

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to SCPT Marina Village, LLC, a Delaware limited liability company, doing business as "Marina Village" (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney (Effective Date), as follows:

RECITALS

- A. CITY as lessor and Lessee/Sublessor, as successor in interest High Fliers, LTD., a California limited partnership are parties to that certain Lease Agreement, as amended and filed on May 11, 1977, as Document No. 759240 in the Office of the City Clerk (the "Lease"). The Lease pertains to that certain CITY-owned property in Mission Bay consisting of approximately 19.426 acres of land and 16.963 acres of water ("Premises").
- B. Lessee/Sublessor now desires to sublease a portion of the Premises to San Diego Parasail Adventures, Inc., a California corporation (Sublessee) for office space in connection with boat slip rental for conducting parasailing tours.
- C. The Lease requires City to consent to the sublease of any portion of the Premises.

NOW, THEREFORE, based on the Recitals set forth above which are incorporated herein, City provides its consent subject to the following:

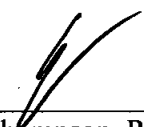
- 1. Subject to the terms and conditions herein, City consents to Lessee/Sublessor's request to sublease a portion of its right, title and interest in and to the Lease to Sublessee. By giving this Consent, City is merely consenting to the requested sublease. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee/Sublessor and the Sublessee;
- 2. City's Consent is conditioned upon Lessee/Sublessor's agreement to pay City ten percent (10%) of any sublease rent as percentage rent for the consented use, in accordance with the Lease;
- 3. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Lease. As set forth in applicable law, Lessee/Sublessor's obligations under the Lease shall survive said sublease and shall continue through the termination dates of the Lease, as set forth therein;
- 4. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Lease;
- 5. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent; and
- 6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. Further, Lessee/Sublessor 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

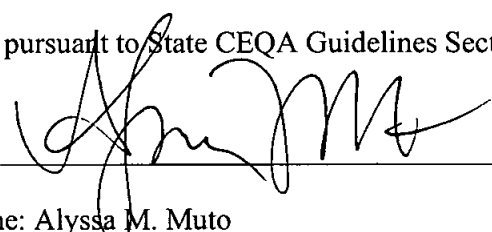
Date: 2/8/18

By: 
Cybele L Thompson, RPA, FMA, CCIM, LEED AP
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).

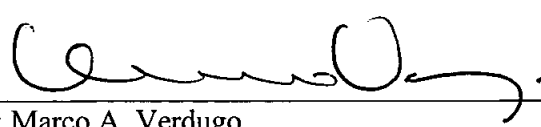
Date: 2/8/18

BY: 

Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 9th
day of February, 2018

MARA W. ELLIOT, City Attorney

BY: 
Name: Marco A. Verdugo
Title: Deputy City Attorney



Date of Notice: January 18, 2018

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease Assignment between SCPT Marina Village, LLC, dba Marina Village, and San Diego Parasail Adventures, Inc.

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2 (Zapf)

LOCATION: 1842 Quivira Way, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease assignment between SCPT Marina Village, LLC, a Delaware limited liability company and San Diego Parasail Adventures, Inc., a California corporation. The Sublease is for approximately 300 square feet of office space on the second floor of the building in connection with boat slip rental for conducting parasailing tours.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined that 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 alteration of existing public or private structures or facilities involving negligible or no expansion of use. The project does not trigger any of the exceptions to the exemptions listed in CEQA Guidelines Section 15300.2, as no cumulative impacts were identified; no significant effect(s) on the environment was identified; the project is not located adjacent to a scenic highway; the project is not located on a hazardous waste site; and no historical resources would be affected by the action.

CITY CONTACT: Pierre Saladin on behalf of Vladimir Balotsky,
Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A, San Diego, CA 92101

PHONE NUMBER: 619-236-6123

On January 18, 2018, the City of San Diego made the above-referenced environmental determination pursuant to CEQA. This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal CEQA determination 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 (**February 1, 2018**). 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: 1/18/2018

REMOVED: 2/2/2018

POSTED: E. Pascual

OFFICE LEASE
BETWEEN
SCPT MARINA VILLAGE, LLC,
a Delaware limited liability company,
AS LANDLORD,
AND
SAN DIEGO PARASAIL ADVENTURES, INC.,
a California corporation,
AS TENANT,
FOR
MARINA VILLAGE

SUMMARY OF BASIC LEASE INFORMATION

This Summary of Basic Lease Information (the "Lease Summary") is hereby incorporated into and made a part of the attached Office Lease (this Lease Summary and the Office Lease to be known collectively as the "Lease"). In the event of a conflict between the terms of this Lease Summary and the Office Lease, the terms of the Office Lease shall prevail. Any capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Office Lease.

1. **Date:** September 11, 2017.
2. **Landlord:** SCPT MARINA VILLAGE, LLC, a Delaware limited liability company.
3. **Address of Landlord:** c/o American Realty Advisors
515 South Flower Street, 49th Floor
Los Angeles, California 90071
Attn: Stanley L. Iezman
4. **Tenant:** SAN DIEGO PARASAIL ADVENTURES, INC.,
a California corporation
5. **Address of Tenant:** P.O. Box 191059
San Diego, CA 92119
Attention: Arrit McPherson
Phone: (619) 518-4386

(Prior to Commencement Date)

and

1842 Quivira Way
San Diego, California 92109
Attention: Arrit McPherson
Phone: (619) 518-4386

(After Commencement Date)
6. **Guarantor(s):** None.
7. **Premises:** Approximately 300 rentable square feet on the second (2nd) floor of the Building. The Premises are outlined on the plan attached to the Lease as Exhibit A.
8. **Building:** The building of which the Premises are a part is located at 1842 Quivira Way, San Diego, California, as shown on Exhibit B (the "Building") and is located on the real property described on Exhibit C (the "Property"). The Building is located in the project known as "Marina Village."
9. **Term:**
 - (a) Lease Term: One (1) Lease Year.
 - (b) Commencement Date: Upon the full execution and delivery of this Lease.

(c) **Expiration Date:** The date immediately preceding the first (1st) anniversary of the Commencement Date, unless the Commencement Date is not the first day of the month, in which case the Expiration Date shall be the last day of the month in which the first (1st) anniversary of the Commencement Date occurs.

Following the Expiration Date, the Lease shall continue on a month-to-month basis, upon all of the terms and conditions set forth in this Lease, except that (i) the Base Rent will increase by 3% on the first day following expiration of the initial Term, and each anniversary thereof, and (ii) the Lease shall thereafter be terminable by either party upon at least thirty (30) days' prior written notice (in which event the termination date set forth in such notice shall be deemed to be the Expiration Date).

10. **Base Rent:**

<u>Lease Year</u>	<u>Annual Base Rent</u>	<u>Monthly Installment of Base Rent</u>
1	\$4,200.00	\$350.00

11. **Additional Rent:**

(a) **Tenant's Cost Allocation:** \$20.00 per month.

12. **Construction:**

(a) **Allowance:** None.

(b) **Landlord Supervision Fee:** N/A.

13. **Initial Payments:**

(a) **Security Deposit:** \$700.00.

(b) **Prepaid Rent:** \$370.00.

14. **Permitted Use:** General office use.

15. **Brokers:**

(a) **Tenant's Broker:** None.

(b) **Landlord's Broker:** None.

17. **Addenda and Exhibits:** The addenda and exhibits listed below are incorporated by reference in this Lease.

Addendum #1	Concession Agreement
Exhibit A	Floor Plan of Premises
Exhibit B	Site Plan of Building
Exhibit C	Legal Description
Exhibit D	Term Certification
Exhibit E	Intentionally Omitted
Exhibit E-1	Tenant Improvement Work
Exhibit E-2	Construction Rules and Regulations
Exhibit F	Building Services
Exhibit G	Rules and Regulations
Exhibit H	Intentionally Omitted
Exhibit I	Environmental Disclosures

Landlord and Tenant hereby agree to the foregoing terms of this Lease Summary.

LANDLORD:

SCPT MARINA VILLAGE, LLC,
a Delaware limited liability company

By: FIRST FIDUCIARY REALTY ADVISORS, INC.,
a California corporation, its Manager

By: 

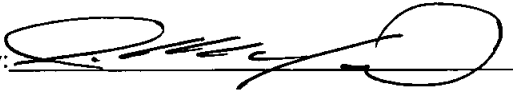
Printed Name: Michael Gelber
Executive Vice President,

Title: Asset Management

Date: 2/27/18

TENANT:

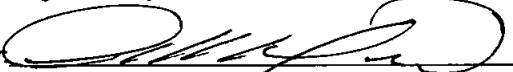
SAN DIEGO PARASAIL ADVENTURES, INC.,
a California corporation

By: 

Printed Name: Arrit McPherson

Title: President

Date: 9/12/17

By: 

Printed Name: Arrit McPherson

Title: Chief Financial Officer

Date: 9/12/17

Taxpayer ID No.: 33-0366499

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OFFICE LEASE

THIS OFFICE LEASE (the "Lease") is made effective as of September 11, 2017, by and between SCPT MARINA VILLAGE, LLC, a Delaware limited liability company ("Landlord"), and SAN DIEGO PARASAIL ADVENTURES, INC., a California corporation ("Tenant"), with reference to the following facts and circumstances:

A. Landlord is the ground lessee of the Project, as defined herein, pursuant to that certain Agreement dated February 16, 1977 by and between the City of San Diego, a municipal corporation ("City") as lessor, and High Fliers, Ltd., a California limited partnership, as lessee ("Original Lessee"), filed in the Office of the City Clerk as Document 759240 and recorded July 25, 1977, at File No. 77-296337, Official Records of the County Recorder of the county of San Diego, State of California (the "Master Lease") Landlord is the successor-in-interest to the Original Lessee under the Master Lease.

B. The Premises covered by this Lease are defined on the Lease Summary and are located in the Building, as defined on the Lease Summary.

C. American Realty Advisors (and its members, parents, subsidiaries, managers, partners, officers, directors, affiliates, representatives, employees, successors and agents; collectively, "Advisor") is the real estate investment manager for Landlord.

D. The parties desire to enter into this Lease, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, the parties do hereby agree to the following:

ARTICLE 1 LEASE OF PREMISES

In consideration of the Rent and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises. In addition, Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants, and invitees to use the Common Areas.

ARTICLE 2 DEFINITIONS

Except as otherwise defined in this Lease, capitalized terms shall have the meanings set forth on the Lease Summary. As used in this Lease, the following terms shall have the following definitions:

2.1 Additional Rent. All amounts, costs and expenses that Tenant assumes, agrees or is otherwise obligated to pay to Landlord under this Lease other than Base Rent.

2.2 Affiliate. An entity that is controlled by, controls, or is under common control with a party. "Control" shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in any entity.

2.3 Bankruptcy Code. Title 11 of the United States Code, as amended from time to time.

2.4 Base Rent. As set forth on the Lease Summary.

2.5 Base Year. As set forth on the Lease Summary.

2.6 Building Services. As set forth in Exhibit F.

2.7 Building Systems. Any plant, machinery, transformers, duct work, cable, wires, and other equipment and facilities, and any systems designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities (other than any supplemental HVAC system exclusively serving any tenant's premises), or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, any Telecommunications System serving the Building generally (and excluding the Telecommunications Systems of the tenants of the Building) and any other mechanical, electrical, electronic, computer or other systems or equipment that serves the Building in whole or in part.

2.8 Business Days. Days other than Saturdays, Sundays and Holidays. If any item must be accomplished or delivered hereunder on a day that is not a Business Day, it shall be timely to accomplish or deliver the same on the next following Business Day.

2.9 Business Hours. As set forth in Exhibit F.

2.10 Claims. Actions, causes of action, charges, claims, contribution costs, damages, demands, expenses (including, without limitation, attorneys' fees and fees and costs of consultants and other professionals), fines, liabilities, liens, losses, obligations, penalties, proceedings, response costs, or suits. All references in this Lease to Landlord's "attorneys' fees" shall mean and refer to all of Landlord's fees and costs for attorneys, including in-house attorneys.

2.11 Commencement Date. As set forth on the Lease Summary.

2.12 Common Areas. The building lobbies, common corridors, common restrooms (as opposed to restrooms for the exclusive use of any tenant), passageways, elevators, stairways, unrestricted parking areas, entrances, exits, driveways and walkways, loading facilities, freight elevators, terraces and landscaped areas in and around the Building, and other public or common areas in the Project designated as such by Landlord.

2.13 Environmental Laws. All Laws regulating or controlling Hazardous Materials, including, without limitation, the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code Sections 25300-25395.15, the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65) California Health and Safety Code Section 25249.5 et seq. and the Hazardous Waste Control Law, California Health and Safety Code Sections 25100-25250.25, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq.; the Hazardous Material Transportation Act, 49 U.S.C. 1801 et seq.; and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2.14 Expiration Date. As set forth on the Lease Summary, unless otherwise sooner terminated in accordance with the provisions of this Lease.

2.15 Force Majeure. Strikes, labor disputes, lockouts, inability to obtain labor, materials, equipment, or reasonable substitutes therefor, acts of God, governmental restrictions, regulations, or controls, judicial orders, enemy or hostile government actions, civil commotion, war, terrorism (foreign or domestic), fire, accident, explosion, falling objects or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder.

2.16 Guarantor(s). The parties set forth on the Lease Summary and any other party liable for or required by Landlord to guaranty Tenant's obligations under this Lease.

2.17 Hazardous Materials. Any hazardous waste or hazardous substance as defined in any Laws applicable to the Project, including, without limitation, the Environmental Laws. "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon gas, petroleum or petroleum fractions, urea formaldehyde foam insulation, transformers containing levels of polychlorinated biphenyls greater than 50 parts per million, medical waste, biological materials (including without limitation blood and blood products), electromagnetic fields, mold and chemicals known to cause cancer or reproductive toxicity, whether or not defined as a hazardous waste or hazardous substance in any statute, ordinance, rule or regulation.

2.18 Holidays. All federally observed holidays, including New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.

2.19 Interest Rate. The average prime loan rate published by the board of governors of the Federal Reserve System of the United States, as the same may change from time to time, plus four percent (4%) per annum, but not in excess of the maximum rate, if any, allowed by Law for the transaction on which interest is being calculated.

2.20 Landlord Related Parties. Landlord, Landlord's Affiliates, Advisor, and the members, principals, beneficiaries, partners, trustees, shareholders, directors, officers, employees, mortgagees, managers (including investment managers and property managers), representatives and brokers, contractors, attorneys, and agents of Landlord, Landlord's Affiliates and Advisor, and the successors of such parties.

2.21 Law or Laws. All federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, requirements, codes, decrees, orders, and decisions by courts and cases, when the decisions are considered binding precedent in the State, and decisions of federal courts applying the Law of the State; including but not limited to The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the California Building Standards Law, Health and Safety Code Sections 18901-18949.1, Title 24 of the California Code of Regulations, and all seismic retrofit or other earthquake protection requirements, and any regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time.

2.22 Lease Year. Each twelve (12) month period or portion thereof during the Term, commencing with the Commencement Date, without regard to calendar years; provided, however, if the Commencement Date is not the first day of the month, then the first (1st) Lease Year shall commence on the first day of the first calendar month after the Commencement Date and be deemed to include the partial month at the beginning of the Term.

2.23 Mortgagee. The lessor under any present and future ground or underlying lease of the Property and the holder of any mortgage, deed to secure debt or trust deed now or hereafter in force against the Property or the Building.

2.24 Permitted Use. As set forth on the Lease Summary.

2.25 Permitted Transfer. The day-to-day sale and exchange of ownership interests in a publicly traded entity on a recognized, domestic, national securities exchange or over-the-counter in the ordinary course of business or an assignment or subletting of all or a portion of the Premises to an Affiliate of Tenant, where (a) the transferee assumes, in full, the obligations of Tenant under this Lease; (b) Tenant remains fully liable under this Lease; (c) the use of the Premises remains unchanged; (d) after such transaction is effected, the tangible net worth of the tenant hereunder is equal to or greater than the tangible net worth of Tenant as of the date of this Lease; (e) Landlord shall have received an executed copy of all documentation effecting such transfer on or before its effective date; and (f) the same is not a subterfuge by Tenant to avoid its obligations under this Lease.

2.26 Permitted Transferee. The Transferee pursuant to a Permitted Transfer.

2.27 Possession Date. The date on which Landlord tenders possession of the Premises to Tenant.

2.28 Project. The Property, the Building and any other improvements on the Property.

2.29 Rent. Base Rent and Additional Rent.

2.30 Rules and Regulations. As set forth in Exhibit G.

2.31 State. The state in which the Project is located.

2.32 Substantial Completion or Substantially Completed. As defined in Exhibit E.

2.33 Telecommunications Systems. All telecommunications systems including but not limited to voice, video, data, and any other telecommunications services provided over wire, fiber optic, microwave, wireless, satellite and any other transmission systems, for part or all of any telecommunications within the Building or from the Building to any other location.

2.34 Tenant Related Parties. Tenant, its Affiliates, agents, contractors, subcontractors, employees, invitees, subtenants, transferees, and any other party claiming by, through or under Tenant.

2.35 Tenant's Cost Allocation. As set forth on the Lease Summary.

2.36 Tenant's Property. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment, and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to or reimbursement by Landlord, that can be removed without damage to the Building, and all furniture, furnishings, records, files and other articles of movable personal property owned by Tenant and located in the Premises; however, in no event shall Tenant's Property include any equipment or other property that Landlord reasonably determines is a leasehold improvement (e.g., rooftop or supplemental air conditioning units).

2.37 Term. As set forth on the Lease Summary, as the same may be extended from time to time; however, the terms and provisions of this Lease shall be effective as of the date of the full execution and delivery of this Lease except for the provisions of this Lease relating to the payment of Rent.

2.38 Transfer. An assignment, mortgage, pledge, hypothecation, encumbrance, lien or other transfer of this Lease or any interest hereunder, a transfer by operation of law, a sublease or license of the Premises or any part thereof, or the use of the Premises by any party other than Tenant and its employees (including any assignment, mortgage, pledge, hypothecation, encumbrance, lien or other transfer of this Lease or any interest hereunder or a sublease of the Premises or any part thereof by Tenant's heirs and/or executors). "Transfer" shall also include (a) if Tenant is a partnership, limited liability company or any other non-corporate entity, the withdrawal or change, voluntary, involuntary or by operation of law, of twenty-five percent (25%) or more of the partners, members or owners, or transfer of twenty-five percent (25%) or more of partnership, membership or ownership interests, within a twelve (12)-month period, or the dissolution of the partnership or company without immediate reconstitution thereof, (b) if Tenant is a corporation, the dissolution, merger, consolidation or other reorganization of Tenant, the sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period; and (c) the sale, mortgage, hypothecation or pledge of more than an aggregate of twenty-five percent (25%) of the value of the unencumbered assets of Tenant within a twelve (12) month period.

2.39 Transferee. Any person or entity to whom or which any Transfer is made.

ARTICLE 3

PREMISES AND DELIVERY OF POSSESSION

3.1 Delivery of Possession. Except as otherwise provided herein, Landlord shall use commercially reasonable efforts to deliver possession of the Premises on or before the Commencement Date. If for any reason, Landlord is delayed in delivering possession of the Premises to Tenant, Landlord shall not be subject to any liability for such failure, and the validity of this Lease shall not be impaired, but (except in the case of delays caused by Tenant) the Commencement Date shall be extended for the period of such delay.

3.2 Commencement Date. If the Commencement Date is not fixed on the Lease Summary, once the Commencement Date is fixed, within ten (10) days following request by Landlord, Tenant will execute and deliver to Landlord a certificate substantially in the form of Exhibit D attached hereto and made a part hereof, indicating thereon any exceptions thereto that may exist at that time. Failure of Tenant to execute and deliver such certificate within ten (10) days following its request by Landlord shall constitute binding and conclusive acceptance of the Premises and acknowledgment by Tenant that the statements included in Exhibit D, as prepared by Landlord, are true and correct.

3.3 Size of Premises. The statement of the rentable area of the Premises set forth on the Lease Summary shall be conclusive and binding on the parties.

3.4 City Consents.

3.4.1 The effectiveness of this Lease is conditioned upon Landlord's receipt of the written consent of the City to this Lease, as required under Section (D) 21 of the Master Lease, which consent shall include an acknowledgement and agreement by the City that Tenant's payment of the Percentage Fee (as defined below) pursuant the Concession Agreement (as defined below) fully satisfies any obligation of Landlord under the Master Lease to pay to the City percentage rent based upon Tenant's sales and income derived from the Premises.

