



Department of Real Estate and Airport Management

July 25, 2024

Mr. John Yamate
Seaforth Sportfishing Corporation
1717 Quivira Road
San Diego, CA 92109

Reference: Consent to Sublease Request

Hi John,

I mailed back the signed Estoppel Cert you were asking for. I hope you have received it.

In the package that you mailed to us on June 29, 2024, you added copies of the new sublease agreement between Seaforth and Brant Crenshaw, who is the new restaurant operator. I assume you are requesting a written Consent to Sublease as required under the lease.

To process the Consent to Sublease the City Attorney's Office will need a signed Lessee/Sublessee Questionnaire to satisfy City Charter Section 225 - Mandatory Disclosure of Business Interest, which I have enclosed, as well as a Certificate of Insurance naming the City of San Diego as the Certificate Holder. Please mail or email me the completed questionnaire and the COI at your earliest convenience.

We will also need a payment for the processing fee of \$1,050 made out to the City Treasurer but mailed to my attention to the address below in my signature block.

Please let me know if you have any questions.

Thank you,

A handwritten signature in cursive script that reads "Roswitha Sanchez".

Roswitha D. Sanchez
Supervising Property Agent
EDD/Real Estate
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Encl.



1717 Quivira Road
San Diego CA 92109
619.224.3383

June 29, 2024

Roswitha Sanchez
Supervising Property Agent
Department of Real Estate and Airport Management
City of San Diego
1200 Third Avenue Suite 1700
San Diego CA 92101

Hi Rose:

Hope all is well.

Please find the enclosed Estoppel Certificate from our bank, Pacific Premier. We are in the process of obtaining a new note as our previous one came to term.

Also enclosed are copies of the lease agreement between Seaforth and our new tenant in the restaurant.

If you have any questions, please feel free to contact me at (619) 224-3383.

Thank you,



John

SUBLEASE AGREEMENT

by and between

SEAFORTH SPORTFISHING CORPORATION,
a California corporation,

"Landlord"

and

BRANT CRENSHAW

Doing Business As:

"Charli LLC"

"Tenant"

Made Effective

December 1,

2023

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS AND FUNDAMENTAL PROVISIONS	1
1.1 <u>Basic Sublease Provisions</u>	1
1.2 <u>Definitions</u>	2
1.3 <u>Significance of Basic Sublease Provisions and Definitions</u>	3
ARTICLE II - DEMISED PREMISES AND TERM	3
2.1 <u>Demise of Premises</u> ...	3
2.2 <u>Quiet Enjoyment</u>	4
2.3 <u>Term:</u>	4
ARTICLE III - RENT AND OTHER CHARGES ..	4
3.1 <u>Place of Payment</u> ..	4
3.2 <u>Percentage Rent To City</u>	4
3.3 <u>Rent Payments/Record Keeping</u>	5
3.4 <u>Operating Charges</u>	5
3.5 <u>Failure to Pay Rent When Due</u>	5
ARTICLE IV - USE OF PREMISES	6
4.1 <u>Use</u> ..	6
4.2 <u>Legal Operation of Premises</u>	6
4.3 <u>Signs and Displays</u>	6
ARTICLE V - ALTERATIONS TO PREMISES	6
5.1 <u>Alterations to Premises</u> ..	6
5.2 <u>Compliance with Laws</u>	6
5.3 <u>Plans</u>	6
5.4 <u>Construction Liens</u>	6
ARTICLE VI - INSURANCE	7
6.1 <u>Tenant Insurance</u>	7
6.2 <u>Increase in Insurance Premiums</u>	8
6.3 <u>Waiver of Subrogation</u>	8
6.4 <u>Mutual Releases</u> ...	9
ARTICLE VII - HAZARDOUS MATERIALS	9
ARTICLE VIII - SUBORDINATION AND ATTORNMENT ..	9
8.1 <u>Subordination to Mortgage</u>	9
8.2 <u>Succession to Landlord's Interest; Attornment</u> ...	9
8.3 <u>Estoppel Certificate</u>	10
ARTICLE IX - TRANSFERS, ASSIGNMENT AND SUBLETTING	10
9.1 <u>Covenant Not to Assign or Sublet Without Consent</u>	10
9.2 <u>Assignment in Violation of Article</u>	10

ARTICLE X - DAMAGE TO PREMISES; INDEMNITY	10
10.1 <u>Damage</u>	10
10.2 <u>Tenant Indemnity</u>	11
10.3 <u>Landlord Indemnity</u>	12
10.4 <u>Insured Losses Excluded</u>	12
ARTICLE XI - DEFAULT AND REMEDIES	12
11.1 <u>Default of Tenant</u>	12
11.2 <u>Landlord's Remedies</u>	12
11.3 <u>Landlord's Right to Cure Default</u>	14
11.4 <u>Remedies Cumulative</u>	14
ARTICLE XII - SURRENDER OF AND ACCESS TO PREMISES	14
12.1 <u>Surrender of Premises</u>	14
12.2 <u>Access to Premises</u>	15
ARTICLE XIII - COMPLIANCE WITH CITY PROGRAMS/POLICIES	15
13.1 <u>Nondiscrimination</u>	15
13.2 <u>Equal Opportunity Contracting</u>	15
13.3 <u>Local Business and Employment</u>	16
13.4 <u>City Employee Participation Policy</u>	16
13.5 <u>Drug-free Workplace</u>	16
13.6 <u>Disabled Access Compliance</u>	17
13.7 <u>Trash and Refuse</u>	17
13.8 <u>Food Packaging</u>	17
13.9 <u>Operation of Facilities</u>	18
ARTICLE XIV - MISCELLANEOUS ..	18
14.1 <u>Notices</u>	18
14.2 <u>Successors and Assigns</u>	18
14.3 <u>Time is of the Essence</u>	18
14.4 <u>Relationship of Parties</u>	18
14.5 <u>Waiver</u>	18
14.6 <u>Force Majeure</u>	18
14.7 <u>Governing Law</u>	19
14.8 <u>Attorney Fees</u>	19
14.9 <u>Partial Invalidity</u>	19
14.10 <u>Entire Agreement</u>	19

