

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) NA
--	--

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 2/28/2017
---------------------	--	--------------------

SUBJECT: Percentage Lease Between City and Shoreline Mission Bay LLC, a Delaware Limited Liability Company

PRIMARY CONTACT (NAME, PHONE): Vladimir Balotsky, 619 235-5248	SECONDARY CONTACT (NAME, PHONE): Cybele Thompson, 619 236-6145
---	---

COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	Comptroller	ORIG DEPT. Thompson, Cybele	03/02/2017
Park and Recreation		CFO	
Liaison Office		DEPUTY CHIEF Villa, Ron	03/10/2017
Equal Opportunity Contracting		COO	
Financial Management		CITY ATTORNEY	
		COUNCIL PRESIDENTS OFFICE	

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to enter into a new twenty five-year Percentage Lease (Lease) with Shoreline Mission Bay, LLC, a Delaware Limited Liability Company, to allow leasing, operation and maintenance of the City-owned property commonly known as former San Diego Visitor Information Center, improved with a vacant 4,600 square-foot building, surface parking, and landscaping, located at 2688 East Mission Bay Drive, San Diego, CA 92109.

- 2. Authorize the Chief Financial Officer to accept and deposit lease rent proceeds into General Fund 100000.
- 3. Determine that this activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

STAFF RECOMMENDATIONS:
 Approve Requested Action

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):	2
COMMUNITY AREA(S):	Mission Bay
ENVIRONMENTAL IMPACT:	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities)
CITY CLERK INSTRUCTIONS:	Do not record. Return documents to Real Estate Assets Department, Attention: Vladimir Balotsky, M.S. 51 A for further handling

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 2/28/2017

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Percentage Lease Between City and Shoreline Mission Bay LLC, a Delaware Limited Liability Company

COUNCIL DISTRICT(S): 2

CONTACT/PHONE NUMBER: Vladimir Balotsky/619 235-5248

DESCRIPTIVE SUMMARY OF ITEM:

This action is to request authorization for the Mayor or his designee to enter into a new twenty five-year percentage lease ("Lease") with Shoreline Mission Bay, LLC, a Delaware Limited Liability Company ("Shoreline"), to allow redevelopment of the City-owned property with a vacant 4,600 square-foot building, and to lease the property for the following uses: (1) restaurant, café and coffee shop, (2) rental and sale of beach items; (3) to maintain the existing parking; (4) to operate a public information center of the Mission Bay Park, and: (5) for special events space rentals. The Lease is for City-property formerly known as the San Diego Visitor Information Center located at 2688 East Mission Bay Drive

STAFF RECOMMENDATION:

Approve Requested Action

EXECUTIVE SUMMARY OF ITEM BACKGROUND: City-owned real property, consisting of approximately 2.58 acres of land including a 4,600 square-foot building formerly leased by the San Diego Visitor Information Center ("Lessee"), has been vacant since October 2010.

The property was originally developed by the Lessee, under a 25 year lease agreement executed in October 1968. In 1995, the lease was renewed for additional 20 year term and was scheduled to expire in February 2015. The Lessee generated most of its revenue through selling advertising space to hotels and other tourist oriented attractions. Additional revenue was derived from selling coffee, soft drinks, gift shop merchandise and commissions from the sale of attraction tickets. The Lessee also assisted travelers by locating and reserving hotel accommodations and providing directions to local attractions and other points of interest. The business was very successful throughout three decades by providing these services to visitors and promoting local tourism.

Starting in the late 1990's, widespread use of on-line reservations services caused the Lessee's business model to become uncompetitive and eventually obsolete. With a limited number of customers using the services the Lessee was no longer able to meet its advertisers' expectations and was unable to sell the advertising space to hotels or local attractions. The Lessee made several unsuccessful attempts to reorganize the business or sublease a portion of the leasehold.

In September 2010, the Lessee requested early termination of the lease and vacated the property on October 11, 2010.

On November 30, 2010, City Council by its Resolution R-306397 authorized the Mayor to execute the lease termination agreement with the Lessee. Also, by that Resolution R-306397, City Council authorized the Real Estate Assets Department to issue a Request for Proposal to re-lease the Property.

According to Council direction, three separate requests for proposals to redevelop and lease the property were issued in 2011, 2013 and 2015. Kirschcohn, Inc., operated by David Cohn was selected among three proposers in 2011, however, the Kirschcohn unilaterally cancelled negotiations in 2012. In 2013, City rejected all three proposals, since none of them met City's goals and objective for the property. Shoreline proposal was selected by City as the best of six proposals submitted as result of 2015 RFP.

Shoreline is a local company specializing in hospitality services and design. Shoreline consists of three partners. Greg Van de Velde, as operational manager with 20 years of restaurant experience in San Diego and Bologna, Italy. Bradley Schnell as the lead architect, his projects range from designing radical modern structures for major museums and to restaurants. Kristine Schnell, known for producing work that allow merging historic components with contemporary parts of the background.

Shoreline is proposing to invest an approximately \$3 Million Dollars to the property with the objective to restore the former San Diego Visitor Information Center to its status as a San Diego landmark, and as a destination point for visitors and locals alike. The proposed redevelopment envisions the property as a vibrant, architecturally-significant hub for waterfront dining. The redevelopment proposal was presented to the City of San Diego Park and Recreation Board as informational item on July 21, 2016. The proposal received positive reviews with no objections.

Staff negotiated a new Lease with Shoreline with the following basic terms and conditions:

Premises – Approximately 2.58 acres of land including an approximately 4,600 square feet building, 86 parking spaces and landscaping;

Redevelopment Period – up to 18 months, subject to one year extension as approved by City.

Use – (a) restaurant, café and coffee shop; (b) sale of refreshments and “grab and go food,” (c) sale or rentals of beach supplies; (d) rental of bicycles; (e) coffee and food service cart; (f) public information center of Mission Bay Park; (g) operation and maintenance of existing 86 space parking; (i) other incidental uses may be approved by City.

Term – up to 18 months -redevelopment period; 25 years – active term, two 5-year options to extend.

Rent - Minimum annual rent of \$120,000 or percentage rents from all operations conducted, whichever is higher. The minimum rent to be adjusted every 5 years to 80% of rents paid during the immediately preceding three years. Percentage rent to be adjusted to market every 10 years. The current percentage rent categories are set by an appraisal dated February 23, 2017. The market value of the fee interest, as determined by an appraisal on February 23, 2017, was \$2,310,000.

Rent Credit - \$450,000 to compensate Shoreline for actual costs attributable to public improvements related to the redevelopment of the property. Rent credit will apply against 50% of rent due until reduced to zero.

Staff recommends entering into a new Lease with Shoreline. Staff's recommendation is based on the facts that the new lease will allow (a) redevelopment of the former San Diego Visitor Information Center that will be consistent with the Mission Bay Park Master Plan (b) receiving consideration in form of rent from the vacant property; (c) transferring all maintenance costs and insurance of the property from City to Shoreline.

If the requested action is approved, the Lease will be presented to City Council at future dates for further approval.

