

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

SAN DIEGO MUSEUM OF ART

(LESSEE) and filed in the Office of the City Clerk as Document RR-275126, hereby consents to that certain Sublease Agreement (Sublease) dated _____, 2007, attached hereto, between the above LESSEE (SUBLESSOR) and

OLD GLOBE THEATRE

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

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

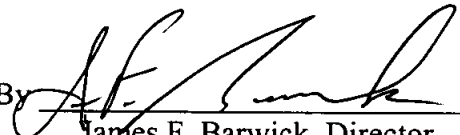
1. ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the Sublease or sublet the subleased premises or any part of the subleased premises without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the Sublease.
2. MODIFICATION OF PREMISES: Any alteration, modification, or restoration of the subleased premises by SUBLESSEE shall be at its sole cost and expense and shall not result in any costs to the CITY.
3. HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify, and hold harmless CITY, its elected officials, officers, employees, agents, and representatives from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the subleased premises, the condition of the subleased premises, or from any act or omission of SUBLESSEE, its agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.
4. INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the subleased premises. Minimum coverage shall be two million dollars (\$2,000,000) combined single limit liability. A copy of the policy of insurance shall be filed with CITY and shall, by separate endorsement, name "The City of San Diego, its

elected officials, officers, employees, agents, and representatives" as additional insureds. The policy shall specify that the policy may not be terminated, altered, or canceled without thirty (30) days prior written notice to CITY by the insurance company.

5. LEGAL PROCEEDINGS: Should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.
6. ASSUMPTION: SUBLESSEE agrees to assume the rights and obligations of the Master Lease and to keep and perform all covenants, conditions, and provisions of the Master Lease which are applicable to the rights acquired.

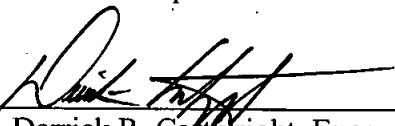
THE CITY OF SAN DIEGO

Date 2/3/08

By 
James F. Barwick, Director

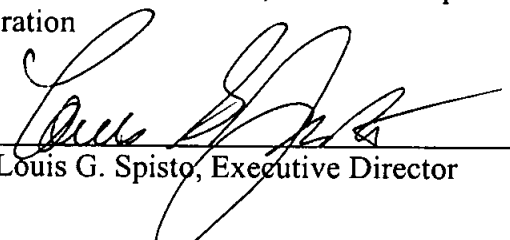
SAN DIEGO MUSEUM OF ART, a California
public benefit corporation

Date 28 Jan. 2008

By 
Derrick R. Cartwright, Executive Director

OLD GLOBE THEATRE, a California public benefit
corporation

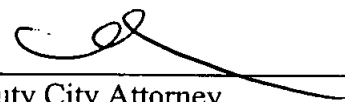
Date 1/30/08

By 
Louis G. Spisto, Executive Director

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 2/8/08

By 
Deputy City Attorney

PDP/nb

1/10/08

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SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Agreement") is entered into, effective as of January 24, 2008, by and between the San Diego Museum of Art, a California, USA public benefit corporation located at 1450 El Prado, Balboa Park, P.O. Box 122107, San Diego, California 92112-2107 ("SDMA") and the Old Globe Theater, a California USA public benefit corporation located at 1363 Old Globe Way, San Diego, California 92101 ("Globe") and constitutes the entire agreement between the parties concerning the use of SDMA's Copley Auditorium ("Copley" or "Copley Premises") and adjacent common facilities of SDMA by the Globe. The parties agree that this Sublease Agreement is subject to that certain City of San Diego - San Diego Museum of Art Balboa Park Lease Agreement ("Master Lease") attached hereto as Exhibit A and incorporated herein by this reference, and Globe agrees to be obligated pursuant to Master Lease to the extent it is applicable to this Agreement. The parties further agree that SDMA hereby subleases to Globe and Globe hires from SDMA the Copley space on the following terms and conditions:

1. TERM: July 7, 2008, through November 29, 2009.
2. FEE: Globe shall pay SDMA a rental fee of \$270,000 for the use of Copley, which represents the parties' agreed computation of SDMA's anticipated loss of revenue by reason of this Agreement, after taking into account reasonable mitigation measures. Payments to SDMA by Globe will be made monthly in amounts of \$15,882, except the final payment which will be \$15,888. All payments shall be made without deduction or offset. The first and final payment shall be paid to SDMA within 10 business days of the date the San Diego City Manager gives its written consent to this Agreement as described in subparagraph 8.1.1 below. All other payments under this paragraph 2 will be due to SDMA by the fifteenth (15th) day of the month beginning in August 2008. A 5% late charge shall be applicable to all payments which are more than five days late. All Payments hereunder shall be made to SDMA at the above address.
3. FACILITIES USE: Prior to Globe occupying Copley, the parties will complete a facilities condition report. This report will be used by SDMA and Globe to ensure that Copley is restored to its current state, or better, at the termination of this Agreement; Globe agrees to accomplish such restoration, with the exception of any electrical installations (which shall remain a part of Copley).
 - 3.1 Delivery of Copley: Copley shall be delivered by SDMA to Globe in its "as is" condition, and Globe has no right to request that SDMA do or provide any improvements thereto. SDMA makes no warranty or representation that the SDMA building in which the Copley Premises are located or the Copley Premises are in compliance with the current building code or other applicable governmental requirements (including without limitation the American with Disabilities Act). Globe acknowledges and agrees that Globe shall be responsible for any modifications to the Copley Premises that may be required in order for the Globe to construct, install and operate its planned modifications and improvements to the Copley Premises ("Code Modifications"), notwithstanding the fact that the Copley Premises may, as of the date of this Sublease, require such Code Modifications in order to be in compliance with existing building and fire codes. However, Globe

shall not be responsible for any Code Modifications to the Copley Premises which are not necessitated by reason of the Globe's planned modifications, improvements or operations, notwithstanding that the fact that such Code Modifications may not have been mandated if the Globe had not made its improvements, modifications or conducted its operations. For example, if the Globe's improvements require fire sprinklers to be installed in a portion of the Copley Premises, Globe shall be responsible for installing such fire sprinklers. If, on the other hand, a building inspector inspecting Globe's improvements, finds that the Copley Premises contains asbestos which must be remediated, Globe shall not be responsible for such remediation.

- 3.2 Globe Use: Globe may use Copley only for the purpose of staging theater performances in accordance with the schedule attached as Exhibit B. Globe will be permitted access to Copley between the hours of 7 a.m. and 12 midnight during the days specified in Exhibit B. Globe may request use of Copley during additional days and times. All such requests must be submitted in writing. SDMA may permit or deny such use at its sole discretion. Consistent with the restrictions in this subparagraph 3.2, Globe will have access to and use of Copley during preparation of the theater space within Copley, rehearsals, performances, and tear down of the stage and related equipment. In addition to the use of Copley, Globe will have (on a non-exclusive basis) access to the auditorium vestibule, the box office, restrooms located in Gallery 14, and access to Copley via the Sculpture Garden Café. All access, construction activity and use will be subject to such reasonable rules and regulations as SDMA may require from time to time by written notice to Globe. Notwithstanding any other provision of this Agreement, and as previously provided, all uses of Copley by Globe must comply with the Master Lease. Globe also acknowledges that in its use of the Copley Premises and the Sculpture Garden Café Globe will comply with the terms and provisions of the Agreement between Water's Fine Catering and The San Diego Museum of Art for Foodservice Operations, which agreement includes, among other things, the right on the part of Waters Fine Catering to be the exclusive provider of alcoholic beverages for events conducted at the Museum. Globe has been provided with a copy of said agreement and has read the same. The parties acknowledge that the current term of such agreement expires on March 31, 2008 and SDMA is in the process evaluating any extension or renewal of the agreement. Globe's use of the premises shall comply with any replacement agreement between SDMA and Waters Fine Catering or other replacement foodservice provider.
- 3.3 SDMA Use: SDMA shall have use of Copley during the dates and times specified in Exhibit C. SDMA reserves the right to enter Copley at any time at its discretion to ensure the safety and security of Copley and SDMA's facilities and property at large, and for emergency maintenance, if necessary.
- 3.4 Chair Storage: During the Term, Globe agrees at its sole cost and expense to store, in secure facilities protected from the weather and the environment, SDMA's chairs currently used in Copley. Globe shall transport the chairs to and from storage at its expense, and shall be solely responsible for any loss or damage to them.

