

 **Real Estate
Assets**
City Consent Application

For installation / modification of Telecommunication antenna facility on City owned property

Date

The City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

RE: Site Name: AT&T Mobility SS0068 The Plunge Project # 329946
Site Address: 3115 "B" Ocean Front Walk, San Diego (the "Property")
Agreement: Agreement dated 4/22/2015 (the "agreement") between The City of San Diego ("City") and Symphony Asset Pool XVI LLC, ("Lessee" or "Permittee").

AT&T Mobility is seeking Consent from the City to perform the following to the above
Applicants Name/Carrier
referenced site:

Modify, upgrade or changes to existing equipment or Site as describe in the attached plans /
photos.

Installation of a New Wireless Communication Facility on City owned property.

Apply for new Permit/New Agreement on existing facility - **NO** modifications or changes to

Existing equipment or site.

Describe proposed project below:

Relocation of AT&T Mobility's telecommunication site onto the new Plunge swim building in Belmont Park. Per previous permit (PTS 329946) the site will include three sectors, 4 antennas each, integrated into the newly proposed building structure.

Pursuant to Improvements and Alterations, section of the above referenced agreement, "Lessee / Permittee shall not construct any improvements, structures or installations of the Premises or make any alterations to the Premises (with the exception of equipment replacement or repairs) without City's prior written approval."

In order to comply with such requirements, AT&T Mobility would like to request City's consent to submit to Development Services Department for review of the proposed items above.

Sincerely, _____, agent for AT&T Mobility

Applicant Signature: _____

A one-time, **non-refundable Processing Fee** (\$4,920 for long term agreements - \$980 for Short term or ROE Permits) payable to City Treasures, MUST be paid within 1 week of feasibility walk. This fee applies even if the agreement is never executed.

City Real Estate Assets Department has provided its consent and approval to allow applicant to submit application for Required Permits needed for the proposed items listed herein, with the understanding that the Department will be allowed to review the improvement plans prior to any permits being issued and that a pre-construction meeting will be conducted with staff before any work begins, if required.

10/10/17

Date

Vladimir Balotsky

Print Name & Title

V. Balotsky

Signature

City of San Diego, acknowledgement and consent for 3115 "B" Ocean Front Walk, San Diego, CA 92109
Site Location

Date

Print Name & Title

Signature

Approved and Stamped plans received and attached
Scan as Amendment to Agreement



Real Estate Assets



October 17, 2017

Elyse Lowe
Deputy Director
Project Submittal and Management, Development Services
City of San Diego
1222 First Ave., MS 301
San Diego, CA 92101-4101

RE: AT&T Site SS0068 The Plunge, 3115 "B" Ocean Front Walk, San Diego, CA 92109

Dear Ms. Lowe:

New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, its Manager ("AT&T") kindly request your assistance with a temporary permit extension (PTS 329946) for AT&T telecommunication facility located at 3115 Ocean Front Walk, San Diego, CA 92109. The applicant requests additional time for the permit authorizing the temporary skyjack supporting nine panel antennas past the expiration date of **December 1, 2017**.

Granting of the extension is requested because Symphony Asset Pool XVI, LLC, by Pacifica Real Estate Services, Inc., its Property Manager ("Pacifica") is currently in the process of constructing the new Plunge swim building and construction is not estimated to be completed until **October 31, 2018**. Therefore, in order for AT&T to avoid a lapse in service to their customers at this vital location, both parties (AT&T and Pacifica) request that the temporary permit be extended to **April 1, 2019** which will provide enough time for AT&T's antennas to be relocated to the new Plunge building and remain on-air once construction of the building is completed. If granted, this extension will eliminate any lapse in AT&T service at Belmont Park and the surrounding area.

Please let us know if you have any questions or concerns regarding this matter.

Kind regards,

Frank DePeralta
Mgr Real Estate Administration, AT&T Network Operations
AT&T Mobility

ACKNOWLEDGED AND APPROVED:

Symphony Asset Pool XVI, LLC
By: Pacifica Real Estate Services, Inc.
Its Property Manager

By:
Debbie O'Connor
Director of Commercial Real Estate

Balotsky, Vladimir

From: Debbie O'Connor <doconnor@pacificaent.com>
Sent: Tuesday, October 17, 2017 7:13 PM
To: Balotsky, Vladimir
Cc: Kara Brown; Paige Sims
Subject: AT&T Temporary Permit - Belmont Park
Attachments: AT&T Mobility Temporary Permit at Belmont Park.pdf

Hi Vladimir,

Attached please find the Lessor approved letter from AT&T regarding extension of their temporary permit at Belmont Park.

Please let me know if you have questions or concerns, or if you need anything further from us.

Thank you!

Debbie

Debbie O'Connor
CalBRE # 00954967
Pacifica Real Estate Services, Inc.
Director, Commercial Real Estate
5505 Cancha de Golf
Rancho Santa Fe, CA 92091
(858) 755-0216 phone
(858) 755-1687 fax
www.pacificaenterprises.com

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to SYMPHONY ASSET POOL XVI LLC, a Delaware limited liability company (Lessee), to be effective upon execution by City and approval by the San Diego City Attorney, as follows:

RECITALS

- A. City and Lessee entered into the Amended and Restated City of San Diego Percentage Lease dated April 22, 2015, filed as document RR-309579 in the Office of the San Diego City Clerk, as amended by the First Amendment to the Amended and Restated City of San Diego Percentage Lease, dated May 27, 2016 and further amended by the Second Amendment to the Amended and Restated City of San Diego Percentage Lease, dated March 8, 2017 (hereinafter collectively the "Agreement"), relating to City-owned real property located at 3106-3146 Mission Blvd., San Diego, California 92109, commonly known as "Belmont Park", and more particularly described in the Agreement (Premises).
- B. Lessee now desires to sublease a portion of the Premises to Mission Beach Attractions, LLC, a California limited liability company (Sublessee) to operate a mirror maze and virtual reality game room.
- C. The Agreement requires City's consent to the sublease of any portion of the Lessee's right, title and/or interest in the Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, City provides its consent subject to the following:

- 1. Subject to the terms and conditions herein, City hereby consents to Lessee's request to sublease a portion of its right, title and interest in and to the Agreement to Sublessee. By giving this Consent, City is merely consenting to the requested subleasing. All terms and conditions of the Agreement shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee and the Sublessee; and
- 2. City's Consent is conditioned upon Sublessee's written agreement that it will assume all rights and obligations as a sublessee under the Agreement and this Consent, as applicable to Sublessee as the sublessee of that certain portion of the Premises set forth in any sublease agreement. Failure to ensure compliance with these obligations, and all other obligations of the Agreement, shall be considered a material default under the Agreement and may subject the Agreement to termination; and
- 3. City does not release, discharge or modify Lessee's obligations to City under the Agreement. As set forth in applicable law, Lessee's obligations under the Agreement shall survive said sublease and shall continue through the termination dates of the Agreement, as set forth therein; and
- 4. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Agreement.

5. Lessee agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.
6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. Further, Lessee agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

IN WITNESS WHEREOF, this Consent to sublease is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California municipal corporation

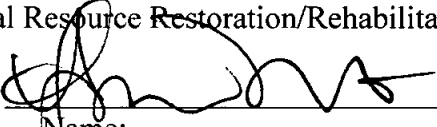
Date: 8/11/17

By: 
Cybele Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and Section 15331 (Historical Resource Restoration/Rehabilitation)

Date: 8/9/17

BY: 
Name: Alyssa Muto
Title: Deputy Director, Planning Dept.

Approved as to form this 16th
Day of August, 2017

MARA W. ELLIOT, City Attorney

BY: 
Name: Hilda R. Mendoza
Title: Deputy City Attorney



Date of Notice: July 5, 2017

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: CONSENT TO SUBLEASE SYMPHONY ASSETS POOL XVI LLC MIRROR MAZE AND VIRTUAL REALITY GAME ROOM

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2

LOCATION: 3106-3146 MISSION BOULEVARD, SAN DIEGO, CA 92109

PROJECT DESCRIPTION: Consent to sublease between Symphony Assets Pool XVI LLC, and Mission Beach Attractions, LLC. The sublease with Mission Beach Attractions will allow leasing of approximately 1552 square feet of space at 3116 Mission Boulevard, to be used for a mirror maze and virtual reality game room for entertainment purposes.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301- Existing facilities and Section 15331 - Historical Resource Restoration/Rehabilitation.

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee, Environment & Policy Analysis, Planning Department

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; Section 15331 (Historical Resource Restoration/Rehabilitation) which allows for maintenance, repair, stabilization, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; historical resources would not be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

PROJECT MANAGER: Vladimir Balotsky, SR/WA, Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101
PHONE NUMBER: (619) 235-5248

On July 5, 2017, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**July 19, 2017**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 7/5/17

POSTED: M. Hermann

LEASE AGREEMENT

SYMPHONY ASSET POOL XVI LLC

and

MISSION BEACH ATTRACTIONS, LLC

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BELMONT PARK LEASE AGREEMENT

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

ARTICLE 1 - **FUNDAMENTAL LEASE PROVISIONS**

Date: The Lease is dated for reference purposes May 22, 2017

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

Tenant: Mission Beach Attractions, LLC, a California limited liability company

Premises: Located in Belmont Park Commercial/Recreational Center as illustrated on the site plan attached hereto as Exhibit A; and, more particularly described as 3116 Mission Blvd., Unit 1-B, San Diego, CA 92109, as shown on the floor plan set forth in Exhibit B and comprising approximately 1,552 rentable square feet of space. The "Center" is more particularly described in Article 3 of the Lease.

Permitted Use: The Premises shall be used only for a mirror maze and virtual reality game room ("**Tenant's Permitted Use**").