Alternatives: Deny the requested action and issue another Request for Proposals or renegotiate the Lease.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S): Goal#3: Create and sustain a resilient and economically prosperous City.

FISCAL CONSIDERATIONS: The initial rent to City will be at least \$120,000 annually.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): This proposed Lease is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination and Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The proposed Lease and redevelopment were presented as informational item to the Mission Bay Park Committee on May 3, 2016 and the City Park and Recreation Board on July 21, 2016.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: General public, including tourists and visitors of Mission Bay Park, City lessees in Mission Bay Park and adjacent businesses, Park and Recreation Department, local community.

Thompson, Cybele
Originating Department

Villa, Ron
Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING EVALUATION

DATE:
March 9, 2017

SUBJECT: Percentage Lease Between City and Shoreline Mission Bay LLC, a Delaware Limited Liability Company.

GENERAL CONTRACT INFORMATION

Recommended Consultant: Shoreline Mission Bay LLC (Not Certified, M Cauc)

Amount of this Action: N/A

Funding Source: Lease

Goal: N/A

SUBCONSULTANT PARTICIPATION

There is no subconsultant participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Shoreline Mission Bay LLC submitted a Work Force Report for their San Diego County employees dated February 28, 2017 indicating 6 employees in their Administrative Work Force.

The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

TC



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
 1200 Third Avenue • Suite 200 • San Diego, CA 92101
 Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: SHORELINE MISSION BAY, LLC

ADA/DBA: SHORELINE

Address (Corporate Headquarters, where applicable): 1837 5th AVE

City: SAN DIEGO County: SAN DIEGO State: CA Zip: 92101

Telephone Number: 619 485-0485 Fax Number: 619 485-0485

Name of Company CEO: BRADLEY SCHNELL

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____ Email: _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____ Email: _____

- One San Diego County (or Most Local County) Work Force - Mandatory
 Branch Work Force *
 Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of SHORELINE MISSION BAY, LLC

 (Firm Name)

San Diego, CA hereby certify that information provided
 _____, _____
 (County) (State)

herein is true and correct. This document was executed on this 28th day of February, 2017

[Signature]

 (Authorized Signature)

BRADLEY SCHNELL

 (Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: SHORELINE MISSION BAY, LLC

DATE: 2/28/2017

OFFICE(S) or BRANCH(ES): _____

COUNTY: SAN DIEGO

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial												2	1		
Professional			1			1									
A&E, Science, Computer															
Technical															
Sales															
Administrative Support													1		
Services															
Crafts															
Operative Workers															
Transportation															
Laborers*															

*Construction laborers and other field employees are not to be included on this page

Totals Each Column			1			1						2	2		
--------------------	--	--	---	--	--	---	--	--	--	--	--	---	---	--	--

Grand Total All Employees 6

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled															
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															

WORK FORCE REPORT – Page 3

NAME OF FIRM: SHORELINE MISSION BAY, LLC

DATE: 2/28/2017

OFFICE(S) or BRANCH(ES): _____

COUNTY: SAN DIEGO

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian
- (4) American Indian, Eskimo
- (5) Filipino, Asian Pacific Islander
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian		(5) Asian Pacific Islander		(6) Caucasian		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														
Totals Each Column														
Grand Total All Employees	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>													
Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:														
Disabled														

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**SHORELINE MISSION BAY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and SHORELINE MISSION BAY, LLC, a Delaware Limited Liability Company ("LESSEE"), to be effective as of _____, 2017 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. PREMISES; USES

1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property (the "Premises") located at 2688 East Mission Bay Drive, San Diego, California 92109, formerly known as the "San Diego Visitor Information Center," consisting of approximately 2.158 acres of land improved with a 4,600 square-foot building, landscaping and parking, all as more particularly described in **Exhibit A: Legal Description of Premises**, and **Exhibit B: Aerial Map of the Premises**, attached hereto.

1.2 Allowed Uses. LESSEE may use the Premises solely and exclusively for the purposes (the "Allowed Uses") of a visitor center and restaurant in Mission Bay Park to provide information to the public in accordance with LESSEE's Redevelopment Plan (as defined below). The visitor center may include: (a) a counter-style restaurant (as defined below); (b) a café and coffee shop; (b) the sale of refreshments and "grab and go" food and beverage items; (c) the sale or rental of beach supplies, beach activity equipment (including, but not limited to roller blades and other items commonly sold from time to time at sports activity rental centers), and sundries; (d) the rental of bicycles; (e) one coffee and food service cart on the Premises, the appearance, location and hours of operation of such cart are subject to prior written CITY approval; (f) a public information center of the Mission Bay Park; (g) parking facilities consisting of a surface parking lot for at least 86 vehicles; (h) rental space for events including, but not limited to, weddings, live music, and holiday events ; and (i) for other related and incidental purposes if first approved in writing by CITY.

(a) "Redevelopment Plan" means the redevelopment plan approved by CITY in its sole discretion as lessor that is summarized in **Exhibit C: Redevelopment Plan Summary**, attached hereto. LESSEE shall redevelop and rehabilitate the Premises in accordance with the Redevelopment Plan according to the terms of this Lease.

(b) "Counter-Style Restaurant" shall mean a counter style restaurant that opens seven days a week, serves breakfast, lunch and dinner meals for on- and off-Premises consumption. The menu for the Counter-Style Restaurant shall

include a reasonable number of moderately-priced selections that may be served by a waiter or waitress at the customer's table and/or by counter service. In no event shall Counter-Style Restaurant include a fast-food establishment or a drive-up window for selling food or drinks. The Counter-Style Restaurant may allow for the off-Premises consumption of food and non-alcoholic beverages and for the preparation and sale of "grab and go" food for off-Premises consumption.

- (c) Subject to LESSEE's compliance with all applicable laws and licensing requirements, LESSEE may offer alcoholic beverages for consumption on the Premises and may offer bottled wine and beer in its original packaging for sale for off-Premises consumption. Under no circumstances shall LESSEE open, or provide the tools to open, any bottled wine and beer sold to consumers for off-Premises consumption. In no event shall bottled beer be contained in containers which are screw top or pull tabs.

- 1.3 Mission Bay Park Master Plan. This Lease is subject to the City of San Diego Mission Bay Park Master Plan Update, adopted August 2, 1994, amended July 9, 2002, and as it may be amended from time to time.
- 1.4 Local Coastal Program. Should a local coastal program ever be adopted for the Mission Bay Park segment of CITY's Local Coastal Program ("Local Coastal Program"), and should the Local Coastal Program provide for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park to fund all or a portion of the cost of a beach shuttle or other substantially similar public access improvements, LESSEE shall contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program, provided the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park.
- 1.5 Business Objective. LESSEE shall diligently and continuously conduct its business on the Premises to reasonably maximize Gross Revenue, as defined in this Lease.
- 1.6 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow LESSEE's development and use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

- 1.7 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's development or redevelopment plans for the Premises, and failure of the CITY or City Council to approve any plans or grant any required permits for development or redevelopment shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. LESSEE shall obtain and maintain throughout the term of this Lease all legally required permits and licenses for the construction of improvements and the operation of its business on the Premises including, but not limited to, California Coastal permits, building permits, and the San Diego County food operator license.
- 1.8 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.9 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.10 Reservation of Rights.
- (a) Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - (b) Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - (c) Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
 - (d) Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises and such non-interference covenant is an express condition to the CITY's exercise of its rights under Section 1.10. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.11 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
- 1.12 Parking. LESSEE shall provide and maintain no less than eighty-six (86) parking spaces on the Premises in accordance with the Redevelopment Plan. LESSEE shall not store any personal property on the parking lot or otherwise interfere in any way with the general public's ability to park in the parking lot. Notwithstanding the foregoing and subject to the terms and conditions of LESSEE's coastal development permit and all applicable laws, rules and regulations of competent governmental authorities, LESSEE may designate all parking spaces on the Premises for LESSEE's customers' exclusive use (including installing customer only signs) and LESSEE shall have the right to use parking control personnel on holidays, such as Memorial Day weekend and the Fourth of July (subject to City's prior written approval, which should not be unreasonably withheld or conditioned).