- 3.5 Reimbursement for Utilities, Security and Janitorial Services. Globe agrees to reimburse SDMA for all additional security and janitorial services reasonably required to be provided by SDMA for Copley or in connection with the use of Copley during Globe's use of the Copley Premises, but Globe shall be entitled to receive prior notice before additional janitorial services for which Globe shall be responsible is performed. Such security and janitorial services will be billed monthly to Globe at the rate SDMA pays for same. Globe shall also reimburse SDMA for all expenses (including water, gas, electricity, and other services and utilities) to the extent their cost exceeds the amount SDMA would pay for such expenses in the absence of this Agreement, the parties hereby agreeing that such amount shall be deemed to be equal to five percent (5%) of the utilities bills (other than the electrical utility bill) incurred by SDMA for the SDMA building plus the calculated share of the electrical utility bill for the building based on the actual electrical usage at the Copley Premises as established by the Separate Meter described in paragraph 4 below. Payment shall be due to SDMA within fifteen days after Globe is sent an invoice for same. With respect to the use of Copley when SDMA is not open, SDMA may require Globe, at Globe's expense, to provide security and janitorial services required in connection with the use of Copley during Globe's use of Copley.
- 3.6 Prohibited Activities. Globe shall not permit smoking, use of smoke machines, use of pyrotechnic devices or the presence of hazardous materials in Copley (including but not limited to the use or presence of such materials during theatrical presentations).
- 3.7 Ushers and Box Office. Globe will provide its own personnel to act as ushers and box office attendants.
4. **MODIFICATIONS TO COPLEY:** All modifications and alterations to the Copley Premises required for Globe's intended use of the Copley Premises shall be made and done by Globe at its sole cost and expense. Globe acknowledges that upgrades to the electrical services to the Copley Premises are required and Globe agrees to make such upgrades at its own cost and expense to ensure that there is an adequate power supply for its purposes. Such upgrades shall include a separate electric services meter (the "Separate Meter") to measure and determine actual electrical usage in the Copley Premises. Any and all improvements made to the electrical system and to the Copley in general shall become the property of SDMA and shall remain at Copley after the end of the Term. However, Globe agrees to remove at its own expense any and all improvements made to the Copley Premises other than the electrical upgrades, unless SDMA requests in writing that said improvements remain in place after the Globe vacates the Copley Premises. Prior to making any alterations to Copley, Globe shall submit written plans and drawings to SDMA for review and approval. SDMA will give Globe access to Copley as needed prior to the commencement of the Term to install the electrical upgrades. Globe must provide SDMA with a written plan for the upgrades and a schedule of dates and times for work to be completed at least thirty (30) days prior to the beginning of the work. In addition Globe will be responsible to reimburse SDMA for all additional security and maintenance escorts and supervision provided by SDMA during the construction and installation periods. Globe shall be solely responsible for

any loss or damage incurred by SDMA in any way related to such upgrade of electrical facilities.

- 4.1 Permits and Approvals. Globe shall solely be responsible for securing all necessary permits and approvals, and taking all actions necessary to comply with all City of San Diego, regional, state, and national laws and requirements, including but not limited to approval from the Fire Marshall, related to improvements to Copley.
 - 4.2 Approval of Contractor. Before commencing any work Globe shall obtain from SDMA its approval of the general and any sub-contractors that will perform the work, which approval shall not be unreasonably withheld.
 - 4.3 Improvements. Any improvements installed pursuant to this Agreement shall be at no cost or expense to the City of San Diego.
5. BROADCAST AND RECORDING: Globe shall have the right to film, tape, record or broadcast in any audio or audiovisual media any rehearsal and performance hereunder.
6. MARKETING: SDMA shall have the right to provide marketing materials for SDMA exhibitions, events, membership, and other matters to Globe patrons. Globe agrees to assist SDMA with distribution of marketing materials, as requested. In addition Globe will include one advertisement for SDMA in each program or playbill published for all Globe performances during the term of this Agreement.
7. INSURANCE:
 - 7.1 Required Insurance Coverages. Throughout the Term of this Agreement, Globe will at its sole expense obtain and maintain, from insurers acceptable to SDMA, insurance coverage of the types and amounts set forth in this paragraph 7. All insurance coverage required under this paragraph 7 shall be written by insurance carriers who are duly authorized to transact that class of insurance in California and have an A.M. Best rating of A-, VII or better. All such insurance shall be primary and non-contributing with respect to any and all policies of insurance carried by SDMA and/or City of San Diego.
 - 7.1.1 Workers' Compensation Insurance with Coverage A with Statutory Limits for Work performed in the State of California and Coverage B - Employer's Liability with limits of \$1,000,000 each Accident for Bodily Injury by Accident, \$1,000,000 Policy Limit for Bodily Injury by Disease, and \$1,000,000 each Employee for Bodily Injury by Disease. A waiver of subrogation endorsement shall be issued in favor of SDMA and its owners, officers, directors, and employees and the City of San Diego.
 - 7.1.2 Commercial General Liability Insurance on "occurrence" forms, as opposed to "claims made" forms, with annual limits of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 per offense for personal injury and advertising injury liability; an annual aggregate limit of not less than \$4,000,000. A separate \$4,000,000 limit shall

apply to completed operations coverage for ten (10) years after the date any work is completed on improvements. The policy shall provide for the duty to defend with defense costs outside the policy limits, if commercially available, and shall provide a deductible of not more than \$25,000 per occurrence or offense. Coverage shall apply to liabilities assumed by Globe under this Agreement. The policy shall include an Additional Insured endorsement, on ISO Form CG2010 11/85 if available, listing as additional insureds SDMA and its owners, officers, directors, and employees and the City of San Diego. A waiver of subrogation endorsement shall be issued in favor of SDMA and its owners, officers, directors, and employees and the City of San Diego. Globe shall at its own expense cover any and all deductibles imposed by the policy.

7.1.3 Business Auto Insurance covering all owned, hired and non-owned automobiles, trucks and trailers with coverage not less than \$1,000,000 bodily injury and property damage liability. The policy shall include an Additional Insured endorsement listing as additional insureds SDMA and its owners, officers, directors, and employees and the City of San Diego. A waiver of subrogation endorsement shall be issued in favor of SDMA and its owners, officers, directors, and employees and the City of San Diego. Globe shall at its own expense cover any and all deductibles imposed by the policy.

7.1.4 Commercial Property Insurance on "all risk" coverage form providing full replacement cost coverage for physical loss of or damage to Copley, including, without limitation damage from fire, windstorm, burglary, theft, vandalism, malicious mischief, collapse. The policy shall expressly cover SDMA and City of San Diego as their interests may appear. Globe shall at its own expense cover any and all deductibles imposed by the policy.

7.1.5 Builder's Risk Insurance on "all risk" coverage form providing full replacement cost coverage for physical loss of or damage to the Copley Premises, the SDMA building in which Copley is located and materials, supplies and equipment to be consumed during improvements to and/or remodeling of Copley. Coverage shall include, without limitation, coverage for physical loss or damage due to fire, windstorm, burglary, theft, vandalism, malicious mischief, collapse, damage due to defective materials and workmanship, and shall provide for debris removal, and demolition occasioned by enforcement of any applicable laws or regulations. Globe shall at its own expense cover any and all deductibles imposed by the policy.

7.2 Additional Requirements. Globe also shall comply with the following.

7.2.1 Before taking possession of the Property, Globe shall provide SDMA with evidence of the liability and commercial property coverages required under this paragraph 7 by providing certificate(s) of insurance reflecting the issuance of the policies required and copies of all required additional insured

endorsement and waiver of subrogation endorsements. Before commencing any improvement or remodeling work in, around or upon the property, Globe shall provide SDMA with evidence of the builders risk coverage required hereunder by providing a certificate of insurance reflecting the issuance of the policy required.

