
Beach Concession Lease

City of Long Beach,

Landlord

and

Gregg LaPenna,

Tenant

Premises: Concession Buildings at Lincoln and the Boardwalk and
Pacific and the Boardwalk

Date: April 27, 2016

Beach Concession Lease

Lease dated April 27, 2016, between the City of Long Beach ("City"), a municipal corporation with a principal place of business at 1 West Chester Street, Long Beach, New York 11561 ("Landlord"), and Gregg LaPenna, an individual, d/b/a Cones and Cups on the Boardwalk and the Whales Tale, ("Tenant"), with a principal place of business at 916 West Beech Street, Long Beach, New York 11561. This lease is being made pursuant to City Council Resolution 33/2016, annexed hereto and made a part hereof as Exhibit A.

Article 1. Basic Terms and Definitions

Section 1.1 Additional Rent. All sums, other than the Fixed Rent, payable by Tenant to Landlord under this lease, including but not limited to costs for electric, water, sewer, sanitation, and the payment of deficiencies and increases in the Security, if any.

Section 1.2 Building. The building and improvements located at Lincoln and the Boardwalk and Pacific and the Boardwalk.

Section 1.3 Commencement Date. May 1, 2016, subject to the provisions of Section 2.6.

Section 1.4 Expiration Date. September 15, 2020, subject to this lease and the Extension Option Rider.

Section 1.5 Extension Option. Five single year extension options, more particularly described in the Extension Option Rider (if any) attached to this lease.

Section 1.6 Fixed Rent. The Fixed Rent is shown on Exhibit B to this lease.

Section 1.7 Fixed Rent Commencement Date. The date that is the Commencement Date.

Section 1.8 Notice Address.

(a) Landlord. Department of Public Works, City of Long Beach, 1 West Chester Street, Long Beach, New York 11561.

(b) Tenant. Gregg LaPenna, 916 West Beech Street, Long Beach, New York 11561.

Section 1.9 Permitted Use. For only those uses as specified and proposed by Tenant in their response to the Landlord's Request for Proposals, and consented to by Landlord in writing, and for no other purpose. All Permitted Uses are subject to the terms and conditions of this lease.

Section 1.10 Premises. The portion of the Building shown on Exhibit C to this lease.

Section 1.11 Real Property. The Building, the Premises, the land on which it is located, and/or above the entire Ocean Beach Park as it is defined in the City of Long Beach Charter and Code of Ordinances.

Section 1.12 Ocean Beach Park. Consistent with the definition of the Ocean Beach Park of the City of Long Beach Charter and Code of Ordinances, and any subsequent resolutions redefining same, the entirety of which is wholly incorporated herein and made reference to hereto.

Section 1.13 Rent. The Fixed Rent and all Additional Rent.

Section 1.14 Security. Ten (10) percent per annum of the Fixed Rent for that calendar year. The amount of the Security shall be increased each time the monthly payments of Fixed Rent increases so that Landlord shall at all times have and maintain 10% per annum of the Fixed Rent as security, subject to further increase as provided in Article 16. Security is due to the Landlord on or before January 1 of each year this Agreement is in effect.

Section 1.15 Term. The period commencing on the Commencement Date and ending on the Expiration Date, subject to earlier termination or extension of this lease pursuant to the terms hereof, as well as the Extension Option Rider.

Section 1.16 Certain Definitions. Any reference in this lease to (a) "legal action", includes any suit, proceeding or other legal, arbitration or administrative process, and any appellate proceedings in connection therewith, (b) "person" includes any individual or entity, (c) "this lease" includes the Rules and the other Exhibits to this lease, and (d) "including" means "including without limitation".

Article 2. Demise; Rent

Section 2.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term, at the Rent and on the other terms of this lease.

Section 2.2 The Term of this lease shall consist of the definition contained in Section 1.15 of this Agreement. However, notwithstanding any other item in this lease to the contrary, Tenant may elect to terminate this lease without any further liability at the conclusion of any Ocean Beach Park Season but in no event later than December of the year preceding the following Ocean Beach Park Season. The terms of this Section 2.2 shall apply with equal force to the Extension Option Rider annexed hereto. On or before January 1 of each year this lease is effective, Tenants must pay the Security to Landlord or the premises shall be deemed abandoned under Section 14.1(e) of this Agreement. Security may be applied to Landlord's Fixed Rent obligation for that calendar year in Landlord's discretion.

Section 2.3 Tenant shall pay Landlord the Rent, without notice, abatement, deduction or offset (except as expressly provided in this lease), in lawful money of the United States of America, by Tenant's check or another method approved by Landlord, at Landlord's Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid on an annual basis, in full, on or before May 1 of each year of this lease. Landlord's delay in rendering, or failure to render, any statement required to be rendered by Landlord for any Rent for any period shall not waive Landlord's right to render a statement or to collect that Rent for that or any subsequent period. The rendering of an incorrect statement shall

not waive Landlord's right to render a corrected statement for the period covered by the incorrect statement and collect the correct amount of the Rent, which Tenant shall pay within thirty (30) days after its receipt of the corrected statement.