2. TERM

- 2.1 Term. The term of this Lease shall consist of a Redevelopment Period, as defined below, and the twenty-five (25) year Active Term, as defined below (collectively, the "Term") commencing on the Effective Date. If the Effective Date is other than the first day of a calendar month, the partial month after the Effective Date shall be included in the following full calendar month to comprise the first month of the Term so that the second month of the Term will start on the first day of a calendar month.
- (a) Redevelopment Period. "Redevelopment Period" means up to the first eighteen (18) months of the Term during which LESSEE shall redevelop the Premises in accordance with the Redevelopment Plan. Upon at least 60-days advance written request by LESSEE, CITY, in its sole discretion, may approve an extension of the Redevelopment Period for up to one (1) additional year without further CITY Council approval. LESSEE shall apply all commercially reasonable efforts to complete the Redevelopment Plan during the Redevelopment Period and be open on the Occupancy Date, as defined below.
- (b) Occupancy Date. "Occupancy Date" means the first day of the month following the date the Certificate of Occupancy is issued for the Premises.
- (c) Active Term. "Active Term" shall mean that portion of the Term commencing on the Occupancy Date.

- (d) Lease Year. "Lease Year" shall mean each twelve-month period during the Active Term.
- 2.2 Right to Extend. Provided that LESSEE is not in default of this Lease, LESSEE may extend this Lease for two additional terms of five (5) years each, subject to all original agreements, considerations, covenants and conditions of this Lease, except the Minimum Monthly Rent (defined in Section 4.3) and Percentage Rent (defined in Section 4.6) shall be adjusted in accordance with Sections 4.4 and 4.7, respectively. To exercise this right to extend, LESSEE must provide CITY with six (6) months written notice prior to the expiration date of this Lease.
- 2.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to one hundred fifty percent (150%) of the then market rent for the Premises, as determined by competent CITY staff, which rent shall be effective as of the first day of the holdover period, retroactively applied as necessary.
- 2.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances, and in as-is condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

3. OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. Subject to force majeure events (as defined in Section 10.5 below) or reasonable closures for remodeling that are approved by CITY in advance, LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Active Term. A regular schedule of days and hours of operation established by LESSEE is attached as **Exhibit D: Schedule of Days and Hours of Operation**, LESSEE shall not materially change the Schedule of Days and Hours of Operation without CITY's prior written approval. LESSEE may make reasonable modifications of limited duration to the Schedule of Days and Hours of Operation during seasonal periods (for example, to reduce hours on a holiday). LESSEE shall diligently furnish services to the public in a creditable manner in conformity with all applicable laws, rules and regulations. LESSEE shall ensure that the type and quality of all food-handling services furnished by LESSEE,

at all times shall satisfy the conditions and requirements of the "A" Card issued by the California Department of Health to operators of food-handling establishments.

- 3.2 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. LESSEE shall ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. LESSEE shall ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable law at the time of refuse collection.
- 3.3 Restriction on Food Containers. LESSEE shall not provide to its customers any prepared, takeout or supplied/resale food in polystyrene foam, nor shall LESSEE obtain or keep any such customer food packaging at or on the Premises. LESSEE's food packaging for all food shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by the LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverage to be consumed off the Premises or elsewhere in the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE shall also limit its distribution of plastic bags to its customers.
- 3.4 Payment Card Industry Data Security. LESSEE certifies that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. LESSEE will provide written annual confirmation of PCI DSS compliance from the credit card types used by the CITY (i.e. VISA, MasterCard, Discover, and American Express). LESSEE will immediately notify the CITY if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, LESSEE shall provide payment card companies, acquiring financial institutions, and their respective designees required access to the LESSEE's facilities and all pertinent records as deemed necessary by the CITY to verify LESSEE's compliance with the PCI DSS requirements.

- (a) Data Security. LESSEE acknowledges responsibility for the security of cardholder data as defined within PCI DSS standards. LESSEE shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, LESSEE will provide the CITY's Chief Information Security Officer with copies of the quarterly scans for verification. LESSEE will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Lease.
- (b) Use of Data. LESSEE acknowledges and agrees that LESSEE may only use cardholder data for completing the work as described in this Lease consistent with PCI DSS standards or applicable law. LESSEE shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the services.
- (c) Notification Requirements. LESSEE shall immediately notify the CITY's Chief Information Security Officer of any breach, intrusion, or unauthorized card access to allow the proper PCI DSS breach notification process to commence. LESSEE agrees to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to: Chief Information Security Officer, 10102nd Avenue, Suite 500, San Diego, California, 92101, cybersecurity@sandiego.gov, (619) 533-4840.
- (d) Indemnity. LESSEE shall indemnify and hold harmless the CITY, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or LESSEE's failure to maintain PCI DSS compliance standards.

4. RENT

- 4.1 Rent. LESSEE shall pay rent to CITY in the amount of the greater of: (a) the Percentage Rent (as defined below); or (b) the Minimum Monthly Rent (as defined below). No Minimum Monthly Rent or Percentage Rent shall be payable during the Redevelopment Period. Within thirty (30) days after the end of each month during the Active Term, LESSEE shall deliver to CITY a schedule of LESSEE's Gross Revenue (as defined below) for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. If the Percentage Rent calculated for any given month is greater than the Minimum Monthly Rent, LESSEE shall pay to CITY the Percentage Rent, otherwise LESSEE shall pay the Minimum Monthly Rent concurrently with the delivery of such schedule and statement, LESSEE shall pay to CITY the greater of the Minimum Monthly Rent or the Percentage Rent.