7.2.2 Each policy required under this paragraph 7 shall be endorsed to state that coverage shall not be suspended, canceled, or not renewed except after thirty (30) calendar days advance written notice by certified mail has been given to SDMA and City of San Diego. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

7.2.3 Globe's failure to procure and maintain any of the coverages required under this paragraph 7 shall be deemed a material breach of the Agreement. Further, at SDMA's sole election, SDMA shall have the right, but not the obligation, to procure and maintain such required insurance. Globe shall pay the cost thereof and shall timely furnish all information necessary to apply for and maintain such insurance.

7.2.4 Within five (5) calendar days of a written request by SDMA or its insurance representative, Globe shall provide a complete copy of any policy of insurance required under this paragraph 7. Globe hereby authorizes its broker(s) or agent(s) without notice to or further request from Globe to provide SDMA with complete copies of all insurance policies, certificates, and endorsements required under this paragraph 7.

7.3 Restricted Activities; Additional Coverage. During the Term, Globe shall not engage in any activity which would void or reduce coverage under any policy of insurance carried by SDMA or which would cause an increase in the premiums of SDMA's insurance. SDMA reserves the right to require additional forms and/or amounts of coverage in the event SDMA, in its reasonable discretion, determines the additional forms and/or amounts of coverage to be prudent or necessary.

8. GENERAL TERMS AND CONDITIONS

8.1 Authority. Except as stated in subparagraph 8.1.1 each party represents and warrants that it has the full right, power and authority to enter into and perform this Agreement, and that it is not a party to any agreement or understanding which would conflict with this Agreement.

8.1.1 The parties acknowledge that the Master Lease prohibits any sublease of the Premises without the prior written consent of the City Manager. SDMA requires, as a condition precedent to the effectiveness of this Agreement, that such written approval from the City Manager of the City of San Diego in accordance with Section 4.02 of the Master Lease be obtained before this Agreement becomes binding. SDMA will use commercially reasonable efforts to obtain the required written approval promptly upon the execution of

this Agreement. Globe will take all commercially reasonable efforts to cooperate with and assist SDMA in acquiring such consent. However, until such time as the City of San Diego provides its written approval of this Agreement, this Agreement is not binding and shall have no force or effect. Globe shall pay all out of pocket costs and expenses incurred by SDMA associated with obtaining such written consent.

- 8.2 Independent Contractor. Each party will perform its duties under this Agreement as an independent contractor, retaining complete control over its respective personnel and operations, conforming to all applicable labor laws, regulations and orders with respect to its employees. Neither Globe nor its employees or agents will be SDMA's or the City of San Diego's joint venturers, employees or agents, or have any authority to represent or bind SDMA. Neither SDMA nor the City of San Diego, nor any of their employees or agents will be Globe's joint venturers, employees or agents, or have any authority to represent or bind Globe.
- 8.3 Indemnification. Globe will indemnify, defend and hold harmless SDMA and its officers, directors, employees, and agents from and against any and all damages, loss, cost, claim, demand, action, or liability whatsoever, including but not limited to all expenses and costs incidental thereto including attorneys' fees, arising from or in any way connected with this Agreement, including but not limited to property damages, personal injury or death of any person whomsoever, or disputes or claims of any type, except to the extent such damages, loss, costs, claims, demands, activities or liability were caused solely and directly by the gross negligence or willful misconduct of SDMA. Globe will indemnify, defend and hold harmless City of San Diego and its officials, officers, directors, employees, and agents from and against any and all damages, loss, cost, claim, demand, action, or liability whatsoever, including but not limited to all expenses and costs incidental thereto including attorneys' fees, arising from or in any way connected with this Agreement, including but not limited to property damages, personal injury or death of any person whomsoever, or disputes or claims of any type, except to the extent such damages, loss, costs, claims, demands, activities or liability were caused solely and directly by the gross negligence or willful misconduct of City of San Diego.
- 8.4 Assignment. Globe's rights and interests under this Agreement are not assignable. Globe covenants and agrees not to assign, sublet or otherwise transfer its rights under this Agreement or its rights to use Copley.
- 8.5 Intentionally Omitted.
- 8.6 Default. Should the Globe default in the performance on any of the terms and conditions of this Agreement (and Globe has not cured such default after it has received written notice from SDMA specifying the nature of such default), SDMA, in addition to any other rights and remedies, may, at its option, immediately terminate this Agreement, take back possession of the Copley even during a rehearsal or performance and remove all persons and Globe property therefrom. The Globe shall, in that event, be liable for the full amount of the fees and costs provided for

herein, less any expenses reduced by reason of steps taken by SDMA to mitigate its loss. The Globe shall also be responsible for the cost of removing its property from the Copley. Any deposits made by the Globe shall be retained by SDMA and applied toward final monies due.

8.7 Mediation/Arbitration.

8.7.1 The parties agree that if a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, they will endeavor to settle the dispute by nonbinding mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration. The parties shall agree to a mediator and if they are unable to agree, the San Diego office of the American Arbitration Association shall select a mediator who may be rejected by the parties only for bias. The parties shall notify the mediator in writing of the existence of a dispute and the mediator shall have thirty days from receipt of notification to meet with the parties and help them resolve the dispute, unless they mutually agree to an extension of the deadline. The cost of mediation (but not the attorneys' fees of the respective parties) shall be borne equally between the parties. Neither party can compel arbitration before the end of the thirty day period.

8.7.2 Any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration, which shall constitute the sole and exclusive remedy. Either party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the American Arbitration Association (San Diego Office) with a copy to the other party. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

8.7.2.1. Any remaining unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration, which shall constitute the sole and exclusive remedy. Either party desiring to institute an arbitration proceeding hereunder shall send written notice thereof, briefly describing the nature of the matter to be arbitrated, to the American Arbitration Association (San Diego Office) with a copy to the other party. Any such arbitration proceeding shall be carried out in accordance with the following provisions:

8.7.2.2. The arbitration will take place in San Diego, California before a single arbitrator. The San Diego Office of the American Arbitration Association shall provide to the parties a list of the available qualified arbitrators to arbitrate such dispute following the demand for arbitration. The parties shall each rank the arbitrators in their respective order of preference (numbered one through the end of the list presented) and present the rankings to

the San Diego Office of the American Arbitration Association. The highest ranking arbitrator (as determined by the sum of the numeric rankings given by the parties) shall serve as the single arbitrator.

8.7.2.3. The parties shall be entitled to all discovery otherwise provided by the California Code of Civil Procedure; provided, however, that the arbitrator(s) shall be empowered to limit discovery for good cause shown and in the interests of justice in order to assure that the arbitration of the applicable matter will proceed within the applicable time frame. The parties intend that the arbitration proceedings and discovery (if any) shall be conducted as expeditiously as possible. In that regard, the parties agree to work together in good faith to arrive upon mutually acceptable procedures regarding the time limits for, and type and degree of, discovery (if any) in any such proceeding and the periods of time within which the matters submitted to arbitration must be heard and determined by the arbitrator; and in the event the parties are unable to so agree, such issues shall be submitted to the arbitrator for his determination. Evidence will be admissible in accordance with the California Evidence Code.

8.7.2.4. The arbitration hearing will take place within 90 days after appointment of the arbitrator. The arbitrator shall make a determination within 30 days after the date of the hearing. The arbitrator shall, upon the request of either party, issue a written opinion of findings of fact and conclusions of law. Upon receipt of such opinion, any party shall have the right within 10 days to file with the arbitrator a motion to reconsider, and the arbitrator shall then reconsider the issues raised by the motion, may allow the other party an opportunity to respond thereto, and shall either confirm or change its decision within 15 days after such filing. If a motion to reconsider has been filed, the revised or confirmed decision shall then be final and conclusive upon the parties, their successors and assigns, as applicable, and shall not be subject to appeal.

