



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: July 20, 2021

Agenda Item 96

**Approvals:**

City Manager ES JB

Dept. Head \_\_\_\_\_

Attorney \_\_\_\_\_

Finance JLH

**Department:** Economic Development  
**Prepared By:** Jonathan Lightfoot, Economic Development Officer

**Subject:** *APPROVAL OF LEASE AGREEMENT TO OPERATE THE T-STREET CONCESSION.*

**Fiscal Impact:** Yes. An estimated \$14,000 in revenue between September 2021 and March 2022. This accounts for an increase of \$7900 above the amount identified within the FY2021-22 budget. Some of these surplus funds may be used to purchase equipment identified by the Orange County Health Department or the City's Building Official as necessary to ensure health and safety within the facility.

**Summary:** Following a comprehensive review of concessions operations on May 4, 2021<sup>1</sup>, the City Council gave direction to seek proposals for city owned properties, including the T-Street Concessions building. Staff is developing the Request for Proposal (RFP) process, which will incorporate options for facility improvements and will incorporate local small business status within the scoring rubric. This will likely be published by Fall of 2021. In the interim, staff sought a limited term operator to maintain operations of the facility through March of 2022. This operator will bring increased hours of service, updated equipment for improved safety and food quality, and will operate beyond September to serve the public through the fall and winter season when the concession stand has traditionally been closed.

**Background:** The City maintains a small concession building near the T-Street beach access point from W. Paseo de Cristobal that has provided beach concession food and beverages to the public for many years. The concession building was operated most recently by Edie Wilson. Ms. Wilson's contract expired in 2019, but she continued to operate on a month-to-month basis.

In May of 2021, staff reviewed a comprehensive report of City concession operations as provided by Profitable Food Facilities Worldwide. Council concurred with some of the key findings, such as recognizing that expanded hours of operation were critical to better serve the public in the mornings and in the fall, winter, and spring. The Beach Trail sees about one million visitors every year, but the majority of those walking the trail have been unaware of this concession stand since operation was limited to May through September, often only between noon and 5pm. City annual receipts for the past three seasons were \$4366 in 2018, \$6055 in 2019, and \$0 in 2020. Staff has received no receipts or rent from the prior operator since October of 2019, but will attempt to recover some rent for the period of known operations between May and July 4, 2021.

<sup>1</sup> <https://www.san-clemente.org/home/showpublisheddocument/63789>

**Discussion:** While staff will be conducting the RFP for multiple facilities this Fall, we pursued an interim operator to expand the hours and profitability of the concession stand until March 30, 2022. Staff received a proposal and interviewed Organic Concepts LLC for this interim operation. They agreed to staff's conditions of daily operations through the summer beginning at 8 a.m. They will offer an expanded menu – including coffees, smoothies, and breakfast items that will better serve the public walking the beach trail. They also agreed to a substantial increase in base rent of \$2000 per month or 10% of gross sales, whichever is greater. They agreed to begin accepting digital payment and commence digital reporting of sales so that the City can more accurately account for the rent due. As is common practice, staff recommends that rent commence September 1, 2021 to allow for the various expenses necessary in procuring new and upgraded equipment for the facility. The lease specifies that there are no options to extend as the City will be conducting the RFP process per Council's prior direction.

Staff and Organic Concepts LLC have met with the Orange County Health Department and the City's building official to identify equipment needs to meet health and safety guidelines. The City will be procuring a food prep sink, a hand washing station, and a type 1 ventilation hood to meet these specifications and better prepare the building for future occupancy and operations. These equipment acquisitions are expected to be covered by the surplus general fund revenues generated by this lease.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the City Manager to execute the Lease Agreement by and between Organic Concepts LLC and the City of San Clemente to operate the T-Street concession; and
2. Authorize a supplemental appropriation of \$10,000 to Account 001-191-44890 (FAS / Other Operating Expenses) from the General Fund unassigned fund balance.

**Attachments:** Limited Term Lease Agreement

**Notification:** Organic Concepts LLC

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**LEASE AGREEMENT  
T-STREET CONCESSION BUILDING**

**by and between**

**CITY OF SAN CLEMENTE  
("LANDLORD")**

**and**

**ORGANIC CONCEPTS LLC  
("TENANT")**

**August 7, 2020**

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## LEASE AGREEMENT

This LEASE AGREEMENT (the "Lease") is dated for reference purposes as of the 14th day of July, 2021 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("Landlord"), and ORGANIC CONCEPTS LLC ("Tenant"). Landlord and Tenant are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

### R E C I T A L S:

A. Landlord is the owner and operator of that certain real property located in the City of San Clemente, California, described as the T-Street Concession (the "Landlord's Property").

B. Landlord desires to lease to Tenant the Landlord's Property or that portion of the Landlord's Property referred to herein as the Premises and Tenant desires to lease the Premises from Landlord, all subject to the terms and conditions set forth herein.

### C O V E N A N T S:

In consideration of the foregoing Recitals, which are incorporated into this Lease by this reference, and the mutual covenants and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Landlord and Tenant, the Parties agree as follows:

### **ARTICLE I SUMMARY OF FUNDAMENTAL LEASE TERMS**

Subject to the more complete statement of certain of the Lease terms and conditions elsewhere in this Lease (which more complete description shall prevail to the extent of any inconsistency or conflict with the provisions set forth in this Article I), the fundamental business terms of this Lease are summarized hereinbelow:

(i) Landlord: City of San Clemente, a municipal corporation, and any successor to or assignee of City's fee ownership of the real property within which the Premises are located.

(ii) Tenant: ORGANIC CONCEPTS LLC. and any permitted assignee or transferee of ORGANIC CONCEPTS LLC's leasehold interest in the Premises approved by Landlord in accordance with this Lease, as set forth in Article X.

(iii) Premises: a building, known as the T-Street Concessions building, located near the T-Street pedestrian bridge access to the beach from W Paseo de Cristobal.

(iv) Term: A limited term between July 14, 2021 and March 30, 2022.

(v) Rent: The greater of Two Thousand Dollars and Zero Cents (\$2000.00) per month, or ten percent (10%) of Gross Sales (as that term is defined in Article IV). Rent to be "triple net" to Landlord. (See Articles V, VII, and IX.)

(vi) Security Deposit: One month's Base Rent, which at the time of execution of this Lease is Two Thousand Dollars (\$2000.00). (See Article XV.) Permitted Uses: The premises shall be used for the sale of food and non-alcoholic beverages, and incidental accessory items. Beach equipment and rental shall also be permitted. (See Article VI.) No delivery or catering services shall be allowed.

(vii) Minimum/Maximum Hours of Operation: The required hours of operation are between 8:00 a.m. and 4:00 p.m. and seven days per week during the period between the commencement of operations in July and September 30<sup>th</sup>. Operator may elect to operate 6 days per week between October and March with notification to the City.

These hours of operation are the minimum hours only and are not intended to restrict operation during other times that the San Clemente Beaches are open to the public. The minimum hours of operation do not apply during periods of inclement weather. (See Section 6.02.)

(viii) Addresses for Notices and Agents for Service of Process:

To Landlord: City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673  
Attn: Economic Development Officer

To Tenant: ORGANIC CONCEPTS LLC  
208 AVENIDA VICTORIA UNIT C  
San Clemente, CA 92672  
Attn. Eligija Straviskaite

## ARTICLE II LEASE OF PREMISES

### SECTION 2.01 GENERAL.

Subject to the terms and conditions set forth in this Lease, Landlord hereby agrees to lease the Premises to Tenant and Tenant hereby agrees to lease the Premises from Landlord.

### SECTION 2.02 QUIET ENJOYMENT.

Landlord agrees that, subject to the limitations expressly set forth in this Lease, Tenant, upon paying the Rent and performing the terms and covenants in this Lease required to be performed by Tenant, may quietly have, hold, and enjoy the Premises during the Initial Term and any Extended Term, as applicable, without hindrance or interruption by Landlord.

SECTION 2.03 AS-IS CONDITION.

From and after the Commencement Date (as that term is defined in Section 3.01 hereinbelow), the Premises will be leased in an as-is physical condition only. By taking possession of the Premises, Tenant thereby acknowledges the Premises are in good and tenantable condition for the purposes intended and that Tenant will not hold Landlord responsible for any repairs or improvements thereon except as may be expressly set forth herein. Furthermore, Tenant, at its sole cost and expense, shall keep and maintain the Property and all structures and improvements, fixtures, equipment, and personal property located within the Property, including without limitation internal plumbing fixtures, HVAC system, all doors, door frames, signage, utilities, lighting fixtures, outlets switches, controls, internal and external lighting components, walls, floors, and ceilings, in good order and first class condition, quality and repair and in accordance with all federal, state, county, municipal, and other governmental agencies having jurisdiction. The Landlord shall have responsibility to maintain the exterior structure of the building, e.g. roof, walkways, walls, exterior hardscape, external plumbing, etc.

**ARTICLE III  
TERM**

SECTION 3.01 COMMENCEMENT AND DURATION.

The "Initial Term" of this Lease shall commence on the "Commencement Date," which shall be July 14, 2021. Starting from 12:01 a.m. on the Commencement Date, the Initial Term shall be 8 ½ months, ending March 30, 2022.

SECTION 3.02 OPTIONS TO EXTEND TERM OF LEASE.

The City intends to publish an RFP for this Concession stand in addition to the North Beach Concession stand prior to March 30, 2022. While the tenant is invited to participate in bidding on that open opportunity, there is no promise or guarantee that they will be selected as the tenant beyond March 30, 2022. No option to extend is included within this limited term lease and operating agreement.

SECTION 3.03 SURRENDER; HOLDING OVER.