EXHIBIT "A" PROJECT AND PREMISES DESCRIPTION

ARTICLE I - DEFINITIONS AND FUNDAMENTAL PROVISIONS

1.1 Basic Sublease Provisions:

- 1.1.1 **EFFECTIVE DATE:** December 1, 2023
- 1.1.2 **LANDLORD:** SEAFORTH SPORTFISHING CORPORATION, a California corporation
- 1.1.3 **ADDRESS OF LANDLORD:** 1717 Quivira Road
San Diego, CA 92109
- 1.1.4 **TENANT:** Charli LLC dba Charli's Landing
- 1.1.5 **ADDRESS OF TENANT:** 1717 Quivira Road,
San Diego, CA 92109
- 1.1.6 **PREMISES:** The restaurant comprising approximately ____ square feet of the Seaforth Sportfishing facility in Mission Bay Park, San Diego, CA and outlined in the plot plan attached as Exhibit A
- 1.1.7 **DELIVERY DATE:** December 1st, 2023 or earlier
- 1.1.8 **RENT COMMENCEMENT DATE:** May 1, 2024 or upon approval of sublease by city.
Whichever is later.
- 1.1.9 **EXPIRATION DATE:** 60 months following the Rent Commencement Date
- 1.1.10 **PERMITTED USES:** Operation of a restaurant, sale of food & beverages (including beer and wine) and related services, and for no other purpose or use, except as expressly permitted and further described in Section 3.2.
- 1.1.11 **RENTAL TERMS:** Base Rent: \$2800 per month. Additional 1% on gross sales less sales tax, tips and for any month where sales exceed \$60,000.

1.1.12 PERCENTAGE RENT:

All percentage rent payable to the City of San Diego per Section 3.2 from operations conducted by Tenant as required under Landlord's master lease from the City (the latter payable by Tenant as a "pass through" obligation from Landlord).

1.1.13 SECURITY DEPOSIT:

None

1.1.14 RENEWAL OPTIONS: Lessee, at their sole discretion, maintains the right to continue leasing space for Two (2) Five (5) year terms. Rent will be increased by 5% each five-year term. Tenant will give landlord written notice of renewal at least 30 days prior to lease expiration.

1.2 Definitions:

1.2.1 Additional Rent: The charges specifically set forth in Article III, and all other amounts and charges payable by Tenant under any provisions of this Sublease.

1.2.2 Common Area Retail Facilities: All areas and facilities within the Project that are outside the exterior boundaries of the buildings situated thereon.

1.2.3 Hazardous Materials: Any: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which: (i) pose a hazard to the Premises or to persons on or about the Premises, or (ii) cause the Premises to be in violation of any Hazardous Materials Laws; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC§ 9601, et seq.; the Federal Water Pollution Control Act, as amended, 33 USC§ 1251, et seq.; (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Premises or the owners and/or occupants of property adjacent to or surrounding the Premises, or any other person coming upon the Premises or adjacent property; and (e) other chemical, materials or substance which may or could pose a hazard to the environment.

1.2.4 Hazardous Materials Claims: Any and all enforcement, cleanup, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against Landlord, Tenant or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

1.2.5 Hazardous Materials Laws: Any federal, state or local laws, ordinances, regulations or policies relating to the environment, health and safety, and Hazardous Materials (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to

industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, soil, groundwater and indoor and ambient air conditions.

1.2.6 Index: The Consumer Price Index - Urban Consumers (San Diego, CA; Base 1982-1984 = 100) ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics. In the event the Bureau of Labor Statistics should discontinue the publication of the Index, or alter the same in some other manner, Landlord in its discretion, will adopt a reasonably comparable, suitable index or procedure which reflects consumer prices.

1.2.7 Interest Rate: The lesser of (i) the maximum lawful rate permitted by law in the State in which the Project is located to be charged by Landlord to Tenant, or (ii) four percent (4%) above the prime rate then published in the *Wall Street Journal*, and such interest shall be computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year.

1.2.8 Master Lease: That certain 40-year lease for the Project between the City of San Diego ("City"), as Lessor, and Seaforth Sportfishing Corporation, as Lessee, approved by San Diego City Council Resolution Dated October 9, 2007, and assigned Document Number 303068. Tenant acknowledges receipt of a copy of the Master Lease to which the terms of this Sublease are subject and subordinate as provided in Section 20.20 [??].

1.2.9 Project: The land and the buildings commonly known as "Seaforth Sportfishing and Marina" situated on approximately 8.995 acres of water and 6.317 acres of land located south-west of the Hyatt Islandia Hotel and Marina in Quivira Basin, Mission Bay Park, San Diego, California, as the same may be expanded, altered, modified or rearranged by Landlord from time to time.

1.2.10 Rent: Minimum Rent, Percentage Rent, Additional Rent, and all other amounts and charges payable by Tenant under any provision of this Sublease, and any rent or sales tax hereinafter levied by governmental authority on any Rent whether payable by Landlord or Tenant or collectible by Landlord from Tenant.

1.2.11 Sublease Year: The first Sublease Year of the Term shall commence upon the Rent Commencement Date. If the Rent Commencement Date shall not fall upon the first day of a calendar month, then the first Sublease Year shall be the period of time from the Rent Commencement Date to the end of the month in which the Rent Commencement Date shall occur plus the following twelve (12) calendar months. Each Sublease Year thereafter shall be a successive period of twelve (12) calendar months.

1.3 Significance of Basic Sublease Provisions and Definitions: Each reference in this Sublease to any of the Basic Sublease Provisions or Definitions contained in Sections 1.1 and 1.2 of this Article shall be deemed and construed to incorporate all of the terms thereof.

ARTICLE II - DEMISED PREMISES AND TERM

2.1 Demise of Premises: Landlord hereby leases and demises to Tenant and Tenant rents from Landlord the Premises (as more particularly described in the Basic Sublease Provisions and Exhibit A to this Sublease), subject to the terms and conditions herein contained, and all encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Project, together with the non-exclusive right to use, in common with Landlord and others, the Common Area Retail Facilities; provided, however, the Premises shall not include such conduits, facilities and structures as may be located in the Premises for the common use and benefit of Landlord and other tenants. It is Tenant's obligation to determine whether the Premises comply with those governmental laws and regulations applicable to Tenant's intended use of the Premises.

2.2 Quiet Enjoyment: Tenant, upon paying the Rent herein reserved and performing and observing all of the other terms, covenants and conditions of this Sublease (subject to applicable notice and cure periods), shall peaceably and quietly have, hold and enjoy the Premises during the Term, subject only to the terms of this Sublease and the Master Lease.

2.3 Term: The term of this Sublease shall commence on the Rent Commencement Date set forth in Section 1.1.8 and shall end on the date set forth in Section 1.1.9 (the "Expiration Date"). All monetary obligations of Tenant, including monthly installments of Rent, shall begin to accrue on the Rent Commencement Date.