8.7.2.5. The costs of arbitration, including attorneys' fees, administrative fees, fees for a record and transcript, and the arbitrator's fees shall be borne by the party not prevailing in such action as determined by the arbitrator.

8.8 Force Majeure. Neither party to this Agreement will be liable for failure to comply with any terms of this Agreement when such failure is caused by an event of war, earthquake, flood, force of nature, strike, any law, rule, regulation or act of governmental authority. The party affected by such event will immediately notify the

other party in writing. Fluctuations in currency values shall not be considered a condition of force majeure.

- 8.9 Notices. All notices, requests, demands and other communications under this Agreement will be in writing and in English and will be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the day following delivery of the notice to a reputable overnight courier, provided such delivery is prior to the cut-off time for shipment the day of delivery, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as set forth below.

The Old Globe
1363 Old Globe Way
San Diego, California 92101-1642
(619) 231-1941
Attention: Lou Spisto, Executive Director

San Diego Museum of Art
P.O. Box 122107
San Diego, CA 92112-2107
Attention: Derrick Cartwright, Executive Director

- 8.10 Modification. This Agreement may not be amended or modified except by written agreement between the parties hereto.

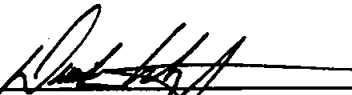
- 8.11 No Right to Holdover. Globe has no right to retain possession of the Copley Premises or any part thereof beyond the expiration or termination of this Agreement. In the event that Globe holds over, then the holdover shall be at the rental rate of \$750.00 per day for each day of the holdover period.

9. SURVIVAL; ENFORCEABILITY: Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law. Should any provision, or portion of any provision of this Agreement be adjudged invalid or unenforceable for any reason, the validity or enforceability of the remaining provisions or of the other portions of the provision(s) so adjudged shall not be affected thereby, and any provisions or portions thereof which are illegal, invalid, or otherwise unenforceable shall be curtailed and restricted only to the extent necessary to bring them within the legal requirements.
10. ENTIRE AGREEMENT: This letter constitutes the entire agreement between the parties hereto and supersedes all prior and contemporary agreements, representations and understandings of the parties as to the subject matter contained in it. This Agreement may not be supplemented, amended or modified except by a writing signed by all parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

11. MISCELLANEOUS: Paragraph headings are for convenience only and shall not be referred to in the interpretation of this Agreement. This Agreement will be governed by and construed in accordance with the local law of the State of California, United States of America, without regard to conflict of law rules. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement in duplicate, intending each duplicate copy to serve as an original.

SAN DIEGO MUSEUM OF ART

By: _____

Derrick R. Cartwright
Executive Director
San Diego Museum of Art
PO Box 122107
San Diego, CA 92112.2107

OLD GLOBE THEATER

By: _____

Lou Spisto
CEO/EXECUTIVE PRODUCER

Exhibit B

Old Globe Dates of Use

<u>Production period</u>	<u>Uses</u>
7/7/08 – 7/20/08	Load-in and theater preparation
7/21/08 – 9/7/08	Production #4, 2008 season
9/8/08 – 10/26/08	Production #5, 2008 season
10/27/08 – 11/16/08	MFA Production (USD student performance)
<i>now</i> 1/20/09 – 3/8/09	Production #1, 2009 season
3/9/09 – 4/26/09	Production #2, 2009 season
4/27/09 – 6/14/09	Production #3, 2009 season
7/20/09 – 9/6/09	Production #4, 2009 season
9/7/09 – 10/25/09	Production #5, 2009 season
10/26/09 – 11/15/09	MFA Production (USD student performance)
11/16/09 – 11/29/09	Load-out

Note: SDMA will have use of Copley during Mondays of production periods, except for the first, second and third Mondays of each such period.

Exhibit C

SDMA Dates of Use

SDMA shall have full use of the facilities during the following periods:

November 17, 2008 through January 19, 2009
June 15, 2009 through July 19, 2009

In addition SDMA shall have full use of Copley on the following Mondays during production periods:

In 2008

August 11, 18, 25
September 1, 29
October 6, 13, 20

2009

February 16, 23
March 2, 30
April 6, 13, 20
May 18, 25
June 1, 8
August 10, 17, 24, 31
September 28
October 5, 12, 19

In addition, SDMA shall have use of Copley on the following dates beginning at the specified times:

August 8, 2008 (beginning at 3 p.m.)
August 9, 2008 (beginning at 5 p.m.)
October 10, 2008 (beginning at 3 p.m.)

101053466.5

CONSENT TO SUBLEASE AGREEMENT

Legal
S.D. Museum of Art

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

SAN DIEGO MUSEUM OF ART (SDMA)

(LESSEE) and filed in the Office of the City Clerk as Document RR-275126 dated February 12, 1990, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

WATER'S FINE CATERING

(SUBLESSEE) dated April 1, 2002 for the purpose of operating a café and concession services, and serving alcoholic beverages. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

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

1. Use of the subleased premises is limited to the uses set forth in the Master Lease. All sales and service of alcoholic beverages shall only be as permitted under the Master Lease, and pursuant to current and valid license by the California Department of Alcoholic Beverage Control.
2. LESSOR shall include the attached ADDENDUM A, MINIMUM STANDARD SUBLEASE CONDITIONS, as terms of the Sublease.

Dated 11/18/03

Dated 11/18/03

Dated 11/19/03

Dated 11/19/03

DOCUMENT NO. RR-275126-2
FILED DEC 02 2003
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

By [Signature]
San Diego Museum of Art

By [Signature]
Waters Fine Catering

By [Signature]
Deputy Director for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

By [Signature]
Deputy City Attorney

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

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

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

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.

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

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated February 12, 1990, between the LESSOR and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of the Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

EXTRA COPY

Agreement between
Water's Fine Catering
and
The San Diego Museum of Art
for foodservice operations

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is made and effective as of April 1, 2002 (the "Effective Date") by and between the San Diego Museum of Art, a California public service corporation, 1450 El Prado, San Diego, CA 92101 ("SDMA") and Water's Fine Catering, 1105 West Morena Boulevard, San Diego California, 92110, ("WFC"), collectively referred as "Parties" and separately referred to as "Party."

RECITALS

WHEREAS, WFC desires to provide food and beverage services to SDMA; and

WHEREAS, SDMA desires to procure such services from WFC.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Definitions.

"Agreement" means this Agreement and any attachments hereto, and any modifications that are made to this Agreement in accordance with its terms.

"Café Services" means the provision of food and beverage services at the Licensed Premises pursuant to Section 2.1.1.

"Catering Services" means the provision of food and/or beverage service at the Museum under a separate contract and on an agreed-upon, pre-planned basis for specific events or occasions at the Museum.

"Concession Services" means the provision of food and/or beverage service at the Museum on a non-hosted basis for specific events or occasions, other than Catering Services or Café Services.

"Contract Administrator" means the Executive Director of SDMA or such other person assigned by the Executive Director to monitor WFC's performance under this Agreement and empowered by the Executive Director to act as SDMA's agent in relations with WFC:

"Licensed Premises" means the area or portion of the Museum licensed to WFC pursuant to this Agreement. The Licensed Premises are generally depicted on the plat attached hereto as Exhibit A and are subject to modification and change as provided in Section 2.8 below.

"Museum" means the buildings and associated ground areas (including the sculpture garden), located in Balboa Park and commonly known as the San Diego Museum of Art, leased by SDMA from the City of San Diego pursuant to that certain Lease between SDMA and the City of San Diego dated February 12, 1990.

"Party/Parties" means either SDMA or WFC or collectively referred to, as the case may be.

"Preferred Caterers" means catering companies selected by SDMA to provide Catering Services at the Museum. The current list of Preferred Caterers is attached hereto as Exhibit B and incorporated herein. SDMA reserves the right to, from time to time, amend or modify such list by adding or deleting catering companies to or from such list. SDMA shall notify WFC in writing of any addition or deletion of catering companies to or from such list. WFC shall remain on the preferred caterers list during the term of this Agreement.