3.4.2 Tenant and the City entered into that certain City of San Diego Parasailing Concession Agreement dated as of October 20, 2014 (the "Concession Agreement"), a copy of which is attached to this Lease as Addendum #1. Tenant shall comply with all terms and conditions of the Concession Agreement, including without limitation the obligation to pay to the City, on a monthly basis, the "Percentage Fee" (as defined in the Concession Agreement). Tenant shall deliver to Landlord evidence of payment of each installment of the Percentage Fee within ten (10) days of the due date therefor, together with copies of all supporting documentation submitted to the City (or required to be submitted to the City) in connection therewith, including without limitation the statements required pursuant to Sections 9.h ([Payment Procedure]) and 9.h.ii ([Inspection of Records]) of the Concession Agreement. Upon request, Tenant shall deliver to Landlord evidence reasonably satisfactory to Landlord of Tenant's compliance with the other terms and conditions of the Concession Agreement. Tenant shall immediately notify Landlord in writing of any amendment to or termination of the Concession Agreement, together with true, correct and complete copies of all documents entered into or delivered in connection with such amendment or termination.

3.4.3 If the City does not consent to this Lease, which consent shall be in form and content acceptable to Landlord in its sole discretion, this Lease shall not come into effect and neither party shall have rights or obligations hereunder. If the City does consent, Tenant agrees to comply with all of the terms and conditions of such consent and the Master Lease that apply to the lessee thereunder, to the extent applicable to the Premises.

ARTICLE 4

RENT

Tenant agrees to pay to Landlord all Rent payable hereunder, without set-off or deduction, in lawful money of the United States of America. Tenant shall pay the Rent as follows:

4.1 Base Rent. Tenant shall pay to Landlord the Base Rent without notice, demand or offset, in installments due and payable in advance on the first (1st) day of each calendar month during the Term. Along with and in addition to each monthly Base Rent payment under the Lease, Tenant shall pay to Landlord any sales or privilege tax required under applicable Law. In the event of any fractional calendar month, Tenant shall pay for each day in such partial month a rental equal to 1/30 of the Base Rent. Concurrent with Tenant's execution of this Lease, Tenant will deliver to Landlord the prepaid rent set forth in Section 13 of the Lease Summary, which Landlord shall apply to the first month's Base Rent and Tenant's Cost Allocation.

4.2 Tenant's Cost Allocation. In addition to the Base Rent and all other payments due under this Lease, Tenant shall pay Tenant's Cost Allocation, in advance, on the first (1st) day of each calendar month during the Term. Tenant acknowledges and agrees that Tenant's Cost Allocation is a fixed contribution toward Landlord's costs of operating the Project, which is due regardless of the actual costs incurred by Landlord to operate the Project.

4.3 Other Taxes Payable by Tenant. In addition to the Base Rent and any other charges to be paid by Tenant hereunder, Tenant shall, as an element of Rent, reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) that are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by, or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures, and other personal property located at the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is held by Tenant or Landlord; or (b) this transaction or any document

to which Tenant is a party creating or transferring an interest or an estate in the Premises, including but not limited to any sales tax on the Rent paid hereunder. If it becomes unlawful for Tenant to reimburse Landlord for any taxes or other charges as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

4.4 Place of Payment. All Rent shall be paid at the address Landlord may from time to time designate in writing and in no event shall Landlord's acceptance of Rent from any party other than the Tenant named in the Lease Summary create a tenancy between Landlord and such party.

4.5 Interest and Late Charges. If Tenant fails to pay any Rent within five (5) days from when due, the unpaid amounts shall bear interest at the Interest Rate. Tenant acknowledges that the late payment of any Rent will cause Landlord to incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such payment is not received by Landlord within five (5) days from when due, Tenant shall pay Landlord a late charge equal to five percent (5%) of such payment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for loss resulting from Tenant's nonpayment. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages for any default of Tenant or as limiting Landlord's remedies in any manner. In addition, any check returned by the bank for any reason will be considered late and will be subject to all late charges, plus a Fifty Dollar (\$50.00) fee. After two (2) returned checks in any twelve (12) month period, Landlord will have the right to receive payment by a cashier's check or money order. Nothing contained herein shall be construed as to compel Landlord to accept any payment of Rent in arrears or late charges should Landlord elect to apply its rights and remedies available under this Lease or at law or in equity in the event of a Default.

ARTICLE 5

SECURITY DEPOSIT

Upon Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit, as shown on the Lease Summary. The Security Deposit shall serve as security for the prompt, full, and faithful performance by Tenant of its obligations under this Lease. In the event that Tenant is in Default hereunder, or in the event that Tenant owes any amounts to Landlord upon the expiration of this Lease, Landlord may use or apply the whole or any part of the Security Deposit for the payment of Tenant's obligations hereunder. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Law and shall not be construed as liquidated damages. In the event the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord, within ten (10) days after notice, an amount sufficient to restore the full amount of the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit. Provided Tenant has performed all of its obligations under this Lease, any remaining portion of the Security Deposit shall be returned to Tenant within thirty (30) days subsequent to the Expiration Date. If the Premises shall be expanded at any time, or if the Term shall be extended at any increased rate of Rent, the Security Deposit shall thereupon be proportionately increased. No trust or fiduciary relationship is created herein between Landlord and Tenant with respect to the Security Deposit. If Landlord transfers the Premises during the Term of this Lease, Landlord may pay the Security Deposit to Landlord's successor-in-interest in accordance with California Civil Code Section 1950.7 or any similar or successor Law, in which event the transferring Landlord shall be released from all liability for the return of the Security Deposit. Tenant waives the provisions of all Laws now in force or that become in force after the date of execution of this Lease, that require return of any remaining Security Deposit within a specified period or limiting the costs, expenses or damages for which Landlord may use a security deposit, including any provisions of such Laws providing that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Accordingly, Tenant hereby waives the provisions of California Civil Code Section 1950.7, as the same may be amended or re-codified, or any similar or successor Law and Tenant specifically agrees that the Landlord may apply such Security Deposit to the damages for breach of lease allowed under California Civil Code Section 1951.2, including any future rent/damages sustained by Landlord for the period of time after the Tenant vacates the Premises through the end of the Term of this Lease. Landlord and Tenant agree

that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant or any Tenant Related Party.

ARTICLE 6

USE

6.1 **Permitted Use.** Tenant shall use the Premises solely for the Permitted Use as shown on the Lease Summary, and for no other purpose without Landlord's consent (which consent may be withheld in Landlord's sole discretion). Tenant shall comply with all recorded covenants, conditions, and restrictions, and the provisions of all ground or underlying leases, now or hereafter affecting the Project, including without limitation the Master Lease. Tenant shall, at Tenant's expense, comply with all insurance company and/or Mortgagee requirements pertaining to the use of the Premises. Tenant shall not (a) do or permit anything to be done in or about the Premises that would in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project or violate any restrictions or exclusive uses set forth in any other tenants' leases; (b) injure, annoy or interfere with the business of any other tenants or occupants of the Project or any of their invitees; (c) cause, maintain or permit any nuisance arising out of Tenant's use or occupancy of the Premises; or (d) commit or suffer to be committed any waste in or upon the Premises, the Building or the Project. Tenant acknowledges that the Building and/or Project has, or in the future may seek, a USGBC or other "green agency" rating and, as a result, the Building and/or Project will be operated pursuant to Landlord's sustainable practices (as the same may be modified by Landlord from time to time) and, in connection therewith, Tenant (i) shall comply with such practices, and (ii) shall not do or permit anything to be done in or about the Premises that would in any way jeopardize any such rating.

6.2 **Compliance with Law.** Tenant acknowledges and agrees that, except as may otherwise be specifically provided in this Lease, Landlord has made no representation or warranty as to whether the Premises, the Building or the Project conforms to the requirements of Law. Tenant shall be responsible for compliance of the Premises with applicable Law and shall bear all costs necessary to maintain the Premises in compliance with Law (including, without limitation, any structural work) and any related inspections. Tenant shall also be responsible for the cost of any alterations to other portions of the Building or the Project necessitated by any Alterations or any change in use of the Premises after the Commencement Date. Tenant shall not use or occupy the Premises in violation of any Law or the certificate of occupancy issued for the Building or the Project and shall, upon notice from Landlord, immediately discontinue any use of the Premises that is declared by any governmental authority having jurisdiction to be a violation of Law or the certificate of occupancy. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such Laws in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Should any obligation be imposed by Law, then Tenant agrees, at its sole cost and expense, to comply promptly with such obligations to the extent the same relate to the Premises or Tenant's use of the Premises, the Building or the Project. As of the date of this Lease, the Premises and the Project have not been inspected by a Certified Access Specialist ("CASp"). A CASp can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

6.3 **Effect on Landlord's Insurance.** Tenant shall not do or permit to be done anything that will invalidate or increase the cost of any property coverage, or other insurance policy covering the Building, the Project or any property located therein. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Section.

6.4 **Intentionally Omitted.**

6.5 **Use of Common Areas.** Use of all Common Areas by any Tenant Related Parties shall at all times be subject to the Rules and Regulations and the exclusive control and management of Landlord.

ARTICLE 7

HAZARDOUS MATERIALS

7.1 **Indemnity.** Tenant shall indemnify, defend and hold harmless all Landlord Related Parties from and against all Claims directly or indirectly arising out of the existence, use, generation, migration, storage, transportation, release, threatened release, or disposal of Hazardous Materials (including, without limitation, the Permitted Materials (hereinafter defined)) in, on, or under the Premises, the Building or the Project or in the groundwater under the Project and the migration or transportation of Hazardous Materials to or from the Premises, the Building or the Project or the groundwater underlying the Project, to the extent that any of the foregoing is caused, or alleged to be caused, by any Tenant Related Parties. This indemnity extends to the costs incurred by any Landlord Related Party to investigate, remediate, monitor, treat, repair, clean-up, dispose of, or remove such Hazardous Materials in order to comply with the Environmental Laws; provided that if Tenant is not otherwise in Default, Landlord shall give Tenant not less than thirty (30) days' advance notice of Landlord's intention to incur such costs.

7.2 **Restriction on Hazardous Materials.** Tenant shall not permit any Tenant Related Parties to use, generate, manufacture, store, transport, release, threaten release, or dispose of Hazardous Materials in, on, or about the Premises, the Building or the Project or transport Hazardous Materials from the Premises, the Building or the Project unless Tenant shall have received Landlord's prior consent therefor, which Landlord may revoke at any time, and shall not cause or permit the release or disposal of Hazardous Materials from the Premises, the Building or the Project except in compliance with applicable Environmental Laws; *provided, however,* Tenant shall be permitted to use and store at the Premises de minimis amounts of customary office and cleaning supplies in compliance with applicable Environmental Laws (the "Permitted Materials"). Tenant shall promptly deliver notice to Landlord if Tenant obtains knowledge sufficient to infer that Hazardous Materials are located on the Premises, the Building or the Project that are not in compliance with applicable Environmental Laws or if any third party, including without limitation, any governmental agency, claims a significant disposal of Hazardous Materials occurred on the Premises, the Building or the Project or is being or has been released from the Premises, the Building or the Project.

7.3 **Investigation of Contamination.** Upon reasonable written request of Landlord, Tenant, through its appropriately qualified and licensed professional engineers, and at Tenant's cost, shall thoroughly investigate suspected Hazardous Materials contamination of the Premises, the Building or the Project that would arguably come within the scope of Tenant's indemnification and hold harmless obligations as set forth above. Tenant, using duly licensed and insured contractors approved by Landlord, shall promptly commence and diligently complete the removal, repair, clean-up, and detoxification of any Hazardous Materials from the Premises, the Building and the Project as may be required by applicable Environmental Laws that comes within the scope of Tenant's indemnification and hold harmless obligations as set forth above. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE 8

SERVICES AND UTILITIES

8.1 **Furnishing of Building Services.** Provided that Tenant is not in Default, Landlord agrees to furnish the Building Services as set forth on Exhibit F. Within five (5) days of Landlord's request, Tenant shall provide to Landlord all requested information regarding Tenant's utility and energy usage at the Premises during the Term (which requested information may include number of computers used in the Premises, operating hours, number of employees per shift and other similar information). Tenant acknowledges that such information may be disclosed to third parties, including governmental agencies and current, potential or future Mortgagees and/or prospective purchasers. Tenant's obligation to provide any of the foregoing with respect to any period of time during the Term shall survive the expiration or earlier termination of this Lease.

8.2 **Interruption in Services.** Landlord shall not be in default hereunder nor be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated, for any interruption of or diminution in the quality or quantity of Building Services, including, without limitation, when the same is occasioned, in whole or in part, by (a) repairs, replacements, or improvements; (b) by inability to secure or limitation, curtailment, or rationing of, or restrictions on, use of electricity, gas, water, or other form of energy serving the Premises, the Building or the Project; (c) by any accident or casualty; (d) by act or Default by Tenant or other parties; or (e) by Force Majeure. No failure, delay or diminution in Building Services shall ever be deemed to constitute an eviction or disturbance of Tenant's use

and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure, delay or diminution of any Building Services.

8.3 Extraordinary Demand. If Landlord determines that Tenant's use of the Premises, Building and/or Project requires Landlord to provide increased levels of any Building Services (including security services), including but not limited to Tenant's use of heat generating machines or equipment in the Premises that affect the temperature otherwise maintained by the heating, ventilation and air-conditioning system, Landlord reserves the right to provide increased levels of such Building Services (including security services) as a result thereof, including the right to install supplementary air-conditioning units in the Premises; and the cost of any and all such increased Building Services (including, without limitation, the cost of installation, operation, and maintenance of any such supplementary air-conditioning units) shall be paid by Tenant upon demand by Landlord.

8.4 Customary Quantities. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of the Premises as general office space (as determined by Landlord) without first procuring the consent of Landlord, and in the event of consent, Landlord may install a water meter or electrical meter in the Premises to measure the amount of water or electric current consumed. Tenant shall bear the cost of any such meter and of its installation, maintenance, and repair, and Tenant agrees to pay to Landlord promptly, upon demand, for all water and electric current consumed as shown by said meters at the rates charged for such services by the local public utility plus any additional reasonable expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense. Tenant shall not use any apparatus or device in the Premises that uses in excess of 120 volts. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises.

8.5 Separate Metering. Nothing in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises at Tenant's sole cost. In the event utilities are separately metered, Tenant shall be responsible for the maintenance, repair and replacement of any such meters at its sole cost and expense.

8.6 Safety and Security Devices, Services, and Programs. The parties acknowledge that safety and security devices, services, and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts or ensure safety of persons or property. The risk that any safety or security device, service, or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests; and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

8.7 Utility Deregulation. If permitted by applicable Law at any time in the future, Landlord shall have the right at any time and from time to time during the Term to either contract for electricity service from different companies providing electricity service (each such company shall hereinafter be referred to as an "Alternate Service Provider"), and the costs, charges or expenses reasonably incurred by Landlord to change such service shall be an Operating Cost hereunder. Tenant agrees to cooperate with Landlord and any Alternate Service Provider at all times and, as reasonably necessary, to provide reasonable access to any electric facilities within the Premises. Tenant may not elect to use any electricity service provider other than the one designated by Landlord for the Building without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion.

8.8 Government Energy or Utility Controls. In the event of imposition of any government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby, and the same shall not constitute a constructive eviction of Tenant. In the event of a difference in interpretation by Landlord and Tenant of any such controls, Landlord's interpretation shall prevail, and Landlord shall have the right to enforce compliance therewith, including, without limitation, the right of entry into the Premises to effect compliance.

8.9 Telecommunications. Tenant and Tenant's telecommunications companies, including but not limited to local exchange telecommunications companies and alternative access vendor services companies ("Telecommunications Companies"), shall have no right of access to or within the Project for the installation and operation of Tenant's Telecommunications System without Landlord's prior consent. All work with respect to Tenant's Telecommunications System shall be subject to the terms of Article 11 of this Lease and such work shall be deemed to be an Alteration. Without in any way limiting Landlord's right to withhold its consent to a proposed request for access, Landlord shall have the right to consider whether a Telecommunications Company is willing to pay reasonable monetary compensation for the use and occupation of the Building for the Telecommunications System.

ARTICLE 9

CONDITION OF THE PREMISES

Tenant acknowledges that Tenant is leasing the Premises on an "as is, where is" basis. Tenant's taking possession of the Premises shall be deemed conclusive evidence that, as of the date of taking possession, the Premises were in good order and satisfactory condition. No promise of Landlord to alter, remodel, repair, or improve the Premises, the Building or the Project, and no representation, express or implied, respecting any matter or thing relating to the Premises, the Building, the Project or this Lease (including, without limitation, the condition thereof) have been made to Tenant by Landlord or its broker or sales agent, other than as may be expressly contained in this Lease.

ARTICLE 10

REPAIRS AND MAINTENANCE

10.1 Landlord's Obligations. Landlord shall maintain in good order, condition, and repair the portions of the Building, the Project and the Premises that are not the obligation of Tenant or any other tenant in the Building. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building Systems serving, located in, or passing through the Premises or any other damage that Landlord is obligated to repair. Tenant hereby waives and relinquishes any right Tenant may have under any applicable Law now or hereafter in effect to make any repairs at Landlord's expense, including, without limitation, under California Civil Code Sections 1941 and 1942, as the same may be amended or re-codified, or any similar or successor Law.

10.2 Tenant's Obligations. Tenant, at Tenant's sole expense, shall maintain, repair and replace the Premises as needed to keep all interior, non-structural portions of the Premises in good order, condition, and repair, including, without limitation, the following: (a) all plumbing and sewage facilities, including but not limited to all plumbing fixtures, pipes, fittings, or other parts of the plumbing system that exclusively serve the Premises; (b) all fixtures, interior walls, floors, carpets, draperies, window coverings, and ceilings; (c) all interior windows, doors, entrances, and plate glass; (d) all electrical wiring, facilities and equipment, including, without limitation, any non-standard light fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment, and systems; and (e) any fire detection or extinguisher equipment that Landlord does not maintain.

10.3 Damage by Tenant. Except for ordinary wear and tear, Tenant shall promptly reimburse Landlord for any costs that Landlord may incur in making repairs and alterations in and to the Premises, the Building, Building Systems, the Project or facilities, systems or equipment of the Project (and in no event shall the provisions of Section 18.7 apply to such reimbursement obligation), where the need for such repairs or alterations is caused by any of the following: (a) Tenant's use or occupancy of the Premises in a fashion that contravenes any provision of this Lease; (b) the installation, removal, use, or operation of Tenant's Property; (c) the moving of Tenant's Property into or out of the Building; or (d) any misuse, tortious act, omission, or negligence of any Tenant Related Parties.

10.4 Load and Equipment Limits. Tenant shall not place a load upon the Premises that exceeds the load per square foot that the structural portions of the Premises were designed to carry, as determined by Landlord or Landlord's structural engineer. If Landlord or Landlord's structural engineer determines that any improvement or load placed upon the Premises exceeds the load per square foot that the structural portions of the Premises were designed to carry, then Tenant shall remove such load or otherwise remedy such fact to Landlord's satisfaction. Upon demand, Tenant shall pay the cost of any such determination.

ARTICLE 11 ALTERATIONS AND ADDITIONS

11.1 Tenant's Alterations. Tenant shall not make any additions, alterations, or improvements (the "Alterations") to the Premises without the prior consent of Landlord, which consent shall be requested by Tenant at least thirty (30) days prior to the commencement of any work and such request for consent shall include (A) Tenant's proposed plans and specifications for the Alterations, (B) a detailed critical path construction schedule containing the major components of the Alterations and the time required for each, including the scheduled construction commencement date, milestone dates and the estimated completion date, (C) an itemized statement of estimated construction costs, including fees for permits and architectural and engineering fees, (D) evidence satisfactory to Landlord of Tenant's ability to pay the cost of the Alterations, (E) the names and addresses of Tenant's contractors (and said contractors' subcontractors) and materialmen to be engaged by Tenant for the Alterations (individually, a "Tenant Contractor," and collectively, "Tenant's Contractors"); however, Landlord may designate a list of approved contractors for any portions of the Alterations involving the Building's structure or the Building Systems, from which Tenant must select its contractors for such portions of the Alterations ("Approved Contractors"), and (F) certificates of insurance, evidencing the insurance required under this Article 11. Landlord's consent to the Alterations (and Landlord's approval of Tenant's plans and specifications therefor) shall not be unreasonably withheld, conditioned or delayed and any changes or modifications to the Alterations or such plans or specifications thereafter shall require Landlord's approval (which shall not be unreasonably withheld). Landlord's review and approval of the plans and specifications for the Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all Laws. Notwithstanding the foregoing, Tenant shall have the right during the Term to make cosmetic Alterations as Tenant may reasonably deem desirable or necessary (the "Cosmetic Alterations"), without Landlord's consent, provided that such Alterations (i) are not visible from outside of the Premises; (ii) do not affect the Building's structure or any Building System; (iii) do not trigger any legal requirement which would require any alteration or improvements to the Building or Project; (iv) do not, in the aggregate, exceed \$5,000 (for Alterations other than floor and wall covering) in any twelve (12) month period; and (v) do not require any license, permit or approval under applicable Law and do not result in the voiding of Landlord's insurance, the increasing of Landlord's insurance risk or the disallowance of sprinkler credits. Tenant shall give Landlord at least ten (10) days prior written notice of such Cosmetic Alterations, which notice shall be accompanied by reasonably adequate evidence that such changes meet the foregoing criteria. Except as otherwise provided, the term "Alterations" shall include Cosmetic Alterations.