ARTICLE III - RENT AND OTHER CHARGES

3.1 Place of Payment: During the Term, Tenant covenants and agrees to pay to Landlord at the place designated in Section 1.1.3 hereof, without demand, deduction or setoff all Rent as defined in Sections 1.1.12 and 1.2.10 hereof.

3.2 Percentage Rent To City: Subject to Section 3.2(d) of the Master Lease regarding the review and modification of percentage rents payable to City, Tenant shall pay to Landlord, commencing on the Rent Commencement Date, an amount equal to the then applicable percentage rent payable to City under the terms of the Master Lease for operations conducted by Tenant, calculated on Gross Income on a monthly basis. As of the Effective Date of this Sublease, such uses and related percentages applicable to Tenant are as follows:

Percentages

3%
6%

Business Activities

Food / NA Beverage Sales
Beer & Wine Sales

"Gross Income," for purposes of calculating percentage rent payable to the City, shall include all income resulting from occupancy of the Premises from whatever source derived, whether received or to become due. Gross Income includes income received by Tenant or by any sublessee, permittee, licensee, or other party as a result of occupancy or operation of the Premises, except as may be otherwise specified in this Sublease (including the exceptions set forth in the next paragraph). Gross Income does not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by Tenant 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 in computing Gross Income. Gross Income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. Gross income does not include customer's tips or gratuities paid to staff. The amount of the taxes and refunds shall be clearly shown on the books and records of Tenant.

"Gross Income" includes: rental income, the sales price of all merchandise sold (including gift certificates), and the charges for all services performed; sales made through mail, email, e-commerce, telephone, or other electronic means and received or filled at the Premises; all deposits not refunded to purchasers; all merchandise sold or services performed for cash or for credit (regardless of collections) or for any other consideration; receipts from vending and electronic entertainment devices in the Premises and any amount which Tenant in the normal and customary course of business would credit or attribute to its business upon the Premises or any part or parts thereof.

All income to Tenant from sale of merchandise to other dealers, at actual cost with no mark up, as a method of changing inventory and resulting in no profit for Tenant, shall be excluded from computation of Gross Income.

Any activity conducted on the Premises without prior approval by Landlord and the City Manager shall be subject to the requirements of Section 3. Unauthorized Use Charge of the Master Lease.

3.3 Rent Payments/Record Keeping:

3.3.1 Payments of all Percentage Rent to the City shall be due and payable monthly within fifteen (15) days after the last day of each month. The last payment of Percentage Rent shall be made on or before the fifteenth (15th) day after the expiration or termination of the Term and shall be for the Percentage Rent payable for the month ending on the last day of the Term.

3.3.2 Tenant shall submit to Landlord on or before the fifteenth (15th) day of each calendar month during the Term (including the fifteenth (15th) day of the month following the end of the Term), together with the remittance of Percentage Rent then owing, a written statement, signed by Tenant and certified by it to be true and correct, showing in accurate detail the amount of applicable Gross Income for the preceding calendar month used to calculate Percentage Rent. Each such report shall be certified as accurate by the chief financial officer of Tenant and shall be prepared in accordance with generally accepted accounting principles consistently applied. All reports of Gross Income shall set forth the amount of Rent paid, Percentage Rent due and paid, shall contain such other details as Landlord shall reasonably require, and shall be in a form reasonably acceptable to Landlord.

3.3.3 Tenant shall, at all times during the 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 Premises pursuant the procedures and methodology set forth in paragraph 3.5 of the Master Lease. Such books and records shall be subject to audit as provided in paragraph 3.5(d) of the Master Lease, and the costs of such audit shall be recoverable by Landlord and/or Tenant as provided therein.

3.4 Operating Charges: "Operating Charges" means Landlord's total reasonable costs for insuring, operating, managing, administering, maintaining, repairing, replacing, or improving the Common Area Retail Facilities. Tenant shall not be required to contribute to Landlord's Operating Charges. Tenant shall, however, be responsible for, and shall hold Landlord harmless of, all costs associated with insuring, operating, managing, administering, maintaining, repairing, replacing, or improving the buildings, appurtenances and other improvements installed or operated by Tenant and/or which comprise the Premises, including but not limited to separately metered gas and electricity and trash collection.

3.5 Failure to Pay Rent When Due: Tenant acknowledges the late payment by Tenant of any installment of Rent when due will cause Landlord to incur certain costs and expenses not contemplated under the Sublease, the exact amount of which costs are extremely difficult or impracticable to determine. Therefore, if any installment is not received by Landlord from Tenant within ten (10) days after the date when due, Tenant shall pay to Landlord a late charge of five percent (5%) of the amount due, but not less than \$25. Landlord and Tenant agree this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss caused by Tenant's late payment. Should Tenant pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of Rent and Additional Rent, Landlord's acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to Tenant's nonpayment nor prevent Landlord

from exercising all other rights and remedies available to Landlord under this Sublease or under law. Tenant shall pay the late charge as Additional Rent with the next installment of Rent when due.

ARTICLE IV - USE OF PREMISES

4.1 Use: Tenant shall use the Premises solely for the Permitted Uses specified in Section 1.1 10 and Section 3.2, and for no other purpose whatsoever, without the prior written consent of both Landlord and City.

4.2 Legal Operation of Premises Tenant shall promptly comply with all laws, ordinances, zoning restrictions, rules, regulations, orders and any requirements of any duly constituted public authorities now or hereafter pertaining to (a) the physical condition of any improvements constructed by Tenant in the Premises; and (b) Tenant's business operations in the Premises, including, without limitation, all ADA and other accessibility requirements unique to Tenant's use. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Premises or the Building in order to comply with the requirements of this Section. Landlord, at its sole cost and expense, shall comply with all other applicable laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, Building and/or the Project including, without limitation, all handicapped accessibility requirements.

4.3 Signs and Displays: Tenant shall not place, cause or permit to be placed and maintained on the exterior or the roof of the Premises any sign, awning or other advertising matter unless in compliance with all applicable laws, ordinances, rules, or regulations. Tenant shall obtain any approval required by such laws, ordinances, rules, and regulations and shall obtain Landlord's prior written approval prior to installing such signs and/or displays.

ARTICLE V - ALTERATIONS TO PREMISES

5.1 Alterations to Premises: Tenant shall not alter the exterior of the Premises including the storefront and/or signs, and shall not make any structural alterations to the Premises or any part thereof without, in each instance, obtaining Landlord's prior written consent, which consent shall be given or withheld in Landlord's sole discretion.

5.2 Compliance with Laws: All alterations shall be completed in a good, workmanlike and prompt manner and in compliance with all applicable laws. If any alterations which Tenant causes result in Landlord being required to make any alterations to any portion of the Project to comply with applicable laws, Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in making such alterations.

