plans and specifications to Lessor for Lessor's approval prior to commencement of any Alterations to the Premises.

ARTICLE 33 - RENEWAL OPTION

33.1 Renewal Option. Provided that at the time of the required notice and at the commencement of the Renewal Term (hereinafter defined) there is no continuing and uncured default existing under this Lease, and provided further that Lessee furnishes current financial statements satisfactory to Lessor which reflect that no material adverse change in the financial condition of Lessee has occurred since the Commencement Date, Lessee shall have the option to renew ("Renewal Option") the term of this Lease for one (1) additional period of eighty-four (84) months which Renewal Option shall be exercised by written notice given by Lessee to Lessor during the sixth (6th) month prior to the date of expiration of the initial Lease Term. Any termination of this Lease and any assignment of this Lease or subletting of all or a portion of the Premises shall terminate the Renewal Option. Lessee acknowledges that TIME IS OF THE ESSENCE with respect to Lessee's exercise of the Renewal Option. During the Renewal Term all of the terms and provisions of this Lease shall apply, except that after the Renewal Term, there shall be no further right of renewal.

ARTICLE 34 - USE OF ROOF ON BUILDING SIX

Lessee may use all of the roof of Building 6 of which Lessee's premises are a part. The anticipated use of the roof is for a miniature golf course operation. Lessee shall be totally responsible and liable for all roof leaks, personal injuries and any other liability that may occur as a result of Lessee's business.

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 Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, 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. If Lessee is a corporation the parties executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Lessee 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.

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 Lessor to Lessee 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. Lessor reserves the absolute right to effect such other tenancies in the Center as Lessor, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Lessee does not rely on the fact, and Lessor does not represent, that any specific lessee or number of lessees 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 Lessor, this Lease shall not be construed either for or against Lessor or Lessee, 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 of 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 Lessee pursuant to this Lease.

35.8 Nondiscrimination and Equal Opportunity. Lessee 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.

Lessee 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. Lessee will cooperate by appropriate décoration 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 Lessor from time to time.

35.10 Cooperation with City. Lessee recognizes that it is the policy of the Center that all lessees, including Lessee, 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. Lessee 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 Lessor in any manner requested by a lender providing construction financing or permanent financing, provided that no such modification shall substantially affect the rights of Lessee hereunder, and in all events no such modification shall change the amount of Rent to be paid by Lessee.

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

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

35.14 Rules and Regulations. Lessee 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 D. Lessor 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 Lessee from Lessor. In the event of any breach of any rules or regulations, or any amendments or additions to such rules and regulations, Lessor will have all remedies which this Lease provides for default by Lessee, 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. Lessor will not be liable to Lessee for violation of such rules and regulations by any other lessee, 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 sweeping, rubbish, rags or other substances shall be thrown therein. Lessee agrees that all damages resulting from any misuse of the fixtures or the Premises by Lessee or its servants, employees, agents, visitors or licensees by repaired by Lessee. Washrooms for public use in the Center shall be maintained by Lessor, and the cost thereof paid by lessees receiving benefits therefrom, as determined by Lessor in Lessor's sole discretion. The allocation of such costs shall be that proportion which the Floor Area of a particular lessee receiving benefits therefrom bears to the total number of leasable square feet by all lessees receiving benefits therefrom.

35.16 Disturbances. Lessee 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. Lessee shall not throw anything out of the doors, windows, or skylights, down the passageways, or off any balconies. Lessee 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 Lessee, nor any of Lessee'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 Lessee shall cooperate to prevent the same.

35.20 No Warrantles by Lessor. Lessor makes no warranty, guaranty, 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 Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee 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 Lessee 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 sublessees of Lessee.

35.22 No Pictorial or Other Representations of Center. Lessee 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 Lessor.

35.23 No Oral Representations. Lessee expressly acknowledges and agrees that no oral representation has been made by Lessor to Lessee in conflict with the provisions of this Lease.

35.24 Use of Name of Center. Lessor reserves the right to change or modify the name of the Center as Lessor may desire from time to time. Lessee acknowledges that the name "Belmont Park" is a proprietary name held by Lessor and not a geographic name. Lessee 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 tradename, service mark or business name.

35.25 Real Estate Broker. Lessee 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 listed in the Fundamental Lease Provisions. Lessee hereby indemnifies and holds Lessor 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 Lessee.

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

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

Lessor:

BELMONT PARK ASSOCIATES,
a California partnership

By: Phase One Development, Inc.
a California corporation
(Sole General Partner)

By: Donald C White
Name: Donald C. White
Title: Director

Lessee:

PIRATE'S COVE, INC.
a California corporation

By: Brian Conn
Name: Brian Conn
Title: President

By: Henry Ho
Name: Henry Ho
Title: Chief Fin. Officer

If Lessee is a corporation, two authorized officers must sign on behalf of the corporation. The Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be furnished.