Restrictions on Tenant's 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, under no circumstances or interpretation or claimed ancillary uses shall Tenant's Permitted Use include the exclusive rights granted to other tenants, as set forth on Exhibit L attached hereto, and specifically including Landlord's agreement with Coca-Cola to only sell Coca-Cola beverage products at the Center. Tenant's failure to strictly comply with any of the foregoing restrictions of the Tenant's Permitted Use shall constitute a material default by Tenant under this Lease.

Lease Term: The term of this Lease (the "**Lease Term**") shall be thirty-six (36) months, commencing on the Rent Commencement Date (defined below) and terminating on the last day of the thirty-sixth (36th) month following the Rent Commencement Date.

Commencement Date: The date that is five (5) business days following the City's (as defined below) approval of the Lease (the "**Commencement Date**").

Rent Commencement Date: The date Tenant opens for business to the public ("**Rent Commencement Date**").

Rent: Rent shall be the summation of:

A. Minimum monthly rent ("**Minimum Monthly Rent**"), which shall be as follows:

Lease Period	Minimum Monthly Rent
_____, 2017 – _____, 2017 (Month 1)	\$2,196.08
_____, 2017 – _____, 2017 (Months 2-6)	\$4,392.16
_____, 2018 – _____, 2018 (Month 7)	\$2,196.08
_____, 2018 – _____, 2018	\$4,392.16

(Months 8-12)	
_____, 2018 – _____, 2019	\$4,523.92
(Months 13-24)	
_____, 2019 – _____, 2019	\$4,659.64
(Months 25-26)	

- B. **Percentage Rent:** Twenty percent (20%) of Gross Sales (as such term is defined in Section 5.3 below) in excess of Four Hundred Thirty Thousand One Hundred Thirteen and 00/100 Dollars (\$430,113.00) per year (the "**Breakpoint**") shall be payable on a monthly basis within ten (10) days following the end of each month during the Lease Term (including any extensions thereof).
- C. **Additional Rent:** Additional rent as provided hereafter in this Lease, including, but not limited to, (i) a common area expense contribution, fixed without regard to Tenant's actual pro-rata share of Landlord's actual expense, at Two Thousand Six Hundred Forty-Seven and 00/100 Dollars (\$2,647.00) monthly with annual increases of four percent (4%) (the "**Common Area Expense Contribution**"); and (ii) a Marketing Fund (as such term is defined in Section 28.1 below) contribution, fixed without regard to Tenant's actual pro-rata share, in the amount of Three Hundred Fifty-One and 00/100 (\$351.00) monthly with annual increases of three percent (3%) (the "**Market Fund Contribution**").

Option

To Renew:

Tenant shall be granted one (1), three-year (3-year) option to extend the Lease Term provided Tenant is not in default at the time such option is exercised or as of the commencement of the Option Term (as defined below). Minimum Monthly Rent for the Option Term (i.e., year 1 of the Option Term) shall commence at Fair Market Rent (as defined below and established pursuant to the terms provided hereafter) which shall not be less than Four Thousand Eight Hundred Ninety-Two and 62/100 Dollars (\$4,892.62) (i.e., the amount which is five percent (5%) greater than the Minimum Monthly Rent in effect the last year of the original Lease Term) and thereafter increase by four percent (4%) starting twelve (12) months following the commencement of the Option Term and every successive twelve (12) months thereafter. Tenant shall provide written notice as provided hereafter of its election to exercise the Extension Option (as defined below) not less than six (6) months and no more than nine (9) months prior to the then expiring term.

Address

For Notices:

To Landlord: Symphony Asset Pool XVI LLC
c/o Pacifica Real Estate Services, Inc.
Attention: Dario De Luca
5505 Cancha de Golf
Rancho Santa Fe, California 92091

To Tenant: Mission Beach Attractions, LLC
Attention: James Austin
1346 Mission Blvd.
San Diego, CA 92109

Landlord's Work: Landlord at its expense will perform the work detailed in accordance with Exhibit H ("**Landlord's Work**") and in "as-in" condition.

Tenant's Work: Tenant will perform the work detailed and in accordance with Exhibit I ("**Tenant's Work**") at its expense immediately upon execution of this Lease Agreement. Landlord shall contribute a sum equal to One Hundred Fifty Thousand and 00/100 Dollars (\$150,000) (the "**Tenant Improvement Allowance**") under the terms and conditions provided in Exhibit I. The Tenant Improvement Allowance shall be paid in four (4) installments as follows: Fifty Thousand and 00/100 Dollars (\$50,000) upon thirty percent (30%) completion, Fifty Thousand and 00/100 Dollars (\$50,000) upon sixty percent (60%) completion, Forty Thousand and 00/100 Dollars (\$40,000) upon substantial completion, and Ten Thousand and 00/100 Dollars (\$10,000) following completion of any punch list items. Tenant Improvement costs in excess of \$150,000 shall be at Tenant's sole cost and expense. Tenant shall reimburse Landlord for One Hundred Twenty Thousand and

 /

00/100 Dollars (\$120,000) of the Tenant Improvement Allowance, amortized over the Lease Term (the "**Tenant Improvement Allowance Reimbursement**"). Tenant shall pay the Tenant Improvement Allowance Reimbursement amount of Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$3,333.33) monthly to Landlord in addition to Minimum Monthly Rent, Percentage Rent, and Additional Rent on or before the first (1st) day of each calendar month.

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 except Pacifica Real Estate Services, Inc. (representing Landlord and Tenant).

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

ARTICLE 2 - EXHIBITS

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

Exhibit A – Site Plan of the Center

Exhibit B – Floor Plan Showing the Premises

Exhibit C – Rules and Regulations

Exhibit D – Intentionally Deleted

Exhibit E – Adjusted Gross Sales Report

Exhibit F – Prohibited Uses

Exhibit G – Storm Water Best Management Practices

Exhibit H – Landlord's Work

Exhibit I – Tenant's Work

Exhibit J – Sign Program

Exhibit K – Park Hours

Exhibit L – Exclusive Uses

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. Additionally, Tenant acknowledges that, for all purposes, Exhibit A may show land that is not 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 Lease 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. The Floor Area of the Premises set forth in the Fundamental Lease Provisions is deemed correct, provided that Landlord makes no representation as to the actual square footage.

ARTICLE 4 - TERM

4.1 Lease Term. The Lease Term shall be for the number of months specified in the Fundamental Lease Provisions and shall commence on the Commencement Date.

4.2 Intentionally Deleted.

4.3 Delay. If Landlord is unable to deliver possession of the Premises to Tenant for any reason whatsoever, including as a result of the inability to complete Landlord's Work, 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 or the obligations of Tenant hereunder, and the specific dates set forth in this Lease are expressly not subject to modification based on the date on which the Landlord's Work is completed.

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, without set-off or deduction, commencing on the Rent Commencement Date.

5.1.1 Minimum Monthly Rent. Tenant shall pay each month, in advance of the first (1st) day of each month, the sum of Minimum Monthly Rent as specified in the Fundamental Lease Provisions.

5.1.2 Percentage Rent. In addition to the Minimum Monthly Rent, Tenant shall pay to Landlord a percentage rent computed by multiplying the percentage rent rate, as specified in the Fundamental Lease Provisions, by the amount by which Tenant's Gross Sales exceed the Breakpoint ("Percentage Rent"). Percentage Rent for any partial lease year shall be determined by multiplying the Breakpoint by the exact fraction of a calendar year represented by the partial lease year and then multiplying the percentage rent rate by the amount by which Tenant's Gross Sales for such partial lease year exceed such modified Breakpoint. Percentage Rent shall be computed each calendar month during the Lease Term immediately following the close of the immediately preceding month. Tenant shall pay to Landlord, on or before the 10th of each applicable month during the Lease Term, the Percentage Rent amount set forth in the Fundamental Lease Provisions multiplied by Tenant's Gross Sales during said 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 E "Adjusted Gross Sales Report" and submit the same along with such payments of Percentage Rent to Landlord no later than ten (10) days following the close of the preceding month.

5.1.2.1 In the event of an increase only in the rate of percentage rent that Landlord is required to pay the City pursuant to the Master Lease, the rate of percentage rent that Tenant pays Landlord pursuant to Section 5.1.2 shall automatically increase at the same time and by the same amount. For instance if Landlord's percentage rent it pays the City is increased by one percent (1%), then Tenant's percentage rent shall also increase by one percent (1%) from twenty percent (20%) to twenty-one percent (21%). Tenant's percentage rent will not decrease regardless of the amount of percentage rent paid by Landlord to the City.

5.1.3 Additional Rent. In addition to Minimum Monthly Rent and Percentage Rent, Tenant shall pay all other sums of money or charges required to be paid by Tenant under this Lease (collectively "Additional Rent") on the first day of each calendar month.

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

5.2 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 E 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 state and total all sales by category, and be signed by Tenant if Tenant is composed of individuals, by a general partner of Tenant if Tenant is a partnership, by a manager, or managing member, if Tenant is a limited liability company, or by a corporate officer if Tenant is a corporation. If Landlord so elects, Tenant shall provide such information in a reasonable 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 make available 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 four (4) 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. 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, 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. In the event Tenant's financial statements are found to be incorrect by 5% or more, 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 Percentage Rent for any period shall not bind Landlord as to the correctness of the statement or the payment. Within four (4) years after receipt of any such statement, Landlord and City, or their agents, at any time with ten (10) days prior written notice to Tenant 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. Any audit conducted by Landlord shall not bind Landlord as to the correctness of the payments or records as determined at that time, or preclude Landlord from conducting additional audits of the same or different periods. 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 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 or incorrectly categorized Gross Sales by more than five percent (5%) 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 reasonable 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. If any of Tenant's statements shall be found to have understated Gross Sales by more than five percent (5%) and Tenant cannot to Landlord's satisfaction demonstrate such understatement was a good faith error, 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, and 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 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. Gross Sales shall include, but not be limited to, the amount received from the sale of goods, memberships, 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, (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, (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) insurance loss proceeds which are applied toward restoration of the Improvements; (v) any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power; and (vi) the proceeds of any sale of Tenant's business to a third party. 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 nor considered part of Gross Sales.