5.3 Plans: When applying for Landlord's consent, Tenant shall furnish complete plans and specifications for the desired alterations. Prior to commencement of any alterations, Tenant shall deliver to Landlord a copy of any required building permit and other governmental authorization pertaining to the alterations. All work shall be performed by licensed contractors acceptable to Landlord.

5.4 Construction Liens: Following the completion of any alterations to the Premises, Tenant shall furnish Landlord with waivers and affidavits confirming that all contractors, subcontractors, laborers and materialmen who have performed work on the Premises or supplied materials have been paid in full. Such waivers and affidavits shall be in accordance with applicable California statutes.

ARTICLE VI - INSURANCE

6.1 Tenant Insurance: Tenant shall keep in force at Tenant's expense during the Term and during such other time as Tenant occupies the Premises or any part thereof, the following types of insurance, in the amounts specified and in the form hereinafter required:

6.1.1 Commercial general liability insurance providing coverage for personal injury and property damage (which policy shall likewise include insurance against all assumed or contractual liability of Tenant under this Sublease), with coverage limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall cover the Premises and Tenant's use thereof against claims for "personal injury" liability, including but not limited to, bodily injury, death or property damage, and including liquor liability insurance.

6.1.2 All-risk property and casualty insurance (special form) covering all leasehold improvements in the Premises installed by Tenant and all of Tenant's property, including, but not limited to, Tenant's betterments and improvements, inventory, fixtures, furnishings, floor coverings, equipment and other property of Tenant, which insurance shall be in an amount sufficient to cover the full replacement cost thereof (without deduction for depreciation) and of any repair or reconstruction from any hazard covered under an all-risk policy, including, without limitation, against damages to all such property caused by or attributable to water damage, including, but not limited to, sprinkler leakage or sprinkler flow. The proceeds of such casualty policy shall be used for the repair or replacement of the property damaged or destroyed.

6.1.3 Business interruption insurance in amounts sufficient to 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 Project as a result of such perils.

6.1.4 Workers' compensation insurance for all of Tenant's employees who are subject to this Sublease to the extent required by applicable state or federal law, Such policy shall provide a minimum of \$1 million employers' liability coverage, and Tenant shall provide an endorsement that the insurer waives the right of subrogation against Landlord and Landlord's agents, as well as City and City's elected officials, officers, employees, agents and representatives. This policy shall also include coverage for claims made under the Long Shoreman Harbor Workers Compensation Act and the Jones Act.

6.1.5 All policies required to be obtained by Tenant pursuant to this Section shall be issued by insurance companies with a general policyholder's rating of not less than A- and a financial rating of not less than Class VII as rated in the most current available "Best's Insurance Guide," qualified to do business in the State of California and acceptable to Landlord and City, and shall name Landlord, Landlord's agents, Landlord's mortgagees or beneficiaries, City and its elected officials, officers, representatives and agents, and such other persons or firms as shall be specified by Landlord from time to time as additional insureds. Such policies shall be primary and non-contributory and shall have deductibles of not more than Ten Thousand and No/100 Dollars (\$10,000.00). 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 Landlord's and City's requirements. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Tenant and must be disclosed and acceptable to Landlord and to City at the time evidence of insurance is provided. 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.

6.1.6 All policies shall be in effect throughout the Term and any extended use, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement.

6.1.7 All proceeds from any loss shall be payable jointly to Landlord and Tenant. The proceeds when received shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed encumbering the Premises, the proceeds may be paid to the approved mortgagee or beneficiary, provided adequate provision reasonably satisfactory to Landlord and City has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the leased premises.

6.1.8 Tenant shall deliver copies of certificates of such insurance to Landlord upon execution of this Sublease and provide evidence of all renewals not less than thirty (30) days prior to the expiration date of each policy.

6.1.9 To assure protection from and against the kind and extent of risk existing on the Premises, Landlord and/or City, in their discretion (exercised reasonably and in good faith), may require/allow the revision of amounts and coverage at any time during the Term by giving Tenant thirty (30) days prior written notice. Tenant shall also obtain any additional insurance required by Landlord or City for new improvements to meet the requirements of this Sublease. Tenant's sublessees may also be required to maintain commercial general liability insurance coverage in amounts and for risks reasonably required to insure such sublessees' probable exposure to risks associated with its operations.

6.1.10 Tenant shall report to Landlord any accident causing any personal injury, or causing property damage in excess of \$500, suffered by persons occupying the Premises within 5 calendar days of such accident. 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.

6.2 Increase in Insurance Premiums: Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's insurance policies or which will prevent Landlord from securing such policies in companies acceptable to Landlord. Subject to the foregoing, if anything done, permitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon and about the Premises shall cause the rate of all-risk insurance on the Premises or the Project in companies acceptable to Landlord to be increased beyond the minimum rate from time to time applicable to the Premises or the Project for the Permitted Uses, Tenant shall pay as Additional Rent the amount of any such increase promptly upon demand by Landlord and shall cease such action until such payment is made.

6.3 Waiver of Subrogation: Landlord and Tenant (for themselves and for their insurers) each hereby waive any and all rights to recover against the other, for any loss or damage to such waiving party arising from any cause covered by all-risk property and casualty insurance (special coverage) policies in the State of California. In furtherance of the foregoing, Landlord and Tenant will each cause their respective insurers to issue appropriate waiver of subrogation rights endorsements (to the extent that such rights are not waived in the policies themselves) to such all-risk property and casualty insurance (special coverage) policies of insurance. By this Section, Landlord and Tenant intend that the risk of loss described above shall be borne by responsible insurance carriers to the extent above provided, and Landlord and Tenant hereby agree that, notwithstanding anything contained to the contrary in this Sublease, they shall look solely to, and seek recovery only from, their respective insurance carriers in the event of a loss, damage, or injury to the extent that such coverage

is provided or, if greater, agreed to be provided hereunder. For this purpose, any applicable deductible amount shall be treated as though it were recoverable under such policies.

6.4 Mutual Releases: Landlord hereby releases Tenant from any liability from any and all claims or damages arising out of Tenant's uses of the Common Area Retail Facilities, regardless of responsibility, to the extent such claims or damages are covered by insurance proceeds received by Landlord and Tenant hereby releases Landlord from any and all liability from any claims or damages arising out of Landlord's use of the Premises, regardless of responsibility, to the extent such claims or damages are covered by insurance proceeds received by Tenant.