- 4.2 Gross Revenue. "Gross Revenue" shall mean all revenue derived from all uses of the Premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenues; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price; (g) receipts from public telephones, stamp machines, public toilet locks, or vending machines installed solely for use by LESSEE's employees; (h) sales of fixtures, equipment or property which are not stock in trade; (i) gift certificate or like vouchers until such time as the same shall have been converted into a sale by redemption; and (j) gratuities which are provided directly to LESSEE'S employees. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.
- 4.3 Minimum Monthly Rent. The minimum monthly rent for the period beginning on the first day of the first (1st) Lease Year and the last day of the fifth (5th) Lease Year shall be Ten Thousand Dollars (\$10,000) (the "Minimum Monthly Rent").
- 4.4 Minimum Monthly Rent Adjustment. Effective as of the first day of the sixth (6th) Lease Year of the Active Term, and as of the first day of each sixth Lease Year thereafter, the Minimum Monthly Rent shall be recalculated to equal one-twelfth (1/12) of eighty percent (80%) of the annual average of actual rents paid and accrued during the then immediately preceding three (3) Lease Years. Notwithstanding the foregoing, no such recalculation of the Minimum Monthly Rent shall be applied to reduce the Minimum Monthly Rent in effect immediately prior to the recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Revenue schedules and Percentage Rent statements. Until such calculations are completed, LESSEE shall continue using the most recent Minimum Monthly Rent for payments and calculations required under Section 4.1. Within thirty (30) days after CITY notifies LESSEE of the new Minimum Monthly Rent, LESSEE shall pay to CITY any and all rent deficiencies.
- 4.5 Rent Credit. CITY acknowledges that LESSEE will invest at least Three Million Eighty Nine Thousand Nine Hundred Thirty Three Dollars (\$3,089,933) in tenant improvements to the Premises and an additional estimated Four Hundred Fifty Thousand Dollars (\$450,000) in public improvements to the Premises, all in accordance with and identified on the Redevelopment Plan. As consideration for LESSEE's investment in the public improvements of the Premises, CITY shall grant LESSEE a rent credit ("Rent Credit") equal to the actual cost of the public

improvements, except for any fees, fines or penalties, in an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000) to compensate LESSEE's actual costs attributable to the public improvements of the Premises. The Rent Credit shall be applied in an amount up to fifty percent (50%) of rent commencing on the first day of the Active Term. The Rent Credit shall be applied continuously on a monthly basis until the Rent Credit is fully applied. No fees, interest charges or adjustment based on financing shall be applied to any of the Rent Credit calculations. CITY shall not be liable for any unused portion of Rent Credit.

4.6 Percentage Rent. Percentage Rent shall be rent in an amount equal to the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

Percentage of Gross Revenue	Business Activities
Three and one half Percent (3.5%)	Operations involving the serving of meals or dispensing of food or non-alcoholic beverages, including without limitation coffee shop.
Seven Percent (7%)	Alcohol (including beer and wine).
Four Percent (4%)	All service charges and mandatory gratuities; provided, however, that in no event shall Gross Revenues include voluntary gratuities provided directly to LESSEE's employees by LESSEE's customers in addition to the basic price for services.
Ten Percent (10%)	All private party and special event rental operations.
Ten Percent (10%)	Coin-operated vending, game or service machines or devices on the Premises and owned or rented by LESSEE.
Fifty Percent (50%)	Commissions or any other compensation to LESSEE for the right to install and operate coin-operated vending, game or service machines or devices on the Premises.
Fifty Percent (50%)	Wireless telecommunication equipment installed or operated on or from the Premises.
Ten Percent (10%)	Bike and beach equipment rental.
Ten Percent (10%)	All retail sales not covered above in this Section 4.6.
Twenty Percent (20%)	All other authorized activities (other than those described above) conducted on or from the Premises.

If LESSEE requests uses of the Premises in addition to the Allowed Uses, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to each such use prior to CITY's approval of the use.

4.7 Percentage Rent Adjustment. Upon at least one hundred eighty (180) days prior notice to LESSEE, CITY may, at its option, adjust the Percentage Rent upward, and upward only, to be effective as of the first day of the eleventh (11th) and twenty-first (21st) Lease Years.

4.7.1 The new Percentage Rent shall be determined by mutual consent or through appraisal as hereinafter set forth. If such adjustment has not been determined by mutual consent by ninety (90) days prior to the start of the applicable Lease Year, then the Percentage Rent adjustment shall be made by appraisal.

4.7.2 If the new Percentage Rent is to be determined by appraisal, an appraisal shall be made of the then current fair market rent for the Premises, as evidenced by then recent leases for similar premises similarly improved and operated with uses substantially similar to the Allowed Uses, and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. In establishing the percentage rates for categories set forth in this Lease, the appraiser shall consider CITY'S interest in the property as a fee simple absolute estate, and as vacant and available on the open market for the Allowed Uses at the commencement of the rental period under review.

4.7.3 CITY and LESSEE shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of the parties from a list of City of San Diego-approved appraisers ("Appraiser List") and within ten (10) days after LESSEE's receipt of such list. If the parties do not mutually select an appraiser within said 10-day period, then CITY and LESSEE shall each select a qualified appraiser from the Appraiser List who in turn shall select a third qualified appraiser from the Appraiser List to perform the appraisal.

4.7.3.1 If a qualified appraiser is not on the Appraiser List, then a qualified appraiser shall be selected by mutual agreement of the parties, subject to all applicable laws, rules, regulations, directives and approvals of competent governmental authorities in each instance, including without limitation CITY in its capacity as a governmental entity.

4.7.3.2 "Qualified appraiser" shall mean a licensed "MAI" (or substantially equivalently qualified) appraiser reasonably experienced in appraising leases substantially similar to this Lease.

4.7.4 If the appraisers selected by CITY and LESSEE do not select a third appraiser within ten (10) days after they are selected, then the third appraiser may be appointed by either party's application to the Superior Court of California – San Diego County (Downtown Branch). If the Superior Court declines to make the

appointment, or if the parties otherwise agree, the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Each party shall pay the cost of its own selected appraiser, and CITY and LESSEE shall equally share the cost of the third appraiser, however appointed.

4.7.5 The appraisal shall be ordered for completion within sixty (60) days. The fair-market percentage rates set forth in the appraisal that are higher than the then current percentage rates for the Percentage Rent shall become the percentage rates used to determine the Percentage Rent under this Lease as of the applicable effective date for the rental period under review, regardless of when the appraisal is actually completed. If the adjustment is retroactively applied, LESSEE shall pay all resulting Percentage Rent deficiencies within ninety (90) days after CITY's notice to LESSEE of the amount of such deficiencies. The percentage rates determined by the appraisal shall be binding on the parties.

4.8 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

4.9 Time and Place of Payment. All rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

4.10 Records. LESSEE shall keep or cause to be kept true, accurate, and complete books, records, and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and

all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

- 4.1.1 Financial Statements. Within sixty (60) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue and the corresponding amount of Rent paid to CITY for the Lease Year, for all LESSEE's activities conducted on or from the Premises. Such statements shall be prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner, or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 4.1.2 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease. If required by competent legal authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 4.1.3 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (a) If an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.14 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

5. ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. Subject to CITY's prior written consent in each instance, which consent shall not be unreasonably withheld or conditioned, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of developing, improving, repairing, refurbishing and/or maintaining the Premises or to finance such capital expenditures previously advanced by LESSEE. CITY's consent may be based in part on its determination that a loan does not exceed seventy five percent (75%) of the appraised value of the leasehold estate and that LESSEE's net operating income to be derived from the leasehold is adequate to service the debt and LESSEE's expenses, including without limitation the payment of rent under this Lease. Each such encumbrance shall be subject to

all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all of CITY's encumbrances on that fee interest, now and in the future.