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 Failure to Pay. Minimum Monthly Rent and Additional Rent shall be due on the first (1st) day of each month, in advance, for the Lease Term. Minimum Rent and Additional Rent shall be late on the fifth (5th) day of each month. Percentage Rent shall be due on the tenth (10th) day of each month, for Percentage Rent accruing during the prior calendar month during the Lease Term. 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 tenth (10th) 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) One Hundred Dollars (\$100.00) or (ii) three percent (3%) 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, reasonable fees of an attorney or collection agency, 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 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 33. 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 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.

5.5 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.

5.6 Returned Checks. Tenant shall further pay, as Additional Rent, a charge of Fifty and 00/100 Dollars (\$50.00) for each payment of Rent which is returned due to insufficient funds, to reimburse Landlord for Landlord's related costs.

5.7 Landlord's Option to Terminate For Failure to Follow Rules. Notwithstanding anything in the Lease contained to the contrary, Tenant's failure to observe the rules and regulations and policies and directions made or reasonably promulgated by Landlord or the City of San Diego shall be a material default under the Lease.

5.7.1 In the case of a default under Section 5.7, Landlord in addition to any other right or remedy under the Lease, may give written notice to Tenant, specifying the default complained of and requiring that it be completely cured within seventy-two (72) hours from the giving of such notice and failing the curing of such default within such period, Landlord may, at its option, in addition to any other rights or remedies under the Lease, 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 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.

ARTICLE 7 - POSSESSION AND USE

7.1 Possession. Landlord shall deliver the Premises to Tenant, subject to the provisions of Sections 4.1 and 4.3. Tenant shall accept the Premises subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and to all exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

7.2 Permitted Uses. Tenant shall use the Premises solely for the Tenant's Permitted Use specified in the Fundamental Lease Provisions. Tenant shall not use or permit the Premises to be used for any restricted use as provided in the Fundamental Lease Provisions. Tenant shall not use or permit the Premises to be used for any other use or purposes, and/or under any other trade name whatsoever, or in violation of the Master Lease, without the prior written consent of Landlord, which consent may be withheld

for any reason whatsoever. Tenant acknowledges that 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. 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 Lease 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 shall at all times comply with the terms of Exhibit G attached hereto.

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

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

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

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

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

ARTICLE 8 - UTILITIES AND SERVICES

8.1 Tenant's Responsibilities. Tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and connection fees, hook-up fees, standby fees or penalties for discontinued or interrupted service for gas, electricity, cable, telephone, DSL, and any other service or utility used in or upon or furnished to the Premises including, without limitation, janitorial services, elevator services, HVAC services, and or any other expense typically considered an operating expense in connection with 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.

8.1.1 Co-generator. Landlord is contemplating investing in a co-generator for the Center. In the event Landlord successfully consummates this venture, Tenant shall purchase its power from the Landlord at the same market rate charged by SDG&E.

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 the Landlord Parties shall not be liable to the Tenant Parties for any of the following: (a) injury to or death of any person; and (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. 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 Parties. To the fullest extent permitted by law, except to the extent caused by the sole negligence of Landlord Parties, Tenant Parties will, at Tenant Parties 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 Parties may make to the Premises or Center, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees or judgments, (iii) any act, omission or negligence by Tenant Parties or of any subtenants, invitees, guests or licensees, and (iv) any failure by Tenant Parties 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 or damage to property caused by fire or any other perils, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

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 Five Million and 00/100 Dollars (\$5,000,000.00) insuring Tenant on an occurrence basis against all liability of Tenant and Landlord and the Tenant Parties and Landlord 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. Tenant shall obtain 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 Lease Term, 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 name of Tenant, with Landlord, City, and any other person or entity designated by Landlord as additional insureds. 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 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 will report in writing to Landlord and City any accident causing property damage or involving any 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, or if required by the Master Lease, Tenant shall increase or add the insurance coverage or type as required by Landlord's lender, City, or Landlord's insurance broker. Tenant shall not carry insurance coverage limits of a lesser amount than required of Landlord by the Master Lease.

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, shall 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. Any requirement of Landlord in connection

with and applicable to the Premises as if it were operating the Premises under the Master Lease is also a requirement of Tenant under this Lease. 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 Lease Term shall not in any event extend beyond the term of the Master Lease.

ARTICLE 11 – ALTERATIONS

11.1 Alterations. Tenant shall 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 Tenant 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 Tenant alterations shall be under the supervision of a competent architect or competent licensed structural engineer, made in accordance with plans and specifications which are first approved in writing by Landlord before the commencement of work, and shall be done in a workmanlike manner by a general contractor approved in writing by Landlord, and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Any such alterations shall be performed and done strictly in accordance with all laws and ordinances relating thereto, including without limitation, all requirements of City and the California Coastal Commission. In performing the work of any such alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the Premises or interfere with the quiet enjoyment of any other tenant in the Center. Upon completion of such work, Tenant shall deliver to Landlord evidence of full payment and unconditional final waivers of all liens for labor services, or materials; and file for record in the office of the San Diego County Recorder, a Notice of Completion in accordance with California Civil Code Section 3093, or any successor statute. Within twenty (20) days after completion of any alterations, Tenant shall deliver to Landlord a reproducible copy of the drawings of the alterations, as built.

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

ARTICLE 12 - MECHANIC'S LIENS

12.1 Tenant's Covenants. Tenant shall pay or cause to be paid all costs for work done by or caused to be done by it on the Premises, and Tenant shall 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 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 AND INTELLECTUAL PROPERTY

13.1 Restrictions. Tenant shall not affix or maintain upon (A) the glass panes and supports of the show windows (and within 72 inches of any window), (B) the doors (or interior of doors as they face open to the outside of the Premises onto the Common Area), or (C) upon exterior walls, of the Premises, any signs, advertising placards, names, insignia, trademarks, neon tubes, awnings, descriptive material, or any other items, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord's approval shall be based, among other things, upon the conformance by Tenant to (i) the sign program prepared by Landlord and attached hereto as Exhibit J ("Sign Program") (which, upon written notice to Tenant, may be changed or modified by Landlord from time to time), (ii) approval of the City of the proposed signage or item, and (iii) architectural conformity of the signage or item 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. Landlord shall, at its sole cost and expense, provide Tenant with standard identification signage on the Center directory.

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 Landlord's written approval of such signage prior to installation. Tenant shall be responsible for all costs related to any such signs, including the reasonable 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 actual cost of such removal.

13.4 Trademarks and Intellectual Property of Landlord. Any usage of any intellectual property owned by Landlord, including but not limited to any Belmont Park name, logo, trademark, or copyrighted item owned by Landlord ("Intellectual Property"), must be approved beforehand in writing by Landlord. Tenant's use of the Intellectual Property in no way grants any ownership rights of such Intellectual Property to Tenant, and Landlord expressly retains all ownership rights, including the right to revoke, limit, restrict, or monitor usage at any time for any reason, to and to charge licensing fees. Upon written notice from Landlord, Tenant shall immediately comply with all usage requirements, including ceasing and desisting from sale or display of any of Landlord's Intellectual Property, if so required, or modification of logos on items for sale. Tenant hereby expressly assigns to Landlord any rights, ownership or claims to any Intellectual Property containing the name "Belmont Park" or any variation thereof that Tenant may have acquired or claims to have acquired during any prior Lease Term.

ARTICLE 14 - FIXTURES AND PERSONAL PROPERTY

14.1 Landlord FF&E. If any furniture, fixtures, artwork, or equipment ("Landlord FF&E") are located at the Premises as of the Commencement Date, or are subsequently purchased or provided by Landlord for Tenant's use, Landlord shall retain ownership of all such Landlord FF&E delivered to Tenant.

14.2 Tenant FF&E. All trade fixtures and personal property of Tenant not permanently affixed to the Premises ("Tenant FF&E") shall remain the property of Tenant provided Tenant is not in default under the terms of this Lease and unless, upon termination or expiration of the Lease Term, Landlord purchases same from Tenant. Landlord shall have the exclusive option ("FF&E Option") to purchase all or some of the Tenant's FF&E located at the Premises, for an amount equal to the then current fair market value of such Tenant FF&E. Such FF&E Option may be exercised by giving written notice of exercise to Tenant within ten (10) days after the effective date of such expiration or termination. If the parties are unable to agree on the fair market value of such Tenant FF&E within ten (10) days after exercise of the FF&E Option, then the fair market value shall be

determined by an independent, qualified appraiser selected by the parties. If the parties are unable to agree on an appraiser, then either party may request that an appraiser be appointed by the San Diego Superior Court (pursuant to a petition to compel arbitration). The purchase price for the Tenant FF&E shall be paid in cash or, in part and at Landlord's option, by credit for any outstanding balances due under the Lease, or by assuming any leased equipment, and title to such Tenant FF&E shall be delivered to Landlord free and clear of all liens, claims and encumbrances other than leases assumed by Landlord; Landlord shall not be obligated to assume any debts, obligations or liabilities of Tenant. In the event Landlord exercises the FF&E Option, then Tenant shall immediately deliver possession of the Tenant FF&E to Landlord pending completion of the purchase.

If Landlord does not purchase the Tenant FF&E, at Landlord's option, Tenant shall remove all Tenant FF&E upon termination or expiration of the Lease 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 may and shall continuously conduct the Tenant's Permitted Use. 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 Tenant FF&E, 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 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 or other transfer 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, sub-tenant, pledge, or other recipient of Tenant's interest, rights or duties in the Lease or the Premises in an Occupancy Transaction.