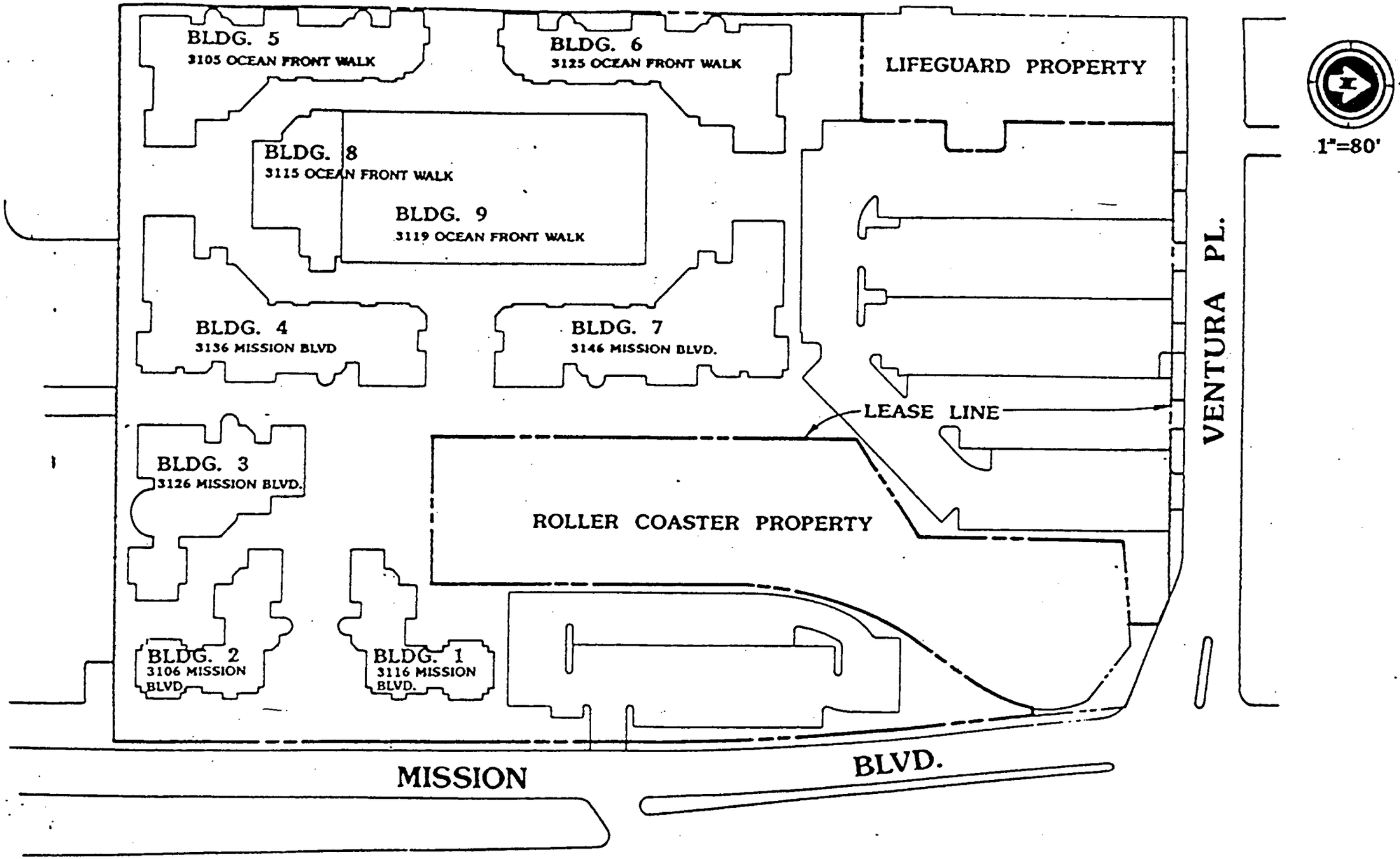

EXHIBIT A

BELMONT PARK COMMERCIAL RECREATIONAL CENTER

BELMONT PARK

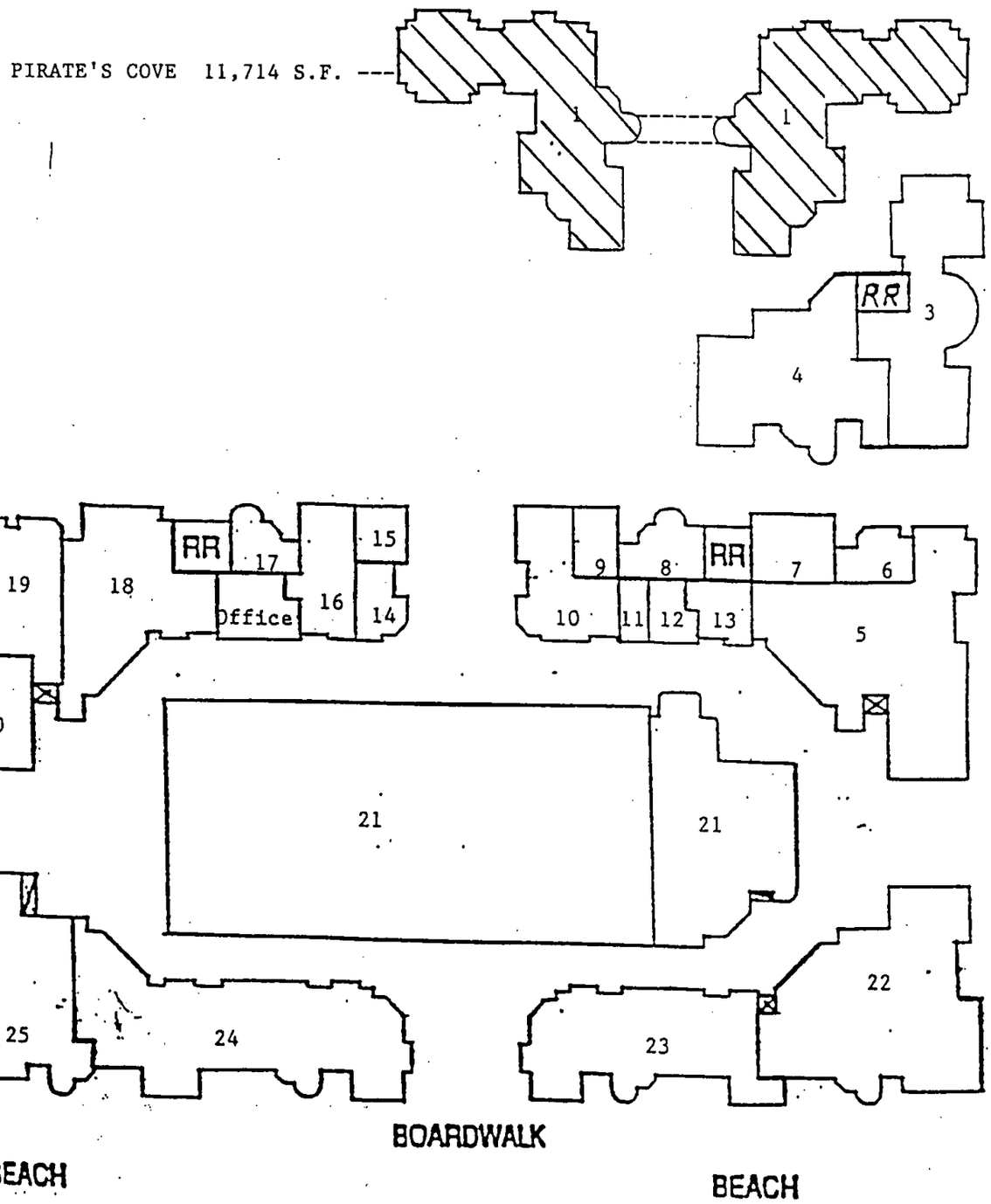

EXHIBIT "B"

EXHIBIT "D"

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. Lessee shall operate its activities in a manner consistent with the foregoing purposes so as to accommodate the public users of the park property.

2. No projection shall be attached to the outside walls of the buildings in the Center or any exterior portion of the Center without the prior written consent of Lessor. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of a lessee's premises, without the prior written consent of Lessor. 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 Lessor. 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 Lessor.

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 lessee, nor shall any bottles, parcels or other articles be placed on the window sills.

4. Vehicles and handtrucks, except those equipped with rubber tires and side guards, shall not be used in the Premises or in the Common Areas, by any lessee or its employees, in the delivery or receipt of merchandise.

5. No lessee 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 Lessor, and as Lessor may direct.

6. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about a lessee's premises, and except as permitted by the Lease, no cooking shall be done or permitted on a lessee's premises, except that the preparation of coffee, tea, hot chocolate and similar items for lessees and their employees shall be permitted. No lessee shall cause or permit any unusual or objectionable odors to be produced or permeate its premises.

7. No lessee'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 Lessor. No lessee shall occupy or permit any portion of its premises to be occupied for any use other than permitted by this Lease. No lessee shall engage or pay any employees on its premises, except those actually working for such lessee on its premises nor advertise for laborers giving an address at its premises. No lessee'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 lessee, nor shall any changes be made in existing locks or the mechanism thereof. Each lessee must, upon the termination of his tenancy, restore to Lessor all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such lessee, and in the event of the loss of any keys so furnished, such lessee shall pay to Lessor the cost of replacing the same or of changing the lock or locks opened by such lost key if Lessor shall deem it necessary to make such change.

9. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must be accomplished under the supervision of Lessor's representative and take place during the hours which the Lessor may determine from time to time. The moving of other fixtures or bulky matter of any kind must be made upon previous notice to Lessor and under his supervision, and the persons employed by any lessee for such work must be acceptable to Lessor.

10. No lessee 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 Lessor. Any antennas or aerial wires installed without such written approval shall be subject to removal at any time without notice. The use of any sand or light producing equipment, shall be subject to control by Lessor to the end that others shall not be disturbed or annoyed.

11. Each lessee shall clean and remove from the Common Areas and the property adjacent to the Center, any debris or stains left behind by said lessee, its agents or employees.

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