Upon the expiration or earlier termination of this Lease, whether by lapse of time or otherwise, Tenant agrees to peaceably yield up and surrender the Premises to Landlord, including all such improvements and trade fixtures (except those Tenant-owned fixtures and property timely removed by Tenant pursuant to Section 8.02 of this Lease) in good order, repair, and condition, reasonable wear and tear and damage by casualty excepted. In the event Tenant continues in possession of the Premises after the Initial Term or an Extended Term with the consent of Landlord, express or implied, but not pursuant to Section 3.02, such holding over shall be deemed a tenancy from month to month subject to all the terms and conditions of this Lease, and Tenant shall pay rent in the same manner and on the same basis as was in effect immediately prior to such holding over; provided, however, that upon no less than thirty (30) days' written notice to Tenant, Landlord may (i) modify the terms of the month-to-month tenancy or (ii) terminate the month-to-month tenancy (in which event Tenant shall vacate the Premises and surrender the same to

Landlord). No holding over by Tenant, whether with or without Landlord's consent, shall operate to extend the Initial Term or a properly exercised and effective Extended Term.

#### ARTICLE IV RENT

##### SECTION 4.01            AMOUNT OF RENT.

Rent shall be the greater of: (a) "Base Rent" for the Initial Term in an amount equal to Two Thousand Dollars and Zero Cents (\$2000.00), or (b) "Percentage Rent" in an amount equal to ten percent (10%) of Gross Sales for each calendar month in the Term (Base Rent and Percentage Rent are collectively referred to herein as "Rent"). Any Rent or other payments or charges due under this Lease for any fractional part of a calendar month shall be prorated based on the ratio that the number of days in that month during the Initial Term or Extended Term (or holding over period, if applicable) bears to the total number of days in that month.

##### SECTION 4.02            TIME OF PAYMENT.

Tenant's obligation to pay Rent shall commence on the Commencement Date (herein, the "Rent Commencement Date"), which will be September 1, 2021 to allow for capital and facility investment, referred to as a "Build Out Period," and Tenant's obligations to pay Rent shall continue thereafter throughout the Initial Term, any Extended Term, and any holdover period. Rent shall be due and payable on a monthly basis. Tenant shall pay Rent to Landlord no later than the tenth day of the month following the full or partial calendar month for which Rent is due. For example, Rent for the month of January is due and payable no later than February 10. It is understood and agreed that the ten-day grace period shall be used by Tenant for accounting and determining whether the Percentage Rent is greater than the Base Rent for the applicable month.

##### SECTION 4.03            CALCULATION OF PERCENTAGE RENT.

Throughout the Initial Term, any Extended Term, and any holdover period, Tenant shall calculate and record, for every full or partial calendar month, as applicable, the total Gross Sales. If the Percentage Rent for the applicable month is greater than the Base Rent, Tenant shall pay the Percentage Rent for that month. If the Percentage Rent for the applicable month is less than the Base Rent, Tenant shall pay the Base Rent for that month. For purposes of this Lease, "Gross Sales" means all revenues, receipts, income, proceeds of sales, and compensation for services of every kind, including without limitation rentals or other fees for the usage of space and deposits not refunded, whether provided for cash or on credit, earned directly or indirectly from the business(es) on and operations on the Premises in and for the applicable month. "Gross Sales" shall not include the occasional sale of fixtures and equipment by Tenant following their substantial use in the conduct of Tenant's operations upon the Premises, sales and use taxes and similar taxes imposed on the sale of goods or services on the Premises, insurance proceeds, or credits or reimbursements earned by Tenant for merchandise returned to shippers, manufacturers, wholesalers, or suppliers.

#### SECTION 4.04 ACCOUNTING FOR GROSS SALES.

At such time as Tenant submits to Landlord each monthly payment of Rent, such payment shall be accompanied by an itemized statement showing the Gross Sales derived from all business and operations at the Premises during the applicable month, together with a detailed itemization of the goods and services provided, as well as any deductions or exclusions therefrom.

Tenant shall establish and install a system of bookkeeping records and accounts ("Accounts") to be used and maintained by Tenant to accurately and timely record the results of all transactions regarding Tenant's use, occupancy, business operations, and other activities of Tenant under this Lease consistent with the reporting requirements of this Lease and the rights of Landlord hereunder to inspect and audit such activities and Accounts. The Accounts shall be established and maintained by Tenant in such manner and with such segregation of such Accounts from any other business or activity of Tenant such that an examination of such Accounts may be conducted by persons external to Tenant (including without limitation Landlord or its representatives) to allow the examiner to determine if such Accounts have truly and accurately recorded the matters for which they were established and to determine if the periodic statements and reports to be submitted by Tenant hereunder truly, accurately, and completely reflect the financial matters to be so reported.

All business records of Tenant must be supported by source documents such as sales slips, invoices, billings, unbilled accounting documents, ledgers, bank deposit receipts, sales tax returns, cash register tapes, sales books, bank books, purchase invoices, contracts, and such other similar records and documents as may be reasonably necessary to verify the amount of Gross Sales and the basis of the calculations necessary for the determination of Percentage Rent hereunder.

In the event that Landlord consents to any sublease by Tenant or any other third party conduct of a business on the Premises, Tenant shall be responsible to ensure that each sublessee and/or other business occupant fully complies with the foregoing accounting and reporting procedures and any failure by any such sublessee or other business occupant to do so shall constitute a Default hereunder by Tenant to the same extent, and with the same consequences, as if said failure were a failure of Tenant itself. Without intending to limit the effect of the foregoing, Landlord's consent to any such sublease or other business occupancy is subject to the continuing condition that the sublessee or other business occupant, as applicable, shall properly account and report for its Gross Sales and upon any failure of the sublessee or other business occupant to do so, Landlord may revoke its consent previously given and require Tenant to take immediate action to terminate such sublease or other business occupancy.

Throughout the Initial Term, any Extended Term, and any holdover period, Tenant shall cause to be completed a financial audit for the previous calendar year (or portion thereof if Tenant's business operations commence after January 1 of any calendar year, or if this Lease shall terminate prior to the end of a calendar year) of all books, records, and accounts pertaining to Tenant's operations at the Premises (the "Annual Audit"). The Annual Audit shall be completed and submitted to Landlord no later than thirty (30) days after the end of the full or partial calendar year for which the audit is being conducted. The Annual Audit shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant, and in the event no mutual agreement is reached, the Annual Audit shall be conducted by a certified public accountant



employed by one of the major accounting firms in the United States chosen at random by Landlord. If the Annual Audit shows a discrepancy with the statements of Gross Sales previously made to Landlord, then and in that event there shall be an adjustment and Tenant shall pay to Landlord on demand such sums as may be necessary to settle in full the accurate amount of Rent payments that should have been paid for the period or periods covered by such inaccurate statement or statements, together with interest on any past due amounts in the sum of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less.

NOTE: Notwithstanding the above, the Tenant has agreed to operate the concession using a digital point of sale system. Reports of gross sales shall be provided electronically on a monthly basis to the City. In the case of this limited term agreement, the "annual audit" will be replaced by an audit covering the first day of operations in July 2021 through March 30, 2022.

#### SECTION 4.05 MAINTENANCE AND INSPECTION OF RECORDS; AUDIT.

Tenant shall maintain at the Premises or at Tenant's office located within twenty-five (25) miles of San Clemente City Hall full, complete, and accurate books, records, and accounts of all daily Gross Sales and other records used in calculating the Gross Sales. Tenant shall keep all such records for a minimum of (i) three (3) years after the Rent amounts attributable to such Gross Sales have been paid or (ii) if Landlord has initiated an audit of Tenant's records prior to the end of such three (3) year period, until said audit has been completed and any dispute relating to the results of said audit have been finally resolved and any delinquent Rent, interest, and late charges thereon, if applicable, have been paid.

Landlord may, at any time within three (3) years after the Rent amounts attributable to Gross Sales have been paid, deliver written notice to Tenant of Landlord's intent to inspect and/or audit Tenant's (and any applicable sublessee's and/or business occupant's) books, records, and accounts relevant to the determination of Gross Sales for such period. Such written notice shall designate a date and time (during Tenant's normal business hours) for such inspection and/or audit. Landlord shall have the right at the date and time designated in such notice to examine, inspect, and make copies and abstracts of such books, accounts, and records. Such inspection and audit may continue from time to time until completed, and shall be conducted either by Landlord or by a representative designated by Landlord. Tenant shall make all records specified in the notice available at the time specified in the notice, to the extent practicable, and at the place where the records are to be kept; provided, however, that Landlord, in the course of any inspection or audit, is entitled to have complete access (with or without copying equipment) to any and all records for the purpose of examination or copying.

Landlord shall pay all of its costs relating to any such inspection or audit of Tenant's business records and Tenant shall pay for any costs it incurs in making such records available; provided, however, that in the event Landlord's inspection and/or audit demonstrates that Tenant has underreported Gross Sales and underpaid Rent for any period of time by an amount in excess of three percent (3%) of the total amount due, Tenant shall be responsible for reimbursing Landlord its actual and reasonable inspection and auditing costs (or the portion thereof attributable to the period for which such underreporting and underpayment occurred) in addition to Tenant's obligation to pay interest and late charges on the delinquent amount and without prejudice to any other right or remedy that Landlord may have hereunder.

SECTION 4.06 MANNER OF PAYMENT.

All Rent and other payments and charges due under this Lease shall be paid by Tenant to Landlord without prior demand therefor, and without any deduction or offset whatever, in lawful money of the United States of America which shall be legal tender at the time of payment, at:

City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673  
Attn: Cashier

or to such other person or at such other place as Landlord may from time to time designate in writing. Tenant shall reference the period for which Rent is being paid. The acceptance by Landlord of Tenant's payment shall not constitute a waiver of Landlord's right to subsequently demand that any additional amount be paid that may be owing.

SECTION 4.07 DELINQUENT PAYMENTS.

4.07.0 Interest.

If Tenant shall neglect or fail to pay any Rent when the same is due and payable Tenant shall pay to Landlord, in addition to such unpaid amounts, interest upon such unpaid amounts at the rate of ten percent (10%) per annum or the maximum legal rate then in effect, whichever is less, from the date the delinquent payment was due until principal and accrued interest are paid in full.

4.07.1 Late Charge.

Tenant acknowledges that late payment by Tenant to Landlord of Rent or any other amount required to be paid under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and administrative and collection costs, accounting charges, and late charges that may be imposed on Landlord by virtue of its debt obligations. Accordingly, if Tenant fails to pay Rent or any other payment required to be paid under this Lease within ten (10) days after such payment is due, Tenant shall additionally pay a late charge equal to five percent (5%) of the amount of such payment or \$150.00, whichever is greater.