11.2 Construction Requirements. All Alterations shall be (a) performed under a valid permit when required, a copy of which shall be furnished to Landlord before commencement of construction, (b) performed in a good and workmanlike manner using only new, first class materials and Tenant shall obtain contractors' warranties for a period of at least one (1) year against defects in materials and workmanship; (c) performed in compliance with all applicable Laws, all applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters), the National Electrical Code, manufacturer's specifications and Landlord's construction rules and regulations attached hereto as Exhibit E-2 (the "Construction Rules"); (d) performed so as not to cause or create any jurisdictional or other labor disputes; (e) performed in such manner as not to obstruct access to the Project or the Common Areas or the conduct of business by Landlord or other tenants in the Project and coordinated with any other work in the Project by Landlord or its tenants in order to minimize interference with such work; (f) diligently prosecuted to completion; (g) if applicable, performed in a manner that will not adversely affect the Building's and or Project's "LEED" certification, Energy Star rating or other "green agency" rating, and (i) performed (A) in compliance with USGBC indoor air quality standards and waste management specifications, and (B) if to the extent applicable, utilizing plumbing fixtures that comply with the EPA's "Water Sense" program and Energy Star compliant equipment, and (h) performed by Tenant's Contractors that are approved by Landlord and, at Landlord's election, Landlord shall have the right to have at least one (1) additional contractor selected by Landlord ("Landlord's Contractors"), submit a bid for the Alterations and Landlord shall notify Tenant of any Landlord's Contractors it elects to have submit a bid for the Alterations at the time Landlord approves Tenant's Contractors. If Landlord elects to have any Landlord's Contractors submit a bid for the Alterations, then promptly after Tenant receives all bids, and based upon the bids submitted by Tenant's Contractors and Landlord's Contractor(s), Tenant shall notify Landlord in writing of its recommendation for the contractor to perform the Alterations, which notice shall include copies of all bids (the "Bid Package"). If Tenant's recommendation for a contractor for the Alterations is not a Landlord's Contractor, then within five (5) Business Days after Landlord's receipt of the Bid Package, Landlord shall either (A) allow Tenant to use its recommended contractor for the Alterations, or (B) require Tenant to use a Landlord's Contractor for the Alterations.

If Landlord elects to proceed under subsection (B) and the bid of the required Landlord's Contractor for the Alterations exceeds one hundred ten percent (110%) of the bid of Tenant's recommended contractor for the Alterations, then Landlord shall reimburse Tenant for the cost of the work performed by Landlord's Contractor (excluding costs incurred for any change orders) in excess of one hundred ten percent (110%) of the bid of Tenant's recommended contractor within thirty (30) days of Tenant's completion of the Alterations and Landlord's receipt of unconditional lien releases therefor.

Tenant agrees to (1) carry (or cause its general contractor to carry) Causes of Loss-Special Form Builder's Risk or Installation Floater insurance with a limit of not less than the total cost of the Alterations, in such form and including such terms, conditions and deductibles as are acceptable to Landlord in its sole but reasonable discretion, covering the construction of such Alterations, and (2) cause all of Tenant's Contractors to agree, in their construction contracts with Tenant, to meet all of the insurance requirements applicable to Tenant pursuant to Article 18 (including providing the certificates of insurance required thereunder). Tenant shall pay to Landlord a percentage of the cost of the Alterations (such percentage, which shall vary depending upon whether or not Tenant orders the work directly from Landlord, to be established by Landlord on a uniform basis for the Project) sufficient to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's supervision of or involvement with the Alterations. Additionally, Tenant shall engage the services of an on-site project manager reasonably acceptable to Landlord, who shall perform daily supervision of the Alterations and who shall be familiar with Landlord's construction procedures for the Project (including the Rules and Regulations and the Construction Rules). Landlord may require, at Landlord's sole option, that Tenant provide to Landlord such security as reasonably determined by Landlord to protect Landlord against any liability in connection with the Alterations, including but not limited to a lien and completion bond naming Landlord as a co-obligee. Promptly after completion of any Alterations, Tenant shall deliver to Landlord "as-built" plans and specifications (including all working drawings) for the Alterations.

Landlord shall have the right to inspect the construction of the Alterations; however, Landlord's failure to inspect any portion of the Alterations shall in no event constitute a waiver of any of Landlord's rights under this Article 11, nor shall Landlord's inspection of any portion of the Alterations constitute Landlord's approval thereof. If, as a result of Landlord's inspection, Landlord disapproves of any portion of the construction of the Alterations, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. In the event Landlord disapproves of any matter that might adversely affect any Building System, the structure or exterior appearance of the Building or any other tenant, Landlord may take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such matter, including, without limitation, causing the cessation of the applicable work.

11.3 Landlord's Property; Removal. All fixtures, equipment, leasehold improvements (including any Alterations), and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant, other than Tenant's Property, shall be and remain a part of the Premises, shall be the property of Landlord, and shall not be removed by Tenant, unless: (i) such removal is necessary to ensure that the Premises and Building comply with applicable code at the time of surrender, including but not limited to removal of wires located in risers and plenums without raceways or conduits; or (ii) Landlord notified Tenant in writing that removal would be required at least thirty (30) days prior to the Expiration Date (however, if this Lease terminates prior to the Expiration Date, such thirty (30) day period shall not apply). In each of the foregoing circumstances, Tenant shall perform such removal and repair any damage caused thereby at Tenant's sole cost and expense prior to the expiration or earlier termination of this Lease, unless Landlord notifies Tenant in writing that Landlord will perform such removal on Tenant's behalf and at Tenant's sole cost and expense, in which case Tenant shall reimburse Landlord for all of Landlord's costs incurred for such removal within ten (10) days of demand.

11.4 Lien Free Completion. Tenant shall cause each of Tenant's contractors to agree, in their construction contracts with Tenant, to satisfy and release (by bond or otherwise) any mechanic's or materialman's liens filed against the Project by any of the subcontractors engaged by such contractor within ten (10) days of such filing. Upon completion of the Alterations, Tenant shall furnish Landlord with full and final waivers of liens and contractors' affidavits and statements, in such form as may be required by Landlord, Landlord's title insurance company and any Mortgagee, from all parties performing labor or supplying materials or services in connection with the Alterations showing that all of said parties have been compensated in full. Before commencement of the Alterations, Tenant shall notify Landlord of the proposed date of commencement of the Alterations, and shall prepare and deliver to Landlord

for Landlord's signature a notice of non-responsibility and allow Landlord no less than seven (7) Business Days to record and post the same. Additionally, if Tenant fails to make any payment relating to the Alterations, Landlord, at its option, may complete the Alterations and/or make such payment and Tenant shall reimburse Landlord for all costs incurred therefor within five (5) days of Landlord's demand.

11.5 Notices and Liens. Tenant agrees not to suffer or permit any lien of any mechanic or materialman to be placed or filed against the Premises, the Building or the Project. In case any such lien shall be filed, Tenant shall satisfy and release such lien of record within twenty (20) days (or such shorter period as may be required by any Mortgagee) after the earlier to occur of (a) receipt of notice thereof from Landlord; or (b) Tenant's actual knowledge or notice of such lien filing. If Tenant shall fail to have such lien satisfied and released of record as provided herein, Landlord may, on behalf of Tenant, without being responsible for making any investigation as to the validity of such lien and without limiting or affecting any other remedies Landlord may have, pay the same and Tenant shall reimburse Landlord on demand for such amount together with any other reasonable costs of Landlord, including, without limitation, reasonable attorneys' fees and/or Landlord shall have the right to deduct such costs from the Allowance (if any). Notwithstanding the foregoing, Tenant shall have the right to contest any such lien claim diligently and in good faith, and during such contest shall not be obligated to pay such lien claim, provided that Tenant is not in breach of any of its obligations under this Lease and provided, Tenant, at its sole cost and expense, bonds the lien, or transfers the lien from the Property to a bond, thereby freeing the Project from any claim of lien. Notwithstanding any such contest or title insurance, Tenant shall pay any such claim in full within five (5) days following the entry of an unstayed judgment or order of sale. All materialmen, contractors, artisans, mechanics, laborers and any other person now or thereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to Premises or any portion thereof, are hereby charged with notice that they must look exclusively to Tenant to obtain payment for the same. Notice is hereby given that Landlord shall not be liable for any labor, services, materials, supplies, skill, machinery, fixtures or equipment furnished to or to be furnished to Tenant upon credit and that no mechanic's lien or any other lien for any such labor, services, materials, supplies, machinery, fixtures or equipment shall attach to or affect the estate or interest of Landlord in and to the Premises or the Project, or any portion thereof. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices that Landlord deems necessary for the protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

ARTICLE 12

CERTAIN RIGHTS RESERVED BY LANDLORD

Landlord reserves the following rights, exercisable without liability to Tenant for (a) damage or injury to property, person, or business; (b) causing an actual or constructive eviction from the Premises; or (c) disturbing Tenant's use, possession, or beneficial and quiet enjoyment of the Premises:

- 12.1 Name. To change the name or street address of the Building or the Project.
- 12.2 Signage. To install and maintain signs on the exterior and interior of the Building and the Project.
- 12.3 Keys. To have passkeys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes.
- 12.4 Inspection and Entry. Landlord may enter the Premises on reasonable prior notice to Tenant (except in the event of an emergency, in which case no notice shall be required) (a) to inspect the Premises; (b) to show the Premises to any prospective purchaser or Mortgagee of the Project, or to others having an interest in the Project or Landlord; (c) during the existence of a Default; (d) during the last six (6) months of the Term, to show the Premises to prospective tenants; (e) to make inspections, repairs, alterations, additions, or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting, or balancing controls and other parts of the heating, ventilation and air-conditioning system); and (f) to take all steps as may be necessary or desirable for the safety, protection, maintenance, or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with Laws.

12.5 Renovations. Landlord may during the Term renovate, improve, alter, or modify (collectively, the "Renovations") the Building, the Premises, or the Project, including without limitation, Common Areas, Building Systems, roof, and structural portions of the Building. Renovations may include, without limitation, (a) modifying the Common Areas and tenant spaces to comply with applicable Laws, including, without limitation, regulations relating to the physically disabled, seismic conditions, and building safety and security; and (b) installing new carpeting, lighting, and wall coverings in the Common Areas. In connection with such Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Building or Project, including, without limitation, portions of the Common Areas, or perform work in the Building that may create noise, dust or leave debris. Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for inconvenience, annoyance or loss of the use of any part of the Premises or of Tenant's Property resulting from the Renovations.

12.6 Common Areas. Landlord shall have the right to eliminate or change the size, location and arrangement of the Common Areas; to enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of the Common Areas; to close all or any portion of the Common Areas as may be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; to close temporarily any or all portions of the Common Areas; and to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable for the convenience and use thereof by owners, occupants, tenants and invitees of the Building.

12.7 Minimize Interference. In the exercise of the rights set forth in this Article 12, Landlord shall (except in an emergency) take reasonable steps to minimize any interference with Tenant's business.

ARTICLE 13

RULES AND REGULATIONS

Tenant shall comply with (and cause all Tenant Related Parties to comply with) the Rules and Regulations. Landlord shall not be responsible for any violation of the Rules and Regulations by other tenants or occupants of the Building or Project. All Rules and Regulations, whether now existing or hereafter adopted by Landlord, shall be non-discriminatory in nature.

ARTICLE 14

TRANSFERS

Except as provided in this Article, Tenant shall not, without the prior consent of Landlord, make any Transfer.

14.1 Notice. Tenant shall notify Landlord of any proposed Transfer (a "Transfer Notice"). The date of the proposed Transfer must be not less than forty-five (45) days or more than one hundred eighty (180) days after the date of the Transfer Notice. The Transfer Notice shall include (a) the proposed effective date of the Transfer; (b) a description of the portion of the Premises to be transferred (the "Subject Space"); (c) all of the terms of the proposed Transfer and the consideration therefor, including, without limitation, a calculation of the Transfer Premium (as defined below); (d) the name and address of the Transferee; (e) current financial statements of the Transferee certified by an officer, partner or owner thereof; (f) any other information that will enable Landlord to determine the financial responsibility, character, and reputation of the Transferee and the nature of such Transferee's business; and (g) the proposed use of the Subject Space. Landlord shall respond to any properly delivered Transfer Notice within thirty (30) days.

14.2 Fees. Whether or not Landlord shall grant consent, Tenant shall pay Landlord, concurrently with any request for consent a \$1,000 administrative review and processing fee, and Tenant shall reimburse Landlord, within thirty (30) days after written request by Landlord for any legal fees incurred by Landlord in connection with any request for consent.

14.3 Consent. Landlord's consent shall not be required for any Permitted Transfer. Landlord shall not unreasonably withhold or delay its consent to any other proposed Transfer. It shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply, without limitation as to other reasonable grounds for withholding consent:

14.3.1 The Transferee is of a character or reputation or engaged in a business that is not consistent with the quality of the Building.

14.3.2 The Transferee intends to use the Subject Space for purposes that are not permitted under this Lease.

14.3.3 The Transferee is either a governmental agency or instrumentality thereof.

14.3.4 The Transfer will result in more than a reasonable and safe number of occupants per floor within the Subject Space.

14.3.5 The Transferee is not a party of acceptable financial worth or financial stability in light of the responsibilities involved under the Lease on the date consent is requested, as determined by Landlord.

14.3.6 The Transfer would cause a violation of another lease or any agreement to which Landlord is a party, or would give an occupant of the Building a right to cancel its lease.

14.3.7 The Transfer would occur at a time when Landlord has similarly-sized space available in the Building and the rent charged by Tenant to such Transferee during the term of such Transfer, calculated using a present value analysis, is less than the greater of (a) ninety-five percent (95%) of the rent that would be quoted by Landlord at the time of such Transfer for such similarly-sized space for a comparable term, or (b) the then-current Rent due under this Lease, each calculated using a present value analysis.

14.3.8 Either the Transferee or an Affiliate of the Transferee (a) occupies space in the Building at the time of the request for consent; (b) is negotiating with Landlord to lease space in the Building at such time; or (c) has negotiated with Landlord during the twelve (12)-month period immediately preceding the Transfer Notice.

14.4 Completion of Transfer. If Landlord consents to any Transfer (and does not exercise any recapture rights Landlord may have under this Lease), Tenant may within six (6) months after Landlord's consent, enter into the approved Transfer, upon substantially the same terms and conditions as are set forth in the Transfer Notice. If there are any material changes in the terms and conditions from those specified in the Transfer Notice (a) such that Landlord would initially have been entitled to refuse its consent to such Transfer; or (b) that would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article (including, without limitation, exercise any of recapture rights Landlord may have under this Lease).

14.5 Transfer Premium. If Landlord consents to a Transfer, Tenant shall pay to Landlord fifty percent (50%) of any Transfer Premium received by Tenant. "Transfer Premium" shall mean (a) all rent, additional rent or other consideration payable by such Transferee in excess of the Rent payable by Tenant under this Lease on a per rentable square foot basis; (b) all key money and bonus money paid by Transferee; and (c) any payment in excess of fair market value for services rendered by Tenant to Transferee. The "Transfer Premium" shall (i) be reduced by all out-of-pocket expenses incurred by Tenant in connection with the Transfer, such as customary brokerage commissions and reasonable attorneys' fees; and (ii) not include any compensation for the fair market value of Tenant's Property nor reasonable compensation for the sale of Tenant's business that is not attributable to the value of Tenant's leasehold interest hereunder. Tenant shall pay the Transfer Premium to Landlord within five (5) days following receipt by Tenant. Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium. Within one (1) year following the date of the Transfer, Landlord shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer as necessary to confirm the calculation of the Transfer Premium. If the Transfer Premium shall be found understated, Tenant shall, within thirty (30) days after demand, pay

the deficiency, together with interest thereon at the Interest Rate and Landlord's costs of such audit. If the Transfer Premium has been understated by more than ten percent (10%), Landlord shall have the right to cancel this Lease upon thirty (30) days' notice to Tenant and Tenant shall indemnify Landlord from and against any and all Claims associated with such termination, including but not limited to any Claims by the Transferee.

14.6 Recapture. Notwithstanding anything to the contrary contained in this Article, Landlord shall have the option, by giving notice to Tenant within twenty (20) days after receipt of any Transfer Notice, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the effective date of the proposed Transfer (or upon the demise of the Subject Space separate from the Premises if the Subject Space being recaptured is less than the entire Premises). In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, (i) the Rent reserved herein shall be prorated on the basis of the rentable area retained by Tenant in proportion to the rentable area of the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and (ii) Tenant shall reimburse Landlord for the costs incurred by Landlord to separately demise the Subject Space from the remainder of the Premises. Upon request of either party, the parties shall execute written confirmation of the foregoing. The provisions of this Section 14.6 shall not apply to any Permitted Transfer

14.7 Effect of Transfer. If Landlord consents to a Transfer, (a) no terms or conditions of this Lease shall be deemed to have been waived or modified; (b) such consent shall not be deemed consent to any further Transfer; (c) no Transfer shall be valid, and no Transferee shall take possession of the Premises, until an executed counterpart of all documentation pertaining to the Transfer has been delivered to Landlord; and (d) no Transfer shall relieve Tenant or any Guarantor from primary liability under this Lease. The acceptance of Rent by Landlord from any party shall not be deemed to be a waiver of Landlord of any provision hereof. In the event of Default by a Transferee in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee. Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease by Transferees without notifying Tenant, and without obtaining its consent thereto, and any such actions shall not relieve Tenant of liability under this Lease and Tenant hereby consents to all or any of the foregoing. Any Transfer for which Landlord's consent is required but not obtained pursuant hereto shall constitute a Default under this Lease and shall be void and, if such Transfer results in the insolvency of Tenant and/or Tenant is unable to pay its debts (including the Rent due hereunder) as such debts become due, then the obligations of Tenant under this Lease shall be personal liabilities of the owners of the ownership interests in Tenant and Landlord shall have the right to look to such owners for the performance of all of the Tenant obligations under this Lease as if such owners had personally guaranteed this Lease.

14.8 Tenant Remedy for Landlord Refusal to Consent. Landlord and Tenant expressly agree that Tenant's sole and exclusive remedy for any alleged wrongful refusal, withholding or delay of consent under this Article shall be an action for specific performance, declaratory and injunctive relief. Tenant hereby waives, relinquishes and releases any and all rights to damages of any kind, or the right to terminate this Lease under Section 1995.310 of the California Civil Code, and under all similar Laws now or hereafter in effect.

ARTICLE 15

DESTRUCTION OR DAMAGE

15.1 Landlord Termination Rights. If the Premises or any portion of the Building or the Project is damaged by fire, earthquake, terrorism, act of war, act of God, the elements or other casualty, then Landlord may terminate this Lease upon notice given to Tenant within sixty (60) days after the date of such casualty, effective as of the date of the casualty if (a) in Landlord's opinion, repairs to the Premises cannot be completed within ninety (90) days; (b) any other portion of the Building or the Project is damaged to the extent that, in Landlord's opinion, repair thereof cannot be completed within ninety (90) days; (c) the Premises or any portion of the Building or the Project necessary for Tenant's occupancy is damaged during the final twelve (12) months of the Term, unless Tenant shall exercise its next available extension option (if any) within ten (10) days following receipt of Landlord's termination notice and Landlord does not elect to terminate this Lease pursuant to one of the other subsections herein within ten (10) days of such exercise; (d) the insurance proceeds available to Landlord are not sufficient to complete repair or restoration; (e) Landlord's lender does not elect to make insurance proceeds available to Landlord for repair and restoration; or (f) Tenant has vacated the Premises or is in Default under this Lease.

15.2 Repairs. If this Lease is not terminated as provided above, it shall continue in full force and effect, and Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment, and subject to all other terms of this Article, restore the Premises, the Common Areas and the portions of the Project serving the Premises and Tenant shall assign to Landlord all insurance proceeds payable to Tenant as to any Alterations; provided that if the cost of the restoration of any Alterations by Landlord exceeds the amount of Tenant's insurance proceeds therefor, as assigned by Tenant to Landlord, such excess shall be paid by Tenant to Landlord prior to Landlord's restoration thereof. Such restoration shall be to substantially the same condition of such items as prior to the casualty, except for modifications (a) required by Law; (b) required by the holder of a mortgage on the Building, or the lessor of a ground or underlying lease with respect to the Property, including without limitation the City as lessor under the Master Lease; or (c) to the Common Areas reasonably deemed desirable by Landlord, and which are consistent with the character of the Project. No such modifications shall materially impair access to the Premises and any Common Areas serving the Premises. Tenant shall be responsible, at its sole cost and expense, for the repair, restoration, and replacement of Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience, or annoyance arising from any casualty or any repair or restoration of any portion of the Premises, the Building, or the Project as a result of any damage from any casualty. All work by Tenant shall be subject to the terms and conditions of Article 11.