"SDMA" means The San Diego Museum of Art.

"Services" means the services described in paragraph 2 herein.

"WFC" means Water's Fine Catering.

2. Services.

2.1 Services. SDMA hereby retains WFC to perform the Services, and WFC agrees to perform the Services with promptness and diligence in a thorough, professional, workmanlike manner consistent with industry standards. The Services to be provided hereunder include the following:

2.1.1 WFC shall operate the *Waters Café at SDMA* (herein sometimes referred to as the "Café") in the Licensed Premises. The Café shall be operated in a modified-cafeteria style format providing food and beverage service for lunch Tuesday through Sunday. The days and hours of business for the Café shall be Tuesday through Sunday, 11:00 a.m. to 4:00 p.m. The Café shall not be open on Mondays or the Holidays listed on Exhibit B attached hereto and incorporated herein. Subject to the prior written approval of SDMA, WFC may modify the business hours. The parties understand that business practicalities may require that the business hours be reduced in the winter and off-season times and increased in the summer and high season times. As a consequence, by mutual agreement of the Parties, the Café may be operated at other times considered economically advantageous.

2.1.2 WFC shall furnish all food, beverages, condiments and food preparation supplies for the operation of the Café in its name and shall not bind SDMA to its contractual agreements. WFC shall be the sole provider of alcoholic beverages for events conducted at the Museum, including events catered by other caterers, pursuant to separate written contracts. WFC's rates for alcoholic beverage services shall be generally competitive within the industry for such services. For catered events hosted exclusively by SDMA, WFC shall provide alcoholic beverage services at a discounted rate of ten percent (10%) off WFC's regular rate for alcoholic beverages.

2.1.3 WFC shall provide Concession Services for designated events at the Museum at the request of, and as coordinated by, SDMA. SDMA shall deliver written notice to WFC on the first business day of each calendar quarter setting forth all then known events for the following six (6) months where WFC will be requested to provide Concession Services. SDMA will use WFC as its exclusive provider of Concession Services.

2.1.4 WFC shall provide alcoholic beverage catering for all events at the Museum at the request of, and as coordinated by SDMA. Such beverage catering shall be provided in coordination with the Preferred Caterer(s) selected or designated by SDMA. Within 180 days of the effective date of this Agreement, WFC shall obtain and maintain a Type 47 license from the Alcoholic Beverage Control authorities for this purpose for the term of this Agreement. WFC shall provide alcoholic beverage catering for catered events that are hosted by SDMA at a discounted rate as described in Section 2.1.2 above.

2.1.5 WFC shall provide a ten percent (10%) discount to SDMA employees and a ten percent (10%) discount to Balboa Park employees and employees of Balboa Park institutions at the Café.

2.1.6 WFC shall not provide Catering Services or Concession Services from the Licensed Premises to events or to persons outside of the Museum and may not book or provide such services to customers at the Museum except upon the prior written request of SDMA.

2.2 Approvals. WFC shall obtain written approval on major decisions relating to the Services from SDMA's Contract Administrator. Major decisions include, but are not limited to, staffing practices, general décor and facility space management, supply and logistics management, cleaning and maintenance. SDMA shall consult with WFC as requested and work with WFC to reasonably and mutually agree upon any major decisions. WFC shall also advise and consult with SDMA prior to any changes in menus or pricing at the Café.

2.3 Warranties. WFC warrants that the Services will be performed in a diligent manner in accordance with applicable industry standards. WFC shall work with SDMA to provide the maximum quality of food and service at the Café commensurate with price and good public relations with SDMA and its visitors and guests. WFC shall anticipate and resolve service problems within a reasonable time. WFC's management staff shall review problems on a daily basis and discuss and implement solutions to prevent recurrence and enable supervisory staff to react immediately. WFC shall comply with all State and local regulations relating to the purchase, storage, preparation and service of food and beverages. It shall also comply with all State and local regulations regarding facility sanitation and maintenance. WFC shall conform with all the provisions of the Uniform Food Facilities Law (formerly the California Restaurant Act), CAL-OSHA and other State regulations. WFC shall provide extermination and pest control services at least once a month in all food preparation and storage, dining, catering and lounge areas of the Licensed Premises by a subcontractor approved in advance by SDMA. WFC shall obtain and maintain applicable business licenses, health certificates, and insurance coverage necessary for the proper and legal operation of the foodservice operation herein described.

2.4 Maintenance. WFC shall provide and pay for the regular and periodic cleaning of all floor areas, tables, chairs, fixtures and equipment within the Licensed Premises utilized in

providing Services hereunder, including without limitation all food processing and preparation equipment, sinks, stoves, ovens and other equipment, fixtures and personal property items used in receiving, preparing and serving food and beverage items on the Licensed and cleaning up and disposing of food and debris upon the daily completion of service, but excluding any art works or personal property of SDMA not included in the Inventory (defined in Section 4.1 below) attached hereto as Exhibit C. WFC shall assume direct responsibility for assuring that such areas are always in a clean and sanitary condition. A mutually agreed upon schedule of cleaning shall be followed by WFC. WFC shall assume direct responsibility for the preventative maintenance and repair of all equipment (other than existing equipment located on the Licensed Premises) used by it, whether purchased by WFC or SDMA. WFC shall use ordinary care in the use and maintenance of any existing equipment located on the Licensed Premises and used by it. SDMA represents that the indoor portion of the Licensed Premises is serviced by a heating, ventilation and air conditioning system ("HVAC") and gas and electric utilities. SDMA represents that the HVAC system, kitchen fixtures and equipment and all utilities to the Licensed Premises are in good working condition as of the effective date of this Agreement. Subject to WFC's responsibility for regular and periodic cleaning described above, SDMA shall be responsible for the maintenance and repair of the structure and the facilities that constitute the Licensed Premises (including without limitation, lighting and outdoor seating) and the architectural and decorative elements (including without limitation all pieces of art work) that are in the Licensed Premises. SDMA shall also be responsible for maintenance, repair, and replacement of all utilities or services provided to the Licensed Premises that are not part of the Licensed Premises, including but not limited to the HVAC and other improvements consisting of or facilitating use of the Licensed Premises.

2.5 Receiving. WFC shall be responsible for receiving goods and services ordered by WFC and for the security of items received. WFC shall maintain the receiving area in a neat and orderly manner.

2.6 Trash Removal. WFC, at its expense, shall remove trash and garbage from the entire Licensed Premises at least once a day or as often as may be necessary to ensure safe and sanitary conditions.

2.7 Security. WFC shall be responsible for control of the keys obtained from SDMA and the overall security of the Food Storage and Preparation Area. Overall security includes but is not limited to locking doors, gates and windows, setting alarms, etc. WFC shall coordinate access to and the securing of the Food Storage and Preparation Area and any access to other parts of the Museum with SDMA's own security officers and services. SDMA's security policies, procedures and services shall control in the event of any inconsistency with WFC's policies and procedures.

2.8 Licensed Premises. SDMA reserves the right to, from time to time in its discretion, on written notice, change and modify the location and configuration of the Licensed Premises as required in the judgment of SDMA for its effective function and operation in Museum, including without limitation the right to move WFC to other space in the Museum, so long as any such change, modification or relocation results in a Licensed Premises comparable in size and exposure to the public to the original Licensed Premises, and all terms hereof shall apply to the new space with equal force. SDMA shall provide written notice to WFC at least one

hundred eighty (180) days prior to the effective date of any change, modification or relocation (such effective date is referred to herein as the "Proposed Modification Date"), and shall move WFC's effects to the new space at SDMA's sole cost and expense at such time and in such manner as to inconvenience WFC as little as reasonably practicable. The new space shall be delivered to WFC with improvements substantially similar to those improvements existing in the Premises at the time of SDMA's notification to WFC of the change, modification or relocation, which improvements shall be paid for by SDMA and SDMA's cost. Simultaneously with such relocation of the Licensed Premises, the parties shall immediately execute an amendment to this Agreement stating the change, modification or relocation of the Licensed Premises. The notice from SDMA to WFC shall provide a detailed written description of the proposed change, modification or relocation, a copy of any plans, and include such specificity that will enable WFC to determine whether to elect to continue the Agreement with the Licensed Premises, as modified, or to elect to terminate the Agreement. WFC shall have sixty (60) days following the receipt of the notice from SDMA stating its intent to change, modify or relocate to Licensed Premises within which to give written notice electing to terminate this Agreement. In the event WFC gives notice electing to terminate, this Agreement shall terminate on the "Proposed Modification Date." In the event WFC gives, or is deemed to have given, notice electing not to terminate, then SDMA shall, on or before the "Proposed Modification Date" (the exact date to be mutually agreed upon by the parties) make any improvements required for the change, modification or relocation, deliver the new space to WFC as improved and move WFC's effects to the new space. Failure of WFC to timely give written notice electing to terminate shall be deemed an election not to terminate.