4.07.2 Independent Rights.

The interest and late charge provisions contained in this Section 4.07 are in addition to and do not diminish or represent a substitute for any other Landlord rights and remedies for a Default by Tenant as set forth in Article XII of this Lease.

**ARTICLE V**  
**TAXES AND UTILITY CHARGES**

SECTION 5.01      TAXES.

5.01.0      Taxes for Possession of Premises.

Tenant shall timely pay any and all taxes, assessments, and other charges, however described (hereinafter collectively referred to as "Taxes"), that are levied, assessed, or imposed by any governmental agency against the Premises, or any portion thereof (including without limitation any possessory interest tax imposed on Tenant's leasehold interest created by this Lease), or any improvements or other property in or on the Premises (including any personal property of any kind (including fixtures) owned by or placed in, upon, or about the Premises by or on behalf of Tenant) for any period from and after the Commencement Date until the termination or expiration of the Term of this Lease or such later date that Tenant actually vacates the Premises.

5.01.1      Right to Contest Taxes.

Tenant may at any time, in good faith and upon reasonable grounds, protest, dispute, or contest the validity or amount of the whole or any part of Taxes for which Tenant is responsible and in this regard Tenant may in good faith diligently conduct any necessary proceedings to void, reduce, recover, or seek a refund of the same. It is understood that Tenant shall not, in the event of and during the bona fide and diligent prosecution of any such proceeding, be deemed to be in default in respect to the payment of any disputed Taxes so long as Tenant complies with the following provisions:

(i)      Tenant shall prosecute any such proceeding to a final conclusion as speedily as is reasonably possible;

(ii)      Neither the Premises nor any part thereof shall by reason of any such proceeding be, in the reasonable judgment of Landlord, in danger of being forfeited, lost, or materially affected;

(iii)      Any such proceeding to contest the validity or amount of any Taxes or to recover any Taxes paid by Tenant shall be prosecuted by Tenant at Tenant's sole cost and expense, and Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claim, liability, loss, cost, or expense of any kind, including but not limited to reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Landlord in connection therewith; and

(iv)      Upon the termination of any such proceedings it shall be the obligation of Tenant to promptly pay the unpaid portion of any such Taxes or part thereof as are finally determined in such proceedings to be due and owing, together with all costs, fees, interest, penalties, or other liabilities in connection therewith, and, upon such payment, Landlord shall direct the Escrow Agent to return any amount deposited with it, not theretofore expended, with respect to such Taxes; provided, however, Landlord, if requested by Tenant, shall direct that the Escrow Agent disburse the monies on deposit with it directly to the taxing authority to whom the Taxes are payable.

SECTION 5.02 UTILITIES.

5.02.0 Payment for Services.

Tenant shall timely pay when due any and all utility charges and fees, however described, for water, gas, electricity, telephone, sewer, storm drain and water quality, cable television, internet, and telecommunications services, and any other utility services provided to or for the benefit of the Premises. To the extent the Premises do not have the means to measure Tenant's usage of any utility separately from the usage of Landlord or other tenants at or occupants of the Landlord's Property, if applicable, Tenant shall pay the portion of that utility usage based upon the percentage of square feet occupied by the Premises compared to the total square footage of the improvements on the Landlord's Property or based upon such other method of allocation as may be reasonably determined by Landlord to be fair and appropriate based upon Tenant's proportionate usage.

5.02.1 Interruption of Service.

So long as Landlord does not default in the performance of its obligations and duties hereunder, Landlord shall not be liable in damages or otherwise for any temporary denial of access to the Premises or any failure or interruption of any utility service being furnished to the Premises, and no such temporary denial, failure, or interruption, unless protracted and due to Landlord's active negligence or willful misconduct, shall entitle Tenant to terminate this Lease or to an abatement of Rent or other amounts due hereunder.

**ARTICLE VI  
USE OF PREMISES**

SECTION 6.01 USE.

The Premises shall be used for only those uses described in Article I, clause (vii) of this Lease and the terms and conditions of any applicable governmental permits and licenses applicable to the Premises from time to time, including without limitation any liquor license, if applicable. To the extent there may be any inconsistency between the terms and conditions of any applicable governmental permits and licenses applicable to the Premises and this Lease, the terms and conditions of the applicable governmental permits and licenses shall govern. As a material part of the consideration for this Lease, Tenant covenants that it shall not use or permit the Premises to be used for any purpose other than the purposes specified in this Lease.

SECTION 6.02 HOURS OF OPERATION.

The Premises shall be open for business to the general public during the minimum hours of operation specified in Article I, clause (viii) of this Lease, and shall not be open beyond the maximum hours of operation specified therein or as may otherwise be prohibited by City ordinance or City Council direction.

## SECTION 6.03      RESTRICTIONS ON USE.

Except as may be provided below in this Section 6.03, Tenant, at its sole cost and expense, shall faithfully observe in the use, occupancy, and possession of the Premises all municipal and county ordinances, and all state and federal statutes now in force and which may hereafter be in force, and Tenant shall fully comply at its sole expense with all regulations, orders, permits, and other requirements issued or made pursuant to any such ordinances and statutes. The final non-appealable judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such statute, ordinance, regulation, order, permit, or other requirement for which Tenant is responsible in its use, occupancy, or possession of the Premises shall be conclusive of that fact as between Landlord and Tenant.

### 6.03.0      Access for Disabled Persons.

Landlord, at its sole cost and expense, shall be responsible in its design and construction for timely complying with all federal, state, and local laws and regulations, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), regarding ingress and egress to and from the Premises for disabled persons, including without limitation the cost of making any physical modifications or improvements to the area outside the Premises for that purpose (herein, "ADA Improvements"). Tenant shall be responsible for any ADA Improvements within the Premises to accommodate use and occupancy by disabled persons. In addition to the foregoing, Tenant shall indemnify, defend, and hold harmless Landlord and its officers, officials, directors, employees, and agents, and each of them, from and against any and all claims, actions, damages, liabilities, and expenses (including without limitation attorneys' fees) directly or indirectly arising from or out of any alleged or actual violation of any federal, state, or local law or regulation, including the ADA, enacted to prevent the discrimination against persons with disabilities, where said alleged or actual violation occurs within any of the areas for which Tenant is responsible.

Landlord shall indemnify, defend, and hold harmless Tenant and its officers, officials, directors, shareholders, employees, and agents, and each of them, from and against any and all claims, actions, damages, liabilities and expenses (including without limitation attorneys' fees) directly or indirectly arising from or out of any alleged or actual violation of any federal, state, or local law or regulation, including the ADA, enacted to prevent the discrimination against persons with disabilities, where said alleged or actual violation occurs within any of the areas for which Landlord is responsible.

### 6.03.1      Nuisance, Waste, Peaceful Co-existence.

Tenant shall not commit or allow to be committed any nuisance, act of waste, or other act in or about the Premises that will in any manner whatsoever obstruct or interfere with the rights of adjacent or nearby property owners, businesses, residents, and the general public or injure or annoy them; nor shall Tenant allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose.

## SECTION 6.04 TENANT'S CONDUCT OF BUSINESS.

Tenant shall keep the Premises and all public areas immediately adjacent to the Premises at all times in a neat, clean, and orderly condition. Tenant's failure to comply with this Section shall be deemed to be a material breach of this Lease.

### 6.04.0 Water Quality

Tenant must be familiar and comply with the City's water quality requirements as defined in Section 13.40 of the City's Municipal Code. For any exterior cleaning activities, the Tenant must use dry sweeping/cleaning methods to the maximum extent possible, and properly collect and dispose of the collected material. If use of water becomes necessary, all washwater must be collected and not allowed to discharge to area drains, storm drain inlets, gutters, paved areas or any similar features. Floor mats or other equipment are prohibited from being cleaned in exterior areas. Any waste oil or grease must be collected for recycling, and must be properly stored for recycling collection. Tenant must properly maintain grease traps and/or grease interceptor units, and keep records to document such maintenance.

### 6.04.1 Trash/ Recycling

Tenant must keep trash area clean and trash lids closed. Trash containers must never be filled with liquid or hosed out with water or other liquids. Tenants must implement a recycling program and separate other recyclable materials to maximize placement of recyclable materials in recycling bins provided by the City.

### 6.04.2 Prohibition on Use of Polystyrene Food Service Products

Tenant shall not sell, serve, or package food or beverages from the Premises in containers made out of expandable polystyrene, or otherwise use or distribute or permit the use or distribution of expandable polystyrene food service products, including without limitation takeout containers, trays, plates, drinking cups, and bowls in connection with Tenant's use of the Premises.

## ARTICLE VII MAINTENANCE AND REPAIRS

### SECTION 7.01 GENERAL PROVISIONS.

During the Initial Term, any Extended Term, and any holdover period, Tenant shall at its expense maintain the Premises and all improvements, fixtures, and personal property located within the Premises in a first-class condition, and in good order and repair, free of litter and trash, reasonable wear and tear and casualty damage excepted. Tenant shall maintain all landscaping, potted plants, and other live plants in and about the Premises in a healthy, pruned, and neat condition, and Tenant shall promptly remove and replace any dead or diseased plants. Except as expressly set forth in Articles VIII and IX, Landlord shall have no responsibility for maintenance or repair of the Premises or any improvements, fixtures, or personal property located thereon.

Tenant shall be responsible for the day-to-day maintenance and repair of the Premises and all portions thereof, including, without limitation, all of Tenant's fixtures and equipment, the

exterior and interior windows, all Tenant signs, door and window locks and closing devices, and all window sashes, casements or frames, doors and door frames, floor coverings, including carpeting, and other special flooring. Tenant shall promptly replace all broken glass, both exterior and interior, with glass of the same kind, size, and quality.

#### SECTION 7.02 LANDLORD'S RIGHT OF SUBSTITUTED PERFORMANCE.

If at any time during the Term Tenant refuses or neglects to make repairs or maintain the Premises or any part thereof in a manner consistent with the terms of this Lease or otherwise reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event Landlord's cost for such work shall be reimbursed by Tenant to Landlord within ten (10) business days after Tenant's receipt of a bill therefor.