15.2 Occupancy Transaction. 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 operates the business during the unexpired Lease Term, particularly because this is a percentage lease and Landlord is relying on Tenant's merchandising and operating expertise.

Therefore, Tenant shall not enter into an Occupancy Transaction, either voluntarily or involuntarily, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. By way of example, and without limitation, Landlord and Tenant hereby agree that it shall be reasonable for Landlord to withhold, condition or delay its consent if any of the following situations exists or may exist:

15.2.1 The Transferee's proposed use of the Premises is different than Tenant's Permitted Use;

15.2.2 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;

15.2.3 In Landlord's judgment, the present net worth of the Transferee is less than the greater of (i) Tenant's net worth at the Commencement Date or (ii) Tenant's net worth at the date of Tenant's request for consent to the Occupancy Transaction, or the net worth is not adequate in Landlord's sole opinion to operate the proposed business;

15.2.4 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;

15.2.5 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;

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

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

15.2.8 The business reputation of each Transferee does not meet or exceed generally acceptable commercial standards in Landlord's sole opinion.

Any attempted Occupancy Transaction without Landlord's consent (and, if required 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 Lease Term. Landlord's (or City if required) consent to one such Occupancy Transaction shall not imply any future consent, and all subsequent Occupancy Transactions shall comply and otherwise satisfy the conditions of this Section 15.2.

15.3 Landlord Elections. If Tenant proposes an Occupancy Transaction, Landlord, at Landlord's election, shall have the option to terminate this Lease by written notice to Tenant within thirty (30) days after Landlord's receipt of written notice from Tenant of the proposed Occupancy Transaction. Notwithstanding that Landlord (or City, if required) has consented to a Occupancy Transaction, any such Occupancy Transaction shall allow Landlord, at Landlord's election, to provide Tenant with written notice of its election to terminate any renewal options, expansion options, purchase options or rights of first refusal that Tenant may have under the Lease.

15.4 Landlord's Occupancy Transaction Review Costs. If Tenant requests consent to a proposed Occupancy Transaction, Tenant shall pay for the reasonable legal and administrative expenses incurred by Landlord in reviewing the request, regardless of whether such Occupancy Transaction is granted and regardless of whether the Occupancy Transaction is consummated.

15.5 Procedures.

15.5.1 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:

15.5.1.1 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;

15.5.1.2 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 and business and financial references of the Transferee and the persons involved therein;

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

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

15.5.2 Within thirty (30) days after receipt by Landlord of the information required by subsection above, Landlord may terminate this Lease on ten (10) days written notice to Tenant unless Tenant rescinds its request for consent within five (5) days following its receipt of Landlord's notice of termination.

15.6 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.

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

15.8 Consideration to Landlord.

15.8.1 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:

15.8.1.1 The Minimum Monthly 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 rent as reasonably determined by Landlord. The new Minimum Monthly Rent shall be increased from time to time in accordance with the procedures set forth in Article 5 of this Lease.

15.8.1.2 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

15.8.1.3 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.

15.8.2 In no event shall the Rent, as adjusted, be less than the 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, at a minimum, continuously conduct business in the Premises during the hours set forth on Exhibit K attached hereto and incorporated herein by this reference (the "**Park Hours**"). Park Hours may be changed by Landlord, in its sole discretion, with ten (10) days written notice to Tenant.

During Park Hours, Tenant shall keep open and unlocked all entrances and exits to the Premises. Tenant shall operate one hundred percent (100%) of the Premises during the entire Lease Term 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 in the Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce maximum Gross 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. Notwithstanding the foregoing, all glass identified as an entrance shall be and remain uncovered.

All trash and rubbish of Tenant shall only be deposited within receptacles as provided by Landlord and 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. 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 and 00/100 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, Visa, and American Express from its customers during the Lease Term.

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 as provided in Section 17.2 below, Tenant shall keep and maintain the entire Premises (including without limitation 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, which failure to repair continues for more than five (5) days after Tenant's receipt of written notice thereof from Landlord, then 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. Landlord shall keep in good condition and repair, the foundations and exterior walls and structural roof components, and the plumbing and electrical lines to the point of

connection 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 to the extent of receipt of insurance proceeds in accordance with City requirements and if and as required by the Master Lease with the City, 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. In any event, in the event of a major casualty which cannot be restored within one hundred eighty days (or thirty (30) days, in the last year of the Lease Term), Landlord may terminate this Lease by providing written notice thereof to Tenant.

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

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, convenience 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 Lease Term, 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 from time to time.

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, lighted and landscaped, and shall repair any damage to the facilities thereof. Tenant shall pay the Common Area Expense Contribution, fixed without regard to Tenant's actual pro-rata share of Landlord's actual expense, as set forth in the Fundamental Lease Provisions.

19.4 Method of Payment. From and after the Commencement Date, Tenant shall pay Landlord, on the first day of each calendar month of the Lease Term, Tenant's fixed Common Area Expense Contribution.

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.

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

19.7 Charged Parking; Validation. Following reasonable notice to Tenant, Landlord may charge a fee, require validation, utilize paid valet parking, institute a system of controlling access to all or any portion of the automobile parking areas under Landlord's control, require Tenant and employees of Tenant to utilize shuttle bus service provided by Landlord to off-site parking areas and institute parking controls and regulations which may be necessary in Landlord's opinion, to control and preserve parking for the customers of the Center. In connection therewith, Landlord may offer parking free, or at reduced rates for specified periods, to customers of Tenant who present parking tickets validated by Tenant for such periods. Tenant agrees to purchase from Landlord validation stamps (or other evidence of validation issued by Landlord) for such purpose, and agrees to deliver them to customers in consideration for purchases by the customers from Tenant, pursuant to rules and regulations promulgated by Landlord from time to time. Landlord may at any time, and from time to time in its sole discretion, establish non-discriminatory parking areas, rates, hours, validation system, charges for parking and validations, rules and regulations relating thereto, and any other aspect of the parking arrangements. Tenant acknowledges that validated parking is not currently permitted by City or by the California Coastal Commission. Nothing contained herein shall be deemed to require Landlord to preserve this status.

19.8 Control of Common Areas. Landlord shall at all times during the Lease Term 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. The rights of Tenant hereunder, in and to the parking areas and parking structure if any, shall at all times be subject to the rights of Landlord as provided in this Lease, and of the City, and shall at all times be subject to the rights of Landlord and its employees, other tenants and authorized users, to use the same in common with Tenant, and it shall be the duty of Tenant to keep all of said areas free and clear of any obstructions created or permitted by Tenant, or resulting from Tenant's operation, and to permit the use of any said areas only for normal parking and ingress and egress by the customers, patrons and service suppliers to and from the building occupied by Tenant and other tenants of Landlord.

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

ARTICLE 20 - BANKRUPTCY - INSOLVENCY

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

is a subsidiary, and any guarantor of this Lease.

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

ARTICLE 21 - DEFAULT BY TENANT

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

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

21.1.2 The breach of Tenant of any of the covenants, conditions or provisions of Sections 5.2 (Gross Sales), 7.2 (permitted uses), 11 (alterations), 15 (assignment or subletting), 20 (insolvency), 26.4 (estoppel certificate), 26.1 (subordination), or 33.1 (Security Deposit), all of which are hereby deemed to be material defaults without additional cure period.

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 Sections 21.1.2 and 21.1.3 above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant. To the extent permitted by law, such ten (10) 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 Section 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 Re-Entry. To the greatest extent allowed by applicable law, Landlord or Landlord's agents and employees may immediately or at any time thereafter re-enter the Premises, or any part thereof, peaceably but using such reasonable force as may be required, and without judicial process, or by any suitable action or proceeding at law, and may repossess the Premises, and may remove any persons, fixtures or chattels therefrom, to the end that Landlord may have, hold and enjoy the Premises. In the event of any such retaking of possession of Premises by Landlord, Landlord shall have the right to Tenant's personal property as provided in Section 21.4 herein, unless Landlord delivers written notice to Tenant to remove all or any portion of such items. In the event Landlord exercises its right to have Tenant remove any such items, Tenant shall remove all personal property located thereon, and, upon failure to do so upon

demand of Landlord, Landlord may in addition to any other remedies allowed by law, remove and store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of Tenant. If Tenant shall fail to pay all sums due hereunder together with the cost of storing any such property within thirty (30) days after it has been stored, Landlord may sell any or all of such property at public or private sale and shall apply the proceeds of such sale first, to the cost of such sale; second, to the payment of the charges and expenses for reentry, removal and storage; third, to the payment of any other sums of money that may be due from Tenant to Landlord under the terms of this Lease; and the balance, if any, to Tenant. Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of Premises or removing and storing or selling the property of Tenant as herein provided, and will indemnify, defend and save Landlord harmless from loss, costs or damages to Tenant occasioned thereby, and no such re-entry shall be considered or construed to be a forcible entry. RE-ENTRY OR TAKING POSSESSION OF SAID PREMISES BY LANDLORD SHALL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO TENANT.

21.2.2 Continue the Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Landlord may elect to continue this Lease in effect, whether or not Tenant shall have abandoned or Landlord shall have re-entered the Premises. If Landlord continues this Lease in effect, Landlord shall be entitled to enforce all Landlord's rights and remedies under this Lease, including the right to recover the Rent as the same may become due hereunder and to recover damages from Tenant in accordance with the provisions of this Article 21.

Efforts by the Landlord to maintain, preserve or relet the Premises, or the appointment of a receiver to protect the Landlord's interests under this Lease, shall not constitute a termination of the Tenant's right to possession of the Premises.

21.2.3 Terminate Lease. Terminate Tenant's right to possession and use of the Premises and/or terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord and shall pay Landlord damages as provided at this Article 21.