- 5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent, which consent shall not be unreasonably withheld or conditioned. Any such consent shall not be deemed consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders.
- 5.3 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 5.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.
- 5.5 Additional Consideration to CITY. If this Lease is assigned or a majority of the Premises are subleased, or in the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; (b) for majority subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease; and (c) in the case of a refinancing, two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan plus, if applicable, the cost of new permanent improvements constructed on the Premises as required or allowed under this Lease. The amount upon which such two-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to

CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or the source of the refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment and/or refinancing shall be paid concurrently with the closing of the proposed transaction. For majority subleases, such additional consideration shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable two-percent payment required by this section shall not apply to:

- (a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants of the individual who is the owner of a controlling interest in LESSEE; or
- (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

6. DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease
- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit" for failure to make required payments or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2(a) and 6.2(b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2(c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- (b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

7. EMINENT DOMAIN

7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:

- (a) Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- (b) Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- (c) Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- (d) Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.
- (e) No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

8. INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation, reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any

claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 8.2 Insurance. LESSEE shall not begin any work under Lease until it has: (a) obtained, and upon the CITY's request provided to the CITY, insurance certificates reflecting evidence of all insurance required in below; however, the CITY reserves the right to request, and the LESSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by the CITY. The LESSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Lease.
- 8.3 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:
- (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability, including Liquor Liability, arising from any and all personal injury or property damage in the amount of Two Million Dollars (\$2,00,000) per occurrence and subject to an annual aggregate of Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - (b) Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - (c) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

- (d) Workers' Compensation. For all of the LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- 8.4 Deductibles. All deductibles on any policy shall be the responsibility of the LESSEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 8.5 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 8.6 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 8.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 8.8 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before any work is initiated under this Lease.

Commercial General Liability Insurance Endorsements:

- (i) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with

respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

(ii) PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

(iii) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

(iv) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the LESSEE.

(v) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

(vi) WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

9. IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 9.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time and to CITY's reasonable satisfaction.
- 9.2 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 9.3 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 9.4 Asbestos. If LESSEE makes improvements, alterations or repairs to the Premises, LESSEE shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
- 9.5 Entry and Inspection. Upon reasonable prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's use of the Premises.

- (a) Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a clean, decent, safe, healthy and sanitary condition, CITY shall have the right but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, and all at LESSEE's sole cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
 - (b) CITY may require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy and sanitary. The bond shall be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond.
- 9.6 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all major maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. LESSEE shall be responsible for installation and maintenance of the grease interceptor and connection to basement sewer lines. CITY shall have no obligation or responsibility to remove debris, or to maintain, repair or replace improvements on the Premises.
- 9.7 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the exterior of the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval, not to be unreasonably withheld or conditioned. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval, including applicable building permits, which should not to be unreasonably withheld. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises. CITY's prior consent shall not be required with respect to any interior alterations or modifications to the Premises, which cost less than Fifteen Thousand Dollars (\$15,000.00) and are non-structural in nature, as long as LESSEE delivers to CITY advance written notice and a copy of any final plans, specifications and working drawings for any such alterations or modifications.
- 9.8 Utilities. LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. Except for the above-ground propane tank, all other utilities shall be installed underground.
- 9.9 Construction Bond. If LESSEE develops or constructs improvements on the Premises, including LESSEE's rehabilitation of the Premises in accordance with the Redevelopment Plan, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of

one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

9.10 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

9.11 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For any construction project performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

(a) Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(i) Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

(ii) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

- (b) Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed
- (c) Payroll Records. LESSEE, its contractors and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY.
- (d) Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- (e) Working Hours. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- (f) Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- (g) Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- (h) Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct LESSEE to withhold contract payments pursuant to the agreement between LESSEE and LESSEE's contractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- (i) Contractor and Subcontractor Registration Requirements. This Lease is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1. (a), "it is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

(i) A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

(ii) A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

(iii) By submitting a bid or proposal to the City, LESSEE is certifying that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of contractor and subcontractor registration to the CITY upon request.

9.12 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent, which will not to be unreasonably withheld or conditioned. Signs on the interior of the Premises that are not visible from the exterior of the Premises shall not require CITY's consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

9.13 Ownership of Improvements and Personal Property.

(a) Improvements. LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

(b) Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all

claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

- (c) Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by qualified CITY staff.
- (d) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

10. REDEVELOPMENT PLAN

- 10.1 Redevelopment Plan. LESSEE shall develop the Premises in accordance with a redevelopment plan (the "Redevelopment Plan") approved by CITY and with all permits and approvals by competent governmental authorities. A summary of the Redevelopment Plan requirements as of the Effective Date are set forth in **Exhibit C: Redevelopment Plan Summary**, attached hereto. CITY may authorize changes to any approved plans, provided that the principal components as defined in the approved plans may not be modified without City Council approval. Documentation evidencing any approved changes shall be filed in the Office of the San Diego City Clerk. LESSEE shall notify CITY if construction is stopped for thirty (30) days or more, and again when construction resumes.
- 10.2 Coastal Commission; Permits. LESSEE shall, at its sole cost and expense, seek and obtain from the California Coastal Commission and all other competent governmental authorities all necessary permits for any development, redevelopment, work or activities on the Premises, or for any changes to any applicable permits for the Premises. In the event LESSEE notifies the CITY in writing that LESSEE is unable to obtain necessary permits and approvals to redevelop the Premises in accordance with Redevelopment Plan during the Redevelopment Period, as may be extended, then CITY and LESSEE shall each have the right to terminate this Lease.
- 10.3 Termination for Failure to Meet Schedules.
 - (a) Failure to Complete Redevelopment Plan. Notwithstanding any provision of this Lease to the contrary, CITY may, in its sole discretion, terminate this Lease if any of the following occurs:

(i) LESSEE fails to commence construction of the improvements identified in the Redevelopment Plan within nine (9) month after the Effective Date;

(ii) LESSEE fails to complete construction of the improvements identified in the Redevelopment Plan within eighteen (18) months after the Effective Date; or

(iii) After commencement of construction of improvements identified in the Redevelopment Plan, the construction is stopped for more than three (3) months, unless such work stoppage is caused by a *force majeure* event, as defined in Section 10.5 of this Lease.

10.4 Liquidated Damages. The parties agree that the damages to CITY resulting from LESSEE's failure to complete the improvements identified in the Redevelopment Plan by the scheduled completion dates would be extremely difficult to determine. Therefore, the Parties agree that if LESSEE fails to complete the Redevelopment Plan as required by this Lease by the scheduled completion dates, LESSEE shall pay to CITY the amount of Three Hundred Thirty Dollars (\$330) as liquidated damages, and not as a penalty, for each day after the applicable scheduled completion date until completion of the improvements. Such liquidated damages shall be deemed additional rent due and payable upon CITY's demand therefor.

10.5 Force Majeure. For purposes of Section 10 of this Lease, "*force majeure* event" shall mean an event beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God, but does not include delays attributable to obtaining necessary governmental permits and approvals (including building permits or certificates of occupancy).