### ARTICLE VIII CONSTRUCTION, ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

#### SECTION 8.01 TENANT IMPROVEMENTS.

Tenant shall not have the right to make any additions, alterations, or improvements to the Premises without the prior written consent of Landlord, which consent Landlord shall not unreasonably delay, condition, or deny; provided, however, that nothing set forth in this Lease is intended or shall be interpreted to limit or restrict Landlord's exercise of its police powers, including with respect to the consideration and approval of required applications for development and building entitlements.

Any and all additions, alterations, and improvements, whether or not requiring Landlord's consent, which are made or caused to be made by Tenant before or during the Initial Term or any Extended Term or holdover period shall be made at Tenant's expense in accordance with the following: (i) such work, including, without limitation, Tenant's final working drawings, plans, specifications, and choice of contractors, subcontractors, and suppliers shall be subject to the continuing approval of Landlord, which information shall be furnished to Landlord for Landlord's review and approval before the work is commenced, and any work not acceptable to the appropriate governmental entity or not reasonably satisfactory to Landlord shall be promptly replaced at Tenant's expense; (ii) notwithstanding any failure by Landlord to object to any such work, Landlord shall not be responsible therefor; (iii) such work shall not adversely affect the outside appearance and strength of the Premises, or the mechanical, electrical, and plumbing services and equipment thereof; (iv) such work shall not alter, add to, or otherwise change the exterior of the Premises without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion; (v) such work shall not cause or create a dangerous or hazardous condition and shall not interfere with or disturb adjacent or nearby property owners, businesses, or residents; (vi) Tenant shall cause all such work to be performed in such a manner as not to obstruct the access to the Premises; (vii) such work shall be done in a good and workmanlike manner and in compliance with all applicable legal requirements and shall be diligently prosecuted to completion; (viii) Tenant's contractor or each of its subcontractors shall be bonded with sureties satisfactory to Landlord in an amount sufficient to ensure full performance of the work to be done by Tenant and to ensure full payment to materialmen; (ix) Tenant and its

contractor and subcontractors shall carry such worker's compensation general liability and personal and property damage insurance as Landlord may reasonably require; (x) such insurance shall be adequate to protect Landlord and shall name Landlord as an additional insured; (xi) Tenant shall defend, indemnify, and hold harmless Landlord and its officers, directors, shareholders, employees, and agents (all of the foregoing being hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, actions, damages, liabilities, and expenses (including, without limitation, attorneys' fees) directly or indirectly arising out of or incurred in connection with, and any and all claims, demands, suits, actions for or in relation to, wages or cost of materials or equipment used in connection with, additions, alterations and improvements made or caused to be made by Tenant; and (xii) Landlord shall have the right at all reasonable times to post and keep posted on the Premises any notice that may be provided by law which Landlord may deem necessary or advisable for the protection of Landlord and the Premises from mechanics' lien or stop notice claims. The restrictions contained in this Section 8.01 with respect to Tenant's contractors, subcontractors, and suppliers shall apply regardless whether such persons or entities are employees or agents of, or otherwise affiliated with Tenant.

#### SECTION 8.02 TENANT'S PROPERTY.

Except for any and all building or structural improvements and trade fixtures permanently affixed to the Premises, which shall immediately become and remain the property of Landlord, any and all items of personal property, including but not limited to trade fixtures not permanently affixed to the Premises, and other fixtures, furniture, furnishings, and other equipment constructed or placed on the Premises after Landlord's delivery of the Premises to Tenant shall be and remain the property of Tenant upon termination. Tenant shall remove from the Premises all such items of property prior to the termination of this Lease. Tenant may also remove any signs containing Tenant's name, trademark, symbol, logo, or design regardless of whether same are attached or affixed to the real property and regardless of their characterization as real or personal property or fixtures under law.

Upon termination of this Lease, if Tenant causes any damage to the Premises or other property of Landlord by removing any property whatsoever, Tenant shall at its own expense repair and restore the Premises and other Landlord property, as applicable, as nearly as practicable to the condition such property was in prior to said damage and in compliance with Section 7.01 of this Lease.

If for any reason Tenant leaves any of Tenant's property in or around the Premises after the termination or expiration of this Lease, Tenant shall be conclusively deemed to have abandoned such property in place in addition to whatever rights Landlord may have and Landlord shall have the right to immediately remove, destroy and dispose of, or reuse the same at Landlord's sole option without any further obligation to Tenant. In such circumstance, Tenant hereby releases and waives any rights and claims that it might otherwise have against Landlord to notice, an opportunity to reclaim Tenant's property, and any right to compensation for Landlord's use or disposal of Tenant's property under California Civil Code § 1980 *et seq.* and any other applicable provision of law.



**ARTICLE IX  
INSURANCE; INDEMNITY**

SECTION 9.01      TENANT'S INSURANCE.

Tenant, at its sole expense, shall procure and maintain in effect the following policies of insurance for the entire Initial Term and Extended Term of this Lease, and any holdover period:

(i)      Comprehensive General Liability Insurance.

A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury, death, and property damage or destruction of property on and about the Premises. Said insurance shall include coverage for, among other risks and perils, all businesses and operations on the Premises (including any businesses and operations conducted by third parties, regardless of whether such third party businesses and operations violate this Lease, and without any waiver by Landlord of any other right or remedy it may have against Tenant with respect thereto), premises and operations, blanket contractual, cross liability, broad form property damage, independent contractors, owned and non-owned automobile and vehicle coverage, garagekeeper's liability (if Tenant manages parking or provides valet parking services), and dramshop and liquor liability coverage. The amount of any deductible or self-insured retention under said policy shall not exceed One Thousand Dollars (\$1,000.00) without Landlord's written consent. Landlord shall have the right at any time during the Term, not more frequently, than once every three (3) years, to deliver written notice to Tenant requiring Tenant to increase the amount of such policy so long as the required percentage increase in the coverage amount does not exceed the percentage increase in the Consumer Price Index published by the United States Department of Labor (All Items) for the smallest geographic area within which the Premises are located or are most proximate between the Commencement Date and the date of Landlord's notice, and in such event Tenant shall procure the increased amount of insurance and provide proof of same to Landlord within thirty (30) days. Such insurance shall be primary insurance and not participating with or in excess of any coverage which Landlord may carry. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement set forth in Section 9.04 of this Lease as to liability for damage to property or injury to or death of persons.

(ii)      Worker's Compensation Insurance.

A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both Landlord and Tenant against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of carrying out the work or services contemplated in this Lease.

(iii)      Business Interruption Insurance.

A policy of business interruption insurance in sufficient amounts to cover any payment by Tenant, including Rent, to Landlord for a period of not less than one (1) year during any casualty loss and restoration of the Premises while this Lease remains in effect.

(iv) Fire and Extended Coverage Insurance.

A policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, covering all Tenant Improvements to the Premises and Tenant's trade fixtures, furnishings, equipment, and personal property on the Premises in an amount equal to one hundred percent (100%) of the replacement costs thereof.

Prior to the Commencement Date pursuant to Section 3.01 of this Lease, Tenant shall file with the City Clerk, in a form and content satisfactory to Landlord, certificates of insurance for all of the above policies. All of the above policies shall be carried by companies rated "B-plus" (B+) or better in Best's Insurance Guide, and shall be primary insurance and name Landlord and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Landlord and against its officers, employees, and agents, and their respective insurers. All of said policies of insurance shall provide that the said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to Landlord. In the event any of said policies of insurance are cancelled or not renewed or extended, Tenant shall, prior to the cancellation or expiration date, submit new evidence of insurance to Landlord. No operations or services authorized pursuant to this Lease shall commence or continue until Tenant has provided Landlord with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages, and said certificates of insurance or binders are approved by Landlord.

SECTION 9.02 WAIVER OF SUBROGATION.

Tenant hereby waives, to the maximum extent permitted by law and any policy issued by its insurance company, any and all rights of recovery against Landlord, or against the employees, agents, and representatives of Landlord, for loss of or damage to Tenant or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Upon obtaining such insurance, Tenant shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease. Tenant shall obtain and furnish evidence to Landlord of the waiver of subrogation in favor of Landlord from all insurance carriers furnishing insurance hereunder.

SECTION 9.03 INCREASES IN INSURANCE COSTS.

Tenant shall not carry any stock or goods or do anything in, on, or about the Premises at any time during the Term of this Lease which will in any way tend to increase the insurance rates or the risks against which Landlord maintains an insurance policy for any portion of the Landlord's Property, including the Premises. Tenant shall pay to Landlord forthwith upon demand the amount of any increase in premiums for insurance carried by Landlord resulting from Tenant's acts or omissions, whether or not Landlord shall have consented to such acts or omissions on the part of Tenant.

## SECTION 9.04 INDEMNITY.

Regardless of any limitations on and exclusions from coverage of any insurance policies obtained by Tenant, Tenant shall fully indemnify, defend, and hold harmless Landlord and its officers, directors, shareholders, employees, and agents, and each of them (the foregoing being hereinafter collectively referred to as the "Indemnitees"), from and against any and all claims, actions, damages, liabilities, and expenses (including, without limitation, attorneys' fees) for damage to property (including Tenant's property) and injury to or death of persons (including officers, directors, employees, or agents of Tenant) directly or indirectly arising from or out of Tenant's occupancy or use of the Premises or any part thereof, including the means of ingress into or egress from the Premises, whether or not occasioned in part by any act or omission of the Indemnitees, regardless of their passive or active negligence, and to the maximum extent permitted by law. If the Premises are not surrendered at the time required pursuant to this Lease, Tenant shall indemnify, defend, and hold harmless the Indemnitees against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding tenant, other than Landlord or an affiliate of Landlord.

## SECTION 9.05 EXEMPTION OF LANDLORD.

So long as Landlord does not default in the performance of its obligations and duties pursuant to this Lease, Landlord shall not be liable to Tenant for injury or damage which may be sustained by any person, property, or effects of Tenant or any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of the pipe, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the same, whether such damage or injury results from conditions arising upon the Premises or from other sources.