21.3 Monetary Damages and Recovery. Tenant shall have full liability for payment of all damages directly or indirectly suffered by Landlord which are proximately caused by any default or breach under this Lease, whether or not such default or breach is declared by Landlord, and such elements of damage and recovery by Landlord from Tenant shall specifically include, but not be limited to:

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

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 of the Lease or possession until the time of award, exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

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; plus

21.3.4 The worth, at the time of the award, of any other amount necessary to compensate Landlord for all damages caused by Tenant's failure to perform its obligations under this Lease, including but not limited to, all costs and legal fees incurred by Landlord following Tenant's default; that portion of any leasing commission paid by Landlord as a result of this Lease which is attributable to the unexpired portion of this Lease; all costs incurred by Landlord in restoring the Premises to good order and condition, or in preparing the Premises for reletting; and all other costs incurred by Landlord in reletting the Premises, including, without limitation, any brokerage commissions, and legal fees; plus

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 subparagraphs 21.3.1, 21.3.2 and 21.3.4 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" will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco in effect 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, all of Tenant's furniture, fixtures, equipment 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 Lease Term, 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.

21.6 Waiver of Rights of Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present and future laws in the event Landlord obtains possession of the Premises by reason of Tenant's violation of any covenant and/or condition of this Lease or otherwise, including, without limitation, those afforded to tenants claiming hardship under California Code of Civil Procedure Section 1179.

21.7 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 is 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 and Landlord has failed to cure such breach following the expiration of the foregoing notice and cure period.

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;

22.2.3 No service of process shall be made against any partner, manager or member 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; and

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, 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 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 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.

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.

23.5 Sole Rights. The rights of Tenant arising from a condemnation are limited to those set forth in this Section and Tenant waives any other rights now or hereafter available under applicable law, including, without limitation, Section 1265.130 of the California Code of Civil Procedure.

ARTICLE 24 - ATTORNEYS' FEES

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

ARTICLE 25 - SALE OF PREMISES BY LANDLORD

25.1 Release of Landlord. In the event of any sale or transfer of the Center and/or Premises by Landlord, or assignment by Landlord of its rights under the Master Lease, Landlord shall be entirely freed and relieved of all liability under its covenants and obligations contained in or derived from this Lease.

ARTICLE 26 - SUBORDINATION, ATTORNMEN AND ESTOPPEL CERTIFICATE

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

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

26.3 Agreement to Execute Documents. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make the Lease or any option granted herein prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder.

26.4 Estoppel Certificate.

26.4.1 Tenant shall at any time upon not less than ten (10) days prior written notice from Landlord execute, acknowledge and deliver to Landlord 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 Tenant's knowledge, any uncured defaults on the part of Landlord, 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.

26.4.2 At Landlord's option, the failure to deliver such statement within such time shall be a material default of the Lease by Tenant, without any further notice to such party, or it shall be conclusive upon Tenant that (i) the Lease is in full force and effect, without modification except as may be represented by Landlord, and (ii) there are no uncured defaults in Landlord's performance. If Tenant fails to deliver the certificate within ten (14) 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

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, without disturbance from Landlord, 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.

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. Tenant shall pay to Landlord on the first day of each calendar month of the Lease Term, 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 Landlord's Right to Change Marketing Contribution Format. Landlord reserves the right to change Tenant's Marketing Fund Contribution from a minimum sum format to a pro rata share allocation provided that in no event shall Tenant be required to pay in any calendar year an amount that exceeds Tenant's Marketing Fund Contribution (as specified in the Fundamental Lease Provisions) for the immediately preceding full or partial calendar year. Landlord shall change the Marketing Fund format to a pro rata format, if at all, only as of the beginning of a calendar year and upon giving Tenant at least three (3) months' advance written notice. In such event, 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 an authorized representative of Landlord, showing the total amount of Marketing Fund Contribution payments made by Tenant with respect to such calendar year, and the amount, if any, by which the Marketing Fund Contribution payments made by Tenant exceeds the limitations set forth above. If Tenant shall have made any such excess payments, then Tenant shall be entitled to offset the excess against the payment next thereafter to become due Landlord for Marketing Fund Contribution payments as set forth herein. If, however, Tenant's Marketing Fund Contribution payments during the applicable calendar year do not equal Tenant's Marketing Fund Contribution for such calendar year, the shortage shall be deemed Additional Rent and shall be due within thirty (30) days written notice by Landlord. There shall be an appropriate adjustment of Tenant's share of Marketing Fund Contribution payments as of the expiration of the Lease Term. Notwithstanding the foregoing, during the Lease Term (as the same may be extended) in no event shall Tenant be required to pay in any calendar or lease year an amount that exceeds Tenants Marketing Fund Contribution (as specified in the Fundamental Lease Provisions and adjusted annually).

28.4 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.

28.5 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" or "Lease Term" shall include the original term and any extension, renewal or holdover thereof.

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

29.4 Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally or locally recognized overnight or same day delivery service which provides for acknowledgment of delivery (e.g., FedEx). 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, and shall be deemed received three (3) days after mailing if sent by certified mail.

ARTICLE 30 - OBLIGATIONS OF SUCCESSORS

30.1 Construction; Successors. All the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section 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 actual 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 Lease Term 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 Minimum Monthly Rent on Tenancy from Month-to-Month. Rent shall be at the rate equal to one hundred fifty percent (150%) of the sum of the Minimum Monthly Rent at the expiration of the Lease Term 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 thirty (30) day notice prior to the next due date of Rent immediately prior to the expiration of the Lease Term or anytime during the month-to-month tenancy provided that the notice is given at least thirty (30) days prior to the next due date of Rent. Tenant shall have a maximum of thirty (30) days from the delivery date of notice by Landlord to vacate the Premises.

ARTICLE 33 - DELETED

ARTICLE 34 - DELETED

ARTICLE 35 - MISCELLANEOUS

35.1 Relationship of Parties. 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. 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; 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 Lease Term, 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. 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 Landlord 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 shall 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 financing to Landlord, provided that no such modification shall substantially, adversely affect the rights of Tenant hereunder, and in all events no such modification shall change the amount of Rent to be paid by Tenant.

35.13 Confidential Shoppers Program. Landlord shall have the right to institute and maintain a Confidential Shoppers Program which is intended to assist Tenant in maintaining the highest quality of its, products and services provided on the Premises. Landlord may from time to time, and without Tenant's knowledge, send persons to the Premises for the purpose of assessing the quality of Tenant's products and services. At the conclusion of said visit Landlord shall prepare a written report which shall be furnished to Tenant within fifteen (15) days after said visit. Tenant shall promptly make every effort to remedy any deficiency described in such report.

35.14 Rules and Regulations. Tenant and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations set forth on Exhibit C attached hereto. 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.

35.16 Disturbances. Tenant shall not make or permit to be made, any unseemly or disturbing noises or odors, 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 are 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 Lease Term.

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 of which at least thirty (30%) percent or more in Landlord's discretion 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 Tenant fails to take possession and open the Premises for business, fully fixtured, stocked and staffed within thirty (30) days following the Commencement Date, then Landlord shall have, in addition to any and all remedies hereinafter provided, the right to immediately cancel and terminate this Lease (provided, however, Landlord shall have no such termination right (or any other remedies available to it) in the event such failure to open is caused by Landlord's failure to timely deliver the Premises to Tenant with Landlord's Work completed).

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, attorney's 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.

35.32 Relocation. At any time after the Commencement Date and continuing throughout the Lease Term, Landlord shall be entitled, upon not less than sixty (60) days written notice to Tenant, to cause Tenant to relocate from the Premises to another space similar in size (a "Relocation Space") within the Center. Landlord or any third party tenant replacing Tenant in the Premises shall (i) pay all out-of-pocket expenses reasonably incurred by Tenant and paid to professional movers in physically packing and moving Tenant's personal property and equipment to the Relocation Space, (ii) furnish the Relocation Space with upfitting improvements comparable (or at Landlord's option, better) in quality than those in the Premises, and (iii) pay all reasonable expenses for Tenant's new stationery and business cards. Such a relocation shall not terminate or otherwise affect or modify this Lease, except that (a) from and after the date of such relocation, "Premises" shall refer to the Relocation Space into which Tenant has been moved, rather than the original Premises as herein defined and (b) all rights and options of Tenant hereunder, if any, to expand or contract the Premises and any right(s) of first refusal, first offer or first option hereunder in favor of Tenant shall automatically terminate upon the receipt by Tenant of the notice indicating Landlord's intent to relocate Tenant from the Premises to the Relocation Space, unless Landlord specifically agrees in writing that such rights and options shall continue.

35.33 Intentionally Deleted.

35.34 Competing Business. In recognition of the fact that this Lease provides for Percentage Rent based on Gross Sales, Tenant, its principals, affiliates, subsidiaries, officers and owners, agree and covenant that it shall not, directly or indirectly, during the Lease Term or any renewals or extensions thereof, own, operate, manage or have any interest in the profits of any similar business establishment within a radius of three (3) miles from the outer perimeter of the Center. For breach of this provision and in addition to any other remedy available, Landlord may require that all sales made in such other establishment be included in Gross Sales and in the computation of the Percentage Rent set forth in this Lease.

ARTICLE 36 – OPTION TO EXTEND

36.1 Option To Extend. So long as Tenant is not then in default under this Lease and is not in default upon the commencement of the Option Term (as defined below), Tenant shall have the right and option (the

"Extension Option") to extend the Lease Term for one (1) option term of three (3) consecutive years (the **"Option Term"**). The Option Term shall be based on all the terms and conditions of this Lease including the continued payment of Percentage Rent and Additional Rent inclusive of the Common Area Expense Contribution and Marketing Fund Contribution, except the Minimum Monthly Rent during the first twelve (12) months of the Option Term shall be an amount equal to the greater of (i) the Fair Market Rent (as defined below) or (ii) Four Thousand Eight Hundred Ninety-Two and 62/100 Dollars (\$4,892.62) (i.e., the Minimum Monthly Rent payable in the last year or partial year (as applicable) of the original Lease Term multiplied by 1.05), and shall thereafter increase during the Option Period as set forth in the Fundamental Lease Provisions.