15.3 Tenant's Termination Rights. If Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and the repairs cannot be completed within three hundred sixty five (365) days after being commenced (the "Repair Period") as determined by an architect or contractor designated by Landlord, Tenant may elect, no earlier than sixty (60) days after the date of the casualty and not later than ninety (90) days after the date of such casualty, to terminate this Lease by notice to Landlord, effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after such notice. In addition, in the event that the Premises or the Building is destroyed or damaged to any substantial extent during the last twelve (12) months of the Term, then Tenant shall have the option to terminate this Lease by giving notice to Landlord within thirty (30) days after such casualty, in which event this Lease shall cease and terminate as of the date of such notice. Tenant shall also have the right to terminate this Lease if Landlord does not complete repairs within the Repair Period by thirty (30) days' notice to Landlord after the expiration of the Repair Period; provided however, if Landlord completes repair within such thirty (30) day period, such termination shall be nullified and this Lease shall continue in full force and effect.

15.4 Apportionment of Rent. Upon any termination of this Lease pursuant to this Article, Tenant shall pay the Rent, properly apportioned up to such date of termination, and both parties hereto shall thereafter be freed and discharged of all further obligations hereunder, except as provided for in provisions of this Lease that by their terms survive the expiration or earlier termination of this Lease.

15.5 Abatement. The Rent shall abate on an equitable basis to the extent Tenant's use of the Premises is impaired, commencing with the date of the casualty and continuing until completion of the repairs required of Landlord; provided that if the damage is due to the negligence or willful misconduct of any Tenant Related Party, Rent shall only abate to the extent the same is covered by rent loss insurance, if any, carried by Landlord.

15.6 Express Agreement. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building, or the Project by fire or other casualty; and any present or future Law that purports to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement is hereby waived by the parties and shall have no application. As a material inducement to Landlord's entering into this Lease, Tenant irrevocably waives and releases the provisions of California Civil Code Sections 1932(2) or 1933(4), as the same may be amended or re-codified or any similar or successor Law now or hereafter in effect, that would permit termination or automatically terminate this Lease or otherwise be contrary to the provisions of this Article in the event of any damage or destruction.

ARTICLE 16 **EMINENT DOMAIN**

16.1 Entire Premises. If the whole of the Building or the Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the earlier of the date of the date title vests or the date possession is given, and Rent shall be prorated to such date.

16.2 Partial Condemnation. If less than the whole of the Building or the Premises is so taken, this Lease shall be unaffected by such taking, except that (a) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty-five percent (25%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business; and (b) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, this Lease shall terminate on the thirtieth (30th) day after either such notice. Rent shall be prorated to the date of such termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining rentable area of the Premises and the Project. This Lease shall be considered an express agreement governing any condemnation of the Premises, the Building or the Project, and Tenant agrees that its rights to terminate this Lease are governed by this Article. Tenant hereby waives, releases and relinquishes all rights it may have to terminate this Lease following a condemnation under Section 1265.130 of the California Code of Civil Procedure, or any similar Laws now or hereafter in effect.

16.3 Proceeds of Award. In the event of any taking, partial or whole, all of the proceeds of any award, judgment, or settlement payable by the condemning authority shall be the exclusive property of Landlord, whether awarded as compensation for the damages to Landlord's or Tenant's interest in the Premises and whether or not awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, and Tenant hereby assigns to Landlord all of its right, title, and interest in any award, judgment, or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's Property.

16.4 Repairs. In the event of a partial taking of the Premises that does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking. Tenant shall be responsible at its sole cost and expense for the repair, restoration, and replacement of Tenant's Property.

ARTICLE 17

INDEMNIFICATION, WAIVER, RELEASE AND LIMITATION OF LIABILITY

17.1 Tenant's Indemnity. Except for any injury or damage to persons or property on the Premises that is proximately caused by or results proximately from the gross negligence, sole negligence or willful misconduct of Landlord, Tenant will and does hereby indemnify, defend and hold harmless the Landlord Related Parties against and from any and all Claims that may be imposed upon, incurred by, or asserted against Landlord or any of the Landlord Related Parties and arising, directly or indirectly, out of or in connection with Tenant's use, occupancy or maintenance of the Premises, the Building or the Project, including, without limitation, any of the following: (a) any act in, on or about the Premises, the Building or the Project or any part thereof by any Tenant Related Party; (b) any injury or damage to any person or property; (c) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease; and (d) the negligence or willful misconduct of any Tenant Related Party. At Landlord's request, Tenant shall, at Tenant's expense and by counsel selected by Landlord, defend Landlord in any action or proceeding arising from any such Claim and shall indemnify Landlord against all costs, reasonable attorneys' fees, expert witness fees, and any other expenses incurred in such action or proceeding.

17.2 Assumption of Risk. Tenant hereby assumes all risk of damage or injury to any person or property in, on, or about the Premises from any cause other than the gross negligence, sole negligence or willful misconduct of Landlord. Tenant agrees that, unless expressly provided herein, no Landlord Related Parties will be liable for any loss, injury, death, or damage to persons or property resulting from any of the following, regardless of whether the same is due to the active or passive act of any Landlord Related Party: (a) theft; (b) Force Majeure; (c) any accident or occurrence in the Premises or any other portion of the Building or the Project caused by the Premises or any other portion of the Building or the Project being or becoming out of repair or by the obstruction, breakage or defect in or failure of equipment, pipes, sprinklers, wiring, plumbing, heating, ventilation and air-conditioning or lighting fixtures of the Building or the Project or by broken glass or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into or out of the Premises; (d) construction, repair or alteration of any other premises in the Building or the Premises, unless due solely to the gross negligence, sole negligence or willful misconduct of Landlord; (e) business interruption or loss of use of the Premises; (f) any diminution or shutting off of light, air or

view by any structure erected on the Land or any land adjacent to the Project, even if Landlord is the adjacent land owner; (g) mold or indoor air quality; or (h) any acts or omissions of any other tenant, occupant or visitor of the Building or the Project. Notwithstanding anything to the contrary in this Lease, in no event shall Landlord be liable for indirect, consequential, or punitive damages, including, without limitation, any damages based on lost profits. None of the foregoing shall be considered a constructive eviction of Tenant, nor shall the same entitle Tenant to an abatement of Rent. Tenant acknowledges that it is familiar with and understands California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant hereby waives and relinquishes every right or benefit that it has or may have under California Civil Code Section 1542 to the full extent that it may lawfully waive such right or benefit. In connection with such waiver and relinquishment, Tenant acknowledges that it may discover facts in addition to or different from those that it knows or believes to be true with respect to the subject matter of this Lease and/or the waiver(s) set forth herein, but that it is Tenant's intention hereby to fully, finally and forever waive and release all Claims, known or unknown, suspected or unsuspected, that may exist or heretofore have existed or that may come into existence hereinafter with respect to such Claims, as well as any and all other Claims and/or matters covered herein or contemplated hereby. The releases given in this Section, as well as elsewhere in this Lease, shall be and remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different facts. Tenant acknowledges and agrees that it has been represented by legal counsel of its choice in connection with this Lease, and that such counsel has explained to Tenant the provisions of this Section. By initialing below, Tenant confirms it has agreed to the provisions of this Section.

Tenant's Initials



17.3 Limitation of Landlord Liability. Neither Landlord nor any Landlord Related Party shall have any personal liability with respect to any of the provisions of this Lease, or the Premises. If Landlord is in breach or default with respect to Landlord's obligations under this Lease, Tenant shall look solely to the equity interest of Landlord in the Building for the satisfaction of Tenant's remedies or judgments. No other real, personal, or mixed property of any Landlord Related Parties, wherever situated, shall be subject to levy to satisfy such judgment. Upon any Transfer of Landlord's interest in this Lease or in the Project, the transferring Landlord shall have no liability or obligation for matters arising under this Lease from and after the date of such Transfer.

ARTICLE 18 **INSURANCE**

18.1 Landlord Required Coverage. Landlord shall procure and maintain during the Term, (i) a policy or policies of commercial property insurance covering the Project (excluding portions of the Project Tenant is required to insure under Section 18.2.2), (ii) commercial general liability insurance, (iii) business income/rental value insurance, and (iv) any other insurance deemed appropriate by Landlord or its Mortgagee. Such insurance shall be in such amounts, from such companies, and on such terms and conditions as Landlord or its Mortgagee may deem appropriate from time to time, so long as such amounts, terms and conditions shall be generally consistent with the amounts, terms and conditions carried by other institutional landlords of projects similar to the Project in the greater San Diego area. All insurance maintained by Landlord shall be in addition to, and not in lieu of, the insurance required to be maintained by Tenant hereunder. Landlord shall cause its respective insurance policy(ies) to be endorsed, if necessary, to waive subrogation.

18.2 Tenant Required Coverage. Tenant shall maintain the following coverages in the following amounts.

18.2.1 Commercial General Liability Insurance covering Tenant against any claims or suits arising out of bodily injury, death, personal injury or property damage arising out of Tenant's operations, assumed

liabilities or use of the Premises, for limits of liability not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) annual general aggregate (these limits may be achieved by a combination of a primary policy and a "follow form" excess or umbrella liability policy). Such insurance shall include a waiver of subrogation endorsement in favor of Landlord.

18.2.2 Commercial Property Insurance covering (a) Tenant's Property, and (b) any improvements and Alterations made by Tenant or at Tenant's request. Such insurance shall include a waiver of subrogation endorsement in favor of Landlord and shall be written on a "Causes of Loss – Special Form" basis (or its equivalent), for the full replacement cost (as reasonably approved by Landlord) without deduction for depreciation, and shall include coverage for theft, vandalism, malicious mischief and sprinkler leakage. Such policy shall have a deductible not greater than Five Thousand and No/100 Dollars (\$5,000.00). The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein any proceeds under (a) shall be paid to Tenant and any proceeds under (b) in excess of Tenant's unamortized cost associated therewith shall be paid by Tenant to Landlord.

18.2.3 Business Income and Extra Expense insurance (or its equivalent) in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or to the Building as a result of such perils, for a period of not less than twelve (12) months. Such insurance shall include a waiver of subrogation endorsement in favor of Landlord.

18.2.4 Statutory worker's compensation (which policy shall include a waiver of subrogation endorsement in favor of Landlord. Tenant shall provide Landlord with a copy of such endorsement concurrent with providing its evidence of insurance required under Section 18.4 below), together with employer's liability/employer's indemnity coverage at limits of:

\$1,000,000 Each Accident
\$1,000,000 Each Employee by Disease
\$1,000,000 Policy Limit by Disease

18.3 Form of Policies. The insurance required by Section 18.2.1 above shall (a) name Landlord, Landlord's property management agent, the Advisor, and at Landlord's request, any Mortgagee, each as an additional insured by endorsement(s) reasonably acceptable to Landlord; (b) cover, to the extent insurable, Tenant's indemnity obligations under this Lease; (c) be issued by an insurance company having an A.M. Best rating of not less than A-IX or that is otherwise reasonably acceptable to Landlord; (d) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (e) contain a separation of insureds provision and no insured vs. insured exclusion or limitation. Tenant agrees that it shall (x) cause such policies to be endorsed to provide thirty (30) days' prior written notice by the insurer(s) to Landlord in the event said insurance is cancelled (ten (10) days' prior written notice in the event of cancellation for non-payment of premium), and (y) provide thirty (30) days' prior written notice to Landlord in the event said insurance shall be canceled, non-renewed or coverage reduced.

18.4 Evidence of Insurance. Tenant shall deliver a copy of each paid-up policy or, at Landlord's option, a certificate of insurance, together with additional insured and waiver of subrogation endorsements, all of which shall be reasonably acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder on or before the Possession Date. Landlord may, at any time and from time to time, inspect or copy any insurance policies that this Lease requires Tenant to maintain. Tenant shall furnish Landlord with renewals, certificates, or "binders" at least ten (10) days prior to the expiration thereof. Tenant agrees that, if Tenant does not obtain and maintain such insurance, Landlord may (but shall not be required to) after five (5) Business Days' notice to Tenant during which time Tenant does not supply Landlord evidence of the required insurance, at Landlord's option, either (a) procure said insurance on Tenant's behalf and charge Tenant the premiums therefor, payable upon demand, or (b) charge Tenant a non-compliance fee equal to five percent (5%) of the then-current monthly Base Rent for each month, or portion thereof, that Tenant fails to provide such evidence of the required insurance. Tenant shall have the right to provide the insurance required hereunder pursuant to blanket policies obtained by Tenant, provided such blanket policies afford coverage as required by this Lease.

18.5 Additional Insurance Obligations. Landlord may require (a) that Tenant obtain additional types of insurance, including but not limited to earthquake, sprinkler leakage by earthquake, environmental and terrorism insurance to the extent such coverages are either (i) standard for similar properties in the same geographic area as the Property and are available at commercially reasonable rates, or (ii) are otherwise reasonably required by Landlord or the Mortgagee; and (b) from time to time, but not more frequently than every three (3) years during the Term, increases in the policy limits for all insurance to be carried by Tenant as set forth herein, in order to reflect standard limits for similar properties.

18.6 Independent Obligations. Tenant acknowledges and agrees that Tenant's insurance obligations under this Lease are independent of Tenant's indemnity obligations, liabilities and duties under this Lease.

18.7 Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding (other than as provided in Section 10.3 above), Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other for any loss or damage to any property of Landlord or Tenant, arising from any cause that (a) would be insured against under the terms of any property insurance or business interruption insurance required to be carried hereunder; or (b) is insured against under the terms of any property insurance or business interruption insurance actually carried, regardless of whether the same is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of such claim, including but not limited to the negligence of a party, or such party's agents, officers, employees or contractors. The foregoing waiver shall not apply if it would have the effect, but only to the extent of such effect, of invalidating any insurance coverage of Landlord or Tenant. The foregoing waiver shall also apply to any deductible and/or self-insured retention, as if the same were a part of the insurance recovery.

ARTICLE 19

DEFAULT

19.1 Tenant's Default. A "Default" shall mean the occurrence of any one or more of the following events:

19.1.1 Tenant's failure to pay any Rent when due, where such failure shall continue for a period of three (3) days after notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subsection.

19.1.2 If any representation or warranty made by Tenant or any Guarantor to Landlord is false in any material respect when made.

19.1.3 Tenant fails to deliver any estoppel certificates or subordination agreements within the periods set forth in this Lease.

19.1.4 The levy of a writ of attachment or execution on this Lease or on any of Tenant's property or that of any Guarantor.

19.1.5 Tenant's or any Guarantor's general assignment for the benefit of creditors or arrangement, composition, extension, or adjustment with its creditors.

19.1.6 Tenant or any Guarantor becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature.

19.1.7 Proceedings for the appointment of a trustee, custodian or receiver of Tenant or any Guarantor or for all or a part of Tenant's or such Guarantor's property are filed by or against Tenant or any Guarantor, and, if filed against Tenant or such Guarantor involuntarily, are not dismissed within sixty (60) days of filing.

19.1.8 Proceedings in bankruptcy, or other proceedings for relief under any law for the relief of debtors, are instituted by or against Tenant or any Guarantor, and, if instituted against Tenant or such Guarantor involuntarily, are not dismissed within sixty (60) days of filing.

19.1.9 Tenant makes an anticipatory breach of this Lease. "Anticipatory breach" shall mean either (a) Tenant's repudiation of this Lease in writing; or (b) the combination of (i) Tenant's desertion or vacation of the Premises or removal of all or a substantial amount of Tenant's equipment, furniture and fixtures from the Premises; and (ii) Tenant's failure to pay any Rent under this Lease when due.

19.1.10 Tenant fails to perform any other covenant, condition or agreement contained in this Lease not covered by the preceding subsections, where such failure continues for thirty (30) days after notice thereof from Landlord to Tenant, or such additional period as is reasonably necessary to effect cure, provided Tenant commences cure within such thirty (30) day period and diligently pursues the same to completion within ninety (90) days following Landlord's notice.

19.1.11 Tenant shall repeatedly fail to pay Rent when due or any other charges required to be paid, or shall repeatedly default in keeping, observing or performing any other covenant, agreement, condition or provision of this Lease, whether or not Tenant shall timely cure any such payment or other default. For the purposes of this subsection, the occurrence of similar defaults two (2) times during any twelve (12) month period shall constitute a repeated default.

Any notice periods provided for under this Section shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

19.2 Landlord's Default. Tenant shall promptly notify Landlord of the need for any repairs or action with respect to other matters that are Landlord's obligation under this Lease. If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of notice from Tenant, or if such default cannot reasonably be cured within thirty (30) days, and if Landlord fails to commence to cure within such thirty (30) day period or to diligently prosecute the same to completion, then subject to the other limitations set forth elsewhere in this Lease, Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided that in no event shall (a) Landlord be liable for indirect, consequential or punitive damages, including without limitation, any damages based on lost profits; or (b) Tenant have the right to terminate this Lease on account of a Landlord default. Tenant shall not have the right to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease unless Tenant has obtained a final, non-appealable judgment against Landlord for the amount due.

ARTICLE 20

LANDLORD REMEDIES AND DAMAGES

20.1 Remedies. In the event of a Default, then in addition to any other rights or remedies Landlord may have at law or in equity, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind, to do any or all of the following without prejudice to any other remedy that Landlord may have:

20.1.1 Terminate this Lease and Tenant's right to possession of the Premises by giving notice to Tenant. Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may re-enter the Premises and take possession thereof and expel or remove Tenant and any other party who may be occupying the Premises, or any part, thereof, whereupon Tenant shall have no further claim to the Premises or under this Lease.

20.1.2 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). Accordingly, if Landlord does not elect to terminate this Lease on account of any Default, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

20.1.3 Without any further notice or demand, Landlord may enter upon the Premises, if necessary, without being liable for prosecution or claim for damages therefor, and do whatever Tenant is obligated to do under the terms of the Lease. Tenant agrees to reimburse Landlord on demand for any reasonable expenses that Landlord may incur in effecting compliance with Tenant's obligations under this Lease. Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, unless caused by the gross negligence or

willful misconduct of Landlord (but subject to the other limitations on Landlord's liability set forth in this Lease). Notwithstanding anything herein to the contrary, Landlord will have no obligation to cure any Default of Tenant.

20.1.4 Landlord shall at all times have the right, without prior demand or notice except as required by Law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof, without the necessity of proving the inadequacy of any legal remedy or irreparable harm.

20.1.5 To the extent permitted by applicable Law, Landlord shall have the right, without notice to Tenant, to change or re-key all locks to entrances to the Premises, and Landlord shall have no obligation to give Tenant notice thereof or to provide Tenant with a key to the Premises.

20.1.6 The rights given to Landlord in this Article are cumulative and shall be in addition and supplemental to all other rights or remedies that Landlord may have under this Lease and under applicable Laws or in equity.

20.2 Damages. Should Landlord elect to terminate this Lease or Tenant's right to possession under the provisions above, Landlord may recover the following damages from Tenant:

20.2.1 Past Rent. The worth at the time of the award of any unpaid Rent that had been earned at the time of termination; plus

20.2.2 Rent Prior to Award. The worth at the time of the award of the unpaid Rent that would have been earned after termination, until the time of award; plus

20.2.3 Rent After Award. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided, if any; plus

20.2.4 Proximately Caused Damages. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses (including, without limitation, reasonable attorneys' fees), incurred by Landlord in (a) retaking possession of the Premises; (b) maintaining the Premises after Default; (c) preparing the Premises or any portion thereof for reletting to a new tenant, including, without limitation, any repairs or alterations, whether for the same or a different use; (d) reletting the Premises, including but not limited to, advertising expenses, brokers' commissions and fees; and (e) any special concessions made to obtain a new tenant.

20.2.5 Other Damages. 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 Law.

As used in Sections 20.2.1 and 20.2.2, the phrase "worth at the time of the award" shall be computed by adding interest on all such sums from the date when originally due at the Interest Rate. As used in Section 20.2.3, the phrase "worth at the time of the award" shall be computed by discounting the sum in question at the Federal Reserve rate promulgated by the Federal Reserve office for the district in which the Project is located, plus one percent (1%).

20.3 Rent after Termination. Tenant specifically acknowledges and agrees that Landlord shall have the right to continue to collect Rent after any termination (whether said termination occurs through eviction proceedings or as a result of some other early termination pursuant to this Lease) for the remainder of the Term, less any amounts collected by Landlord from the reletting of the Premises, but in no event shall Tenant be entitled to receive any excess of any such rents collected over the Rent.

20.4 No Termination. A termination of this Lease by Landlord or the recovery of possession of the Premises by Landlord or any voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, shall not work a merger and shall at the option of Landlord, terminate all or any existing franchises or concessions,

licenses, permits, subleases, subtenancies or the like between Tenant and any third party with respect to the Premises, or may, at the option of Landlord, operate as an assignment to Landlord of Tenant's interest in same. Following a Default, Landlord shall have the right to require any subtenants to pay all sums due under their subleases directly to Landlord.

20.5 Waiver of Demand and Notice. All demands for Rent and all other demands, notices and entries, whether provided for under common law or otherwise, that are not expressly required by the terms hereof, are hereby waived by Tenant. Notwithstanding the foregoing waiver of notices, Landlord may elect to serve such notices (including statutory notices) and combine such notices with any notices required under the provisions of this Lease.