## SECTION 9.06 CASUALTY DAMAGE.

### 9.06.0 Destruction by Risk Covered by Insurance.

If the Premises are totally or partially destroyed by a risk covered by insurance carried by Tenant, rendering the Premises totally or partially inaccessible or unusable, Tenant shall utilize the insurance proceeds to restore the Premises to substantially the same condition as they were in immediately prior to such destruction. Restoration shall be commenced as soon as reasonably practicable, and in no event later than ninety (90) days after the later of (i) the date such destruction occurs or (ii) the date such insurance proceeds are made available for such restoration, and thereafter the work shall be diligently pursued to completion.

### 9.06.1 Damage Not Covered by Insurance.

If the Premises are totally or substantially destroyed by a risk not covered by and not required to be covered by insurance, then either Party may at its option elect to terminate this Lease by giving written notice to the other Party within fifteen (15) days after determining the replacement cost; provided, however, that in such event this Lease shall not terminate if the non-terminating Party shall, within thirty (30) days after receipt of such notice give written notice to the terminating Party of its election to cause the repair and restoration of the Premises at its cost.

In such event, the Party electing to cause the repair and restoration shall, at its sole expense, provide the funds necessary therefor and shall thereafter promptly and diligently repair and restore the Premises. Each Party agrees in such event to assign all insurance proceeds to the Party electing to make the repairs. As used herein, the term "substantially destroyed" shall mean that the uninsured replacement cost exceeds the sum of Twenty-five Thousand Dollars (\$25,000).

9.06.2 Replacement of Tenant's Property.

In the event of the damage or destruction of improvements located on the Premises not giving rise to a termination of this Lease, Tenant shall, at its own expense, replace and repair all Tenant's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as possible to permit the prompt continuation of Tenant's business from the Premises.

9.06.3 Damage Near End of Lease Term.

In the event more than fifty percent (50%) of the Premises are totally destroyed during the last six (6) months of the Initial Term or any Extended Term, Tenant and Landlord shall each have the option to terminate this Lease on written notice to the other of exercise thereof within thirty (30) days after such destruction.

9.06.4 Abatement of Rent.

In the event that a partial damage or destruction of the improvements on the Premises occurs and this Lease is not terminated, there shall be no abatement of rent for a period of one year (the period of the business interruption insurance which Tenant is required to maintain pursuant to this Lease), and Tenant shall continue to utilize the improvements for the operation of its business to the extent it may be practicable to do so. If, despite diligent effort, Tenant is unable to fully repair and restore the Premises during said one year period, the Base Rent shall abate from the end of the one year period until the improvements on the Premises are fully repaired or restored, but only by that proportion that the unusable part of the improvements bears to the whole thereof.

**ARTICLE X  
ASSIGNMENTS AND SUBLETTING**

SECTION 10.01 REQUIREMENT OF LANDLORD'S CONSENT.

This Lease is a personal contract in that Landlord has entered into this Lease to a material extent because of the unique character and quality of Tenant and Tenant's existing business operations. Accordingly, Tenant shall not transfer, assign, sublet, devise, bequeath, enter into license or concession agreements, change ownership, mortgage, or hypothecate (hereinafter, collectively, "Transfer") this Lease or Tenant's interest in and to all or any portion of the Premises without first procuring the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Any attempted Transfer without Landlord's written consent shall be void and shall confer no right upon any third person. Furthermore, where Tenant is one or more individuals, Tenant's personal representative in the event of Tenant's death shall not Transfer this Lease or Tenant's interest in and to the Premises without first procuring Landlord's written consent; any attempted Transfer by such personal representative without Landlord's prior written consent shall be void and shall confer no right upon any third party. If Tenant enters into a sublease

or other arrangement for occupancy of any portion of the Premises by any third party without Landlord's consent and such sublease or other arrangement remains in effect notwithstanding the consent requirements contained herein, Tenant shall immediately pay Landlord as additional Rent any consideration received or retained by Tenant, and Landlord's acceptance of such additional Rent shall not limit or restrict any other right or remedy Landlord shall have under this Lease for Tenant's Default.

#### SECTION 10.02 CERTAIN TRANSFERS.

For the purpose of this Article, each of the following shall constitute a "Transfer": (i) if Tenant is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partners or the dissolution of the partnership; (ii) if Tenant consists of more than one person, a purported assignment, voluntary, involuntary, or by operation of law, from one person to another; and (iii) if Tenant is a corporation (whose stock is not traded through an exchange or over the counter) any liquidation, dissolution, merger, consolidation, or other reorganization of Tenant, or the sale, exchange, trade, assignment, hypothecation, or other transfer of an aggregate of twenty-five percent (25%) or more of the capital stock of Tenant, or the sale of an aggregate of twenty-five percent (25%) or more of the value of the assets of Tenant.

#### SECTION 10.03 OBLIGATIONS AND LIABILITIES OF TRANSFEREE.

Each Transfer to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, and shall be executed by the transferor in each instance; and each transferee shall agree in writing for the benefit of Landlord herein to assume, to be bound by, and to perform the terms, covenants, and conditions of this Lease to be done, kept, and performed by Tenant, including the payment of all amounts due under this Lease. Failure to comply with the provisions of this section shall operate to prevent any such Transfer from becoming effective.

#### SECTION 10.04 NO WAIVER OR RELEASE.

Consent to any Transfer which may be given by Landlord or the acceptance of any Rent by Landlord from Tenant or any third party, shall not constitute a waiver by Landlord of the provisions of this Article or a release of Tenant from the full performance by it of the covenants contained herein to be performed by Tenant. Any consent given by Landlord to any Transfer shall not relieve Tenant from the requirement of obtaining the written consent of Landlord to any subsequent Transfer. The restrictions on transferability contained in this Article shall be considered a continuous covenant and shall run with the land.

### ARTICLE XI MECHANICS' LIENS

Tenant shall give Landlord twenty (20) days' prior written notice before any construction work on the Premises is undertaken by or on behalf of Tenant. Tenant shall do all things reasonably necessary to prevent the filing of any mechanics' liens or other liens against the Premises, or any part thereof, by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises, or any part thereof, through or under Tenant. Without limiting the generality of the foregoing, Tenant shall record a notice of completion promptly upon the completion of any such work, labor, services or supplying of

materials, in the manner permitted by law. If any such lien shall at any time be filed, Tenant shall promptly notify Landlord of same and shall either cause the same to be discharged of record within twenty (20) days after the date of filing the same, or, if Tenant, in its discretion and good faith, determines that such lien should be contested, it shall furnish such security as may be required by law to prevent any foreclosure proceedings against the Premises, or any part thereof, or Tenant's interest therein, during the pendency of such contest. If Tenant shall fail to discharge such lien within such period or fail to furnish such security, then, in addition to all other rights or remedies, Landlord may, but shall not be obligated to, discharge the same no sooner than five (5) days after delivery of written notice to Tenant (and assuming Tenant has not cured its default within that period of time) (i) by paying the amount claimed to be due, (ii) by procuring the discharge of such lien by deposit in court, (iii) by giving security, or (iv) in such other manner as is, or may be, prescribed by law. Any amount paid by Landlord for any of the aforesaid purposes, including all reasonable attorney's fees to procure the discharge of such lien with all necessary disbursements in connection therewith, with interest thereon at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, from the date of payment, shall be repaid by Tenant to Landlord on demand. Nothing herein contained shall imply any consent or agreement on the part of Landlord to subject the Premises, or any part thereof, to liability under any mechanics' lien law.

## **ARTICLE XII DEFAULT, TERMINATION, AND REMEDIES**

### **SECTION 12.01      DEFINITION OF DEFAULT.**

The occurrence of anyone or more of the following events shall constitute a material "Default" of this Lease by Tenant:

#### **12.01.0      Rent Default.**

The failure by Tenant to make, as and when due, any payment of Rent or other charges payable by Tenant hereunder, where such failure has continued for a period of ten (10) days after written notice thereof from Landlord to Tenant. Any such notice shall be in lieu of, and not in addition to, any notice otherwise required under Sections 1161 and 1162 of the California Code of Civil Procedure.

#### **12.01.1      Abandonment.**

The abandonment or vacation of the Premises by Tenant. As used herein, abandonment is defined to include, without limitation, any absence of Tenant from the Premises for fifteen (15) consecutive days or longer, or the failure to continuously operate the business authorized by this Lease for fifteen (15) consecutive days or longer, excepting such failures as may be excused due to the occurrence of casualty losses or other events of force majeure as set forth in Section 16.16 of this Lease.

#### **12.01.2      Failure to Perform Covenants.**

The failure by Tenant to observe or perform any of the express or implied covenants, promises, agreements, or provisions of this Lease to be observed or performed by Tenant, where

such failure has continued for a period of fifteen (15) days after written notice thereof from Landlord to Tenant (or such other time period as may be expressly provided herein); provided, however, that if such failure to observe or perform cannot be cured with such fifteen (15) day period due to causes referred to in Section 16.16, Tenant shall not be deemed in Default of this Lease if, within such fifteen (15) day period, Tenant promptly commences to cure such failure and thereafter diligently pursues the cure to completion. Any such notice shall be in lieu of, and not in addition to any notice otherwise required under Sections 1161 and 1162 of the California Code of Civil Procedure. In the event Tenant fails to comply with the same term, covenant, or condition of this Lease on three (3) occasions during any twelve (12) month period of the Term, and is given notice as provided herein for each such failure, then each failure thereafter during such twelve (12) month period shall at the sole option of Landlord constitute an incurable Default. The fifteen (15) day curing period provided for in this Subsection shall in no event be construed to lengthen or extend the curing periods provided elsewhere in this Section. Furthermore, if the covenant, promise, agreement, or provision of this Lease which Tenant fails to observe or perform is of such a nature that it cannot afterward be performed, then such failure shall constitute an incurable Default immediately upon occurrence and no notice or time to effect a cure need be given to Tenant.

#### 12.01.3 Falsification of Statements.

The falsification by Tenant or an agent of Tenant of any report or statement required to be furnished to Landlord pursuant to the terms of this Lease, which at the sole option of Landlord shall constitute an incurable Default.

#### 12.01.4 Assignment of Leasehold Interest.

The Transfer of Tenant's rights and interest in this Lease without Landlord's prior written consent, as set forth in Article X.