36.1.1 Notice of Election To Exercise Extension Option. In order to exercise the right to the Extension Option, Tenant must, no less than six (6) months and no more than nine (9) months prior to the expiration of the Lease Term, provide Landlord written notice that it elects to exercise its Extension Option. Time is of the essence and if such written notice is not timely provided to Landlord then the Extension Option shall be waived and deemed null and void.

36.1.2 Fair Market Rent. The term **"Fair Market Rent"** shall mean the monthly fair market rental value of the Premises for the Option Term as reasonably determined by Landlord. Landlord shall give Tenant notice of Landlord's determination of the Fair Market Rent (**"Landlord's Determination"**) within thirty (30) days following Landlord's receipt of Tenant's notice exercising the Option Term. If Tenant does not agree with Landlord's Determination, and the parties cannot, in good faith, agree upon the Fair Market Rent within ten (10) days following Landlord's delivery of the Landlord's Determination to Tenant, then Tenant shall be deemed to have rescinded its Extension Option, and this Article 36 shall be null and void.

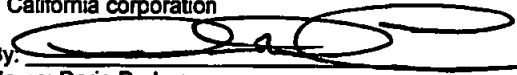
[SIGNATURE PAGE FOLLOWS.]

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

LANDLORD

 Symphony Asset Pool XVI LLC,
a Delaware limited liability company

By: Pacifica Enterprises, Inc.,
a California corporation

By: 
Name: Dario De Luca
Title: President

TENANT

Mission Beach Attractions, LLC
a California limited liability company

By: _____
a _____

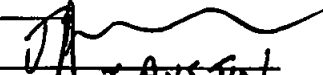
By: 
Name: J. Austin
Title: CEO

EXHIBIT A
SITE PLAN

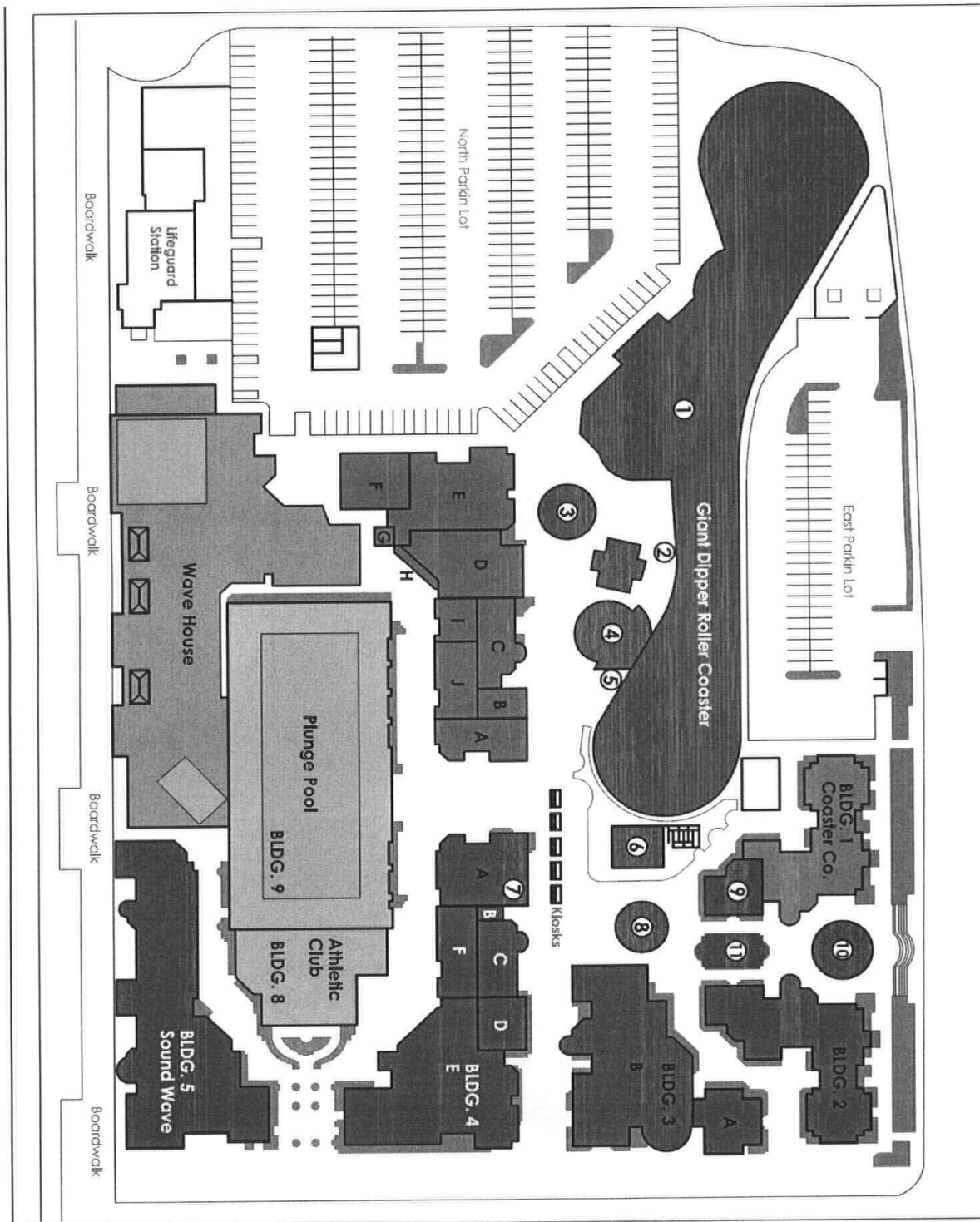
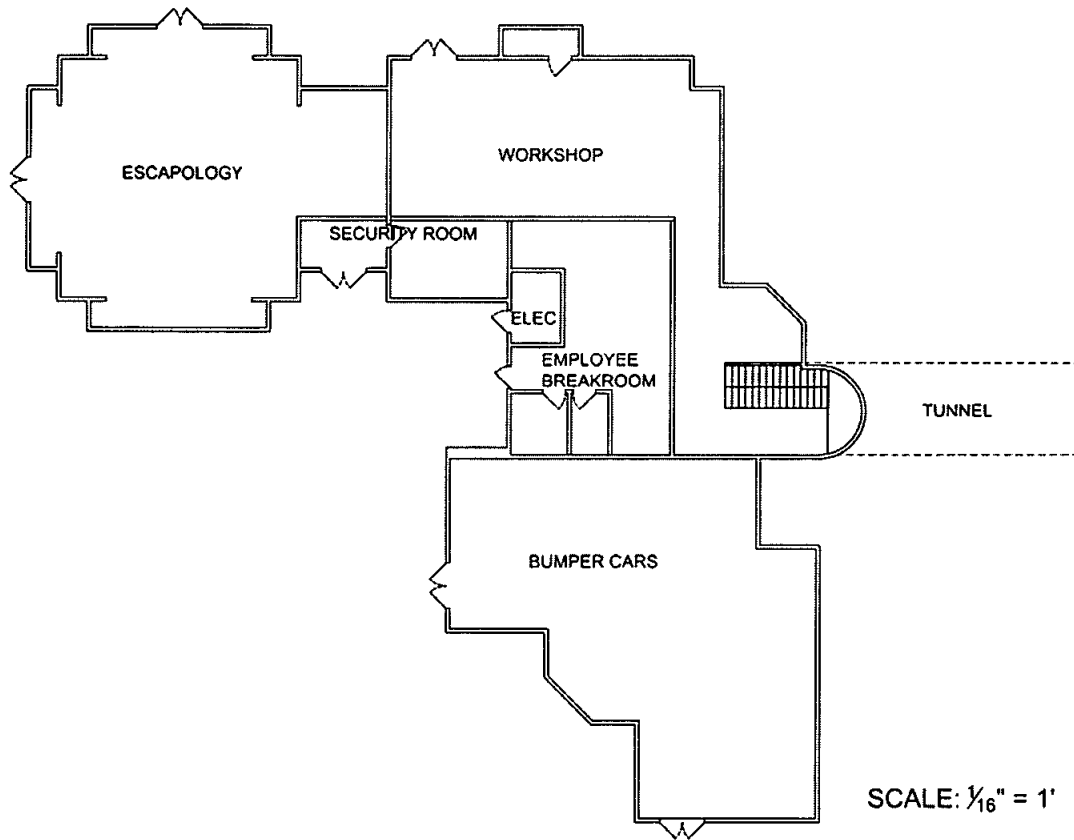


EXHIBIT B

FLOOR PLAN SHOWING THE PREMISES



Virtual Reality Game Room and Mirror Maze location (below)