ARTICLE VII - HAZARDOUS MATERIALS

Tenant neither has nor will it allow any person to: (1) install on the Premises or the Project any friable asbestos or any substance containing asbestos (which is included in the definition of Hazardous Materials) or (2) use, store, release or dispose of any Hazardous Materials in, on, or under the Premises or the Project, except in accordance with applicable law and normal business practices for similar projects similar in use to the Premises. In the event of a Hazardous Materials Claim or if Hazardous Materials are discovered in, on or under the Premises, due to Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials in, on or under the Premises, Tenant, at its sole cost and expense, shall comply with all Hazardous Materials Laws relative to such Hazardous Materials, pay immediately when due the cost of removal of any such Hazardous Materials and keep the Premises free of any lien imposed pursuant to such Hazardous Materials Laws.

ARTICLE VIII - SUBORDINATION AND ATTORNMENT

8.1 Subordination to Mortgage: Landlord and Tenant agree that this Sublease be and hereby is made subject and subordinate at all times to all ground and underlying leases and to all mortgages in any amounts, and all advances thereon which may now or hereafter affect such leases or the Project and to all renewals, modifications, consolidations, participation, replacements, and extensions thereof; provided, however, as a condition to this subordination provision, Landlord shall obtain from any then current holder of such lease or mortgage a commercially reasonable Subordination, Non-Disturbance and Attornment Agreement. The term "mortgage" as used herein shall be deemed to include a bond, trust indenture, and deed of trust. If Landlord or such lessor or mortgagee desires confirmation of such subordination, Tenant shall, within twenty (20) days thereafter, execute, acknowledge and deliver any reasonable instruments requested to evidence such subordination.

8.2 Succession to Landlord's Interest: Attornment: Nothing contained in this Sublease shall in any manner restrict Landlord's right to assign or encumber this Sublease or to sell, convey or transfer its interest in the Project. Should Landlord sell, convey or transfer its interest in the Project, or should Landlord enter into a mortgage affecting Landlord's fee interest or leasehold interest, as the case may be, in the Project or a sale/leaseback transaction, Tenant shall be bound to any successor to Landlord in title or interest under all the terms, covenants and conditions of this Sublease for the balance of the term hereof remaining after such succession, and Tenant shall without further documentation be conclusively deemed to have attorned to such succeeding party as its landlord under this Sublease promptly upon any such succession. Tenant's agreement to attorn to such purchaser or assignee shall be expressly conditioned upon such purchaser or assignee assuming this Sublease and agreeing to recognize Tenant's leasehold interest under this Sublease and Tenant's right to possession of the Premises and further agreeing that such right of possession shall not be terminated or disturbed except in accordance with the provisions of this Sublease. Landlord shall be

relieved of any and all obligations to Tenant hereunder arising subsequent to the transfer by Landlord of its title or interest in the Project promptly upon the assumption of said obligation by Landlord's successor. Tenant agrees that should any party so succeeding to the interest of Landlord require a separate agreement of attornment regarding the matters covered by this Sublease, then Tenant shall enter into any such commercially reasonable "attornment agreement".

8.3 Estoppel Certificate: Within twenty (20) days after request therefor by Landlord, Tenant shall deliver without charge a certificate to Landlord or any person, firm or corporation specified by Landlord, certifying that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed by Tenant), the dates to which Rent has been paid, and the Term.

ARTICLE IX - TRANSFERS, ASSIGNMENT AND SUBLETTING

9.1 Covenant Not to Assign or Sublet Without Consent: Tenant covenants that it will not assign, mortgage, or encumber this Sublease, nor sublease the Premises, or permit the Premises or any part of the Premises to be used or occupied by others, without the prior written consent of Landlord and City in each instance, compliance with the restrictions imposed in Sections 4.2 and 4.3 of the Master Lease, if applicable, and payment of the "Additional Consideration" provided for in Section 4.7 of the Master Lease, if required.

9.2 Assignment in Violation of Article: Any assignment or sublease in violation of this Article shall be deemed *void ab initio*. No consent to any assignment or subletting by Tenant shall release Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Sublease. The consent by Landlord and/or City to an assignment or sublease will not be construed to relieve Tenant from obtaining Landlord's and City's prior written consent in writing to any further assignment or sublease. No permitted subtenant shall have the right to assign or encumber its sublease or further sublease all or any portion of its subleased space or otherwise permit the subleased space or any part of its subleased space to be used or occupied by others. The acceptance of Rent from any other person shall not be deemed a waiver of any of the provisions of this Sublease nor consent to an assignment or sublease.

ARTICLE X - DAMAGE TO PREMISES; INDEMNITY

10.1 Damage:

10.1.1 In the event the Premises are damaged by fire, explosion, or other casualty or occurrence to the extent of fifty percent (50%) or less of the insurable value of the Premises, the damage to the Premises shall be repaired with due diligence by Landlord at Landlord's expense; provided, however, that Landlord in no event shall be required to expend for such repair an amount in excess of the net insurance proceeds received by Landlord as a result of such damage. In the event of any such damage in which: (A) the Premises shall be damaged to the extent of more than fifty percent (50%) of the insurable value, (B) either the building of which the Premises are a part or the Project is damaged to the extent of fifty percent (50%) or more of the insurable value, (C) the damage is caused by any occurrence not covered by Landlord's insurance, or (D) either the Project or the building of which the Premises are a part is damaged within the last six (6) months of the Term to the extent of twenty-five percent (25%) or more of the insurable value, Landlord may elect either to repair or to rebuild the Premises or the building in which the Premises are located or to terminate this Sublease upon giving notice of such election in writing to Tenant within ninety (90) days of the happening of the event causing the damage; provided, however, that Landlord in no event shall be

required to expend for such repair of the Premises or the building of which the Premises are a part an amount in excess of the insurance proceeds received by Landlord as a result of such damage. If the casualty or the repairing or rebuilding shall render the Premises untenable in whole or in part, and Tenant does not occupy such untenable portion of the Premises, the Rent shall be equitably abated from the date when the damage occurred until the earlier of Tenant's reopening for business or until ninety (90) days after Landlord delivers the Premises to Tenant, or until the effective date of termination as herein provided. If Landlord is required or elects to rebuild the Premises as herein provided, Tenant shall at its sole expense, repair or replace its betterments and improvements, stock in trade, fixtures, furnishings, floor coverings, equipment, and all other items which Tenant will require to operate in the Premises or is required to insure hereunder, and if Tenant has closed, Tenant shall promptly reopen for business.