#### 12.01.5 Insolvency

Insolvency, which shall be the (i) making by Tenant of any general assignment for the benefit of creditors; (ii) filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; (iv) attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days thereafter; or (v) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts.

### SECTION 12.02 NOTICE OF DEFAULT.

Notices given under this Article shall specify the alleged Default and the applicable provisions of this Lease and shall demand that Tenant perform the provisions of this Lease, or pay Rent or other sum that is otherwise due, within the applicable period or quit the Premises.

## SECTION 12.03 LANDLORD'S REMEDIES.

Upon the occurrence of a Default by Tenant, or at any time thereafter during the continuance of such Default, in addition to and not by way of limitation of any other rights and remedies Landlord may have under this Lease and applicable law, Landlord shall have the right, at its option and without further notice or demand of any kind to Tenant, to any and all of the following remedies:

### 12.03.0 Continuation of Tenant's Interest.

Landlord may continue Tenant's interest in the Lease and Premises in full force and effect, and Landlord shall have the right to collect any Rent payable to Landlord when due. During the period Tenant is in Default, unless Tenant is diligently proceeding to cure the Default, Landlord may enter the Premises and relet them or any part thereof to a third party or parties. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including costs for advertisements and brokerage fees. Reletting may be for a period shorter or longer than the remaining Term, whether the Initial Term or any Extended Term, of this Lease. Tenant shall pay to Landlord Rent due under this Lease on the date such Rent is due, which payment shall be adjusted by the amount of Rent Landlord receives from any reletting. No act of malfeasance, effort to relet, or any other act by Landlord allowed by this Subsection 12.03.1 shall terminate Tenant's interest in the Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate.

### 12.03.1 Termination of Tenant's Interest.

Landlord may terminate Tenant's right to possession of the Premises at any time while Tenant is in Default, provided that Tenant is not diligently proceeding to cure such Default, by giving Tenant written notice specifying that the Default has not been cured and that Landlord has terminated this Lease, effective as of the date of termination set forth in such notice. Tenant's interest in this Lease shall terminate on the date specified in such notice as fully and completely as if such date were the date originally fixed for the expiration of the Initial Term or applicable Extended Term, and Tenant shall quit and surrender the Premises. No act by Landlord other than giving such notice of termination to Tenant shall terminate Tenant's interest in this Lease. Upon termination of Tenant's interest, in addition to any other rights Landlord has pursuant to this Lease or at law or in equity, Landlord shall have the rights described in Section 12.04 of this Lease.

### 12.03.2 Right to Appoint Receiver.

Landlord shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business while Tenant is in Default, provided Tenant has not commenced to cure and is not diligently proceeding to cure said Default. Neither the filing of a petition for the appointment of a receiver nor the appointment thereof shall constitute an election by Landlord to terminate this Lease.

### 12.03.3 Right to Cure at Tenant's Expense.

Landlord may, at any time after Tenant commits a Default, cure such Default at Tenant's expense. If Landlord at any time, by reason of Tenant's Default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from



Tenant to City at the time the sum is paid, and if paid at a later date, shall bear interest in the amount of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less, from the date the sum is paid by Landlord until reimbursement by Tenant.

#### SECTION 12.04 TERMINATION OF LEASE DAMAGES.

Upon Landlord's termination of this Lease, as set forth in Section 12.03, Landlord may recover as damages from Tenant any and all of the following:

##### 12.04.0 Unpaid Rent at Termination.

The worth, at the time of award, of the unpaid and past due Rent at the time of termination.

##### 12.04.1 Unpaid Rent at Award.

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

##### 12.04.2 Future Rent.

The worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Initial Term, or the applicable Extended Term, exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided.

##### 12.04.3 Other Amounts.

Any other amount necessary to compensate Landlord for all of the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, whether through inability to relet the Premises on satisfactory terms or otherwise, specifically including, but not limited to, (i) all reasonable expenses necessary to relet the Premises, which shall include the cost of advertisements and brokerage fees, and (ii) any increase in insurance premiums caused by the vacancy of the Premises.

#### SECTION 12.05 TERMS DEFINED.

As used in Section 12.04, the following terms are defined:

##### 12.05.0 Worth at the Time of Award.

The "worth, at the time of award" of the amounts referred to in Subsections 12.01.1 and 12.01.2 is computed by allowing interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less. The "worth at the time of award" of the amount referred to in Subsection 12.01.3 is 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 (1%).

12.05.1 Time of Award.

The "time of award" as used in Subsections 12.01.1, 12.01.2, and 12.01.3 is the date on which judgment is entered by a court of competent jurisdiction.

SECTION 12.06 LANDLORD'S DEFAULT.

Landlord shall be in Default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of default has been received by Landlord from Tenant. If such Default cannot be reasonably cured within thirty (30) days, Landlord shall not be in Default if Landlord commences to cure the Default within the thirty (30) day period and thereafter diligently and in good faith continues to cure the Default.

SECTION 12.07 INDEMNIFICATION UNAFFECTED.

Nothing in this Article shall limit or otherwise impair the right of Landlord to indemnification from Tenant under this Lease, whether before or after this Lease expires or is terminated.

SECTION 12.08 NO TERMINATION.

Even though Tenant has breached this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due.

SECTION 12.09 TERMINATION AND ENTRY.

In the event Landlord terminates this Lease, Landlord may (upon such notice as is expressly provided in this Article XII) re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim under this Lease. Such termination shall not relieve Tenant of any obligation hereunder that has accrued prior to the date of such termination. Landlord may take possession of all personal property of Tenant and of any other person that is located on the Premises and may store all such personal property on behalf of and at the risk and expense of Tenant. Within thirty (30) days after Landlord takes possession thereof, Tenant may redeem such personal property upon payment to Landlord in full of all amounts then due from Tenant to Landlord hereunder and all costs incurred by Landlord in providing such storage. If Tenant fails to redeem such personal property within such period Landlord may sell such personal property in any reasonable manner and shall apply the proceeds from such sale actually collected by Landlord from such sale first against the costs of storage and sale and then against any other obligation due from Tenant hereunder. Tenant recognizes these rights as just and adequate remedies and hereby expressly waives any and all rights of redemption granted by or under present or future laws (including, without limitation, Sections 1174 and 1179 of California Code of Civil Procedure) in the event of Tenant's being evicted or dispossessed for any cause, or in the event of Landlord's obtaining possession of the Premises by reason of a Default of Tenant under this Lease, or otherwise.

SECTION 12.10 LIEN FOR RENT.

Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such lien and security interest of Landlord for payment of all Rent and any other amount required to be paid by Tenant under this Lease. Said lien and security interest shall be in addition to and cumulative of the Landlord's liens and provided by law. This Lease shall constitute a security agreement under the California Commercial Code (the "CCC") so that Landlord shall and may enforce a security interest on all property now or hereafter placed by or on behalf of Tenant in or on the Premises, including, but not limited to, all fixtures, machinery, equipment, furnishings, and other articles of personal property. Tenant shall execute as debtor such financing statement or statements as Landlord may now or hereafter reasonably request in order that such security interest or interests may be protected pursuant to the CCC. Landlord may at its election at any time file a copy of this Lease as a financing statement. Landlord, as secured Party, shall be entitled to all of the rights and remedies afforded a secured Party under the CCC.

SECTION 12.11 WAIVER.

No delay or omission in the exercise of any right or remedy of Landlord shall impair such a right or remedy or be construed as a waiver. The waiver by Landlord of any failure by Tenant to perform any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent or preceding failure or breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Rent (or a portion thereof) by Landlord shall not be deemed to be a waiver of any previous breach by Tenant of any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the Rent (or portion thereof) so accepted, regardless of Landlord's knowledge of such prior existing failure or breach at the time and acceptance of such Rent. Without limitation on the foregoing, no payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy available to Landlord; no receipt of money by Landlord from Tenant after the termination of this Lease or after the service of any notice of the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the Initial Term or any Extended Term, or affect any such notice, demand or suit; and acceptance of any payment from a debtor in possession, a trustee or any other person acting on behalf of Tenant or Tenant's estate shall not waive or cure a default hereunder. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant requiring Landlord's consent or approval.

SECTION 12.12 SURRENDER.

Prior to expiration of the Initial Term or any then-effective Extended Term, only an express written notice from Landlord to Tenant of Landlord's intention to accept a surrender by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this

Lease. No other act or conduct of Landlord including, without limitation the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises before the expiration of the Initial Term or any then-effective Extended Term. Landlord shall not by any re-entry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless Landlord shall have given Tenant written notice of Landlord's election to terminate this Lease.

#### SECTION 12.13 CUMULATIVE REMEDIES.

In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Except as provided herein or as provided under applicable California law in effect at the time of execution hereof, the rights and remedies reserved to Landlord in this Article XII are independent and cumulative and in addition to all other rights available to Landlord under this Lease, at law or in equity, and Landlord may pursue any or all of such rights and remedies, at the same time or otherwise.

### ARTICLE XIII COMMON AREAS: USE, MAINTENANCE, AND COSTS

#### SECTION 13.01 DEFINITIONS.

As used herein, "Common Areas" shall mean all areas and improvements within the Landlord's Property, if any, that will not be held for exclusive use by Landlord or by other persons entitled to occupy any space therein. Common Areas shall include parking areas, walkways, driveways, delivery passages, curbs, sidewalks, landscaped and planted areas, service areas, exterior and interior access ways and stairways, retaining walls, paving, light fixtures, and other areas and non-building improvements, where said Common Areas are provided by Landlord for the common use of Landlord, tenants and their respective employees, agents and invitees, and the general public. Landlord may make changes at any time in the size, shape, location, number, and extent of the Common Areas and may provide substitute parking, so long as Tenant's access to the Premises is not unreasonably impaired. No such change shall entitle Tenant to any abatement of Rent. Before instituting any such changes, Landlord shall notify Tenant thereof and consult with Tenant thereon, but Tenant's consent thereto shall not be required and Landlord may institute such changes in its sole discretion.