20.6 Waiver of Redemption. Tenant hereby waives, relinquishes and releases for itself and for all those claiming under Tenant any right of occupancy of the Premises following termination of this Lease, and any right to redeem or reinstate this Lease by order or judgment of any court or by any legal process or writ under present or future Laws, including, without limitation, California Code of Civil Procedure Sections 473 and 1179, and California Civil Code Section 3275.

20.7 Deficiency. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have the right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies.

20.8 Counterclaim. Tenant hereby waives any right to plead any counterclaim, offset or affirmative defense in any action or proceedings brought by Landlord against Tenant for possession of the Premises or otherwise, for the recovery of possession based upon the non-payment of Rent or any other Default. The foregoing shall not, however, be construed as a waiver of Tenant's right to assert any claim in a separate action brought by Tenant against Landlord. In the event Tenant must, because of applicable court rules or statutes, interpose any counterclaim or other claim against Landlord in such proceedings, Landlord and Tenant agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counterclaim or other claim asserted by Tenant shall be severed from the proceedings instituted by Landlord (and, if necessary, transferred to a court of different jurisdiction), and the proceedings instituted by Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of any such counterclaim or any other claim asserted by Tenant.

ARTICLE 21

BANKRUPTCY

21.1 In the event a petition is filed by or against Tenant under the Bankruptcy Code, Tenant, as debtor and debtor in possession, and any trustee who may be appointed agree to adequately protect Landlord as follows:

21.1.1 to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises an amount equal to all Rent due pursuant to this Lease;

21.1.2 to perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of a court of competent jurisdiction;

21.1.3 to determine within one hundred twenty (120) days after the filing of such petition whether to assume or reject this Lease;

21.1.4 to give Landlord at least thirty (30) days' prior notice, unless a shorter period is agreed to in writing by the parties, of any proceeding relating to any assumption of this Lease;

21.1.5 to give at least thirty (30) days' prior notice of any vacation or abandonment of the Premises, any such vacation or abandonment to be deemed a rejection of this Lease; and

21.1.6 to do all other things to benefit Landlord otherwise required under the Bankruptcy Code.

This Lease shall be deemed rejected in the event of the failure to comply with any of the above.

21.2 In order to provide Landlord with the assurance contemplated by the Bankruptcy Code, the following obligations must be fulfilled, in addition to any other reasonable obligations that Landlord may require, before any assumption of this Lease is effective: (a) all monetary Defaults under this Lease must be cured within ten (10) days after the date of assumption; (b) all other Defaults (other than those arising solely on account of the bankruptcy filing) must be cured within fifteen (15) days after the date of assumption; (c) all actual monetary losses incurred by Landlord (including, but not limited to, reasonable attorneys' fees) must be paid to Landlord within ten (10) days after the date of assumption; and (d) Landlord must receive within ten (10) days after the date of assumption a security deposit in the amount of six (6) months' Base Rent and an advance prepayment of three (3) months' Base Rent.

21.3 In the event this Lease is assumed in accordance with the requirements of the Bankruptcy Code and this Lease, and is subsequently assigned, then, in addition to any other reasonable obligations that Landlord may require and in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Landlord must be provided with (a) a financial statement of the proposed assignee prepared in accordance with generally accepted accounting principles consistently applied, though on a cash basis, which reveals a net worth in an amount sufficient, in Landlord's reasonable judgment, to assure the future performance by the proposed assignee of Tenant's obligations under this Lease; or (b) a written guaranty by one or more guarantors with financial ability sufficient to assure the future performance of Tenant's obligations under this Lease, such guaranty to be in form and content satisfactory to Landlord and to cover the performance of all of Tenant's obligations under this Lease.

21.4 Neither Tenant nor any trustee who may be appointed in the event of the filing of a petition under the Bankruptcy Code shall conduct or permit the conduct of any "fire," "bankruptcy," "going out of business" or auction sale in or from the Premises.

ARTICLE 22

LIEN FOR RENT

In consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all Rent. The provisions of this Article relating to such lien and security interest shall constitute a security agreement under the Uniform Commercial Code in force in the State (the "UCC") so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, including, but not limited to, all fixtures, machinery, equipment, furnishings and other articles of personal property now or hereafter placed in or upon the Premises by Tenant. Landlord, as secured party, shall be entitled to all of the rights and remedies afforded a secured party under the UCC in addition to and cumulative of Landlord's liens and rights provided by law or by the other terms and provisions of this Lease, and Landlord shall have the right to file a Financing Statement reflecting such lien.

ARTICLE 23

HOLDING OVER

If, after expiration of the Term, Tenant remains in possession of the Premises, Landlord may, at its option, serve notice upon Tenant that such hold over constitutes either: (a) a month-to-month tenancy upon all the provisions of this Lease (except as to Term and Base Rent); or (b) a tenancy at sufferance. If Landlord does not give said notice, Tenant's hold over shall create a tenancy at sufferance, subjecting Tenant to all the covenants and obligations of this Lease. In either event, the monthly installments of Base Rent shall be increased to one hundred fifty percent (150%) of the monthly installments of Base Rent in effect at the expiration of the Term. If a month-to-month tenancy is created, either party may terminate such tenancy by giving the other party at least thirty (30) days advance notice of the date of termination. Additionally, if Tenant shall hold over without the consent of Landlord, then Tenant shall also protect, defend, indemnify and hold Landlord harmless from all Claims resulting from retention of possession by Tenant, including, without limiting the generality of the foregoing, any Claims made by any succeeding tenant founded upon such failure to surrender and any lost rents and profits to Landlord resulting therefrom. The provisions of this Article shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord, nor shall

receipt of any rent or any other act appearing to affirm the tenancy operate as a waiver of the right to terminate this Lease for a breach by Tenant hereof.

ARTICLE 24 **SURRENDER OF PREMISES**

Upon the expiration or earlier termination of this Lease, Tenant shall peaceably surrender the Premises to Landlord broom-clean and in the same condition as on the date Tenant took possession (a) except for reasonable wear and tear, loss by fire or other casualty and loss by condemnation, and (b) with all removal, restoration and/or repairs required pursuant to Section 11.3 above and this Article 24 completed. Tenant's Property shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that, if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal. If Tenant abandons or surrenders the Premises or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale or Landlord may elect to dispose of Tenant's Property in accordance with Section 1980 et seq. of the California Civil Code, or any similar Laws now or hereafter in effect. If Landlord elects to remove all or any part of such Tenant's Property, the reasonable cost of removal, storage and disposal of Tenant's Property, including, without limitation, repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date, Tenant shall surrender all keys, parking cards and other means of entry to the Premises, the Building and the Project, and shall inform Landlord of the combinations and access codes for any locks and safes located in the Premises. It is specifically agreed that any and all telephonic, coaxial, ethernet, or other computer, word processing, facsimile, or electronic wiring ("Telecom Wiring") and any other components of Tenant's Telecommunications System shall be removed at Tenant's cost at the expiration of the Term, unless Landlord has specifically requested in writing that the Telecom Wiring shall remain, whereupon the Telecom Wiring shall be surrendered with the Premises as Landlord's property.

ARTICLE 25 **BROKERAGE FEES**

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except as set forth on the Lease Summary. Tenant shall indemnify, defend and hold Landlord harmless from any Claims for any compensation, commission, or fees claimed by any other real estate broker or agent in connection with this Lease (including but not limited to any expansions of the Premises and extensions) or its negotiation.

ARTICLE 26 **NOTICES**

Any notice, demand, request, consent, covenant, approval or other communication to be given by one party to the other must be in writing and (except for statements and invoices to be given in the ordinary course hereunder, which may be sent by regular U.S. Mail) (a) delivered personally; (b) mailed by certified United States mail, postage prepaid, return receipt requested (except for statements and invoices to be given in the ordinary course hereunder, which may be sent by regular U.S. Mail); or (c) sent by nationally recognized overnight courier. The effective date of notice shall be (i) for any notice delivered in person, the date of delivery; (ii) for any notice by U.S. mail, three (3) days after the date of certification thereof; and (iii) for any notice by overnight courier, the next Business Day after deposit with the courier. All notices shall be delivered or addressed to the parties at their respective addresses set forth on the Lease Summary. Either party may change the address at which it desires to receive notice upon giving notice of such request to the other party in the manner provided herein. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including, without limitation, any notices required under Section 1161 of the California Code of Civil Procedure, or any similar Laws now or hereafter in effect. When a statute requires service of a notice in a particular manner, service of that notice (or the replacement notice required by this Lease) as provided in this Article shall replace and satisfy, to the maximum extent permitted by law, the statutory service procedures, including, without limitation, those set forth in Section 1162 of the California Code of Civil Procedure, or any similar Laws now or hereafter in effect.

ARTICLE 27
RELOCATION OF PREMISES

If the Premises contain less than 10,000 square feet, Landlord shall have the right to relocate the Premises to another part of the Project in accordance with the following: (a) Landlord shall give Tenant at least thirty (30) days' notice of Landlord's intention to relocate the Premises; (b) the new premises shall be substantially the same in size, dimensions, configuration, and decor as the Premises and, if the relocation occurs after the Commencement Date, shall be placed in that condition by Landlord at its cost; (c) as nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday and if the physical relocation has not been completed in that time, Rent shall abate from the time the physical relocation commences to the time it is completed, but not to exceed three (3) Business Days from the time that Landlord makes the new premises available to Tenant with all work to be performed by Landlord thereon substantially complete; (d) upon completion of such relocation, the new premises shall become the "Premises" under this Lease; (e) all reasonable out of pocket costs incurred by Tenant as a result of the relocation shall be paid by Landlord; (f) if the new premises are smaller than the Premises as they existed before the relocation, the Base Rent and Tenant's Proportionate Share shall be reduced proportionately; and (g) the parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of the Base Rent and Tenant's Proportionate Share, if any. Tenant hereby waives any claim against Landlord for loss of business on account of any relocation.

ARTICLE 28
SIGNAGE

28.1 Tenant shall be entitled, at its sole cost and expense, to identification signage outside of the Premises on the floor on which the Premises are located. The location, quality, design, style, lighting and size of such signage shall be consistent with the Landlord's Building standard signage program and shall be subject to Landlord's prior written approval.

28.2 Landlord shall pay all costs of fabrication and installation of one (1) line on the Building directory to display Tenant's name and location in the Building, which shall be consistent with the Landlord's Building standard signage program and shall be subject to Landlord's prior written approval. Any changes to the signage initially provided by Landlord shall be at Tenant's expense.

28.3 No other signage shall be permitted without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion. If Landlord grants such consent, the signage will be at Tenant's expense. Tenant shall not affix, paint, erect, or inscribe any sign, projection, awning, signal, or advertisement of any kind to any part of the Premises, the Building or the Project, including, without limitation, the inside or outside of windows or doors, without the consent of Landlord, which consent may be withheld in Landlord's sole discretion. Landlord shall have the right to remove any signs or other matter installed without Landlord's permission without being liable to Tenant by reason of such removal and to charge the reasonable cost of removal to Tenant, payable within ten (10) days of written demand by Landlord.

28.4 Any damage to any portion of the Project upon installation, maintenance, or removal of Tenant signage shall be Tenant's sole responsibility. Upon removal of Tenant's signage, the area affected thereby shall be repaired and restored pursuant to Landlord's specifications to a condition acceptable to Landlord, at Tenant's sole expense. Upon the expiration or earlier termination of this Lease, Tenant will remove all of its signage.

ARTICLE 29
LENDER PROVISIONS

29.1 Subordination. This Lease is subject and subordinate to all present and future ground or underlying leases of the Property and to the lien, operation and effect of any mortgages, deeds to secure debt or trust deeds, now or hereafter in force against the Property or the Building, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof (collectively, "Mortgages"), and to all advances made or hereafter to be made upon the security of such Mortgages. In the event any proceedings are brought for the foreclosure of any mortgage, deed to secure debt or trust deed, or if any ground or underlying lease is terminated, Tenant shall attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or

underlying lease, as the case may be (the "Purchaser"), and recognize the Purchaser as the lessor under this Lease, which attornment shall be effective as of the date that the Purchaser acquires title to the Property; however, the Purchaser shall have the right to accept or reject such attornment upon written notice to Tenant and in no event shall such attornment be negated by a foreclosure. In no event shall Tenant have a right of offset against amounts due any Purchaser on account of any defaults by Landlord under this Lease that pre-date the time the Purchaser becomes the lessor hereunder, nor shall any Purchaser be liable for any such defaults by Landlord. Tenant shall, within ten (10) Business Days of request by Landlord or the Purchaser (as applicable), execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any Mortgages or Tenant's attornment to the Purchaser (as applicable). Tenant waives the provisions of any current or future statute, rule or law that may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any foreclosure proceeding or sale. Notwithstanding the provisions hereof, should any Mortgagee require that this Lease be prior rather than subordinate to its Mortgage, or require that Tenant attorn to any Purchaser, then in such event, this Lease shall become prior and superior to such Mortgage, or Tenant shall so attorn, upon notice to that effect to Tenant from such Mortgagee. The aforesaid superiority of this Lease to any Mortgage shall be self-operative upon the giving of such notice and no further documentation other than such notice shall be required to effectuate such superiority or attornment. In the event Landlord or such Mortgagee desires confirmation of such superiority or attornment, Tenant shall, promptly upon request therefor by Landlord or such Mortgagee, and without charge therefor, execute a document acknowledging such priority or attornment obligation to the Mortgagee as Landlord in the event of foreclosure or deed in lieu thereof or termination of a ground lease.

29.2 Estoppel Certificates. Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord, or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and Additional Rent have been paid in advance; (c) the amount of any security deposit with Landlord; (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default; and (e) such other matters as may be requested. Landlord and, any purchaser, assignee or Mortgagee may rely upon any such statement. Tenant's failure to execute and deliver such statement within the time required shall be conclusive against Tenant (1) that this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) that there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim, or deduction against Rent; (3) not more than one (1) month's Rent has been paid in advance; and (4) as to the truth and accuracy of any other matters set forth in the statement as submitted to Tenant.

29.3 Notice and Cure Rights. Tenant agrees to notify any Mortgagee whose address has been furnished to Tenant, of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such Mortgagee shall have an additional thirty (30) days to cure such default; provided that, if such default cannot reasonably be cured within that thirty (30) day period, then such Mortgagee shall have such additional time to cure the default as is reasonably necessary under the circumstances.

29.4 Changes Requested by Mortgagee. Tenant shall not unreasonably withhold its consent to changes or amendments to this Lease requested by a Mortgagee, so long as such changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of Tenant.

29.5 Mortgagee Approval. Notwithstanding anything to the contrary contained in this Lease, to the extent the consent of any Mortgagee is required under the applicable Mortgage in order for Landlord to enter into this Lease, Landlord may terminate this Lease by written notice to Tenant if such consent is not obtained (in which event this Lease shall be of no force or effect).

ARTICLE 30 MISCELLANEOUS

30.1 Parking. It is understood that Tenant, its employees and invitees shall not be permitted to park more than ten (10) automobiles in the automobile parking areas of the Common Areas made available for non-exclusive of tenants, occupants and invitees of the Project from time to time. Further, Landlord at all times shall have the right to designate the particular parking area to be used by any or all of Tenant's employees (which designation may be changed

from time to time) and, upon such designation, Tenant and its employees shall only park their automobiles in such designated area. If Tenant or its employees violate the foregoing parking restrictions, such violation shall be a Default under this Lease. Tenant shall supply Landlord with a list of the license plate numbers of the cars of Tenant's employees within five (5) days of request. Tenant hereby acknowledges that Landlord may tow away or cause to be towed away from the Project at Tenant's expense any cars in violation of the provisions of this Section whether belonging to Tenant or Tenant's employees, and to attach violation stickers or notices to such cars. Landlord may charge Tenant an amount not to exceed \$25.00 per employee car parked in any parking area other than designated by Landlord. Tenant shall comply with all parking rules and regulations established by Landlord for the Project, as the same may be revised from time to time.

30.2 Quiet Enjoyment. Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, deed of trust, lease, or other agreement to which this Lease may be subordinated.

30.3 No Air Rights. This Lease does not grant Tenant any rights to any view or to light or air over any property, whether belonging to Landlord or any other person. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Building, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

30.4 Force Majeure. Any prevention, delay, or stoppage of work to be performed by Landlord or Tenant that is due to Force Majeure shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay, or stoppage. Nothing in this Section shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

30.5 Accord and Satisfaction; Allocation of Payment. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent; nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent. Pursuant to the requirements of California Code of Civil Procedure Section 1161.1(c), as the same may be amended or re-codified or any similar or successor Law, Tenant is hereby placed on actual notice that Landlord's acceptance of rent shall not constitute a waiver by Landlord of (a) any preceding breach by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted; or (b) any of Landlord's rights, including but not limited to any rights Landlord may have to recover possession of the Premises or to sue for any remaining rent owed by Tenant.

30.6 Attorneys' and Other Fees. Should either party institute any action or proceeding to enforce or interpret this Lease or any provision hereof, for damages by reason of any alleged breach of this Lease or of any provision hereof, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be awarded from the other party all costs and expenses, including, without limitation, attorneys' and other fees, reasonably incurred in good faith by the prevailing party in connection with such action or proceeding. The term "attorneys' and other fees" shall mean and include reasonable attorneys' fees, accountants fees, expert witness fees and any and all consultants and other similar fees incurred in connection with the action or proceeding and preparations therefor. The term "action or proceeding" shall mean and include actions, proceedings, suits, arbitrations, appeals and other similar proceedings.

30.7 Construction. Headings at the beginning of each Article, Section and subsection are solely for the convenience of the parties only and in no way define, limit, or enlarge the scope or meaning of this Lease. Except as otherwise provided in this Lease, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. This Lease shall not be construed as if either Landlord or Tenant had prepared it, but rather as if both Landlord and Tenant had prepared it. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

30.8 Confidentiality. Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants or as required by Law. In addition to any other remedies to which Landlord may be entitled if Tenant breaches the foregoing covenant, Landlord shall have the right to increase the Rent to then current market rent for the Building.

30.9 Governing Law. This Lease shall be governed by, interpreted under, and construed and enforced in accordance with the Laws of the State applicable to agreements made and to be performed wholly within the State.

30.10 Consent. Unless otherwise expressly set forth herein, all consents and decisions required or permitted of Landlord hereunder shall be granted, withheld and made in Landlord's reasonable discretion. Except for consent to a Transfer, which shall be governed by the provisions of Article 14 above, all consents and approvals required from Landlord hereunder or any request by Tenant which causes Landlord to actually incur attorneys' and/or consultants' fees shall be subject to the requirement that Landlord be reimbursed within fifteen (15) days of Landlord's written demand for attorneys' and consultants' fees and costs incurred in connection therewith. Except for consent to a Transfer, which shall be governed by Article 14 above, Tenant shall have no claim and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding, or delaying by Landlord of any consent, approval, statement, or satisfaction that Landlord has agreed shall be subject to a standard of reasonableness. In such event, Tenant's only remedy therefor shall be an action for specific performance, injunction, or declaratory judgment to enforce any right to such consent, approval, statement, or satisfaction.

30.11 Authority. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors, if Tenant is a corporation, or other satisfactory documentation, if Tenant is another type of entity, authorizing execution of this Lease.

30.12 Duplicate Originals; Counterparts; Fax/Email Signatures. This Lease may be executed in any number of duplicate originals, all of which shall be of equal legal force and effect. Additionally, this Lease may be executed in counterparts, but shall become effective only after each party has executed a counterpart hereof; all said counterparts, when taken together, shall constitute the entire single agreement between the parties. This Lease may be executed by a party's signature transmitted by facsimile ("fax") or email, and copies of this Lease executed and delivered by means of faxed or emailed copies of signatures shall have the same force and effect as copies hereof executed and delivered with original wet signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were original wet signatures. Any party executing and delivering this Lease by fax or email shall promptly thereafter deliver a counterpart signature page of this Lease containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Lease as if it were an original wet signature page.

30.13 Offer. The submission and negotiation of this Lease shall not be deemed an offer to enter the same by Landlord but the solicitation of such an offer by Tenant. Tenant agrees that its execution of this Lease constitutes a firm offer to enter the same which may not be withdrawn for a period of thirty (30) days after delivery to Landlord (or such other period as may be expressly provided in any other agreement signed by the parties). During such period and in reliance on the foregoing, Landlord may, at Landlord's option, proceed with any plans, specifications, alterations, or improvements, and permit Tenant to enter the Premises; but such acts shall not be deemed an acceptance of Tenant's offer to enter this Lease, and such acceptance shall be evidenced only by Landlord's signing and delivering this Lease to Tenant.

30.14 Further Assurances. Landlord and Tenant each agree to execute any and all other documents and to take any further actions reasonably necessary to consummate the transactions contemplated hereby.

30.15 Financial Statements. In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request (including in connection with Tenant's exercise of any Extension Option granted under this Lease), with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records, and information furnished by Tenant to Landlord in connection with this Lease are true, correct, and complete in all material respects.