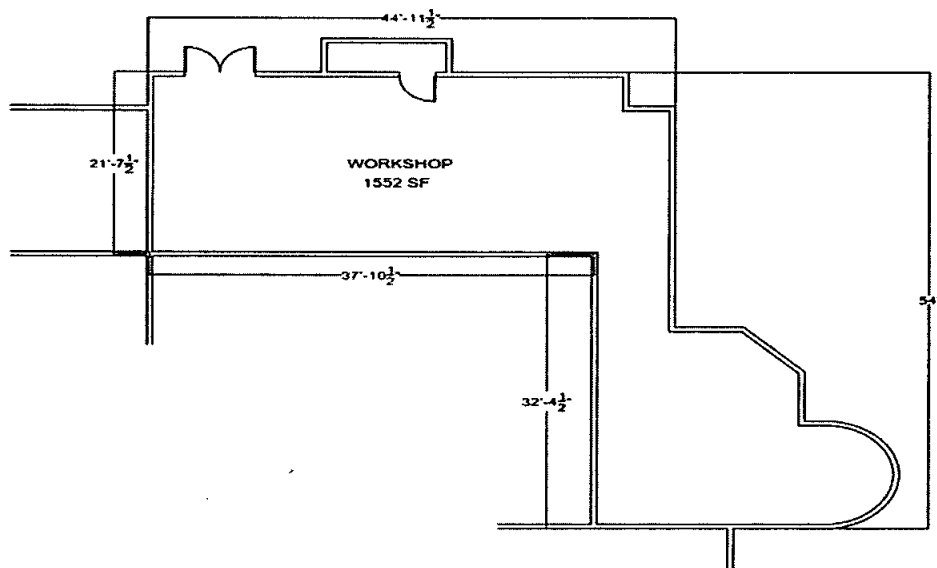


EXHIBIT C

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, upon termination of his tenancy, shall 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. No tenant shall engage in or knowingly permit illegal activity within the Premises, including but not limited to the use, sale, or purchase of state or federally restricted substances, illegal consumption of

alcoholic beverages, or solicitation, loitering, or any other violations of municipal, state, or federal law. Tenant promises to immediately report to Landlord any witnessed or suspected criminal activity committed either by Tenant, Tenant's employees or agents, any other tenant in the Center, or any guest or patron of Tenant. In addition to the immediate notification required herein, Tenant promises to notify Landlord in writing within 72 hours of any such violation.

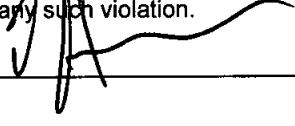
Tenant's Signature:  Date: 6/13/17

EXHIBIT D
INTENTIONALLY DELETED.

EXHIBIT E

ADJUSTED GROSS SALES REPORT

for

MISSION BEACH ATTRACTIONS, LLC

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

Food and Beverage Gross Sales:

Amount: \$ _____ x Percentage: 20% (if in excess of Breakpoint) = \$ _____

Retail, Memberships & Other Gross Sales:

Amount: \$ _____ x Percentage: 20% (if in excess of Breakpoint) = \$ _____

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 X 20% (if in excess of Breakpoint) = \$ _____ the percentage rent due Landlord for the period.

I have reviewed the foregoing and certify under penalty of perjury that it is true and correct.

Authorized Signature

Date

EXHIBIT F
PROHIBITED USES

EXHIBIT G



STORM WATER

BEST MANAGEMENT PRACTICES

Prepared by:



I. Belmont Park's Planning and Organization Committee

Debbie O'Connor
Colleen Quinones
Brian Richardson

Director, Commercial Real Estate (Enforcement Official)
Onsite Manager
Maintenance Enforcement Supervisor

II. Belmont Park's Reference Phone Listing

<u>Name</u>	<u>Phone</u>	<u>Contact</u>
Belmont Park's Admin Office	858-755-0216	Debbie O'Connor
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

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

Reference Code

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

III. Restaurant Tenant Obligations and Recommendations

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

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

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

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

III. Tenant's Hazardous Material Stored On-Site

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

IV. Materials Handling and Cleaning Requirements

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

1. Painting:
 - a. Keep all liquid paint products and wastes away from the street, gutter, and storm drains. Liquid residues from paints, thinners, solvents, glues, and cleaning fluids are hazardous wastes. When thoroughly dry, used brushes, rags, drop cloths, and empty paint cans (lids off) may be disposed of as trash.
 - b. Use water-based paints instead of oil-based paints. Look for the words "latex" or "clean up with water" on the label.
 - c. Don't use paints over fifteen (15) years old. They may contain toxic levels of lead.
 - d. Reuse paint thinner. Set used thinner aside in a closed jar to settle out paint particles. Then pour off clear liquid for future use. Wrap the residue in newspaper and dispose of it in the trash.
 - e. Paint Removal: Chips and dust from marine paints or paints containing lead or tributyl tin are hazardous wastes. Dry sweep and call (619-533-4477) for disposal information.
 - f. Paint chips and dust from non-hazardous dry stripping or sanding may be swept up and disposed of as trash.
2. Keep pollutants off exposed surfaces.
3. Place trashcans and recycling receptacles around the Premises and service often.
4. Cover and maintain trash receptacles. Check frequently for leaks. NEVER CLEAN A TRASH RECEPTACLE BY HOSING IT DOWN OUTSIDE OF A SINK, e.g., Do not clean on the Boardwalk.
5. Never hose down "dirty" pavement or surfaces where materials have spilled. Use dry cleanup methods whenever possible.
6. Make sure subcontractors know about the storm water requirements and their own responsibilities.
7. Minimize waste when ordering materials. Order only the amounts needed to complete the job.
8. Use recycled and recyclable materials whenever possible.

V. Parking Lot Vehicles

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

VI. Spill & Trash Removal Program

Trash Removal:

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

Spill Removal:

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

VII. 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

LANDLORD'S WORK

Landlord shall deliver the Premises to Tenant in "as is" condition.

EXHIBIT I

TENANT'S WORK

Tenant's Work shall be performed and completed at Tenant's sole cost and expense and include, without limitation:

- A. The installation of new or like new trade fixtures.
- B. The installation of additional equipment that Tenant's line of business typically requires (if any).
- C. The completion of any work, labor, and materials required by Tenant to obtain a final certificate of occupancy and open for business that is not specified as a part of Landlord's Work. Said work shall be performed at the sole cost and expense of the Tenant, and shall be incorporated within Tenant's plans and specifications.
- D. The completion of all other construction Tenant requires to open for business.
- E. The adherence to contractor regulations established by Landlord from time to time.

Prior to the commencement of any Tenant's Work, Tenant shall:

- A. Obtain all approvals necessary from all governing bodies. No work shall commence without a building permit issued by the applicable governmental authority(ies).
- B. Hire a licensed commercial contractor to perform all Tenant's Work. The Landlord-approved general contractor shall place Landlord and any other entities required by Landlord as additionally insured on its builder's risk and liability insurance policies that cover the Tenant's entire construction cost. Evidence of insurance shall be provided to Landlord prior to any construction commencement within or at the Premises.
- C. Submit to Landlord the name of and contact information for the Landlord approved general contractor performing the Tenant's Work.
- D. Submit all signage for the exterior of the building to Landlord for written approval, and said approval shall be obtained prior to fabrication or permitting.
- E. Submit the plans and specifications for Tenant's Work for Landlord's written approval not later than 45 days after the date of the Lease and no less than 14 calendar days prior to filing for building permit.

EXHIBIT J
SIGN PROGRAM

SIGN PROGRAM (part 1 of 4)

A complete copy of the Belmont Park Tenant Signage Design Criteria dated 1-21-15 to be provided under separate cover. Basic criteria follow herein. All Tenant signage must be approved in writing by Sublessor prior to installation.

General Sign Construction Requirements

1. All signs and their installation shall comply with all local building and electrical codes.
2. All electrical signs will be fabricated by a U.L. approved sign company, according to U.L. specifications and bear U. L. Label.
3. Sign company to be fully licensed with the City and State and shall have full Workman's Compensation and general liability insurance.
4. All penetrations of building exterior surfaces are to be sealed waterproof in color and finish to match existing exterior.
5. Internal illumination to be 30 milliamp neon, installed and labeled in accordance with the "National Board of Fire Underwriters Specifications".
6. Painted surfaces to have satin finish. Only paint containing acrylic polyurethane products may be used.
7. Logo and letter heights shall be specified and shall be determined by measuring the normal capital letter of a type font exclusive of swashes, ascenders, and descenders.
8. All sign fabrication work shall be of excellent quality. All logo images and type styles shall be accurately reproduced. Lettering that approximates type style will not be acceptable. The Landlord reserves the right to reject any fabrications work deemed to be below standard.
9. All lighting must match the exact specification of the approved working drawings. No exposed conduits or raceways, unless integrated into the overall design will be allowed.
10. Signs must be made of durable rust-inhibiting materials that are appropriate and complimentary to the building.
11. Color coating shall exactly match the color specified on the approved plans.
12. Joining of materials (e.g. seams) shall be finished in way as to be unnoticeable. Visible welds be continuous and ground smooth. Rivets, screws, and other fasteners that extend to visible surfaces shall be flush, filled and finished so as to be unnoticeable.
13. Finished surfaces of metal shall be free from oil canning and warping. All signs finishes shall be free from dust, orange peel, drips, and runs and shall have a uniform surface conforming to the highest standard of the industry.
14. In no case shall any manufacturer's label be visible from the street from normal viewing angles.
15. Exposed raceways are not permitted unless they are incorporated into the overall sign design.
16. Exposed junction boxes not permitted.
17. All raceways, conduits, etc... installed on back of parapets to be painted a specific color to be obtained from the architect.

EXHIBIT J
SIGN PROGRAM (part 2 of 4)

Tenant Signage Specifications

The intent of this criteria is to encourage creativity to ensure the individuality of each tenant sign as opposed to similar sign design, construction, and colors repeated throughout the project. Signs must be architecturally compatible with the entire center.

Storefront Signage:

The following types of contraction will be allowed:

- Acrylic face channel letters
- Through face and halo channel letters
- Reverse pan channel letters
- Skeleton neon behind flat cut out shapes and letters.
- Open pan channel letters (Only in an artistic letter style/font)
- Push-through letters and logos in custom-shaped aluminum cabinets
- Flat cut out dimensional shapes and accents
- Metal screen mesh accents
- Exposed skeleton neon accents

The idea of using dissimilar materials and creating signs with varying colors, layers, and textures will create an exciting and appealing retail environment.

Sign area for all tenants will be calculated as follows:

1.5 square feet of sign area for every linear foot of leased frontage is the maximum aggregate area allowed.