#### SECTION 13.02 TENANT'S RIGHT TO USE; TENANT'S COOPERATION.

Tenant and its employees, agents, and invitees shall be entitled to use the Common Areas in common with Landlord and with other persons authorized by Landlord; provided, however, that Tenant's use of the Common Areas shall not interfere with or impair the use and enjoyment of the Landlord's Property by Landlord, other tenants and occupants, their employees, agent, and invitees, or any other member of the public. The rights of Tenant in and to the Common Areas shall at all times be subject to the rights of Landlord and the other tenants and occupants of the

Landlord's Property to use the same in common with Tenant. Landlord shall not be responsible to Tenant for the violation or nonperformance by any other tenant or occupant of the Landlord's Property for failure to observe Tenant's right to use and enjoyment of the Common Areas. Tenant shall keep the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation.

#### SECTION 13.03 CONTROL BY LANDLORD.

##### 13.03.0 Management.

Landlord shall operate, manage, equip, police, insure, light, repair, clean, and maintain the Common Areas. Landlord may temporarily close the Common Areas, or any portion or portions thereof, for repairs or alterations, or to prevent a dedication thereof or the accrual of prescriptive right therein.

##### 13.03.1 Exclusive Control.

Landlord shall at all times have exclusive control of all Common Areas and may at any time restrain any use thereof, except as otherwise provided by law or in this Lease. Landlord may at any time remove any unauthorized person from the Common Areas or prohibit the use thereof by unauthorized persons. If, in the opinion of Landlord, unauthorized persons are using any of the Common Areas by reason of the presence of Tenant, Tenant, upon demand of Landlord, shall remove such unauthorized persons by appropriate proceedings. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from the Common Areas or to restrain the use of any of the Common Areas by unauthorized persons.

#### SECTION 13.04 PARKING.

Tenant and its employees and agents shall park their vehicles only in portions of the parking areas within the Common Areas that are from time to time designated for that purpose by Landlord, which parking areas shall be reasonably close to the Premises. If requested by Landlord, Tenant shall furnish Landlord with a list of its employees' and agents' vehicle license numbers within fifteen (15) days after the Commencement Date and thereafter notify Landlord of any change in such list within five (5) days after such change occurs. Tenant shall assume responsibility for compliance by its employees with the parking provisions contained herein. Tenant hereby authorizes Landlord to tow away from the Common Areas any vehicle belonging to Tenant or Tenant's employees or agents parking in violation of these provisions.

Tenant shall complete any forms, acknowledgements, or training as required by the City to permit the morning vehicular access to the beach before 8am. Access is permitted only for loading and unloading between the hours of 6-8am daily by authorized agents of the company. Tenant may secure two (2) parking passes at no additional charge from the City to enable parking within the Pier Bowl or T-Street parking areas. If desired, additional passes must be paid for and obtained from the City.

**ARTICLE XIV  
SIGNAGE**

SECTION 14.01      PROHIBITED ACTIVITIES.

Tenant shall have the right, subject to obtaining any required governmental plans and permits and obtaining Landlord's prior written consent, which consent shall not be unreasonably denied, delayed, or conditioned, to:

- (a) Install or affix to the exterior doors or windows of the Premises lighting fixtures, shades, awnings, or exterior decorations (including exterior painting); and
- (b) Install or affix to the exterior doors or windows of the Premises or to the face of the building any sign, lettering, placards or the like.

Tenant shall not, without Landlord's prior written consent, do any of the following:

- (a) Cause or permit to be used any advertising materials or methods which are objectionable to Landlord including, without limitation, loudspeakers, mechanical or moving display devices, unusually bright or flashing lights, and similar devices, the effect of which may be seen or heard outside the Premises;
- (b) Solicit business in the parking areas or other Common Areas, or distribute, or cause to be distributed, any hand bills or other advertising matter in the parking areas or in other Common Areas; or
- (c) Use any sign or advertising that is not of professional quality.

SECTION 14.02      MAINTENANCE.

Tenant shall at all times maintain its windows and signs in a neat, clean and orderly condition. If, as to any sign exposed to the parking areas or other Common Areas, Tenant shall fail to do so after twenty-four (24) hours' written notice from Landlord, Landlord may repair, clean, or maintain such exterior sign and the cost thereof shall be payable by Tenant to Landlord upon demand as additional Rent.

**ARTICLE XV  
SECURITY DEPOSIT**

No later than the Commencement Date, Tenant shall deposit, in lawful money of the United State of America, a "Security Deposit" in the amount of one month's Base Rent, two thousand dollars (\$2000). The Security Deposit shall be held by Landlord as security for the performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant. The Security Deposit shall not be mortgaged, assigned, transferred, or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to filing

of such proceedings. If Tenant commits a Default with respect to any provision of this Lease, including without limitation the provisions relating to the payment of Rent, Landlord may (but shall not be required to) use, apply, or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's Default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's Default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days or written demand therefore by Landlord, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material Default of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully performs every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) upon termination of this Lease. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer the Security Deposit to Landlord's successor in interest, and upon such transfer Landlord shall be discharged from any further liability with respect to the Security Deposit.

## **ARTICLE XVI MISCELLANEOUS**

### **SECTION 16.01      LANDLORD'S RIGHT OF ACCESS.**

Upon reasonable prior notice to Tenant, Landlord and its agents shall have free access to inspect the Premises during Tenant's normal business hours (or at other times in the event of a sudden and unanticipated emergency), to make reasonable repairs or installations which Landlord may be required or permitted to make hereunder, to exhibit the Premises to prospective purchasers or tenants, and to post notices required or permitted by law.

### **SECTION 16.02      NONDISCRIMINATION.**

Tenant covenants, by and for himself, and his successors and assigns, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or any other protected class pursuant to federal, state, or local law, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of licensees, tenants, lessees, sublessees, subtenants, or vendees in the Premises.

The foregoing provisions shall be binding upon and shall obligate Landlord and Tenant and any transferees or assignees of either of them.

SECTION 16.03      TRANSFER OF LANDLORD'S INTEREST.

Upon any transfer of Landlord's interest in the Premises, the transferor shall be automatically relieved of all obligations and liabilities on the part of Landlord accruing after the date of such transfer.

SECTION 16.04      SEVERABILITY.

Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

SECTION 16.05      TIME OF ESSENCE.

Time is of the essence with respect to every provision of this Lease.

SECTION 16.06      LEASE NOT SUBJECT TO LEVY.

This Lease and the interest of Tenant hereunder shall not be subject to garnishment or sale under execution in any action or proceeding which may be brought against or by Tenant without the written consent of Landlord.

SECTION 16.07      NON-PARTNERSHIP.

It is understood and agreed that neither Party shall be construed or held to be a partner, joint venturer, affiliate, or associate of the other, nor shall either Party be liable for any debts or other obligations incurred by the other; and that the relationship of the Parties hereto is and at all times shall be and remain that of Landlord and Tenant.

SECTION 16.08      BROKERS.

Tenant hereby warrants and represents that Tenant has not dealt with any brokers. Tenant shall indemnify and hold harmless Landlord from any and all claims, costs, expenses (including, without limitation, attorneys' fees) and liability for any commission, brokerage fee, or other charge claims against Landlord by any broker, agent, or finder purporting to have been engaged by Tenant in connection with this Lease.

SECTION 16.09      QUITCLAIM.

At the termination of this Lease, Tenant shall execute, acknowledge, and deliver to Landlord, within ten (10) days after written demand from Landlord, any quitclaim deed or other document reasonably required by any reputable title company to remove the cloud of this Lease from the title to the real property subject to this Lease.

SECTION 16.10      SAFETY AND HEALTH.

Tenant shall at all times during the Initial Term, any Extended Term, and any holdover period, comply with the requirements of the Occupational Safety and Health Act of 1970, 29



U.S.C. Section 651 *et seq.*, and any similar legislation in California (collectively, the "Act"), to the extent that the Act applies to the Premises and operations thereon. Without limiting the generality of the foregoing, Tenant shall maintain all working areas, all machinery, structures, electrical facilities, and the like upon the Premises in a condition that fully complies with the requirements of the Act, including such requirements as would be applicable with respect to agents, employees, or contractors of Landlord who may from time to time be present upon the Premises. Tenant shall indemnify and hold harmless Landlord from any liability, claims, or damages arising as a result of a breach of the foregoing covenant and from all costs, expenses, and charges arising therefrom including, without limitation, attorneys' fees and court costs incurred by Landlord in connection therewith, which indemnity obligation shall survive the termination of this Lease.

#### SECTION 16.11 ATTORNEY'S FEES.

If either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful Party in such action or proceeding shall reimburse the prevailing Party therein for the reasonable expenses, disbursements, and attorneys' fees incurred therein by the prevailing Party.

#### SECTION 16.12 CAPTIONS.

Article, Section, and Subsection captions in this Lease have been inserted solely for the convenience of the Parties, and such captions, headings, and titles shall in no way define or limit the scope, intent, or application of any provision of this Lease.

#### SECTION 16.13 INUREMENT.

Subject to any provisions hereof restricting assignment or subletting by Tenant, the terms and conditions contained in the Lease shall bind the Parties and their successors and assigns.

#### SECTION 16.14 CHOICE OF LAW.

This Lease shall be construed in accordance with and governed by the internal laws of the State of California, without regard to conflict of law principles.

#### SECTION 16.15 GENDER; NUMBER.

Throughout this Lease the stated gender shall be read to mean the feminine, masculine, or neuter, and the stated number shall be read to mean the singular or plural, as the context may require.

#### SECTION 16.16 FORCE MAJEURE.

In the event Landlord or Tenant is delayed, hindered, or prevented from performing any act required hereunder by reason of strikes, lockouts, or other labor troubles, inability to procure or shortage of materials or supplies, failure of power, energy shortages, restrictive governmental laws or regulations, inclement weather, fire, explosion, earthquake or other casualty, riots, insurrection, war, act of God, or other causes that are without the fault and beyond the reasonable

control of such Party, then the performance of such Party shall be excused for and extended by the period of such delay. The provisions herein shall not operate to excuse Tenant from the prompt payment of Rent or any other payment required under this Lease, unless herein otherwise expressly provided to the contrary. In no event shall Tenant's inability to obtain financing, interest rates, or market conditions excuse Tenant's performance or entitle Tenant to an extension of time for performance of its obligations set forth in this Lease.