30.16 Recording. Tenant shall not record this Lease without the prior consent of Landlord, which consent may be withheld in Landlord's sole discretion.

30.17 Right to Lease. Landlord reserves the absolute right to create such other tenancies in the Building as Landlord shall determine to best promote the interests of the Building and the Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Term, occupy any space in the Building or the Project.

30.18 Severability. In the event any portion of this Lease shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Lease, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Lease.

30.19 Survival. All indemnity and other unsatisfied obligations set forth in this Lease shall survive the termination or expiration hereof.

30.20 WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE, OR THE TRANSACTIONS OR MATTERS RELATED HERETO OR CONTEMPLATED HEREBY. THE PARTIES FURTHER HEREBY WAIVE THE RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.

30.21 Successors and Assigns. Subject to the terms and conditions of Article 14 of this Lease, this Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.

30.22 Integration of Other Agreements; Amendments. This Lease sets forth the entire agreement and understanding of the parties with respect to the matters set forth herein and supersedes all previous written or oral understandings, agreements, contracts, correspondence and documentation with respect thereto. Any oral representations or modifications concerning this Lease shall be of no force or effect. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

30.23 TIME OF THE ESSENCE. TIME IS OF THE ESSENCE OF THIS LEASE AND EACH AND EVERY TERM AND PROVISION HEREOF.

30.24 Waiver. The waiver by a party of any breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. No delay or omission in the exercise of any right or remedy of a party shall impair such right or remedy or be construed as a waiver of any default of the other party. Consent to or approval of any act by a party requiring consent or approval of the other party shall not be deemed to waive or render unnecessary such consent to or approval of any subsequent act. Any waiver must be in writing and shall not be a waiver of any other matter concerning the same or any other provision of this Lease.

30.25 No Surrender. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

30.26 Number and Gender. As used in this Lease, the neuter includes masculine and feminine, the singular includes the plural and use of the word "including" shall mean "including without limitation."

30.27 Days. The term "days," as used herein, shall mean actual days occurring, including Saturdays, Sundays and Holidays.

30.28 Joint and Several Liability. If Tenant consists of two (2) or more parties, each of such parties shall be liable for Tenant's obligations under this Lease, and all documents executed in connection herewith, and the liability of such parties shall be joint and several. Additionally, the act or signature of, or notice from or to, any one or more of such parties with respect to this Lease shall be binding upon each and all of the parties executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice and, in the event more than one (1) entity comprising Tenant so acts, signs or gives or receives such notice, Landlord shall be entitled to rely on the first such act, signature, or giving or receiving of notice and any subsequent act, signature or giving or receiving of notice by any additional Tenant entity(ies) shall be null and void.

30.29 No Third Party Beneficiaries. Except as otherwise provided herein, no person or entity shall be deemed to be a third party beneficiary hereof, including but not limited to any brokers, and nothing in this Lease (either expressed or implied) is intended to confer upon any person or entity, other than Landlord and Tenant (and their respective nominees, successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Lease.

30.30 No Other Inducements. It is expressly warranted by each of the undersigned parties that no promise or inducement has been offered except as herein set forth and that this Lease is executed without reliance upon any statement or representation of any person or party or its representatives concerning the nature and extent of damages, costs and/or legal liability therefor.

30.31 Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent. Tenant hereby expressly waives the benefit of any Laws to the contrary and agrees that if Landlord fails to perform any of its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of Rent.

30.32 No Discrimination. Tenant covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, sex, religion, marital status, ancestry or national origin or any other classification protected under applicable federal, state or local Laws in the leasing, subleasing, transferring, use, or enjoyment of the Premises, nor shall Tenant itself, or any person claiming under or through Tenant, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees in the Premises.

30.33 OFAC Compliance.

30.33.1 Tenant hereby represents and warrants to Landlord that Tenant and its directors, officers, employees, agents and affiliates are not, and during the Term of the Lease shall not be, Sanctioned Persons. "Sanctioned Person" means: (a) an entity or individual named on the Consolidated Sanctions List maintained by the U.S. Office of Foreign Assets Control, or any successor list, or targeted by the U.S. Department of State under economic or financial sanctions or trade embargoes of the United States ("Sanctions Laws"); (b) any other entity or individual with which an entity incorporated in the United States is prohibited from dealing pursuant to Sanctions Laws; or (c) any entity or individual acting on behalf of anyone described in the foregoing clauses of this definition.

30.33.2 Tenant represents and warrants that Tenant is in compliance, and, during the Term of this Lease, shall remain in compliance, with Sanctions Laws and Anti-Money Laundering Laws and shall not, directly or indirectly, take any action that would cause Tenant or Landlord to be in violation of Sanctions Laws or Anti-Money Laundering Laws. "Anti-Money Laundering Laws" means: the U.S. Bank Secrecy Act, the USA PATRIOT Act, and all other laws of the United States that prohibit money laundering or other use of funds derived from illegal activity.

30.33.3 Tenant covenants to provide any information deemed necessary by Landlord to comply with Landlord's obligations under Sanctions Laws or Anti-Money Laundering Laws, and this obligation shall survive the termination of the Lease. Breach of any of the foregoing representations, warranties and covenants shall be considered a Default under this Lease and shall entitle Landlord to pursue all rights and remedies available to Landlord under this Lease and/or applicable Laws.

30.34 Landlord's Disclosure Regarding Hazardous Materials. By signing this Lease, Tenant represents that Tenant has read and understood the statutorily required disclosures, if any, of Landlord set forth in Exhibit I to this Lease, which disclosures relate to certain hazardous substances, including without limitation Hazardous Materials, known or suspected to exist at the Premises, the Building or the Project.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties have executed this Lease, under seal, as of the date first-above written.

Witness:

Date: _____

LANDLORD:

SCPT MARINA VILLAGE, LLC,
a Delaware limited liability company

By: FIRST FIDUCIARY REALTY ADVISORS, INC.,
a California corporation, its Manager

By: Mu

Printed Name: Michael Gelber
Executive Vice President,

Title: Asset Management

Date: 2/27/18

Witness:

Date: _____

TENANT:

SAN DIEGO PARASAIL ADVENTURES, INC.,
a California corporation

By: [Signature]

Printed Name: Arrit McPherson

Title: President

Date: 9/12/17

By: [Signature]

Printed Name: Arrit McPherson

Title: Chief Financial Officer

Date: 9/12/17

Taxpayer ID No.: 33-0366499

ADDENDUM #1

CONCESSION AGREEMENT

CITY OF SAN DIEGO
PARASAILING CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and San Diego Parasail Adventures Inc. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. **Incorporated Documents.** This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Parasailing Concessions issued by the CITY on February 25, 2013, and CONCESSIONAIRE's proposal in response to the RFP, dated March 15, 2013. Attached and incorporated herein are the following documents: Map (Attachment A), and Parasailing Concession Requirements (Attachment C). The Operating Plan submitted by CONCESSIONAIRE as part of its RFP proposal is also attached hereto (Attachment D) and incorporated herein. In addition to the terms and conditions set forth in the Agreement, CONCESSIONAIRE agrees to fully abide by the Parasailing Concessions Requirements, the Operating Plan, and any additional requirements listed in the RFP.
2. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, and agents to operate a parasailing concession ("Concession") as defined in Section 3 below, offshore, on the waters of the Pacific Ocean between the North Channel Jetty of Mission Bay and Crystal Pier, not closer than 1,500 feet of the mean tide line as depicted on Attachment A hereinafter referred to as the "Site."
3. **Use of Site.** This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate Concession. Concession means an operation involving the conducting of parasailing tours serving the general public under the terms and conditions of this Agreement. No solicitation or marketing is permitted on any portion of any City beach. Renting or selling of beach equipment or any other merchandise is not allowed under this Agreement. Any use other than as a Concession as described herein shall constitute good cause for immediate termination of this Agreement. CONCESSIONAIRE must also only conduct business from an approved sublease in Mission Bay, as specified in the RFP.
4. **Competent Management.** Throughout the term of this Agreement, CONCESSIONAIRE shall provide competent management of the Concession and the Site for the permitted uses to the satisfaction of the City Manager.

CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concession to maximize gross revenue.

5. Term. This Agreement will have a three (3) year term ("Term"), as described in this section.

The "Commencement Date" is the date this Agreement is fully executed by the Parties.

An "Agreement Year" consists of each successive twelve (12) month period following the Commencement Date.

This Term will begin on the Commencement Date if the agreement is fully executed on the first day of any calendar month. If this Agreement is not fully executed on the first day of a calendar month, then the first Agreement Year will include the period from the Commencement Date to the next first day of a calendar month, in addition to the next (12) twelve calendar months. Therefore, no matter when the Commencement Date is, the Term and each Agreement Year will end on the last day of a month.

The term of this Agreement may be extended for two (2) one-year (1) periods. All extensions must be in writing and signed by both parties.

6. Termination. This Agreement may be terminated at any time by either party upon ninety (90) days prior written notice to the other party. Any written notice to this effect shall be served in accordance with Section 43 of this Agreement.
7. Revocable License. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of termination or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.b that conflict with or prohibit CONCESSIONAIRE's use of the Site.
8. Special Provisions.
 - a. Operating Plan. The Operating Plan(s) for June 1, 2014 through May 31, 2015 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal shall be revised by CONCESSIONAIRE if required by CITY, and the final CITY approved Operating Plan(s) shall be incorporated into this Agreement as Attachment D. Beginning June 1, 2015, and for every twelve (12) months thereafter during the Term, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for

the upcoming year for the CITY'S approval. CONCESSIONAIRE shall submit such Operating Plan by February 1, of each Agreement Year during the Term of the agreement. All Operating Plans submitted to the CITY should be consistent with the format and content of the Operating Plans included as Attachment D. CITY in its sole discretion shall have the right to approve or disapprove the proposed Operating Plan. Once approved, CONCESSIONAIRE shall not make any changes to the Operating Plan without prior written approval of CITY. CONCESSIONAIRE shall not operate the Concession at any time during the Term without an Operating Plan fully approved by the City valid for the time period of operation.

- b. Operations. The CITY reserves the right to make changes at any time to the CONCESSIONAIRE's parasailing operations based on operational and safety considerations. At all times, the CONCESSIONAIRE shall ensure that all of its operations comply with the Parasailing Concession Requirements incorporated herein as Attachment C.
- c. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a respectable and courteous manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach/bay/ocean users, and otherwise comply with all of the Parasailing Concession Requirements set forth as Attachment C to this Agreement.
- d. Exclusiveness of Agreement and Unauthorized Vending. CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Site shall be free of unauthorized activity or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- e. Concession Site. CONCESSIONAIRE shall erect no improvements on the Site without prior written approval by the CITY. The Site must be maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Site by the CONCESSIONAIRE must be approved in writing by CITY and shall not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained.
- f. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Site now existing or constructed on the Site by CONCESSIONAIRE shall be deemed to be part of the Site and shall become CITY's property free of all liens and claims. All personal property remaining on the Site after expiration or termination shall also

become the property of CITY. Alternatively, the CITY, at its option, may require CONCESSIONAIRE to immediately remove any and all improvements, trade fixtures, structures, installations and additions to the Site at CONCESSIONAIRE's sole cost and expense

- g. Maintenance of Site. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Site clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost and expense.
9. Fees. CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee or the Monthly Minimum Fee, as described below. In the event that the combined total amount of fees paid by CONCESSIONAIRE during any Agreement Year equals or exceeds the Annual Minimum Fee for that Agreement Year, then CONCESSIONAIRE shall only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends.
 - a. Percentage Fee. The Percentage Fee shall be calculated on a calendar month basis and shall consist of ten percent (10%) of the total Gross Revenue (as defined in Section 9.g of the Agreement) of CONCESSIONAIRE's Concession activities allowed under this Agreement.
 - b. Annual Minimum Fee and Monthly Minimum Fee. The Annual Minimum Fee established for the first two Agreement Years following the effective date of this Agreement is Fifteen Thousand Dollars (\$15,000), or Twelve Hundred Fifty Dollars (\$1,250) per month on a monthly installment basis ("Monthly Minimum Fee").
 - c. Minimum Fee Adjustment. Effective at the beginning of the first day of the third Agreement Year of this Agreement (known below as the "Adjustment Date"), the Annual Minimum Fee shall be set at eighty percent (80%) of the annual average of the Total Fees Paid or accrued under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment Date. In the event that this adjusted amount is less than the past Annual Minimum Fee, the adjusted amount shall be discarded and the Annual Minimum Fee shall instead be increased by ten percent (10%) for the third Agreement Year of this Agreement.

The new Minimum Fee amount calculated after the Adjustment Day shall then be divided by twelve (12) to establish the new Monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding years in order to determine the amount of the Minimum Fee for the remaining Term. Until

such calculations are completed, CONCESSIONAIRE shall continue paying the Monthly Minimum Fee at the past rate. Any additional fees determined by the adjustment to be due for the months previously paid at the past rate shall be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 43 of this Agreement.

- d. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any Concession fees when due, CONCESSIONAIRE shall pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to the delinquent fee. The parties agree that such delinquent fees are appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- e. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue (as defined in Section 9.g) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not constitute the waiver of any of the CITY'S rights under the Agreement.
- f. Additional Fees. The CITY, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Site. All incidental services or operations must be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Site without the prior written approval of the CITY, shall be subject to the requirements of Section 9.e. Unauthorized Use Charge.
- g. Gross Revenue. "Gross Revenue," as used in this Agreement shall include all income resulting from the Concession whether received or to become due; provided, however, that Gross Revenue shall not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross

Revenue shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.

h. Payment Procedure.

On or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned, CONCESSIONAIRE shall provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Receipts in a form selected by CITY. The statement shall be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:

- i. Total Gross Receipts for the subject month itemized as to business categories for which the separate Percentage Fee is established.
- ii. The Percentage Fee due CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current year.
- iv. Payments in the greater of the two following amounts: The Monthly Minimum Fee or the total Percentage Fee due CITY computed as described in this Section.

h. Inspection of Records.

- i. Records. CONCESSIONAIRE shall at all times during the Agreement Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records shall be supported by

source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine CONCESSIONAIRE's Gross Revenue. Any retail sales or charges will 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. The registers shall be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession fees, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid CITY for the year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 9.h.i, shall be kept for at least five (5) years and made available throughout that five (5) year period to CITY in one location within the City of San Diego. Those books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this

Agreement. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. **Audit Cost.** The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):
- A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) on an annual basis for any Agreement Year or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
 - B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any fee deficiency determined by the audit shall be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement section 9.d. CITY shall credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- i. **Default.** CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with the covenants of this Agreement, a material breach of this Agreement and good cause for termination.

- j. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- k. Security Deposit. CONCESSIONAIRE shall deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. CONCESSIONAIRE shall maintain this security deposit throughout the Term of this Agreement. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and immediately remove its property from the Site.
- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice from CITY, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
- ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination,

require to adequately secure CONCESSIONAIRE's obligations under this Agreement.

- iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.

- 12. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval shall mean the written consent or approval of the Mayor or the Mayor's designee, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor or the Mayor's designee's sole and absolute discretion, unless otherwise expressly provided.
- 13. Acceptance of Site. CONCESSIONAIRE represents and warrants that it has independently inspected the Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Site is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Sites and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Site, including without limitation the presence of any hazardous substances.
- 14. Maintenance of the Site. CONCESSIONAIRE shall at its sole cost and expense and to CITY'S satisfaction, maintain the Site in a decent, safe, healthy and sanitary condition at all times during the Term.
- 15. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Site in a respectable and courteous manner.
- 16. Inspection. CITY may, at all times, enter and inspect the Site.
- 17. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for:
 - n. Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Three Million Dollars (\$3,000,000) per occurrence, subject to an annual aggregate of Three Million Dollars (\$3,000,000).
 - i. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San

Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- ii. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
 - iii. SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- b. CONCESSIONAIRE must maintain current workers compensation coverage which meets statutory requirements for all employees. One Million Dollars (\$1,000,000) of employers' liability coverage is also required.
- i. WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.
 - ii. For any of CONCESSIONAIRE's employees who are covered by the Jones Act, the City will accept Jones Act crew coverage of One Million Dollars (\$1,000,000.00). Employees not covered under the Jones Act must have appropriate workers compensation coverage as required by this section.
- c. Automobile Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.

- i. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Contractor.
 - ii. SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- d. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its own cause and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- e. CONCESSIONAIRE must maintain a marine protection and indemnity policy, with limits of not less than One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). UNLESS proof is submitted that CONCESSIONAIRE's parasailing operations are under the commercial general liability policy. A certified copy of the CGL policy will be sufficient to meet this requirement.
- f. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- g. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- h. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to

the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance on at least an annual basis during the Term. If CONCESSIONAIRE's insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify the CITY and immediately obtain replacement insurance.

- i. Modification. To assure protection from and against the kind and extent of risk existing on the Site, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Site in order to meet the requirements of this Agreement.
- j. Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or person engaged in the activities permitted under this Agreement. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- k. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest on the premium paid by the CITY at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY's notice. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of any and all of its personal property from the Site.
- l. All insurers must be licensed to conduct business in the State of California and with exception of workers compensation, be rated "A-, VI" or better by AM Best. If coverage is provided by a surplus lines carrier, it must be listed on the current LESLI list. Any and all deductibles and/or self-

insured retentions must be disclosed to the City at the time proof of insurance is provided. All insurers must be acceptable to the City.

18. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
19. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE's use of the Site, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. CONCESSIONAIRE shall at all times abide by CITY's non-discrimination laws found in the San Diego Municipal Code section 22.3501 et. seq.

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime contractors shall ensure their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

20. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.

21. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
22. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
23. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's occupancy or use of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
24. No Nuisance. CONCESSIONAIRE shall not use the Site in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
25. No Assignment. CONCESSIONAIRE shall not assign or sublicense any rights granted by this Agreement or any interest in this Agreement without CITY'S prior written consent, which may be withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.

26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such information shall be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by CITY.
27. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.
28. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE shall be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
29. Encumbrances. CONCESSIONAIRE shall keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy or use of the Site. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
30. Defaults and Remedies.
- a. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection b below) which are grounds for immediate termination, in the event that:
 - i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by

CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;

- ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
- iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided however, in the event that any default described in Part 30.a.i of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- b. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection (a) above, in the event CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan or Attachment C that, in the CITY's sole discretion, relate to public safety ["Safety Violations"], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or revoke this Agreement.
- c. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement shall continue in full force and effect for so long as CITY does

not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the month fees as they become due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY's interest under this Agreement.

31. Damages. CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover the outstanding annual Minimum Fees due for the remaining term of the Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
32. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy or use of the Site.
33. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
34. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, CONCESSIONAIRE shall, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

35. Hazardous Substances. CONCESSIONAIRE shall not discharge or release of any hazardous substances in, on, under, or from the Site. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Site. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

- c. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- d. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE's occupancy or use of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- e. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Site, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Site.

- f. Environmental Assessment. At CITY's option upon expiration or termination of this Agreement, an environmental assessment of the Site shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Site, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.
36. Waiver. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Site is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
37. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
38. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
39. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
40. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
41. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The

numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

42. Entire Agreement. This Agreement, along with the RFP documents related to this Concession, constitute the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties, agreements and permits between them and pertaining to this Agreement and CONCESSIONAIRE'S occupancy or use of the Sites. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
43. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Ste. 1700 MS 51A
San Diego, CA 92101

THE CITY OF SAN DIEGO
Lifeguard Division
Attention: Lifeguard Chief
2581 Quivira Court
San Diego, CA 92109

CONCESSIONAIRE:
San Diego Parasail Adventures Inc
Attention: Arrit McPherson
844 W. Mission Bay Drive
San Diego, CA 92109

44. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy or use of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy or use of the Sites.
45. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Agreement shall be deemed to refer to "the Mayor or his/her designee."