2.9 Hazardous Materials Compliance. In the event any condition is encountered in the Museum requiring action to effect compliance of the Licensed Premises (including the kitchen area) with the applicable laws, rules, regulations and ordinances regarding asbestos materials during the location of WFC in the Licensed Premises, or results from any action by SDMA to change or modify the configuration of the Licensed Premises or relocation of WFC therein, SDMA shall be responsible for all work, cost and expense required to effect compliance of the Licensed Premises, and the location or relocation of WFC therein, with such applicable laws, rules, regulations and ordinances.

3. Compensation.

3.1 Payment Structure. WFC will compensate SDMA per the following terms:

3.1.1 WFC shall pay to SDMA each month during the term of this Agreement the sum of Four hundred dollars (\$400), without deduction or offset, as a license fee for the Café and the Licensed Premises.

3.1.2 Subject to offset for the credit described in Section 4.2 below, each month WFC shall pay to SDMA as an additional license fee hereunder an amount equal to ten percent (10%) of gross food sales (including non-alcoholic beverage, but excluding gross sales for Concession Services and discounted sales pursuant to Section 2.1.5 above) in excess of thirty-two thousand dollars (\$32,000) during such month.

3.1.3 There shall be no percentage charge or license fee for alcoholic beverage sales during the term of this Agreement.

3.2 Payment and Reporting Schedule. WFC shall submit payments monthly, together with financial reports, to SDMA (ATTN: Chief Financial Officer) detailing the results of business activity and the calculations of payment per paragraph 4.1. Payment and reports shall be due no later than the fifteenth (15th) day of the succeeding month.

3.3 WFC Accounting Records. WFC shall maintain separate revenue accounts for gross food sales and gross beverage sales generated by it in providing Services hereunder. These records shall be open for inspection by SDMA, or its agents, at all reasonable times, including unannounced audits. At the termination of this Agreement, WFC shall maintain such records for not less than 18 months and shall make them available to SDMA, or its agents, in accordance with this section.

4. Capitalization.

4.1 Inventory. WFC and SDMA have performed a physical inventory of SDMA's furnishings, equipment, supplies and wares, and all other property of SDMA located on the Licensed Premises and to be used by WFC in connection with the providing of Services or operation of the Café. A complete listing of properties so inventoried has been prepared and attached hereto as Exhibit C and incorporated herein (the "Inventory").

4.2 Initial Capitalization. The Parties acknowledge and agree that the Inventory attached hereto as Exhibit C does not include a substantial amount of capital items required for the operation of the Café and the providing of the Services required hereunder. Consequently, a plan for start-up capitalization fees and requirements shall be developed and agreed upon by written mutual consent of the Parties. WFC shall prepare its recommendation regarding such plan and the Parties shall thereafter meet, review and negotiate in good faith a reasonable capitalization plan for additional equipment and fixtures, not to exceed a total of \$60,000.00. The Plan shall include an itemization of the fixtures and equipment to be purchased with written costs estimates and the proposed vendors for such equipment, but shall not include the cost of the liquor license which shall be the sole responsibility of WFC. The cost of the new capital equipment to be acquired under the agreed upon capital plan shall be funded on a 50/50 basis between the Parties. WFC shall purchase the new capital equipment following agreement on the capital plan and submit paid invoices to SDMA for all equipment so purchased. SDMA shall immediately reimburse to WFC 50% of the cost incurred, not to exceed \$30,000.00. All initial capitalized items shall be the sole property of SDMA.

4.3 WFC Credit and Offset for WFC Share. SDMA shall repay the WFC share of the capital purchased, not to exceed \$30,000.00, in 18 equal monthly installments commencing on the first due date for any payment of licensing fee pursuant to paragraph 3.1.2 above. Each monthly installment payment shall be made as follows: (i) first, WFC shall receive a credit or offset in the amount of the monthly payment due against any license fees to be paid on such due date under paragraph 3.1.2; and (ii) in the event the monthly installment payment due exceeds the licensing fees due under paragraph 3.1.2, then SDMA, shall within five business days of the due date, pay to WFC the amount of such excess. In the event this Agreement is terminated for

any reason, including breach by either party, the portion of WFC's initial capitalization that has not been repaid to WFC pursuant to the above provisions shall be paid by SDMA to WFC within fifteen (15) days after the date of termination, subject to offset by SDMA for any amount owed by WFC to SDMA under the Agreement, including amounts owed under any claims under the Agreement and claims for damages for breach of the Agreement.

4.4 Subsequent Capitalization. Any additional capitalization requirements shall be by written mutual consent of the Parties.

5. Liability Insurance.

During the term of this Agreement, WFC shall obtain and maintain general liability insurance coverage in the amount of not less than two million five hundred thousand dollars (\$2,500,000) and shall name SDMA as an additionally insured. WFC shall furnish SDMA a certificate of insurance denoting compliance with the provisions herein prior to the commencement of foodservice operations. WFC shall report SDMA promptly and in writing any incident which might reasonably be expected to result in any insurance claim under this coverage. WFC shall also maintain Workers Compensation Insurance covering all WFC employees connected with the performance of this Agreement in compliance with the laws of the State of California, Employees Liability Insurance, and, where applicable, insurance in compliance with any statutory requirements pertaining to the compensation of injured employees. WFC shall also obtain and keep in full force during the term of this Agreement, a Fire Legal Liability or Broad Form Property Damage Liability Endorsement to the above-mentioned general liability coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall also contain Business Automobile Liability insurance insuring vehicles owned, not owned, and/or hired with the minimum combined single limited of One Million Dollars (\$1,000,000.00) per occurrence. WFC shall provide proof of such insurance upon request of SDMA.

6. Damages, Repair and Maintenance.

6.1 Damages Caused by WFC's Negligence or Misconduct. WFC shall be liable for the cost of repair or replacement of damages to the Museum, including the Licensed Premises, caused by WFC's negligence or willful misconduct.

6.2 Damages Caused by SDMA Negligence or Misconduct. SDMA shall be liable for the cost of repair or replacement of damages to the Licensed Premises, including any property or items at the Licensed Premises damaged or lost, due to the negligence or willful misconduct of SDMA. Any such property or items shall be replaced by SDMA whether or not such items are the property of SDMA.

6.3 Damages Caused by Normal Wear and Tear. WFC shall be liable for the cost of repair or replacement of fixtures and equipment purchased pursuant to the approved capital plan described in Section 4 above (exclusive of maintenance, repairs and damages caused by SDMA). SDMA shall be liable for the cost of repair or replacement of fixtures and equipment (including ovens, hoods, fire extinguishers, and refrigeration equipment provided by SDMA) at the

Licensed Premises damaged or lost as a result of normal wear and tear (exclusive of maintenance, repairs and damages caused by WFC that exceed normal wear and tear). Any other fixtures or equipment shall be replaced or repaired by the Parties subject to mutual agreement on an additional capitalization plan under Section 4.4.

6.4 Museum Maintenance Responsibilities. SDMA shall be responsible for the repair and maintenance of the Museum, including the Licensed Premises, except as otherwise expressly provided herein.