SECTION 16.17 NO REPRESENTATIONS OR WARRANTIES BY LANDLORD.

Tenant agrees to accept physical possession of the Premises in a strictly "as-is" physical condition, subject to all matters of record and to all applicable zoning, municipal, county, state, and federal laws, ordinances, and regulations governing and regulating the use of the Premises. Tenant acknowledges that neither Landlord nor Landlord's agents have made any representation or warranty as to such matters of record, or as to such laws, ordinances, zoning regulations, or as to the condition of the Premises or the suitability of the Premises for the conduct of Tenant's business. Landlord reserves the absolute right to lease other space within Landlord's Property as Landlord, in the exercise of its sole business judgment, shall determine to better promote its interests. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall during the Initial Term or Extended Term occupy any other space within the Landlord's Property.

SECTION 16.18 EFFECTIVENESS OF LEASE.

Submission of this instrument for examination or signature by Tenant does not constitute an offer of or option to lease; it is not effective as a lease otherwise until execution by Landlord and delivery thereof to Tenant.

SECTION 16.19 INCORPORATION OF PRIOR LEASE AGREEMENTS.

This Lease and the Exhibits hereto cover in full each and every agreement of every kind or nature whatsoever between the Parties concerning the Premises, and all preliminary negotiations and agreements of whatsoever kind or nature, except those contained herein, are superseded and of no further force or effect. Landlord has made no representations or promises whatsoever with respect to the Premises, except those contained herein; and no other person, firm, or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord, and Tenant expressly agrees that if any such representations or promises have been made by others, Tenant hereby waives all right to rely thereon. No verbal agreement or implied covenant shall be held to vary the provisions of this Lease, any statute, law or custom to the contrary notwithstanding. No provision of this Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in it interest. Tenant, by initialing this section, acknowledges that it has read the same and understands it to be a waiver of any right to rely on any representations or agreements concerning the Premises not expressly set forth in this Lease.

Tenant's Initials \_\_\_\_\_

Landlord's \_\_\_\_\_

SECTION 16.20 NOTICES.

Any notice required or permitted hereunder shall be in writing and shall be served personally or by certified or registered mail. If served by mail, notice shall be addressed as specified in Article I. Any notice given by mail shall be deemed to have been delivered seventy-two (72) hours after deposit in the United States mail, postage prepaid and addressed as specified in Article I. Either Party may by written notice to the other specify a different address for notice.

SECTION 16.21 SERVICE OF PROCESS.

Tenant hereby appoints as its agent for receiving service of legal process on behalf of Tenant the person or entity identified in Article I at the address specified therein. Tenant shall not revoke or rescind the above appointment or otherwise relieve or replace said agent without first notifying Landlord in writing of the name and address of another agent to be substituted in lieu thereof. Such notice shall specify the effective date of substitution.

SECTION 16.22 COUNTERPARTS.

This Lease may be signed by the Parties in several counterparts, and each of the signature pages shall be deemed to be an original copy and combined shall be a document binding on the Parties.

[Signature Page to Follow]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease to be effective on the date first above written.

Landlord:

CITY OF SAN CLEMENTE,  
a California municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Tenant:

Dated: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT "A"

DEPICTION OF THE PREMISES

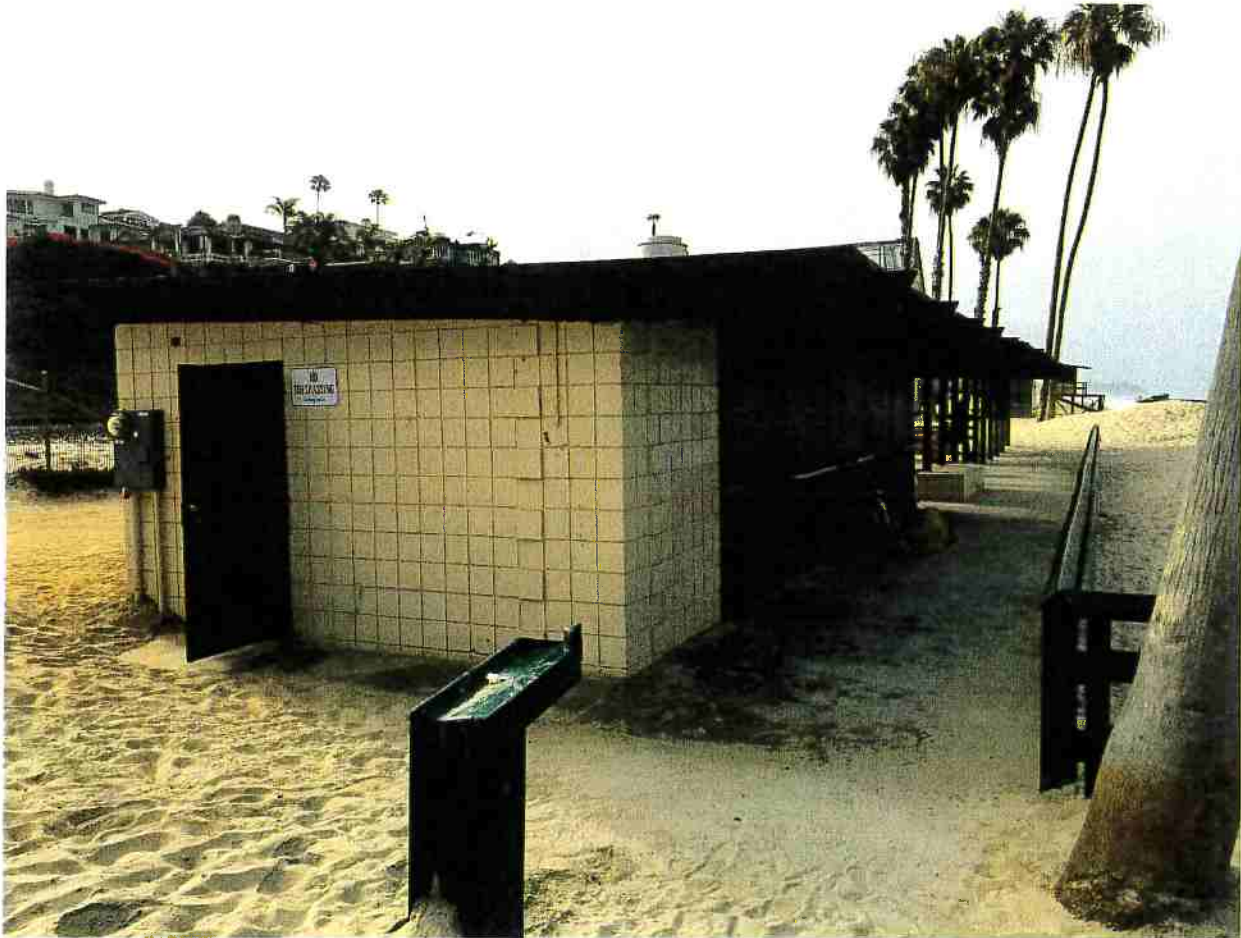


EXHIBIT "B"

**CONCEPT PROPOSAL**

**Prepared by:** Eligija Stravinskaite  
Email Address: eligutee@yahoo.com

**Executive summary**

This proposal is for the T-Street concession stand operation from July 9th, 2021 through March 31st, 2022. Eligija Stravinskaite is the applying party seeking the right to take over the lease for limited term operations.

**Terms of proposal:**

- POS system for food and beverage sales. Records of sales and reports shared with the City.
- Monthly rent: 10% of revenue but no lower than \$2,000 whichever is higher.
- Currently the concession needs renovation and inside/outside improvement. With the City's permission and approval, we would like to upgrade the inside (walls, counter top, menu display, décor, etc.) and improve the outside (new paint, etc.), to give the place a clean, organic and beautiful look, which we believe would attract much more customers. We would improve the look of the building at our own expense, which is why we offer 10% of revenue as the monthly rent instead of 13%.

Since the City is looking to start operations July 9, 2021, because of the lack of time, the improvements would be made while the concession is operating during after hours, or would need to postpone the opening date.

- If the City allows we would like to offer a surfboard rental next to the building. Surfboards would be displayed as part of the building décor, representing the famous T-Street surf spot, and the rental would bring in extra income.
- With the green philosophy in mind, to protect our beautiful beach and environment we would use disposable eco-friendly paper food containers, straws, cups and tableware.
- Hours of operations.  
Summer hours 8am-6pm weekdays, 8am-7pm on weekends.  
Winter hours 8am-4 or 5pm weekdays, 8am-6pm on weekends.

**Sample menu:**

- Coffee
- Americano

- Espresso
- Latte
- Ice Latte
- Cappuccino

Smoothies

- King of the day – orange juice, pineapple, mango, strawberry
- Three Amigos – coconut water, dragon fruit, mango, banana
- Funky Monkey – orange, ginger, lemon, pineapple, honey
- Green Machine – green apple, spinach, celery, kale, cucumber, lemon, ginger
- Aloha – strawberry, banana

Breakfast

- Açai bowl
- Avocado toast
- Waffle (traditional, with açai or Nutella)
- Tequenos (cheese sticks)

Entrees

- Burger
- Fish tacos
- Caprese panini (add chicken)
- Grilled corn (queso blanco, truffle oil)
- Chicken tenders with skinny French Fries

Soft drinks

- Water
- Sparkling water
- Coca Cola
- Diet Coke
- Sprite

Desserts

- Ice Cream
- Cotton Candy
- S'mores (make your own at the fireplace)
- Chocolate Chip Cookies

**Staff plan**

Role	Hours per week	Rate	Number of Staff
Manager	40	\$16-\$18 plus tips	1
Cashier/cook	40	\$15 plus tips	2

EXHIBIT "C"

**PRELIMINARY DESIGN PLANS**

[Not Applicable]



EXHIBIT "D"

**LIST OF EQUIPMENT AND ITEMS TO BE PROVIDED**  
**BY LANDLORD AND TENANT**

City:

- Two-compartment prep sink
- Single food prep sink
- Hand washing station/sink
- Type 1 Ventilation Hood

Tenant:

- All other equipment

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