10.1.2 Notwithstanding anything contained herein to the contrary, if Landlord is unable or unwilling to commence to repair, restore or rebuild the Premises within four (4) months after the occurrence of any such casualty or to substantially complete repairs to the Premises within six (6) months after the occurrence of such casualty, Tenant may terminate this Sublease upon thirty (30) days notice to Landlord after the expiration of such four (4) and six (6) month period, as applicable, and upon the expiration of said thirty (30) day notice period, neither party hereto shall have any further obligation to the other with respect to this Sublease or the tenancy created hereby except for obligations occurring or accruing prior to such termination.

10.2 Tenant Indemnity: Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord and City, and the elected officials, officers, representative, employees and agents of each, from and against all Claims (as defined below) and all costs, expenses, and attorneys' fees reasonably incurred in the defense or handling of any such Claims or any action or proceeding brought on any of such Claims. For purposes of this Sublease, the term "Claims" shall mean all third party liabilities, damages, losses, costs, expenses, attorneys' fees, and claims (except to the extent they result from Landlord's negligent acts or willful misconduct) in connection with injury or loss of life to person or damage to property arising from or which seek to impose liability under or because of (i) Tenant's or Tenant's contractors or licensees (collectively, "Tenant Parties") use of the Premises or the Project, (ii) the conduct of Tenant's business, (iii) any activity, work or things done, permitted, or suffered by Tenant or any of Tenant Parties in or about the Premises or elsewhere in the Project, (iv) any breach or default in the performance of any obligation to be performed by Tenant under this Sublease, (v) Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises or the Project, and/or (vi) any negligence of Tenant or any of Tenant Parties. If any action or proceeding is brought against Landlord by reason of any such Claims, Tenant upon notice from Landlord shall defend such action or proceeding at Tenant's sole cost by competent legal counsel. Except to the extent caused by Landlord's negligent acts or willful misconduct, Tenant assumes all risk of, Tenant waives all claims against Landlord in respect of, and Landlord shall not be liable for, any of the matters set forth above in this Section or any of the following: injury to Tenant's business, loss of income from such business, or damage or injury to the goods, wares, merchandise, or other property or the person of Tenant, Tenant Parties, or any other persons in, upon, or about the Premises, whether such damage, loss, or injury is caused by or results from criminal acts, fire, steam, electricity, gas, water, rain, the breakage, leakage, obstruction or other defects of pipes, sewer lines, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or any other cause, conditions, arising upon the Premises, or other sources or places, and regardless of whether the cause of such damage, loss, or injury or the means of repairing such damage, loss, or injury is inaccessible to Tenant.

10.3 Landlord Indemnity: Notwithstanding anything contained herein to the contrary, Landlord agrees to indemnify and hold Tenant harmless from and against: (i) any and all third party claims, actions, damages, liability and expenses in connection with injury or loss of life to person or damage to property arising out of any breach or default by Landlord in the performance of any term of this Sublease on Landlord's part to be performed, (ii) any negligence, willful wrong doing, inaction or action of Landlord, its agents, or employees in or about the Common Area Retail Facilities or the Project, or (iii) the existence of Hazardous Substances within the Project or the Premises which are were not introduced by Tenant. In case Tenant shall, without fault on its part, be made a party to any litigation or proceeding commenced by or against Landlord, then Landlord shall protect and hold Tenant harmless and shall pay all reasonable costs, expenses, and attorneys' fees incurred or paid by Tenant in connection with such litigation or proceeding and shall satisfy any judgment or fines that may be entered against Tenant in such litigation or proceeding. The foregoing indemnification shall survive the expiration or termination of this Sublease due to the lapse of time or otherwise.

10.4 Insured Losses Excluded: "Claims," as defined in connection with Tenant's and Landlord's obligations under the preceding sections to indemnify to other from loss, shall exclude insured claims to which Sections 6.3 (Waiver of Subrogation) and 6.4 (Mutual Releases) apply, but only to the extent such claims are in fact reimbursed with insurance proceeds.

ARTICLE XI. DEFAULT AND REMEDIES

11.1 Default of Tenant: In addition to any other provisions of this Sublease defining a default hereunder, and in addition to the events described in Section 4.4 of the Master Lease (as applied to Tenant's conduct), the occurrence of any of the following shall constitute a default by Tenant and a breach of this Sublease:

11.1.1 Failing or refusing to pay when due any amount of Rent required to be paid under this Sublease. No grace period prior to the imposition of a late charge pursuant to Section 3.5 above shall extend the date when Rent is due and payable. Notwithstanding the foregoing, Landlord agrees not to institute proceedings to terminate Tenant's rights under this Sublease without providing Tenant written notice of such default and ten (10) day's opportunity to cure. Such notice shall be in lieu of, and not additional to, any statutorily required notice of a period less than or equal to ten (10) days.

11.1.2 Failing or refusing to perform fully and promptly any covenant or condition of this Sublease other than those specified in Section 11.1.1 above if the failure continues for thirty (30) days (or such shorter time period as may be specified in the specific provision of this Sublease creating such covenant or condition) after written notice of the failure from Landlord to Tenant; provided, however, if such default cannot be cured within said time period, Tenant shall be deemed to have cured such default if Tenant so notifies Landlord in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and actually completes the cure within a reasonable period thereafter.

11.2 Landlord's Remedies: Landlord shall have the following remedies upon the occurrence of any default by Tenant. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law. Upon the occurrence of a default by Tenant under this Sublease, Landlord may at any time thereafter, without further notice or demand of any kind to Tenant or any other person except as required by applicable state law and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default, do any of the following:

11.2.1 Upon the occurrence of any default by Tenant and lapse of any applicable cure period, Landlord may at its election terminate this Sublease or terminate Tenant's right to possession only, without terminating this Sublease. Upon termination of this Sublease or of Tenant's right to possession, Tenant shall immediately surrender possession and vacate the Premises, and deliver possession thereof to Landlord, and Landlord or Landlord's agents may immediately or any time thereafter without notice, re-enter the Premises and remove all persons and all or any property therefrom by any suitable action or proceeding at law or equity and repossess the Premises, together with the right to receive all income of, and from, the Premises.