This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "Strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

46. City's Not-Liability. CITY shall not be liable to CONCESSIONAIRE, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of CITY, or in the CITY's performance of any act related to protecting the public health and safety.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

47. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

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

Date: 1 OCT 14

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: [Signature]
Scott Chadwick, COO
City of San Diego

Date: 10/01/14

BY: [Signature]
Rick Wurts, Chief
San Diego Fire-Rescue Lifeguards

Date: 10/17/14

San Diego Rescue Services, Inc. LC
CONCESSIONAIRE

BY: [Signature]
[Signature]

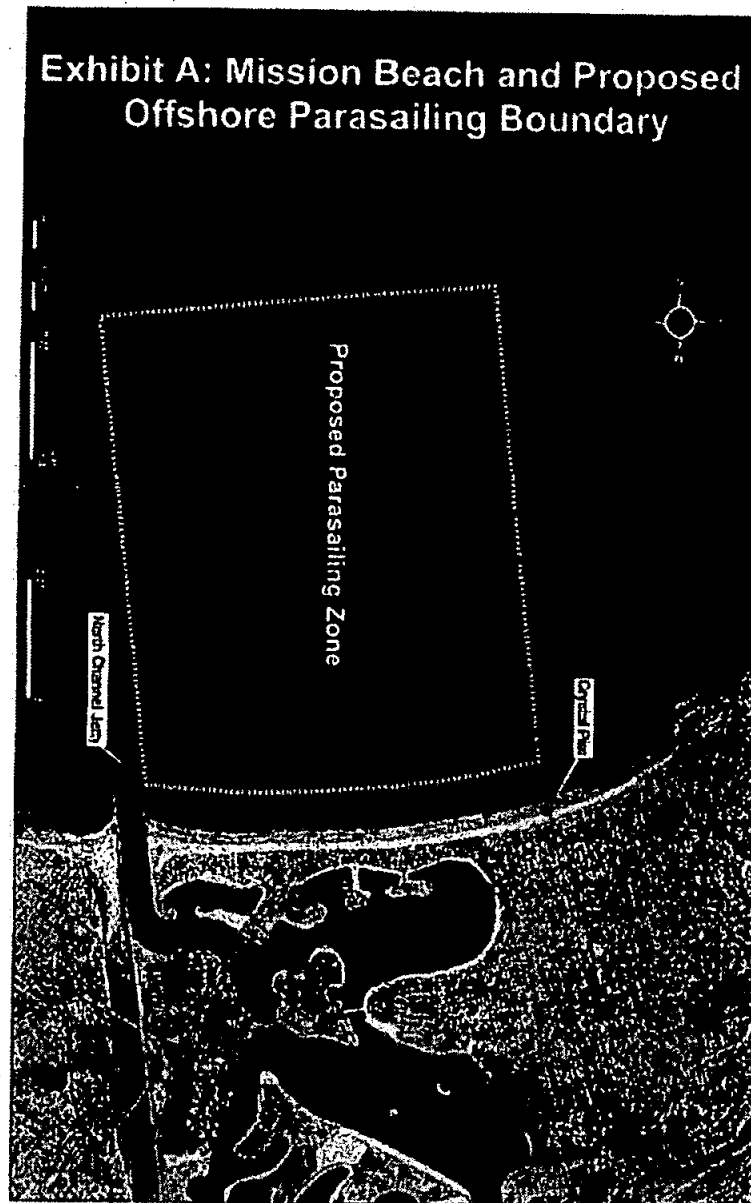
APPROVED AS TO FORM AND LEGALITY:

Effective Date: 10/20/2014

JAN L GOLDSMITH, City Attorney

BY: [Signature]
Deputy City Attorney

Attachment A - Site Map



Attachment B – Intentionally Left Blank

Attachment C - Parasailing Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. Identifying Markers

CONCESSIONAIRE's vessel shall be readily identifiable. The vessel Captain and crew shall wear attire containing the company logo, making them readily identifiable to clients, first responders and law enforcement.

2. Ocean Conditions and Safety

Parasailing shall only be conducted in the area identified in Exhibit A.

CONCESSIONAIRE must check the Beach and Weather Report maintained by the San Diego Fire-Rescue Lifeguards (available by calling (619) 221-8824) each day before beginning operations. CONCESSIONAIRE must continuously monitor weather reports throughout each day of operations to monitor wind and water conditions on Mission Bay and the Pacific Ocean.

CONCESSIONAIRE must provide safety information/briefing to clients containing the following:

1. Parasailing safety lecture and/or video. Additionally, a written handout will be provided to all clients containing the same information.
2. A pre-flight evaluation of conditions and/or hazards and the dangers inherent to Parasailing operations in open exposed bodies of water. Possible hazards include, but are not limited to, wind speed and direction, small craft warnings, cold water, extreme heat, contaminated water, low flying aircraft, other vessel traffic in the area, and/or hazards to navigation, etc.

CONCESSIONAIRE and its employees, agents and/or affiliates must adhere to all directions provided by Lifeguards, Park Rangers, other representatives of the CITY, or any other officer with authority to enforce local, state or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of Lifeguards regarding any particular matter on a given day is final and should be brought to the attention of the area Lifeguard Lieutenant as necessary at a later time.

Lifeguards and Park Rangers reserve the right to terminate any Parasailing operation based on safety considerations or violations of Concession Requirements.

3. Equipment

In addition to necessary Parasailing equipment, CONCESSIONAIRE will ensure that all carriage requirements are on board the vessel. In addition, the vessel shall have a properly functioning VHF marine band radio, as

well as a properly functioning cellular phone. Each vessel will maintain a first aid kit, drinkable water, and emergency blankets.

4. **CPR and First Aid**
CONCESSIONAIRE's vessel Captain and crew must each possess any one (1) of the following CPR certifications:

1. American Red Cross
2. American Heart Association
3. Any other nationally recognized basic CPR training with certification

Additionally, the Captain and crew must each possess any one (1) of the following certifications:

1. Emergency Medical Technician (EMT)
2. American Red Cross Emergency Response
3. American Red Cross First Aid Basic
4. Any other nationally recognized first aid course with certification.

5. **Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach or waterway which arise from or are in any manner connected with the services provided to the participants under this Agreement. These waivers must be approved by CITY in writing before CONCESSIONAIRE operates this Concession.

6. **Minimum Age Requirements**

CONCESSIONAIRE's vessel Captain and crew must be at least eighteen (18) years of age.

7. **EMERGENCY RESPONSE PLAN FOR PARASAILING CONCESSIONS**

The following plan is the minimum level of response and readiness required from CONCESSIONAIRE during emergency situations. CONCESSIONAIRE is required to read the "General Rescue Procedures for Water Emergencies" listed below and cover all aspects of the plan with each employee working under this Agreement on a regular basis.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.

3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform rescue based on training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Assess the victim for injuries.
9. If an emergency exists, immediately report via marine band radio (VHF channel 16) or call 911.
10. Provide first aid until lifeguards and/or emergency medical services (EMS) arrive.

Accidents, Injuries and Reports

In the event of any accident or injury, regardless of severity, the CONCESSIONAIRE shall notify the lifeguard supervisor on duty as soon as possible. All rescues and medical aids involving customers or other personnel must be documented on CONCESSIONAIRE company reports.

EXHIBIT A
FLOOR PLAN OF PREMISES

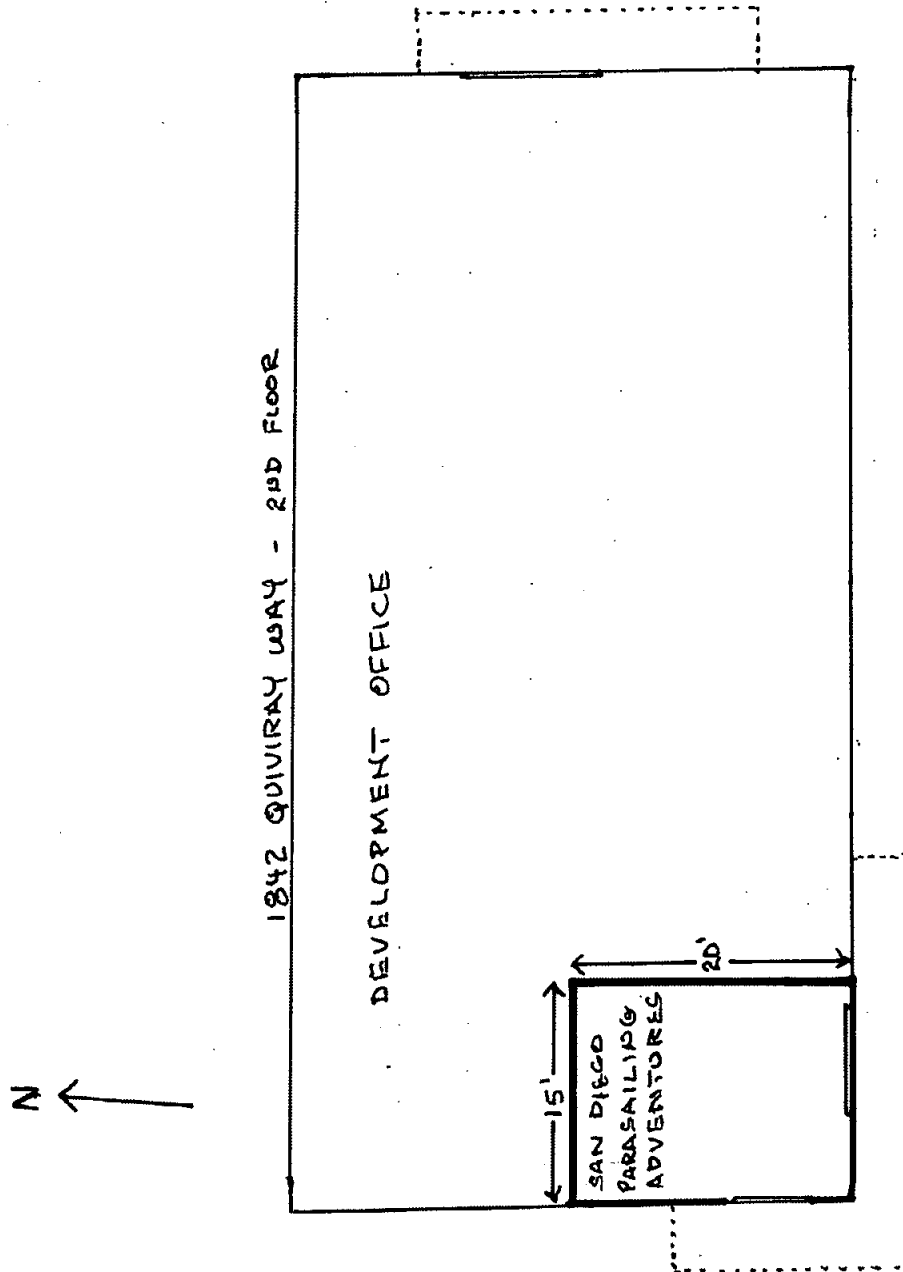


EXHIBIT A

EXHIBIT B

SITE PLAN OF BUILDING



Marina Village Marina
&
Conference Center

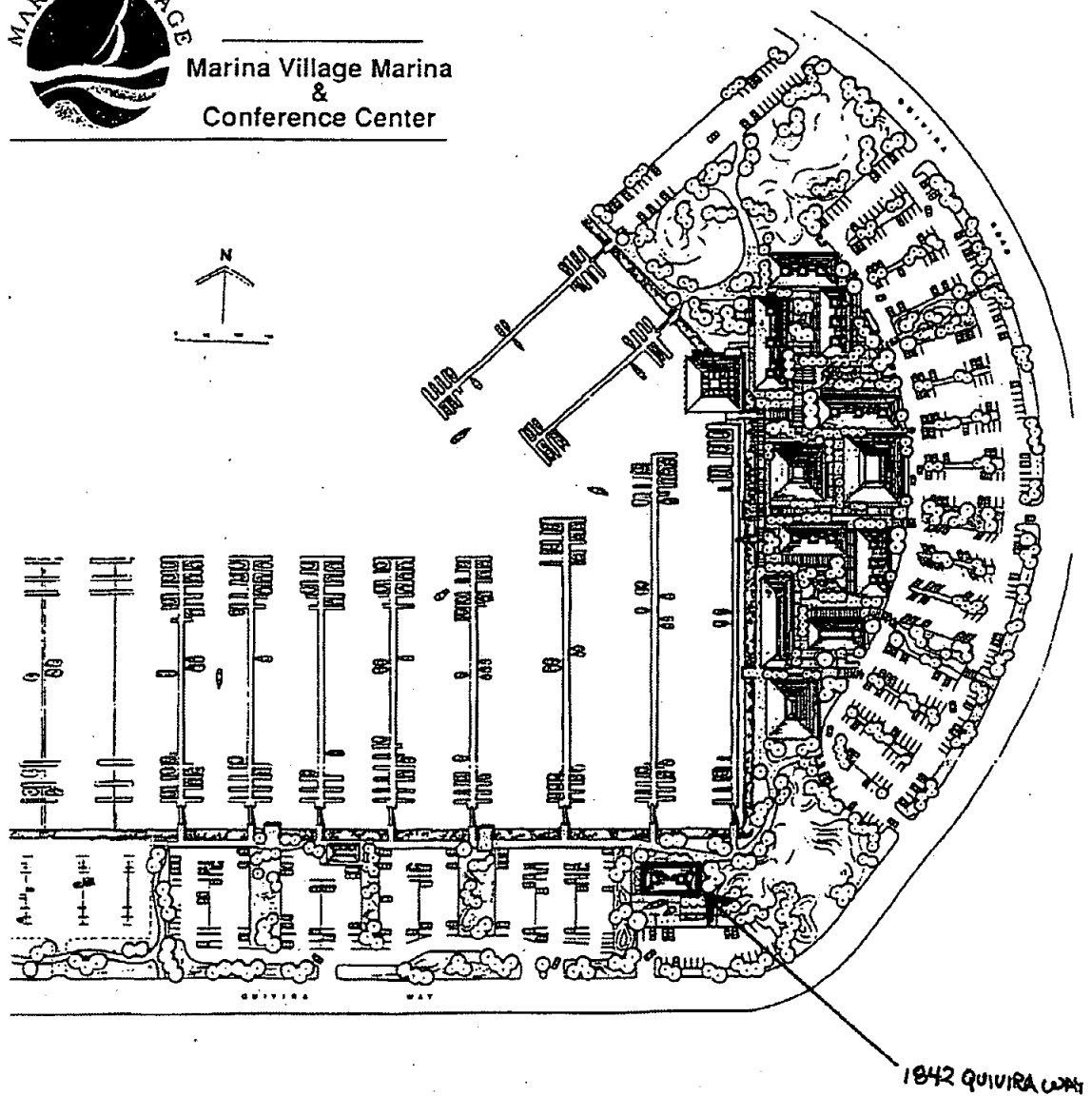


EXHIBIT B

-1-

EXHIBIT C

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1:

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY - AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 24 IN BLOCK 10 OF RESUBDIVISION OF BLOCKS 7, 8, 10 AND A PORTION OF BLOCK 9 AND LOT "A", INSPIRATION HEIGHTS, ACCORDING TO MAP THEREOF NO. 1700, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 27, 1917; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89 DEG. 55'56" WEST - RECORD SOUTH 89 DEG. 59'00" WEST - 25.00 FEET TO A POINT OF TANGENT CURVE IN THE BOUNDARY OF SAID LOT 24; THENCE SOUTH 00 DEG. 04'04" EAST 2.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 2.00 FEET SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID BLOCK 10; THENCE ALONG SAID PARALLEL LINE NORTH 89 DEG. 55'56" EAST 249.70 FEET; THENCE NORTH 05 DEG. 30'02" WEST 104.06 FEET TO THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "OLD TOWN" - THE LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6, FOR SAID STATION "OLD TOWN" ARE X EQUALS 1,712,415.7 AND Y EQUALS 213,819.22 - AND SAID TRIANGULATION STATION IS LOCATED AT LATITUDE 32 DEG. 45'02.45" NORTH AND LONGITUDE 177 DEG. 11'07.200" WEST, BEING ALSO THE POINT OF ORIGIN FOR THE SAN DIEGO CITY ENGINEER'S MISSION BAY PARK COORDINATE SYSTEM; THENCE NORTH 5160.53 FEET AND WEST 16,030.79 FEET, BEING AT MISSION BAY COORDINATES; NORTH 5160.53 FEET AND WEST 16,030.79 FEET; THENCE SOUTH 66 DEG. 35'46" EAST 352.89 FEET BEING AT MISSION BAY PARK COORDINATES NORTH 5020.42 FEET AND WEST 15,706.89 FEET; THENCE CONTINUING SOUTH 66 DEG. 35'46" EAST 618.76 FEET BEING AT MISSION BAY COORDINATES NORTH 4774.57 FEET AND WEST 15,139.07 FEET; THENCE CONTINUING SOUTH 66 DEG. 35'46" EAST 313.04 FEET TO A POINT FOR REFERENCE THE COORDINATES HEREINAFTER MENTIONED ARE SAID MISSION BAY PARK COORDINATE SYSTEM, SAID LAST MENTIONED POINT BEING ALSO THE TRUE POINT OF BEGINNING; THENCE SOUTH 40 DEG. 00'00" WEST 421.74 FEET TO A POINT HEREIN CALLED "POINT A"; THENCE SOUTH 50 DEG. 00'00" EAST 406.88 FEET TO COORDINATES NORTH 4065.64 FEET AND WEST 14,811.19 FEET; THENCE SOUTH 08 DEG. 09'38" EAST 8.12 FEET TO COORDINATES NORTH 4057.60 FEET AND WEST 14,810.04 FEET; THENCE SOUTH 08 DEG. 09'38" EAST 694.75 FEET TO COORDINATES NORTH 3369.88 FEET AND WEST 14,711.43 FEET; THENCE SOUTH 81 DEG. 50'22" WEST 1202.00 FEET; THENCE SOUTH 08 DEG. 09'38" EAST 217.76 FEET; THENCE NORTH 81 DEG. 50'22" EAST 1133.01 FEET TO A TANGENT 239.52 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE 219.05 FEET THROUGH AN ANGLE OF 52 DEG. 24'00"; THENCE TANGENT TO SAID CURVE NORTH 29 DEG. 26'22" EAST 273.89 FEET TO A TANGENT 805.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE 1349.29 FEET THROUGH AN ANGLE OF 96 DEG. 02'08"; THENCE TANGENT TO SAID CURVE NORTH 66 DEG. 35'46" WEST 33.68 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY - AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE ABOVE SAID "POINT A" BEING ALSO THE TRUE POINT OF BEGINNING; THENCE SOUTH 50 DEG. 00'00" EAST 406.88 FEET TO COORDINATES NORTH 4065.64 FEET AND WEST 14,811.19 FEET; THENCE SOUTH 08 DEG. 09'38" EAST 8.12 FEET TO COORDINATES NORTH 4057.60 FEET AND WEST 14,810.04 FEET; THENCE SOUTH 08 DEG. 09'38" EAST 694.75 FEET TO COORDINATES NORTH 3369.88 FEET AND WEST 14,711.43 FEET; THENCE SOUTH 81 DEG. 50'22" WEST 1202.00 FEET; THENCE NORTH 08 DEG. 09'38" WEST 480.00 FEET; THENCE NORTH 81 DEG. 50'22" EAST 800.00 FEET; THENCE NORTH 08 DEG. 09'38" WEST 152.88 FEET; THENCE NORTH 87 DEG. 08'14" WEST 113.99 FEET TO COORDINATES NORTH 3944.99 FEET AND WEST 15,313.03 FEET; THENCE NORTH 50 DEG. 00'00" WEST 100.00 FEET; THENCE NORTH 40 DEG. 00'00" EAST 415.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM THAT PORTION OF SAID PARCELS 1 AND 2 LYING WITHIN THE NATURAL BOUNDARIES OF MISSION BAY - FORMERLY FALSE BAY - ALL THE DEPOSITS OF MINERALS, INCLUDING OIL AND GAS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS AND TO OCCUPY AND USE SO MUCH OF THE SURFACE AS MAY BE REQUIRED THERETO, AS RESERVED BY THE STATE OF CALIFORNIA IN AN ACT OF THE LEGISLATURE APPROVED APRIL 27, 1945; STATUTES OF CALIFORNIA, CHAPTER 142.

APN: 760-029-08-00

EXHIBIT D

TERM CERTIFICATION

The undersigned, as Tenant, under that certain lease dated [_____] (the "Lease"), with [_____] as Landlord, hereby certifies as follows:

1. That the undersigned has entered into occupancy of the Premises described in the Lease.
2. That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows: _____.
3. That the Lease represents the entire agreement between the parties as to said leasing.
4. That the Commencement Date of the Lease is: _____. The Lease expires on _____.
5. That all improvements to have been constructed or completed by Landlord have been substantially completed in a satisfactory manner and all conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied.
6. That there are no defaults by either Tenant or Landlord under the Lease.
7. That no rents have been prepaid, other than as provided in the Lease.
8. That on this date there are no existing defenses or offsets, which the undersigned has against the enforcement of the Lease by Landlord.
9. That the undersigned has received _____ set(s) of keys to the Premises on this date.

EXECUTED this _____ day of _____, 20__.

TENANT:

[_____] ,
a [_____]

By: _____

Printed Name: _____

Title: _____

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT E

-1-

EXHIBIT E-1

TENANT IMPROVEMENT WORK

Tenant hereby accepts the Premises in their "AS-IS" condition, and Landlord shall have no obligation to perform any work therein (including, without limitation, demolition of any improvements existing therein or construction of any tenant finish-work or other improvements therein), and shall not be obligated to reimburse Tenant or provide an allowance for any costs related to the demolition or construction of improvements therein. Any additions, alterations or improvements desired to be made by Tenant shall be subject to the terms of Article 11 of this Lease.