6.5 Sales/Use/Property/Possessory Tax Assessments. WFC shall hold SDMA harmless, in the event any sales, use tax, property or possessory tax, including California use tax, is assessed with respect to the sale of food or beverage under the terms of this Agreement, against any liability with respect to any such assessments and against all costs and expenses related thereto.

7. Proprietary Rights.

7.1 Agreement as License Only. WFC acknowledges and agrees that this Agreement includes a license to use the Licensed Premises and does not constitute a lease or sublease of any interest in the Museum or any part thereof. WFC also acknowledges that the license granted herein is a non-exclusive license, SDMA retaining possession and control of the Museum at all times; provided, however, WFC shall have exclusive use of the "Food Storage and Preparation Area" as depicted on Exhibit A, and WFC shall have exclusive use of the remainder of the Licensed Premises during the business hours for the café and the two (2) hours prior to and one (1) hour after such business hours (hereinafter collectively the "Hours of Operation"). WFC shall have the right to construct, at its sole cost, a secure area (e.g., a caged storage area) within the Food Storage and Preparation Area for the exclusive use by WFC for purpose of storage of inventory of food product and equipment. The location and construction of the secure area shall be subject to the prior written approval of SDMA and WFC shall provide SDMA with a key to such area at all times to enable SDMA and its security force to enter the area in any emergency or to inspect the area as reasonably and prudently required.

7.2 Property of the Museum. It is hereby agreed that any and all facility improvements or capitalized property created or produced in connection with, or on behalf of, this Agreement shall be done by mutual written consent of both Parties, and shall become the property of SDMA.

8. Term and Termination.

8.1 Term. Subject to earlier termination in accordance with Section 8.2 below, this Agreement shall become effective on the Effective Date and shall remain in full force for a period of five (5) years from the Effective Date, and shall be renewable or otherwise extended only upon the written mutual consent of both parties.

8.2 Option to Extend WFC shall have the option ("Option") to extend the Term of this Agreement for an additional period of two years by delivering written notice to SDMA stating WFC's election to exercise its Option to extend not sooner than 360 days prior to, nor later than 180 days prior to, the end of the original Term specified in paragraph 8.1 above. This

Option is personal to the Original entity named as WFC above and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original entity named as WFC. Said Option cannot be assigned separately or apart from this Agreement. WFC shall have no right to exercise the Option during the time WFC is in breach of this Agreement. Upon proper exercise of this Option, the Term as defined in paragraph 8.1 above shall be deemed extended for an additional two year period and the remaining terms and conditions, including without limitation the provisions of paragraph 8.3 below, shall be unmodified and shall remain in full force and effect.

8.3 Termination. Following the second anniversary of the Effective Date of this Agreement, the Agreement may be terminated, with or without cause, upon one hundred eighty (180) days written notice by either Party. Any notice electing to terminate may only be given after said second anniversary of the Effective Date. Notwithstanding the foregoing, this Agreement may be terminated for cause by either Party in the event the other Party is in default hereunder. A Party (the "Defaulting Party") shall be in default in the event it fails to observe or perform any provision, covenant or condition of this Agreement to be observed or performed by it where such failure continues for twenty (20) days after written notice thereof from the other Party (the "Electing Party"); provided that if the nature of such default is such that the same cannot reasonably be cured within a twenty (20) day period, the Defaulting Party shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said default, as soon as possible. Upon the occurrence of such default, the Electing Party shall have the option to terminate this Agreement and pursue any other remedies available at law or in equity. Upon any termination, WFC shall immediately vacate the Licensed Premises and deliver possession to SDMA. If WFC fails to so vacate the Licensed Premises and deliver possession to SDMA, then SDMA may, without prejudice to any other remedy which it may have for possession, damages or arrearages, enter upon and take possession of the Licensed Premises and expel or remove WFC and any other person who may be occupying the Licensed Premises.

8.4 Obligations. In the event of such termination or upon expiration of this Agreement, WFC shall return to SDMA any and all facilities, fixtures and equipment listed on Exhibit "C" attached hereto, together with any such items of capital equipment acquired under the approved capital plan described in Section 4 above. In addition, WFC shall remove its own equipment and other property from the Museum and Licensed Premises at WFC's sole cost and expense and restore the Licensed Premises and any other part of the Museum used by WFC in the operation of the Café to substantially the same condition as it was prior to any use by WFC, reasonable wear and tear, damage by casualty, and alterations/improvements approved by SDMA, excepted.

9. Independent Contractor Relationship.

The Parties expressly intend and agree that WFC is acting as an independent WFC and not as an agent or employee of SDMA. WFC retains sole and absolute discretion, control and judgment regarding the manner and means of performing the Services, except as to the policies and procedures set forth herein. WFC represents and warrants that it holds all necessary business licenses to carry out its business. WFC understands and agrees that he/she shall not be entitled to any of the rights and privileges established for SDMA's employees, including, but not limited to:

(i) retirement benefits; (ii) medical insurance, life insurance or disability coverage; (iii) paid vacation or sick pay; (iv) 401K plan benefits; (v) deferred compensation; or (vi) severance pay. WFC understands and agrees that SDMA will not pay or withhold from the compensation paid to WFC any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, workers compensation or any other withholding tax, insurance or payment, and all such payments, as may be required by law, are the sole responsibility of WFC. WFC agrees to indemnify and hold SDMA harmless against any such payments of liabilities for which WFC may become liable with respect to such matters. This Agreement shall not be construed as a partnership agreement. SDMA shall have no responsibility for any of WFC's debts, liabilities or other obligations.

10. Indemnification.

WFC shall defend, indemnify and hold harmless SDMA, its officers, employees, and agents, from and against all losses and expenses (including reasonable attorneys' fees) by reason of liability imposed by law upon SDMA for damages because of bodily injury and personal injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to Property, including loss of use thereof, arising out of or in consequence of the performance of this Agreement, provided such injuries to persons or damage to property are due to the negligent acts or admissions of WFC, its officers, employees, or agents.

SDMA shall defend, indemnify and hold WFC, its officers, employees, and agents from and against all losses and expenses (including reasonable attorneys' fees) by reason of liability imposed by law upon WFC for damages because of bodily injury and personal injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of this Agreement, provided such injuries to persons or damage to property are due to the negligent acts or omissions of SDMA or its officers, employees, or agents.

WFC agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Licensed Premises or within the Museum, and WFC shall keep the Licensed Premises and the Museum free and clear of all mechanic's liens and other liens filed or asserted on account of such work, on behalf of SDMA or persons claiming under it (the "Liens"). WFC agrees to and shall indemnify, defend and save SDMA and the Museum free and harmless against any and all liability, loss, damage, cost, attorneys' fees and all other expenses on account of any Liens for work performed or materials or supplies furnished for WFC or persons claiming under it.

WFC, at its sole expense, shall also indemnify, defend and hold SDMA, its officers, employees, and agents harmless against any and all claims or actions brought against any of them arising from or relating to any Services or food or beverage product provided by WFC under this Agreement. WFC shall pay all costs, fees (including reasonable attorneys' fees) and damages which may be incurred by SDMA, its officers, employees, and agents, in connection with any such claim or action, including, but not limited to, the settlement thereof.

11. Notices.

All notices, demands, acknowledgments or other communications made or given by either Party in accordance with this Agreement which is required hereunder or relates to a formal notice of an event of default or demand for indemnity shall be in writing, in the English language and sent via facsimile (with confirmation received) or by registered mail or certified mail, return receipt requested, or by courier service and addressed to the other Party at its address as set forth below (or any other address of which the other Party is notified of in accordance with this Section). Any notice shall be deemed to have been duly given and received by the Party to whom it is addressed if: (i) confirmation was received; or (ii) sent by registered or certified mail, three (3) days after deposit in the mail with postage prepaid; or (iii) by overnight courier service, the next Business Day.