Tenant with multiple elevations will be allowed the same formula for each elevation. Stacked copy is not permitted.



EXHIBIT J
SIGN PROGRAM (part 3 of 4)

Prohibited Signs:

1. No Standard plex faced cabinet construction allowed.
2. Signs constituting a Traffic Hazard:
No person shall install or maintain, or cause to be installed or maintained, any sign which simulates in size, color, lettering or design any traffic sign or signal, or which make use of the words "STOP", "LOOK", "DANGER" or any words, phrases, symbols, or characters in such a manner as to interfere with, mislead or confuse traffic.
3. Signs in Proximity to Utility Lines:
Signs which have less horizontal or vertical clearance from authorized communication or energized electrical power lines that are prescribed by the laws of the State of California are prohibited.
4. Signs painted directly on a building surface subject to sole discretion of landlord based upon submitted design for review.
5. No sign shall project above or below the sign-able area. The sign-able area is defined in the attached exhibit for tenants. Including no lower wall mounted signs.
6. Vehicle signs:
Signs on or affixed to trucks, automobiles, trailers, or other vehicles which are use for advertising, identity, or provide direction to a specific use or activity not related to its lawful activity are prohibited. (i.e. Delivery trucks with tenant signage is OK!)
7. Light Bulb Strings:
External displays, other than temporary decorative holiday lighting which consists of unshielded light bulbs are prohibited. An exception may be granted by the Landlord when the display is an integral part of the design character of the activity to which it relates.
8. Banners, Pennants & Balloons used for Advertising Purposes:
Temporary flags, banners, or pennants, or a combination of same constituting an architectural feature which is an integral part of the design character of a project may be permitted subject to Municipal Code requirement, Landlord's, and City approval.
9. Billboards Signs are not permitted
10. No additional sign copy, tagline, or descriptors allowed for main tenant sign.



EXHIBIT J
SIGN PROGRAM (part 4 of 4)

Abandonment of Signs:

Any tenant sign left after thirty (30) days from vacating premises shall become the property of Landlord.

Inspection:

Landlord reserves the right to hire an independent electrical engineer at the Tenant's sole expense to inspect the installation of all Tenant's signs and to require the Tenant to have any discrepancies and/or code violations corrected at the Tenant's expense.

Maintenance:

It is the Tenant's responsibility to maintain their signs in proper working and clean conditions at all times. Otherwise, Landlord reserves the right to hire his own contractor, make the necessary corrections, and bill tenant should it be deemed necessary.

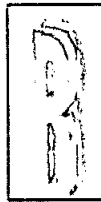


Illumination Method 1

Illuminated LEXAN FACED CHANNEL display with THROUGH FACE ILLUMINATION.

Use standard aluminum construction with Matthews (or equivalent) satin acrylic polyurethane finish. Faces use translucent Lexan with matching trim cap only. Illuminate with 30 mA neon or equivalent LED illumination.

Paint returns to match face only.



Illumination Method 2

Illuminated REVERSE PAN CHANNEL display with HALO ILLUMINATION.

Use standard aluminum construction with Matthews (or equivalent) satin acrylic polyurethane finish.

Illuminate with 30 mA neon or equivalent LED illumination.

Paint faces and returns to match only.



Illumination Method - Combination of 1 and 2

Illuminated LEXAN FACED CHANNEL display with THROUGH FACE AND HALO ILLUMINATION.

Use standard aluminum construction with Matthews (or equivalent) satin acrylic polyurethane finish.

Faces use Lexan with matching trim cap. Illuminate with 30 mA neon or equivalent LED illumination.

Paint returns to match face only.



Illumination Method 3

Illuminated OPEN PAN CHANNEL display with EXPOSED NEON ILLUMINATION.

Use standard aluminum construction with Matthews (or equivalent) satin acrylic polyurethane finish.

Illuminate with 30 mA neon or equivalent LED illumination. Paint face and returns to match only.

Note: All signs may utilize solid color-matched digital vinyl printing on faces of illuminated or non illuminated surfaces.

EXHIBIT K
PARK HOURS

_____

EXHIBIT L

EXCLUSIVE USES

Tenant shall not use the Premises for:

1. The sale of surf wear, sunglasses and/or accessories sold by Sun Diego Boardshop.
2. The sale of bathing suits; provided, however, that if sale of beach wear is permissible under Article 1 of the Fundamental Lease Provisions, Tenant may sell bathing suits to the extent such sales do not exceed fifteen percent (15%) of Tenant's monthly Gross Sales.

CITY OF SAN DIEGO

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

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

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

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

Exact name of existing Lessee (always complete):

Mission Beach Attractions LLC

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

Exact name of existing Sublessee (complete only if applicable):

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

Date this Questionnaire completed: 6/13/2017, _____.

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

Signature: _____

Title: _____

CEO

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

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

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

Mission Beach Attractions LLC

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

3146 Mission Blvd, Suite H, San Diego, CA 92109

Telephone No.: _____ Fax. No.: _____
E-mail Address: _____

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

Telephone No.: _____ Fax. No.: _____

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

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

Explain if necessary:

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

PARTNERSHIP STATEMENT

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

1. Date of Organization: _____
2. General Partnership ()
Limited Partnership ()
Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

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

General/Limited	Name	Address	Share %

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

CORPORATION STATEMENT

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

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

- | | | | |
|-------------------------------------|-------------------|---------------|--------------------|
| 6. Please list the following: | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
| a. Number of voting shares: | _____ | _____ | _____ |
| b. Number of nonvoting shares: | _____ | _____ | _____ |
| c. Number of shareholders: | | | _____ |
| d. Value per share of Common Stock: | | Par | \$ _____ |
| | | Book | \$ _____ |
| | | Market | \$ _____ |

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

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

Name: _____
 Title: _____
 Address: _____

 No. of Shares: _____

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

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

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

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

LIMITED LIABILITY COMPANY STATEMENT

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

1. Date of Organization: December 2009
2. Where Organized: California
3. Is the Company authorized to do business in California?
 - a. Yes (*) No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes (*) No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %
	James Austin	5516 La jolla Blvd, La Jolla, CA 92037	100

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

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

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

OTHER INFORMATION

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

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

REFERENCES FOR PROPOSED (SUB)LESSEE

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

REFERENCE NO. 1

Name: Spencer Norton

Firm: Firestone Financial

Title: Sales Manager

Address: _____

Telephone: 866 851 1001

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

Financed various pieces of amusement equipment.

REFERENCE NO. 2

Name: Jeff Scheer

Firm: Betson West

Title: Sales

Address: 5660 Knott Ave, Buena Park, CA

Telephone: 714 228 7500

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

Supplied video arcade equipment.

REFERENCE NO. 3

Name: Peter Quinn

Firm: Rhode Island Novelty

Title: _____

Address: 350 Commerce Drive

Telephone: 800 528 5599

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

Supplier of amusement merchandise.

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

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

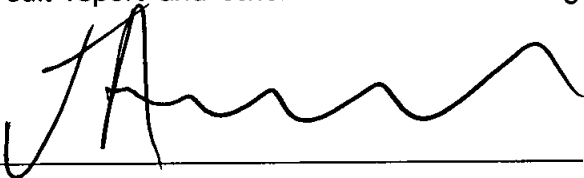
CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	James Antony Austin
Date of Birth	8/29/74
Place of Birth	Charleston, SC
Social Security Number	592-41-4096
Driver's License Number/State	D7448647 CA
Home Address	5516 La jolla Blvd, La Jolla, CA
Previous Address	
Home Telephone No.	858 405 4353
Employer	Self Employed
Occupation	Mission Beach Attractions
Business Address	3146 Mission Blvd, San Diego
Business Telephone No.	
Business Fax No.	

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date 6/13/2017 Signed 

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

Mission Beach Attractions LLC

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

The property will be used for a Mirror Maze Attraction and a Virtual Reality Experience. The mirror maze is a modern twist on an old school attraction, guests will navigate their way through a maze of mirrors with changing LED lighting and fun appropriate music, It's an attraction that will appeal to all ages. Virtual Reality will be a \$5 billion business by 2020, we will offer our guests the opportunity to try a number of different VR experiences.

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

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

Landlord will fund the tenant improvements and Mission Beach Attractions will reimburse the landlord according to the lease.

Construction will begin as soon as the lease is approved and will take 2 months.

ESTIMATE OF GROSS RECEIPTS

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

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

Year of Operation	Uses (Identify Each Use)				
1	\$ 300,000	\$	\$	\$	\$
2	\$400,000				
3	\$450,000				
4					
5					

EXPERIENCE STATEMENT

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

23 years of experience in the amusement/theme park business. 13 years at Belmont Park with operations including the arcade, mini golf, laser tag, escape rooms, zip line/climbing attractions.

The mirror maze and virtual reality will be another natural extension to the current business.

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

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

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



PACIFICA
REAL ESTATE SERVICES, INC.

June 15, 2017

Via Overnight mail

Vladimir Balotsky
The City of San Diego
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4199

Re: Belmont Park – Request for Sublease Approval

Dear Vladimir:

Attached please find transaction processing fees for the proposed Virtual Reality Game Room and Mirror Maze to be operated by Mission Beach Attractions. Please find enclosed the following:

- Check #10374 in the amount \$990 from Mission Beach Attractions, LLC;
- a copy of the half executed proposed Sublease;
- a copy of the City of San Diego Lessee Questionnaire

I have forwarded the same to you via email. Please don't hesitate to contact me if you have questions or require additional information. Thank you!

Kind regards,

PACIFICA REAL ESTATE SERVICES, INC., Property Manager
on behalf of SYMPHONY ASSET POOL XVI, LLC

Debbie O'Connor
Director of Commercial Real Estate

cc: File

Enclosures