EXHIBIT E-2

CONSTRUCTION RULES AND REGULATIONS

1. All contractors, subcontractors, and materialmen ("Contractor Parties") will check in and out with Building management.
2. All Contractor Parties will be appropriately dressed to work in an office environment: shirts with sleeves (T-shirts with company name are acceptable), pants (no shorts), work shoes with socks, and whatever other clothing as may be appropriate. No torn or worn-out clothing is permitted. Contractor Parties will display a courteous demeanor towards tenants, customers, visitors and general public. No Contractor Parties shall remain in the Building after work hours.
3. All Contractor Parties shall clean the job site after meals are eaten. Alcoholic beverages and drugs are not to be brought into, or consumed in the Building. Personnel appearing to be under the influence of either alcoholic beverages or drugs will not be allowed into the Building.
4. Parking for all personnel must be arranged prior to commencement of work, and will be provided in designated areas only. Vehicles in unapproved areas will be subject to citation and towing without notice. Any parking charges are the sole responsibility of the Contractor Parties.
5. Access to the Building shall be by freight elevator only.
6. Delivery of materials, use of loading dock, freight and passenger elevators must be scheduled with Landlord prior to receipt of materials.

Delivery Dock Hours: Monday – Friday 7:00 A.M. to 5:00 P.M.

Other hours of access are available with prior arrangement.
7. All Contractor Parties shall maintain the condition of docks, elevators and corridors used.
8. All materials are to be stored at the job site or in designated storage areas. No materials are to be stored in corridors or in public areas. Landlord may provide minimum secured storage for materials with prior arrangement.
9. Contractor Parties must arrange access to areas other than job site at least 24 hours in advance.
10. All work areas are to be visually and materially protected from the tenants and general public. If required by Landlord, the job site shall be sealed off from the balance of the adjoining space so as to minimize the disbursement of dirt, debris and noise.
11. Radios or other excessive noise are not permitted.
12. The use of toxic materials or odor-causing liquids must be scheduled with Landlord in advance and prior notice must be given to the tenants adjacent to the job site.
13. All non-job site areas are to be kept clean and dust free. No material residue shall be tracked through corridors or public areas.
14. Contractor Parties shall ensure the job site is left clean and secure at the completion of each work day. Trash and excess materials shall (a) not remain on, in, or at the job site; (b) be disposed of in bins or by truck promptly; (c) not be staged in storage at the job site in any public or adjacent areas; and (d) shall not be disposed of in the Building's trash receptacles.

EXHIBIT F

BUILDING SERVICES

Subject to all Laws applicable thereto and the Rules and Regulations, Landlord agrees to furnish the following services in a manner that such services are customarily furnished to comparable projects in the area:

1. Electrical power for normal general office use, as determined by Landlord.
2. Intentionally omitted.
3. City water from the regular Building outlets for drinking, lavatory and toilet purposes.
4. Maintenance of the Common Areas.
5. Intentionally omitted.
6. Replacement for building standard lights bulbs. Tenant shall bear the cost of replacement of non standard bulbs, and all fixtures, starters and ballasts within the Premises.
7. Restroom supplies.
8. Intentionally omitted.
9. Landlord may, from time to time, provide such on-premises courtesy personnel (who will not necessarily have any responsibilities for any security), the cost of which shall be an Operating Cost hereunder; but Landlord makes no representation or warranty, written or oral, express or implied, that any security will be provided to the Project, or if provided, what the level of that security may be. Landlord does not guarantee any level of security and is released from any responsibility for any Claims based upon assertions that Landlord failed to provide adequate security to the Project, the Premises, or otherwise.

"Business Hours" shall mean Monday through Friday, from 8:00 a.m. to 6:00 p.m. and Saturdays from 8:00 a.m. to 12:00 p.m., excluding Holidays, which hours shall be subject to change by Landlord from time to time.

Notwithstanding anything to the contrary set forth in the Lease, Tenant acknowledges and agrees that Landlord does not agreed to provide heating, ventilation, and air-conditioning ("HVAC") to the Premises, that Landlord makes no representation or warranty regarding the availability or adequacy of the existing HVAC system for Tenant's purposes, and that Landlord shall have no obligation to maintain, repair or replace such HVAC system. The existing HVAC system serving the Premises was designed to serve space in the Building in addition to the Premises, and the controls therefore are not located in the Premises. If Tenant desires HVAC, Landlord shall use reasonable efforts to make such service available upon reasonable notice from Tenant, and Tenant shall pay all costs incurred by Landlord in connection therewith on demand. In the event such service is provided, and the additional space served by the HVAC system is leased and occupied, Landlord shall equitably allocate the costs of such service among Tenant and the occupant of such additional space. Tenant shall be responsible, at its cost, for compliance of the HVAC system serving the Premises with applicable Law.

EXHIBIT G

RULES AND REGULATIONS

1. The Common Areas shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress to and egress from their respective premises. The Common Areas are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation, and interest of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. If the responsibility for the HVAC system is not a tenant's, no tenant and no employee or invitee of any tenant shall go upon the roof of the Building except in the case of maintenance of the HVAC system.

2. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging. No cooking shall be done or permitted on the Premises except that private use by Tenant of approved microwave ovens, equipment for brewing coffee, tea, hot chocolate, and similar beverages shall be permitted, provided that such use is in accordance with all Laws.

3. No tenant shall employ any person or persons other than the janitor of Landlord for the purpose of cleaning its Premises unless otherwise agreed to by Landlord in writing. Except with the consent of Landlord (which consent may be withheld in Landlord's sole discretion), no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. No tenant shall cause any unnecessary labor by reason of such tenant's carelessness or indifference in the preservation of good order and cleanliness. Tenant shall promptly notify Landlord of any carpet or wall stains requiring attention. Janitor service will not be furnished on nights when rooms are occupied after 6:00 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.

4. Landlord will furnish each tenant free of charge with two (2) keys to each door provided in the premises by Landlord. Landlord may make a reasonable charge for additional keys. No tenant shall have any such keys copied. No tenant shall alter any lock or install a new or additional lock or any bolt on any door of its premises. Each tenant upon the termination of its lease shall deliver to Landlord all keys to doors in the Building. Should Tenant install a locking system that requires a code, such code shall be provided to Landlord in writing, and all subsequent changes to the code will be provided in writing twenty-four (24) hours prior to such change taking place.

5. Landlord shall designate appropriate entrances for deliveries or other movement to or from the Premises of equipment, materials, supplies, furniture, or other property, and Tenant shall not use any other entrances for such purposes. Landlord must have approved all means or methods used to move equipment, materials, supplies, furniture, or other property in or out of the Building prior to any such movement. Landlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Building by moving or maintaining such property shall be repaired at the expense of Tenant. Tenant shall move all freight, supplies, furniture, fixtures, and other personal property only at such times as Landlord may designate. Unattended vehicles will be towed at the vehicle owner's expense.

6. No tenant shall use any method of heating or ventilation or air conditioning other than that supplied by Landlord.

7. No animals (except for service animals) shall be brought or kept in the Premises or the Building.

8. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person in the case of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's opinion. Landlord reserves the right to prevent access to the Building during the continuance of the same by such action as Landlord may deem appropriate, including closing doors.

9. No curtains, draperies, blinds, shutters, shades, screens, or other coverings, hangings, or decorations shall be attached to, hung, or placed in, or used in connection with, any window of the Building. Such items shall be

installed on the office side of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. Tenant shall keep window coverings closed when the effect of sunlight (or the lack thereof) would impose unnecessary loads on the Building's heating or air condition systems.

10. Tenant shall ensure that the doors of the Premises are closed and locked and that all water faucets, water apparatus, and utilities are shut off before Tenant or Tenant's employees leave the Premises so as to prevent waste or damage, and for any default or carelessness in this regard, Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors, all tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

11. The toilet rooms, toilets, urinals, wash bowls, and other apparatus shall not be used for any purpose other than that for which they are constructed, no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the tenants who, or whose employees or invitee, shall have caused it.

12. No tenant shall sell at retail newspapers, magazines, periodicals, theater or travel tickets, or any other goods or merchandise to the general public in or on the Premises, nor shall any tenant carry on or permit any employee or other person to carry on the business of stenography, typewriting, printing, or photocopying or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the Building; nor shall the premises of any tenant be used for manufacturing of any kind, or any business or activity other than that specifically provided for in such tenant's lease.

13. No tenant shall install any radio or television antenna, loudspeaker, or other device on the roof or exterior walls of the Building. No TV or radio or recorder shall be played in such a manner as to cause a nuisance to any other tenant.

14. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Landlord may approve. No other vehicles of any kind shall be brought by any tenant into the Building or kept in or about its premises.

15. Each tenant shall store all its trash and garbage within its premises. No material shall be placed in the hallways or in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of office building trash and garbage in the locale without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entryways provided for such purposes and at such times as Landlord shall designate. Each tenant shall comply with any and all Laws regarding recycling.

16. Canvassing, soliciting, distribution of handbills, or any other written material and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

17. Except in a case of emergency, the requirements of tenants will be attended to only upon application in writing at the office of the Building or by facsimile transmitted to the office of the Building manager. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

18. Tenant shall not occupy the Building or permit any portion of the Building to be occupied for the manufacture, distribution, or direct sale of liquor, narcotics, or tobacco in any form, or as a medical office, barber shop, manicure shop, music or dance studio, or employment agency. Tenant shall not conduct in or about the Building any auction, public or private, without the prior written approval of Landlord, which approval may be withheld in Landlord's sole discretion.

19. Tenant shall not use in the Building any machines, other than standard office machines, such as typewriters, calculators, desktop computers, copying machines, and similar machines, without the prior written approval of Landlord. All office equipment and any other device of any electrical or mechanical nature shall be placed

by Tenant in the Premises in settings approved by Landlord, so as to absorb or prevent any vibration, noise, or annoyance. Tenant shall not cause improper noises, vibrations, or odors within the Building.

20. Tenant shall not enter the mechanical rooms, air conditioning rooms, electrical closets, janitorial closets, or similar areas or go upon the roof of the Building.

21. Tenant shall not mark, paint, drill into, cut, string wires within, or in any way deface any part of the Building, without the prior consent of Landlord, and as Landlord may direct.

22. Tenant will not place objects on window sills or otherwise obstruct the exterior wall window covering.

23. Tenant will keep all doors opening to the exterior of the Building, all fire doors, and all smoke doors closed at all times.

24. Tenant shall not obstruct, alter, or in any way impair the efficient operation of Landlord's heating, ventilating, electrical, fire, safety, or lighting systems, nor shall Tenant tamper with or change the setting of any thermostat or temperature control valves in the Building.

25. If Tenant uses the Premises after regular business hours or on non-business days Tenant shall lock any entrance doors to the Building or to the Premises used by Tenant immediately after using such doors.

26. Tenant shall not use any portion of the Premises for lodging.

27. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

28. Tenant shall not park or attach any bicycle or motor driven cycle on or to any part of the Premises or Building.

29. Tenant shall not install any artwork that could give an artist or any other party a right under applicable Law to prevent removal of the same.

30. This is a non-smoking facility. Smoking is prohibited within the confines of the building.

31. Provided Landlord acts in good faith pursuant to sound operating procedures, Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

32. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the agreements, covenants, conditions, and provisions of any lease of premises in the Building.

33. Landlord reserves the right to modify the foregoing and promulgate such other rules and regulations as Landlord may from time to time decide are needed for the safety, care, or cleanliness of the Building, for the preservation of good order therein, or as changed conditions or particular circumstances may require.

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT H

-1-

EXHIBIT I

ENVIRONMENTAL DISCLOSURES

Landlord hereby discloses to Tenant that chemicals listed under the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65), are used in building materials, and in products used to maintain the Property, and are emitted as a result of the activities of tenants and guests. In addition, other listed chemicals are present in some of the building materials, in products used to maintain the Property, and are emitted as a result of the activities of tenants and guests. In accordance with Proposition 65, the following warning is provided:

WARNING

THIS BUILDING CONTAINS CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, AND BIRTH DEFECTS AND OTHER REPRODUCTIVE HARM. THESE CHEMICALS ARE CONTAINED IN SOME BUILDING MATERIALS, IN SOME OF THE PRODUCTS AND MATERIALS USED TO MAINTAIN THE PROPERTY, AND IN EMISSIONS, FUMES, AND SMOKE FROM TENANT AND GUEST ACTIVITIES. DISTURBANCE OF OR DAMAGE TO INTERIOR SURFACES OF THE BUILDING MAY INCREASE THE POTENTIAL FOR EXPOSURE TO THESE SUBSTANCES.

(CALIFORNIA HEALTH AND SAFETY CODE §25249.5 ET SEQ.)

Tenant acknowledges that Landlord has advised Tenant that the Building contains or, because of its age, is likely to contain asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations, as permitted by Article 11 of the Lease, Tenant shall, in addition to complying with the requirements of Article 11, undertake the Alterations in a manner that avoids disturbing any ACMs present in the Building. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health and Safety Code Sections 25915-25919.7.



CERTIFICATE OF LIABILITY INSURANCE

SANDIEG-01

DAWFA1

DATE (MM/DD/YYYY)
05/18/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements(s).

PRODUCER
First Flight Insurance Group, Inc.
4112 N. Croatan Hwy.
Kitty Hawk, NC 27949

CONTACT: Annette McCargo
PHONE: (252) 573-3884
FAX: (252) 573-3884
E-MAIL: amccargo@firstflightinsurance.com
ADDRESS: amccargo@firstflightinsurance.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURED

San Diego Parasail Adventures Inc.
PO Box 191059
San Diego, CA 92159

INSURER A: Certain Underwriters at Lloyds

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

WKS LTR	TYPE OF INSURANCE	ADDL SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ \$2,500 per occ ded. GEN'L AGGREGATE LIMIT APPLIES PER ☒ POLICY ☐ PRO ☐ LOC ☐ OTHER	X	SA00263-R15-16581	05/27/2017	05/27/2018	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (E.C. CONTRACTOR) \$ 100,000 MED EXP (ACC OR PERS) \$ 1,000 PERSONAL & ADJ INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMPOUND AGG \$ Excluded
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRE AUTOS ONLY ☐ NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT \$ BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER OCCURRENCE) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
	UMBRELLA LIAB EXCESS LIAB DED \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe below	Y/N	N/A			PER \$ \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):
Parasail Operation at the locations per schedule on file.

CERTIFICATE HOLDER IS LISTED AS AN ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY.

Additional Insured holds the following endorsement: Waiver of Transfer of Rights of Recovery Against Others To Us, FORM CG 24 04 10 93.

CERTIFICATE HOLDER

City of San Diego, its elected officials, officer representatives,
agents & employees
1200 Third Ave, Suite 1700
San Diego, CA 92101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Dawne Vitaros



September 12, 2017

Vladimir Balotsky
Supervising Property Agent
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Dear Mr. Balotsky:

Subject: (San Diego Parasail Adventures, Inc. sublease) – Lease Agreement – The City of San Diego – SCPT Marina Village, LLC – Document 759240 in the Office of the City Clerk

Pursuant to Section (D) 21, Assignment and Subletting, of the above referenced lease, the attached application for sublease and corresponding sublease assignment documents are provided for City review and approval.

A processing fee check of \$990.00 is also included in this package. Should you have any questions, I can be reached at (619) 921-9349.

Sincerely,

Gerard Charest
General Manager



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):

S.C.P.T. Marina Village, LLC

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

N/A

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

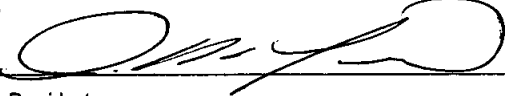
N/A

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

San Diego Parasail Adventures Inc

Date this Questionnaire completed: August 15th 2017

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

Signature: 

Title:

President

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:

San Diego Parasail Adventures Inc.

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

P.O. Box 191059 San Diego, CA 92119

Telephone No.: 619 518-4386

Fax. No.: N/A

E-mail Address: prowatersports@gmail.com

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

N/A

Telephone No.: _____

Fax. No.: _____

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

Sole Proprietorship (); Partnership (); Corporation (X);

Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): N/A

N/A

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 (X)
2. When incorporated? August 15th 1989
3. Where incorporated? California
4. Is the corporation authorized to do business in California? Yes (X) No ()
If so, as of what date? August 15th 1989
5. The corporation is held:
 - a. Publicly () Privately (X)
 - 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: | <u>100</u> | <u>100</u> | <u>0</u> |
| b. Number of nonvoting shares: | <u>0</u> | <u>0</u> | <u>0</u> |
| c. Number of shareholders: | | | <u>1</u> |
| d. Value per share of Common Stock: | | Par | \$ <u> </u> |
| | | Book | \$ <u> </u> |
| | | Market | \$ <u> </u> |

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:	Arri McPherson
Title:	President
Address:	P.O. Box 191059 San Diego, CA 92119
No. of Shares:	100%

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: _____
2. Where Organized: _____
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 %

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

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

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

OTHER INFORMATION

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

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

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: Mr. Chris Brewster

Firm: City of San Diego

Title: (Former Chief Lifeguard City of San Diego)

Address: brewster@lifesaver1.com

Telephone: 619 807-7777

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

Chief Brewster was in charge of overseeing the original RFP (1989) in which San Diego Parasail Adventures was selected.

REFERENCE NO. 2

Name: Sandy Kuhn

Firm: Homnick, Voris and Kuhn, LLP

Title: Principal Accountant

Address: ibkuhn@att.net

Telephone: (619) 461-6700

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

Current CPA (15 years)

REFERENCE NO. 3

Name: Susan Lamping

Firm: CDC Small Business Finance

Title: Vice President of Community Lending

Address: slamping@cdcloans.com

Telephone: 619 234-8639

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

Borrowed \$140,000.00 (repaid loan ahead of term with no late payments)

REFERENCE NO. 4

Name: Mike Suskind

Firm: Logan Insurance Agency

Title: Commercial Agent

Address: mike@loganins.net

Telephone: (850) 438-1054

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

Insurance agent for over twenty years. Financing of insurance premiums approximate annually \$22,000.00

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.)

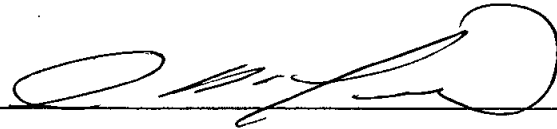
The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	Armit A. McPherson
Date of Birth	10/11/1962
Place of Birth	Long Beach, California
Social Security Number	553 08 8900
Driver's License Number/State	N9994742 (California)
Home Address	9881 Hawley Rd El Cajon, CA 92021
Previous Address	8460 El Paso Street La Mesa, CA 91942
Home Telephone No.	619 518-4386
Employer	San Diego Parasail Adventures
Occupation	President/Captain/GM
Business Address	P.O. Box 191059 San Diego, CA 92119
Business Telephone No.	619 223-4386
Business Fax No.	N/A

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

Date August 15th 2017

Signed



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

San Diego Parasail Adventures Inc.

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.

Commercial Parasailing Tours (operating under current Parasailing Concession Agreement).
San Diego Parasail Adventures Inc has been an operating partner of the City of San Diego since 1989.

*For more details, please see 2017 operating plan currently on file with City

N/A

**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.

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)				
	Parasailing Tours				
1	\$ 575,000.00	\$	\$	\$	\$
2	\$592,000.00				
3	\$609,000.00				
4	\$627,000.00				
5	\$645,000.00				

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.

Captain Arrit A. McPherson is the co-founder and current president of San Diego Parasail Adventures Inc. which was formed in 1989, since that time, the company has been successfully operating in partnership with the City.

Over the past three decades under McPherson's leadership the company has grown into an iconic, top-rated San Diego visitor attraction, the company has also established an impeccable safety record. In addition, Mr. McPherson has established himself as a top-level consultant and one of the world's leading experts in the Commercial Parasailing and Watersport industries.

Mr. McPherson also founded the Professional Association of Parasail Operators (PAPO) and the National Association of Commercial Watersport Operators (NACWO) where he developed the world's first comprehensive set of Commercial Parasailing Operating Standards and Guidelines (OSAG) which are now recognized by the USCG, and are currently in use by several government agencies, Insurance underwriters, Cruise-line operators and other companies to aid in regulating operators.

Mr. McPherson also assisted Florida and Virginia lawmakers with drafting legislation that is currently helping to regulate operators in the state of Florida and Virginia.

N/A

**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).

Lease Agreement

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and HIGH FLIERS LTD., a California limited partnership, hereinafter called "LESSEE".

(A) DEMISE. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, delineated on EXHIBIT C attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

1. Said premises are lessed to LESSEE for the purpose of construction, operation and maintenance of a marina complex including major and minor boat repairs, boat sales, marine chandlery, boat slips, transient mooring, marine fuel dock, pump-out station, boat rental, ports of call shops, restaurants and such other uses necessary or incidental thereto, all in accordance with the Precise Plan of Development filed in the Office of the City Clerk as Document No. 740187; and such other uses which are first approved in writing by the City Manager of CITY and for no other purpose. The major and minor boat repairs and the marine fuel dock specified herein are facilities which may be provided at the LESSEE'S option in accordance with said Precise Plan. The boat repair area shall be landscaped in a manner comparable to landscaping approved throughout the project.

2. LESSEE covenants to use said premises only for the aforesaid purposes for which they are leased and to diligently conduct the business thereon so as to maximize rental income therefrom.