11.2.2 If Landlord elects to terminate Tenant's right to possession only, without terminating this Sublease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating this Sublease or releasing Tenant, in whole or in part, from Tenant's obligations to pay the Rent hereunder for the full Term or from any other obligations of Tenant under this Sublease. Landlord shall use commercially reasonable efforts to relet all or any part of the Premises for such rent and upon such terms as are commercially reasonable (including the right to relet the Premises for a term greater or lesser than the remainder of the Term and the right to relet the Premises as a part of a larger area, the right to change the character or use made of the Premises and the right to grant concessions of free rent). For the purpose of such reletting, Landlord may decorate or make any repairs, changes, alterations, or additions in or to the Premises that may be necessary or desirable. If Landlord is unable to relet the Premises after using such commercially reasonable efforts to do so, Landlord shall have the right to terminate this Sublease, in which event Landlord shall have the right to recover the sums provided in Section 11.2.3 below. If the Premises are relet and sufficient sums shall not be realized from such reletting after payment of all expenses of such decorations, repairs, changes, alterations, additions and the expenses of repossession and such reletting, and the collection of the Rent herein provided and other payments required to be made by Tenant under the provisions of this Sublease for the remainder of the Term then, in such event, Tenant shall pay to Landlord on demand any such deficiency and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this Section from time to time, and all costs and expenses of Landlord, including attorneys' fees, incurred in connection with any such suit shall be paid by Tenant.

11.2.3 If Landlord elects to terminate this Sublease, Landlord has the right to recover from Tenant and Tenant shall immediately pay to Landlord all of the following:

- (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of such termination,
- (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after such termination until the time of award exceeds the amount of such loss of Rent that Tenant proves could have been reasonably avoided,
- (iii) 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 (had there been no such termination) exceeds the amount of such loss of Rent that Tenant proves could be reasonably avoided, and
- (iv) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, any costs or expense incurred by Landlord in (a) retaking possession of the Premises, including reasonable attorney fees therefor, (b) maintaining or preserving the Premises after such default, (c) preparing the

Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Premises.

The "worth at the time of the award" of the amounts referred to in subparagraphs (i) and (ii) above is to be computed by allowing interest at the Default Rate. The "worth at the time of the award" of the amount referred to in subparagraph (iii) above is to be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

11.3 Landlord's Right to Cure Default: Landlord, at any time after Tenant fails to perform any obligation or duty of Tenant under this Sublease, may cure such failure at Tenant's sole cost. If Landlord at any time, by reason of Tenant's failure to perform, pays any sum or does any act that requires the payment of any sum, such sum shall be due immediately from Tenant to Landlord at the time such sum is paid, and shall be deemed Additional Rent under this Sublease.

11.4 Remedies Cumulative: Except as otherwise provided in this Sublease, all rights and remedies of Landlord or Tenant herein created or remedies otherwise available (at law or in equity) to Landlord or Tenant under the laws of the United States or California, which Landlord or Tenant may, at its option, invoke, are cumulative and the exercise of one or more rights or remedies shall not exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant, as applicable, shall deem desirable.

ARTICLE XII - SURRENDER OF AND ACCESS TO PREMISES

12.1 Surrender of Premises. Tenant, upon expiration or termination of this Sublease, either by lapse of time or otherwise, agrees peaceably to surrender to Landlord the Premises, including the alterations, additions, improvements, changes, and fixtures other than Tenant's movable trade fixtures, in broom-clean condition and in good repair, ordinary use and wear, loss by fire or other casualty excepted. All personal property, furnishings, machinery and trade fixtures, equipment and improvements (trade or otherwise) that Tenant installs in the Premises ("Tenant's Property") shall remain the property of Tenant. Upon the termination or expiration of the Term, Tenant may remove Tenant's Property from the Premises; such removal shall be completed within ten (10) business days after the termination or expiration date. Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. Tenant's failure to so remove its property as described above shall be deemed an abandonment to Landlord of such property and, if Landlord elects to remove all or any part of said property, such removal, including the cost of repairing any damage to the Premises caused by or resulting from such removal, shall be paid by Tenant.

If Tenant fails to surrender the Premises as provided above, Tenant's occupancy of the Premises shall be as a tenant at sufferance, terminable at any time by Landlord, and Tenant agrees to pay Landlord, as liquidated damages for all the time Tenant shall so retain possession of the Premises or any part thereof, a sum equal to one hundred fifty percent (150%) of the Rent payable hereunder for the month immediately preceding the expiration of this Sublease. In addition thereto, Tenant shall indemnify Landlord against all liabilities, damages, losses, costs, expenses, attorneys' fees and claims resulting from such failure, including without limitation any claim for damages made by a succeeding tenant. The exercise of Landlord's rights under this clause shall not be interpreted as a grant of permission to Tenant to continue in possession.

12.2 Access to Premises. Tenant agrees Landlord, its agents, employees, or servants or any person authorized by Landlord may, at all reasonable times, and upon reasonable advance notice, enter the Premises to inspect the condition of the same, to make such repairs, additions, improvements, changes, or alterations to the Premises, the building of which they are a part, or the Project as required under this Sublease (including, but not limited to, the right to strengthen, add to or shore the foundation, walls columns or supporting members thereof, to install, repair, remove, maintain or otherwise service and utilize pipes, chases or other installations, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety and preservation of or service to the Premises, the premises of other tenants or the Project), and to exhibit the same to prospective purchasers of the Project, or to prospective tenants (during the last six (6) months of the Term, unless Tenant has one or more unexercised Option Periods remaining, in which event Landlord may not exhibit the space to prospective tenants until Tenant's right to exercise an Option Period has expired), without any such activity constituting an eviction of Tenant in whole or in part, and the Rent shall in no way abate by reason of loss or interruption of the business of Tenant or otherwise while any such work is being done. If an emergency occurs, Landlord, or Landlord's agent or employees may enter the Premises by whatever lawful means necessary without liability therefor and without in any manner affecting the obligations, covenants, terms, or conditions of this Sublease. Landlord agrees to use its best efforts to keep such entries to a minimum and, further, during any such entry, Landlord shall use its best efforts not to disturb or inconvenience Tenant in the conduct of Tenant's business therein.

ARTICLE XIII - COMPLIANCE WITH CITY PROGRAMS/POLICIES

To the extent applicable to Tenant's operations at the Premises, Tenant shall comply with the following City Programs and Policies made binding upon Landlord and Landlord's subtenants per the terms of the Master Lease:

13.1 Nondiscrimination: Tenant 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 Tenant's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

13.2 Equal Opportunity Contracting: Tenant acknowledges and agrees it is aware of, and will comply with, City of San Diego Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Tenant and all of its subcontractors are individually responsible to abide by its contents.

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Tenant will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Tenant shall submit to City a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Tenant will take to achieve the City's commitment to equal employment opportunities.

Tenant shall insert the foregoing provisions in all subcontracts for any work covered by this Sublease so that such provisions will be binding upon each subcontractor. Tenant agrees compliance with EEO provisions flowing from the authority of Landlord, Tenant and City will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

13.3 Local Business and Employment. Tenant acknowledges City seeks to promote employment and business opportunities for local residents and firms in all City of San Diego contracts. Tenant shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Sublease from local residents and firms as opportunities occur. Tenant shall hire qualified local residents and firms whenever feasible.