Waters Fine Catering
1105 West Morena Boulevard
San Diego, California 92110
Attention: Mary Kay Waters
Facsimile: (619) 276-8810

San Diego Museum of Art
P. O. Box 122107
1450 El Prado, Balboa Park
San Diego, California 92112-2107
Attention: Heath Fox
Facsimile: (619) 232-9367

12. General Provisions.

12.1 Survivability. The terms and conditions of this Agreement that by their sense and context are intended to survive after performance of the Services hereunder shall survive the termination or expiration of this Agreement.

12.2 Assignment. This Agreement is personal to the original entity specified as WFC above. WFC shall not assign any of its rights or obligations under this Agreement and shall not subcontract any of the Services to be performed hereunder without the prior written consent of SDMA. Subject to the foregoing restriction on assignment by WFC, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns.

12.3 Applicable Law; Dispute Resolution. This Agreement shall be governed by the laws of the State of California, without regard to conflicts of law principles.

12.4 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written negotiations and agreements between the Parties with respect to the subject matter hereof. No modification, variation or amendment of this Agreement shall be effective unless made in writing and signed by both Parties.

12.5 Severability; Non-Waiver. In the event that any of the terms, conditions or provisions of this Agreement are held to be illegal, unenforceable or invalid by any court of competent jurisdiction, the remaining terms, conditions or provisions hereof shall remain in full force and effect. The failure or delay of either Party to enforce at any time any provision of this Agreement shall not constitute a waiver of such Party's right thereafter to enforce each and every provision of this Agreement.

12.6 Signage. Banners attached to the outside of the Museum shall be maintained regularly by SDMA. SDMA will consult with WFC upon request regarding such banners and any signage for the Café.

12.7 Delivery. At all times during WFC's Hours of Operation, SDMA shall maintain and WFC shall have non-exclusive access to the delivery entrance designated for delivery vehicles at the Museum. WFC shall comply with the reasonable rules and regulations of SDMA in the use of such delivery entrance.

12.8 Café Name. WFC shall operate the Licensed Premises under the fictitious business name "Waters Café at SDMA." The name of the Café may only be changed by the prior mutual written agreement of WFC and SDMA. Upon the expiration or termination of this Agreement, SDMA shall cease using the name "Waters Café at SDMA."

12.9 Attorneys Fees. In the event any party to this Agreement commences any action, legal or otherwise, concerning any aspect of this Agreement or any tort cause of action, including but not limited to the interpretation or enforcement of any of its provisions or because of any alleged dispute, breach, default, or misrepresentation in connection with any aspect or provision of this Agreement, or for a declaration of a party's rights or obligations hereunder, or for any other judicial remedy, the prevailing party shall be entitled to recover its reasonable attorneys' fees and all other costs and expenses incurred in connection with the action or proceeding, including without limitation expert witness fees, court reporter fees, collection expenses, and the costs of appeal, in addition to any other relief that party may be entitled, whether or not such action proceeds to judgment. The award of attorneys' fees shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, include the full amount of costs, expenses, and attorneys' fees incurred in good faith.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the date of signature of both Parties.

For SAN DIEGO MUSEUM OF ART:

[Signature]
Signature
Executive Director
Title
2 APRIL 2003
Date

95-1696715
Tax ID Number
619.696.1903
Telephone
hfox@sdmart.org
Email

For WATERS FINE CATERING:

Mary Kay Waters
Signature
PRESIDENT
Title
4.10.03
Date

33-0495026
Tax ID Number
619 276 8803
Telephone
MKWATERS@waterscatering.com
Email

Exhibit A Licensed Premises

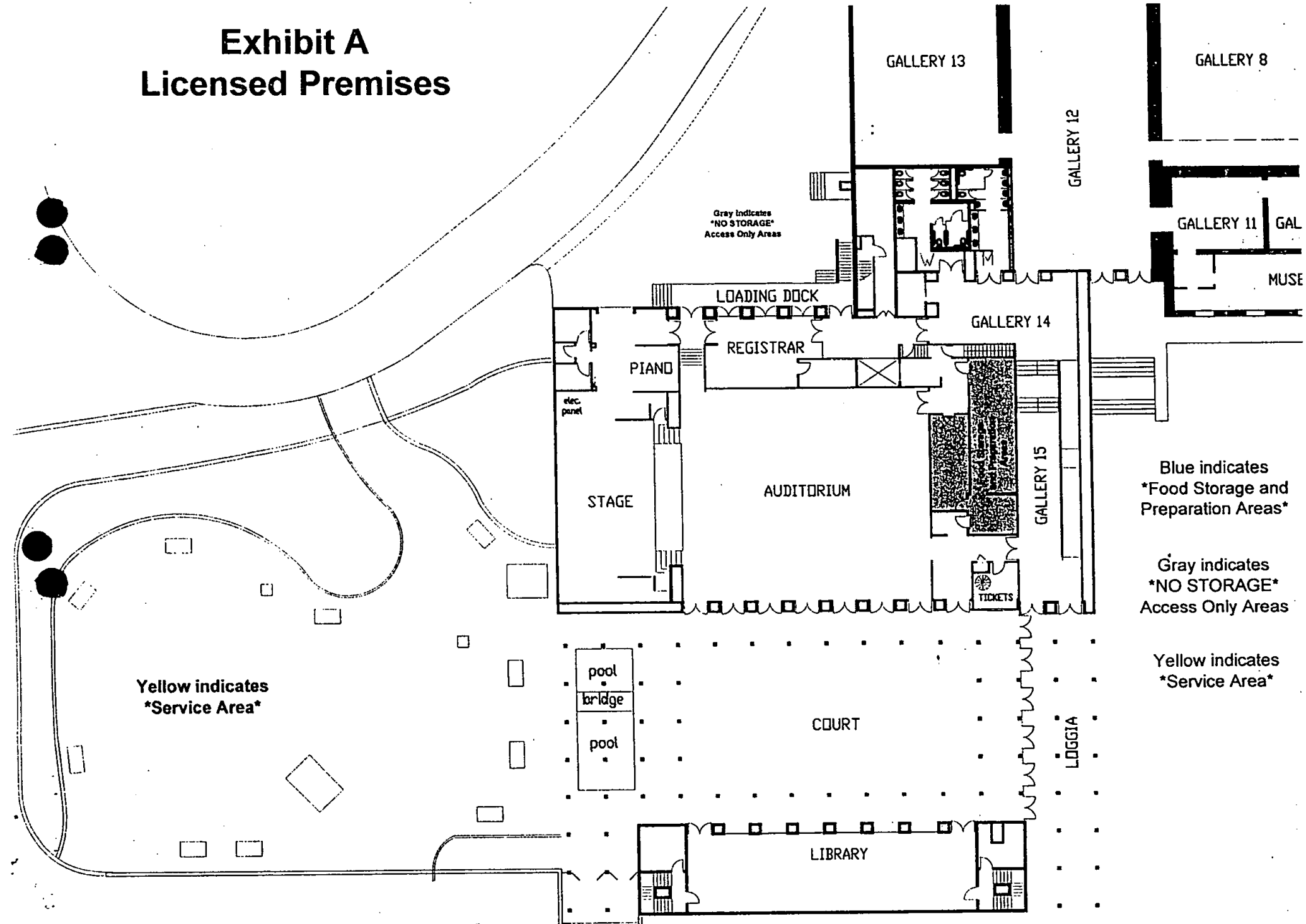


Exhibit B: Holiday List

Non-Monday Holidays that SDMA is closed to the public:

New Years Day
Thanksgiving Day
Christmas Day

Exhibit C: Inventory

• Beverage Table	1,000.00
• China/Flatware	3,000.00
• Table Linens	1,500.00
• Trash Receptacles	1,320.15
• Cash Register	3,250.00
• 15' Caging	1,175.47
• Kiosks	12,175.00
• Construction	12,972.00
• Equipment:	23,607.38
Salad Prep Table	
Sandwich Prep Table	
Prep Sink	
Hand Sink	
Three Compartment Sink	
Walk-In Refrigerator	
Freezer	
Ice Machine	
Floor Mats	
Soup Warmer	

Estimated Total

\$60,000.00