11. GENERAL PROVISIONS

11.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

SHORELINE MISSION BAY, LLC
c/o Playground Agency
Attention: Bradley Schnell
1837 5th Avenue
San Diego, California 92101
(619) 485-0485

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 11.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).
- 11.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

11.3.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

11.3.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

- 11.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 11.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 11.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); California Building Code (CBC) Title 24; and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- (a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - (c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - (d) Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by

bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

(i) LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

(ii) LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

11.7 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp). Further pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

11.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

(a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace;

(ii) LESSEE's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

11.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

11.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

11.11 Water Quality Assurances. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312). Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a). It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

11.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

- 11.13 Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.
- 11.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 11.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 11.17 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, redevelopment, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.
- 11.18 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 11.19 Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation taxes upon licenses and permits, and including taxes upon the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE alone shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
- 11.20 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and

maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

- (a) Release. A release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material or waste substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- (b) Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- (c) Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove or cause to be removed all Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- (d) Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- (e) Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- (f) Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authorities or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

11.21 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay


- 11.22 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
- 11.23 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

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

SHORELINE MISSION BAY, LLC, a Delaware Limited Liability Company

Date: March 7, 2017

By: 
Name: BRADLEY SCHNELL
Title: CEO

THE CITY OF SAN DIEGO, a California municipal corporation

Date: _____

By: _____

Cybele Thompson, CCIM
Director, Real Estate Assets Department

Approved as to form this ____ day of _____, 2017:

MARA W. ELLIOTT, CITY ATTORNEY

By: _____
Name: _____
Title: _____

- Exhibit A: Legal Description of Premises**
- Exhibit B: Aerial Map of the Premises**
- Exhibit C: Redevelopment Plan Summary**
- Exhibit D: Schedule of Days and Hours of Operation**

Exhibit A: Legal Description of Premises

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF FALSE BAY ALSO KNOWN AS MISSION BAY, AND INCLUDING ANY PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN. DIEGO, IN THE COUNTY OF.SAN DIEGO, IN THE STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT STATION "MORENA" THE NAD 83 COORDINATES OF SAID STATION BEING NORTH 1866406.405 AND EAST 6267555.712, THENCE NORTH 16°25'54"W 2347.45 FEET; THENCE SOUTH 79°07'59" WEST 20.00 FEET TO THE **TRUE POINT OF BEGINNING**, THE NAD 83 COORDINATES OF SAID POINT BEING NORTH 1868654.20 AND EAST 6266872.04; THENCE NORTH 10°52'01" WEST 85.00 FEET TO THE BEGINNING OF A TANGENT 50.00 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID CURVE 78.54 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE TANGENT TO SAID CURVE SOUTH 79°07'59" WEST 63.00 FEET TO THE .BEGINNING OF A TANGENT 399.74 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE 174.42 FEET, THROUGH A CENTRAL ANGLE OF 25°00'00" TO THE BEGINNING OF A TANGENT COMPOUND 136.42 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE SOUTHERLY ALONG SAID CURVE 195.24 FEET THROUGH A CENTRAL ANGLE OF 82°00'00"; THENCE SOUTH 31038'29" WEST 22.48 FEET, TO A POINT ON A 119,37FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 56°43'47" WEST; THENCE EASTERLY ALONG SAID CURVE 186.67 FEET THROUGH A CENTRAL ANGLE OF 89°35'48"; THENCE SOUTH 20°29'10" EAST 115.00 FEET; THENCE NORTH 39°30'50" EAST 23.00 FEET TO A POINT ON A 37.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 39°30'50" WEST; THENCE EASTERLY ALONG SAID CURVE 48.43 FEET THROUGH A CENTRAL ANGLE OF 75°00'00", THENCE SOUTH 89°29'10" EAST 20.00 FEET; THENCE NORTH 30°30'50" EAST 107.00 FEET; THENCE NORTH 38°29'10" WEST 107.00 FEET; THENCE NORTH 5°11'23" EAST 156.45 FEET TO A POINT ON A 50.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°52'01" WEST; THENCE SOUTHEASTERLY ALONG SAID CURVE 78.54 FEET THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE TANGENT TO SAID CURVE NORTH 10°52'01" WEST 85.00 FEET TO THE TRUE POINT OF BEGINNING.

(SAID PARCEL OF LAND CONTAINS 2.158 ACRES, MORE OR LESS)