Tenant understands failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Sublease and debarment from participating in City of San Diego contracts for a period of not less than one (1) year.

13.4 City Employee Participation Policy: Tenant acknowledges it is the policy of City that all City contracts, agreements, or leases with consultants, vendors, or City's lessees shall include a condition that the contract, agreement, or lease may, at the sole option of City, be unilaterally and immediately terminated by City if the contractor or lessee employs an individual who, within the twelve months immediately preceding the employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or lessee. It is not the intent of this policy that these provisions apply to members of the City Council.

13.5 Drug-free Workplace: Tenant shall 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 Premises and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace.
 2. Tenant's policy of maintaining a drug-free workplace.
 3. Any available drug counseling, rehabilitation, and employee assistance programs.
 4. The penalties that may be imposed upon employees for drug abuse violations.
- c. Tenant shall include language in each sublease agreement which indicates Tenant's agreement to abide by the provisions of a drug-free workplace. Tenant and its sublessees shall be individually responsible for their own drug-free workplace programs.

13.6 Disabled Access Compliance: LESSEE 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. LESSEE'S compliance shall include, but not necessarily be limited to, the following:

- a. Tenant shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Tenant.
- c. Tenant shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, Tenant shall comply with City's disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of Tenant.
- e. Tenant shall include language in each sublease agreement which indicates Tenant's sublessee's agreement to abide by the foregoing provisions. Tenant and Tenant's sublessees shall be individually responsible for their own ADA employment programs.

Tenant understands failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Sublease.

13.7 Trash and Refuse: Tenant shall provide containers on or immediately adjacent to the Premises to receive trash and refuse generated from Tenant's business operations. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by Tenant or others acting pursuant to Tenant's direction at authorized landfills or other garbage reception areas as provided under laws applicable at the time of collection.

13.8 Food Packaging: Tenant shall not, after the effective date of this Sublease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall Tenant obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption off the Premises.

Tenant's food packaging for prepared food to be consumed on the Premises or for takeout food shall be biodegradable, and Tenant shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. Tenant's food packaging for prepared food to be consumed off the Premises shall be biodegradable unless Tenant demonstrates to the satisfaction of Landlord and City that biodegradable food packaging materials are not available for purchase in the quantities required by Tenant. In the event biodegradable food packaging materials are not available for purchase in the quantities required by Tenant, Tenant may limit its use of the packaging to the amount actually available.

For purposes of this Sublease, the following definitions are applicable:

- a. "Prepared food" means foods or beverages which are prepared on the Premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
- b. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the Premises.
- c. "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the Premises.

13.9 Operation of Facilities: Tenant shall operate the Premises and associated facilities continuously and without interruption after the Premises are opened for operation during the Term of this Sublease. A regular schedule of days and hours of operation shall be established by Tenant to best serve the public. The schedule shall be subject to the approval of Landlord and the City Manager. Tenant shall diligently and in a creditable manner furnish services to the public in conformity with the general rules and regulations of City. The type and quality of service furnished by Tenant shall qualify for the conditions and requirements of the "A" Card issued by the Department of Health to operators of fast food handling establishments.

ARTICLE XIV - MISCELLANEOUS

14.1 Notices: Notices and demands required or permitted to be given hereunder may be given by personal delivery to either party or any officer or other representative of the party to be notified, or may be sent by recognized overnight courier or certified mail, return receipt requested, addressed, postage prepaid, to the address set forth in Sections 1.1.3 and 1.1.5 hereof. Notices and demands shall be deemed to have been given upon the date of delivery.

14.2 Successors and Assigns: Subject to Article IX, all covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply, and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

14.3 Time is of the Essence: The time of the performance of all of the covenants, conditions, and agreements of this Sublease is of the essence.

14.4 Relationship of Parties: Nothing herein shall be construed so as to constitute a joint venture or partnership between Landlord and Tenant.

14.5 Waiver: One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by either party to or of any act by the other party requiring the approving or consenting party's consent or approval shall not be construed to waive or render unnecessary any further consent or approval to or of any subsequent similar act by the other party.

14.6 Force Majeure: In the event either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Sublease to be performed by the party and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like

nature beyond the control of the party so delayed or hindered, then performance of such work, service, or other act shall be excused for the period of such delay and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay. In no event shall such delay constitute a termination or extension of this Sublease. The provisions of this Paragraph shall not operate to excuse Tenant from the prompt payment of Rent as due under any provision hereof.

14.7 Governing Law: This Sublease shall be construed under the laws of the State of California. Venue of any action to enforce or interpret this Agreement shall be in the San Diego County Superior Court or in the United States District Court for the Southern District of California.

14.8 Attorney Fees: In the event the parties hereto become involved in any action or proceeding arising out of or in connection with this Sublease, the Premises or the Project (including, without limitation, the enforcement or interpretation of this Sublease or either party's rights, duties or obligations hereunder), the prevailing party shall, subject to the provisions of local law, be entitled to recover from the non-prevailing party all reasonable expenses of attorney's fees and costs, expenses and disbursements reasonably incurred by the prevailing party in such action or proceeding, without the necessity for a cross-action by the prevailing party. Such reimbursement shall include all such expenses reasonably incurred prior to and at any such trial or proceeding and at all levels of appeal and post judgment proceedings.

14.9 Partial Invalidity: If any provision of this Sublease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected, and each provision of this Sublease shall be valid and enforced to the fullest extent permitted by law.

14.10 Entire Agreement: This Sublease and the Exhibits attached to it constitute the sole and exclusive agreement between the parties with respect to the Premises; provided, however, this Sublease shall be subordinate to the Master Lease and the terms of the Master Lease shall bind Tenant. To the extent this Sublease is inconsistent with the Master Lease or any future modification(s) of the Master Lease, the provisions of the Master Lease shall control. No amendments, modifications of or supplements of this Sublease shall be effective unless in writing and signed by Landlord and Tenant.

IN WITNESS WHEREOF this Sublease has been executed and made effective as of the day and year first above written.

LANDLORD:

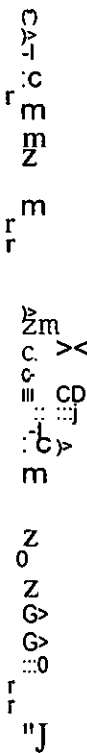
TENANT:

SEAFORTH SPORTFISHING
CORPORATION, a California corporation,

By: _____

John Yamate, Secretary
Treasurer

BRANT CRENSHAW

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