Exhibit B: Aerial Map of the Premises

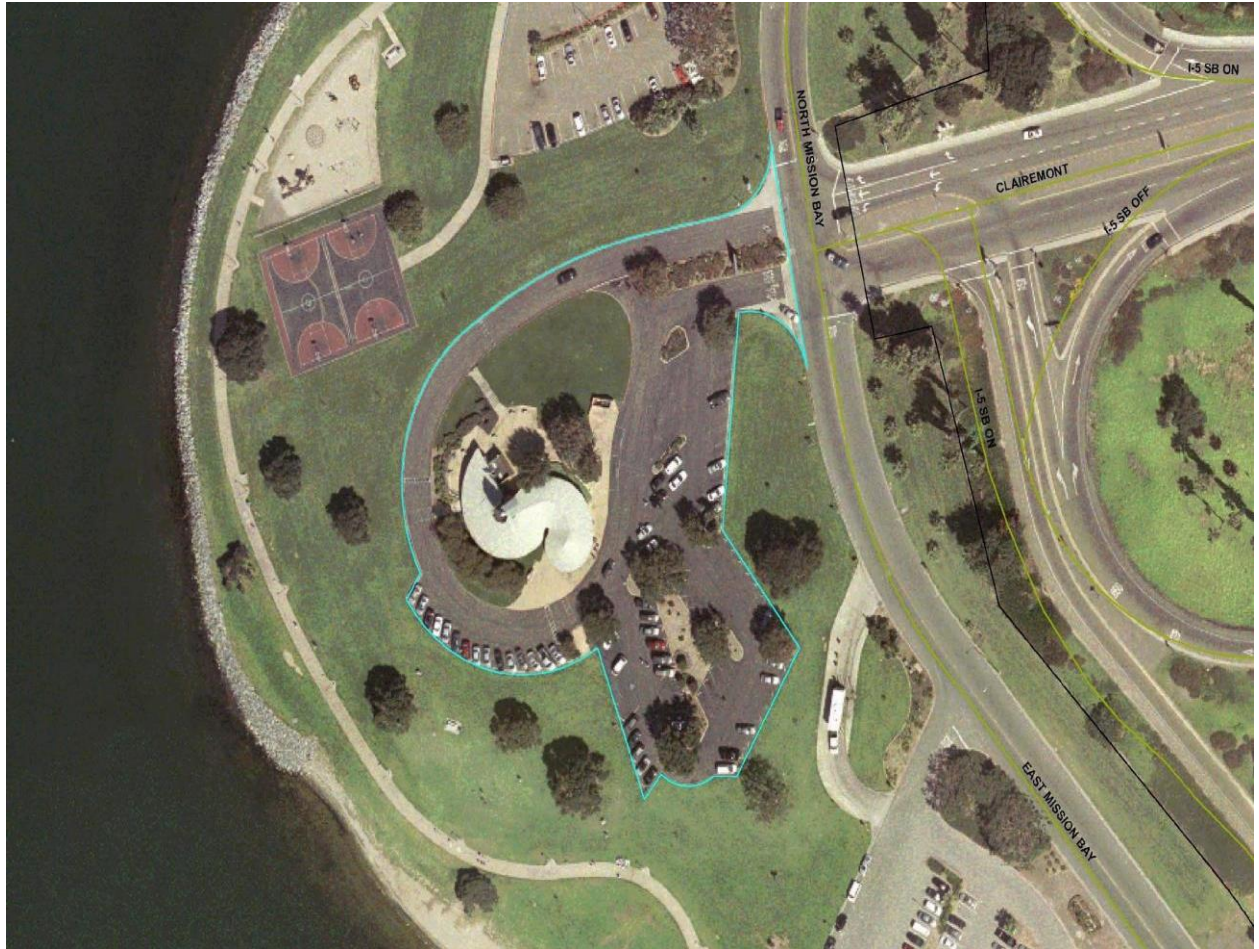


Exhibit C: Redevelopment Plan Summary

- Financial Plan: \$3,083,993 in construction costs to be paid in cash (provided by LESSEE). Any shortfalls are expected to be privately secured by LESSEE.
- Redevelopment Plan:
 - Architectural Renderings: See Attachment #1
 - Redevelopment Plan Costs: See Attachment #2 (1 page)
 - Redevelopment Plan: See Attachment #3

All improvements to be consistent with the original building design by Richard Lareau.

Redevelopment Teams:

Playground
c/o Bradley Schnell

General Design

Architects LOCAL
c/o Steve Waldron
License # C-35050

Architect of Record

Civil Landworks
c/o Dave Caron
License # 50477

Civil Engineering

ARB Electrical Design,
c/o Andrew Balkwell
License # 18563

Electrical Engineering

KPFF Consulting Engineers
c/o Eric Lehmkuhl
License # S-3406

Structural Engineering

VanderVeen Engineering
c/o Jason VanderVeen
License # 34874

Plumbing/Mechanical Engineering

Steve White Construction
c/o Steve White
License #452513

General Contractor

Attachment #1 to Exhibit C: Architectural Renderings





Attachment #2 to Exhibit C: Redevelopment Plan Summary

Redevelopment Plan Costs

General Requirements:	\$65,000
Site work/demolition:	\$345,525
Concrete:	\$152,000
Metals (Steel):	\$100,400
Carpentry/Casework:	\$265,000
Thermal/Moisture protection:	\$183,932
Doors and windows:	\$175,000
Finishes:	\$297,500
Specialties:	\$157,754
Equipment:	\$300,000
Furnishings:	\$250,000
Mechanical:	\$311,180
Electrical:	\$293,000
<hr/>	
Subtotal:	2,896,291
Liability Insurance (1%)	\$23,462
Contractor's Fee (7%)	\$164,240
<hr/>	
Total Estimated Costs:	\$3,083,993

Attachment #3 to Exhibit C: Redevelopment Plan Summary Redevelopment Plan

The primary intent of Shoreline Mission Bay, LLC is to create a beautiful community space for the benefit of all of San Diego, as well as visitors and families who enjoy vacationing in this area. Shoreline will refurbish, remodel and retain the unique and familiar architectural core of the original San Diego Visitor Center and convert this facility into an affordable, casual and family-friendly waterfront dining option within the Mission Bay area; as well as provide retail and rental operations for the enjoyment of Mission Bay; and a relaxing, picturesque facility for private events and celebrations.

Shoreline is based on a counter-service dining model for ease of customer's use, for affordability and to maximize overall operating efficiency. By providing quality menu offerings with a focus on healthy, local and kid-friendly options, we anticipate a warm reception from locals as well as tourists, who search for accessible dining options that are appropriate for the whole family. Shoreline will also serve gourmet coffee beverages, fresh pressed juices and wine, as well as a wide selection of locally produced craft beers. The menu will include fresh seasonal offerings, as well as crowd-pleasing classics such as the famous fish tacos that San Diego is known for.

The concept for Shoreline is based on various established and successful restaurants in Los Angeles, San Francisco and San Diego. The cuisine is California Coastal inspired with a focus on building the menu around locally sourced, fresh ingredients. Customers will have the option of ordering take-out food from the restaurant, including some specialty packaged "picnic arrangements" for use in Mission Bay Park, or sit down dining in a comfortable, family oriented, relaxed environment. Customers may also purchase or rent "grab and go" items to take with them to the park such as picnic blankets, bicycles, et al), or shop in the Shoreline "retail marketplace" for popular San Diego souvenirs. The Shoreline location is unique and this concept is much needed in San Diego's vibrant culinary scene and recreation area.

The development plan for Shoreline includes the following elements:

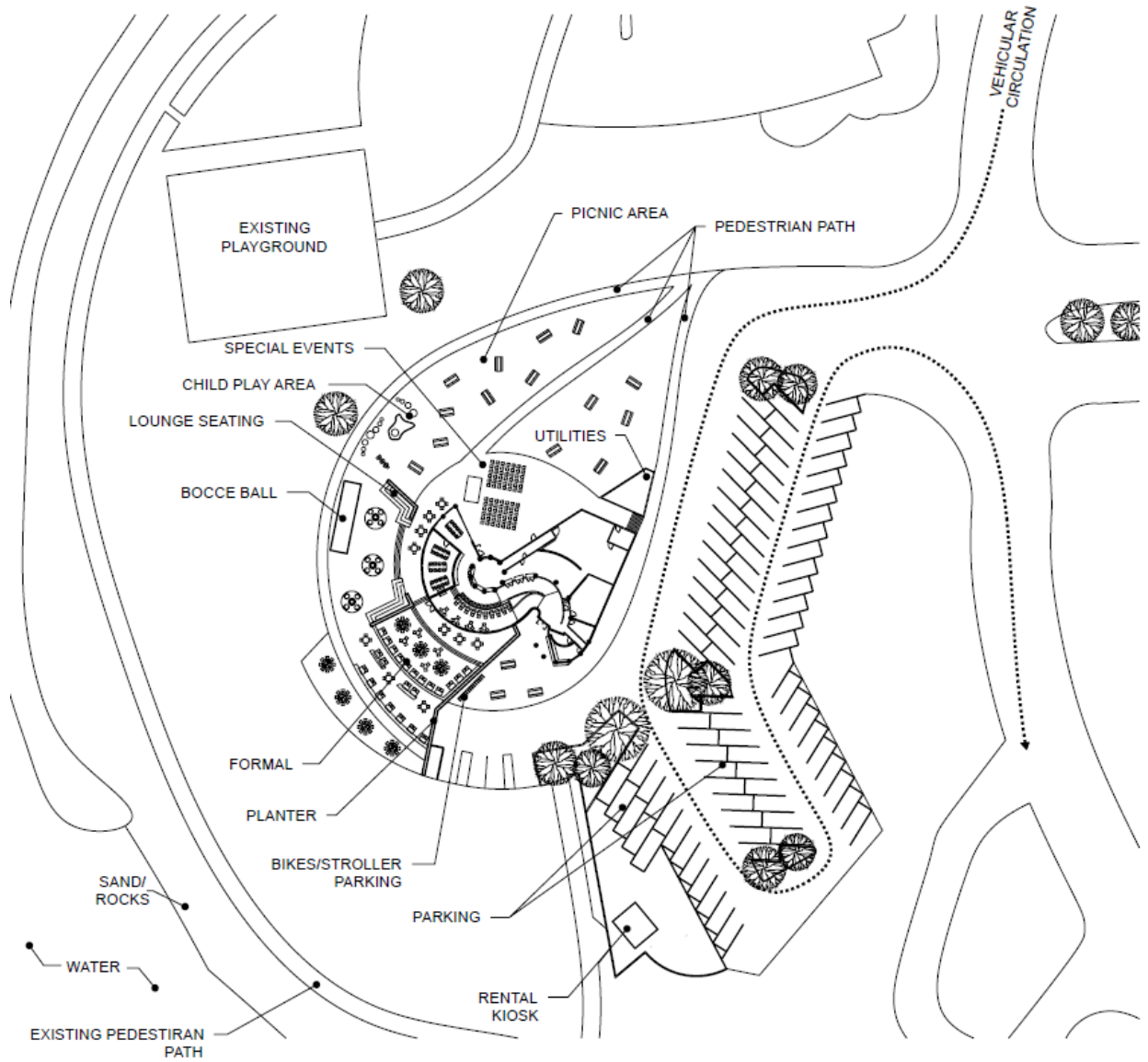
- Counter-service dining restaurant
- Retail wine and craft beer sales
- Creation Bike and beach rental kiosk
- Walk-up coffee and juice bar
- Beach and souvenir retail shop
- Visitors educational component with staff trained as concierge for locals and visitors
- Wedding and special events venue
- Lounge area with fire pits, bocce ball and kid-friendly play area
- Improved traffic flow and parking lot plan, which will remove the dangerous blind corner on the loop road and restore the natural landscaping
- Renovation of building interior to create an ADA accessible facility
- Addition of 1,000 square feet of kitchen space

- Opening up the southwest facing side of the building to enhance Mission Bay views, while keeping with the spirit of the original fenestration patterns

The Shoreline team is working with the original project architect, Richard Lareau, to ensure compliance with initial design intent of this important San Diego building, while revitalizing it for generations to come and enjoy the best of what San Diego has to offer. The project will honor the original intent of the Visitor's Center, welcoming visitors to San Diego and greeting locals while revitalizing this iconic building.

[REDEVELOPMENT PLAN TO FOLLOW BEHIND THIS PAGE]

Development Plan (page 1)



Development Plan (page 2)

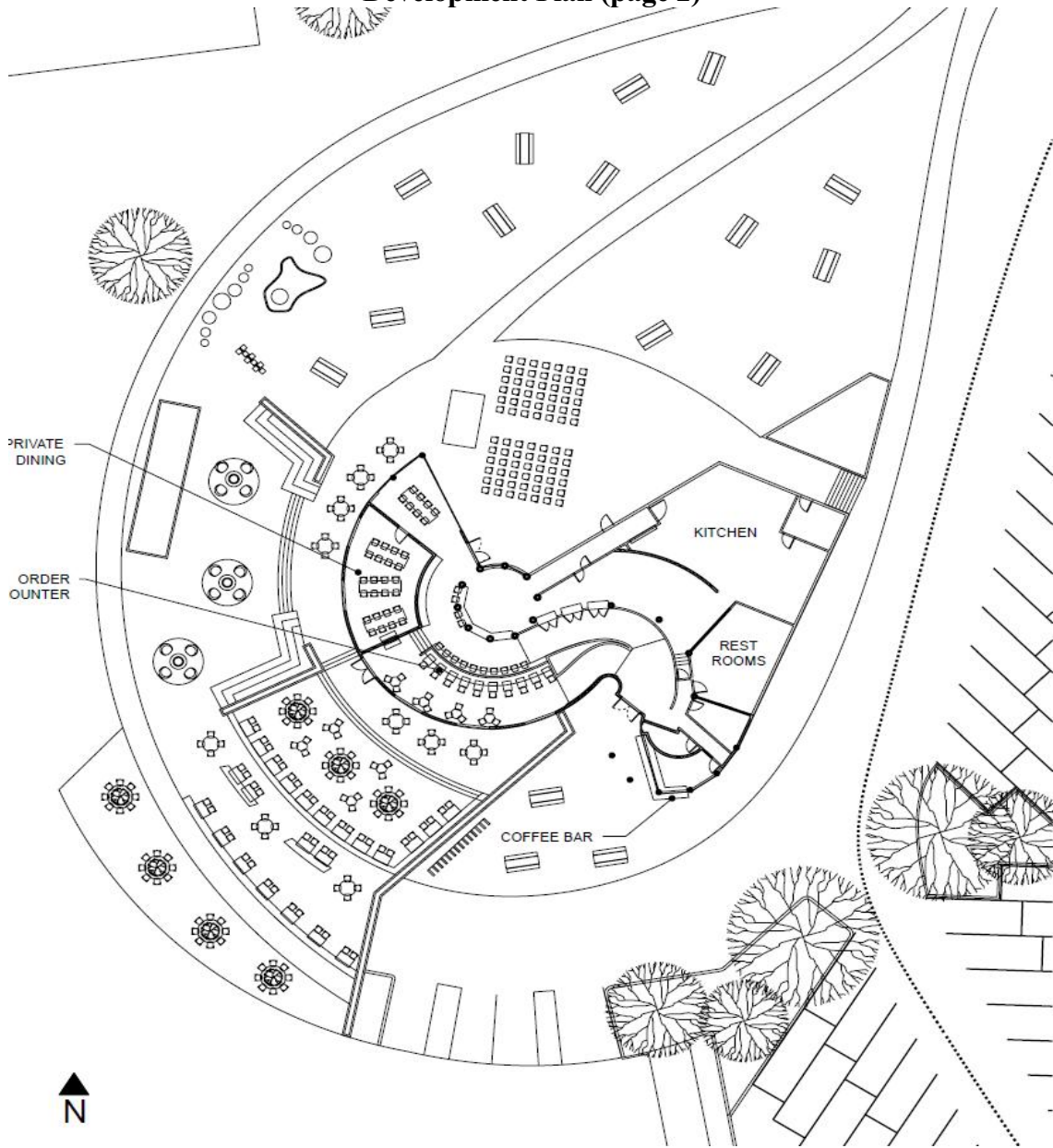


Exhibit D: Schedule of Days and Hours of Operations

Average Annual Opening Hours

<u>Day of Week</u>	<u>Open</u>	<u>Closed</u>
Monday	9:00AM	10:00PM
Tuesday	9:00AM	10:00PM
Wednesday	9:00AM	10:00PM
Thursday	9:00AM	10:00PM
Friday	9:00AM	10:00PM
Saturday	9:00AM	10:00PM
Sunday	9:00AM	10:00PM

Observed Holidays

Christmas Day

Thanksgiving Day