Section 2.4 If a Fixed Rent Commencement Date is specified in Article 1 of this lease: (a) Tenant is not required to pay Fixed Rent until the Fixed Rent Commencement Date provided Tenant does not default in performing its obligations under this lease beyond any applicable cure period; and (b) if the Fixed Rent Commencement Date is not the first day of a month, the Fixed Rent for the month in which the Fixed Rent Commencement Date occurs shall be apportioned according to the number of days in that month and shall be due and payable when invoiced.

Section 2.5 Unless otherwise specified in this lease, all Additional Rent shall be paid by Tenant within thirty (30) days after Tenant is billed therefor.

Section 2.6 Except as otherwise specifically provided in this lease, Landlord's calculation, determination, or estimate of any Fixed Rent adjustment, any Additional Rent, any Additional Rent adjustment, or any refund (if this lease provides for one) (a "Determination") shall bind Tenant unless: (a) Tenant gives Landlord Notice of Tenant's objection (with all reasonable grounds for such objection) within thirty (30) calendar days after receiving Landlord's first invoice based on such Determination, and (b) Tenant timely pays the invoiced amount (without prejudice to Tenant's right to object as provided in this Section).

Section 2.7 If for any reason Landlord is unable to deliver vacant possession of the Premises with Landlord's Work, if any, substantially complete on or before May 1, 2016, [the date that is the estimated Commencement Date], this lease shall not be void or voidable nor shall Landlord be liable to Tenant therefor, monetarily or otherwise, but the Commencement Date shall be delayed until the date on which Landlord delivers vacant possession of the Premises to Tenant with Landlord's Work, if any, substantially completed. This Section constitutes an express provision to the contrary pursuant to Section 223-a of the New York Real Property Law (or any similar Laws, hereinafter defined), which Landlord and Tenant agree is inapplicable to this lease (and Tenant hereby waives any right to damages or to rescind this lease which Tenant might otherwise have thereunder).

Section 2.8 Landlord and Tenant shall execute an agreement setting forth the Commencement Date, the Fixed Rent Commencement Date and the Expiration Date in the form attached hereto as Exhibit D.

Section 2.9 Notwithstanding anything to the contrary in this lease or in any exhibit or diagram attached to it, no vault or vault space, or other area, outside those sections of the Concession building which constitute the Real Property or Building is included in the Premises. If Tenant is permitted to use or occupy any such vault, space, or other area, it is under a revocable license, and if such license is revoked or the size of such vault, space or area is reduced, such revocation or reduction shall not be deemed to be an actual or constructive eviction, and shall not entitle Tenant to any abatement or reduction of Rent, or relieve Tenant from any of its obligations under this lease, or impose any liability on Landlord. Tenant shall pay, as Additional Rent, all fees, taxes and charges imposed by any Authority (hereinafter defined) for any such vault, space or area used or occupied by Tenant. Any revocations are made pursuant to the sole discretion of the Commissioner of Public Works.

Article 3. Use; Rules and Regulations; Tenant Operations; Signs

Section 3.1 Tenant shall use the Premises only for the Permitted Use, subject, however, to the provisions of this lease. Tenant, at its sole cost and expense, shall acquire any and all permits, licenses, certificates and approvals required by Laws for the Permitted Use and the conduct of Tenant's operations in the Premises. Tenant shall store in the Premises only the merchandise that Tenant sells on a retail basis for the Permitted Use of the Premises, and shall use commercially reasonable efforts to minimize the areas used for storage and to maximize the area used for retail sales.

Section 3.2 Tenant shall not use the Premises, or any part thereof, in violation of any directive from the Landlord, if any, for the Premises or the Real Property. Tenant shall not use the property in any way which is inconsistent with the response submitted to the Landlord's Request for Proposals. Further, all terms and condition of the Request for Proposals are specifically incorporated herein and apply with full force herein, to the extent they are not inconsistent with the provision of this lease. The Request for Proposals is annexed hereto as Exhibit F.

Section 3.3 Tenant shall, and shall cause its employees, contractors, and invitees to, comply with the rules and regulations annexed hereto as Exhibit E and such reasonable changes therein (whether by modification, restatement, elimination or addition) as Landlord may make at any time or times hereafter and communicate to Tenant (the "Rules"). Landlord is not required to enforce the Rules against Tenant or any other tenant or occupant, their employees, contractors or invitees, and Landlord shall not be liable to Tenant for any violation of the Rules by another tenant or occupant or any of their employees, contractors or invitees. Landlord's failure to enforce the Rules against Tenant or any other occupant of the Building shall not be considered a waiver of the Rules.

Section 3.4 The continuous operation of Tenant's business in the Premises is of material importance to Landlord because of the adverse impact on the Real Property of vacant retail space. Tenant shall cause its business to be fully stocked and staffed, and open continuously for business at the Premises at least eight (8) hours a day, such hours to occur at all times when the Ocean Beach Park is open for business, up to 7 days a week. In no event shall Tenant operate its business between the hours of 9 p.m. and 6 a.m., unless the Landlord provides prior written consent at its sole discretion.

Section 3.5 Tenant shall, at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean and keep all exterior store surfaces of the Premises clean; (b) replace immediately any cracked or broken glass of the Premises with glass of like color, grade, and quality; (c) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests and shall arrange for extermination at regular intervals, not less frequently than monthly and more often as necessary; (d) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises that are kept closed until removed, unless otherwise permitted by the City of Long Beach's Commissioner of Public Works; (e) deposit such garbage, trash, rubbish and refuse, on a daily basis, in receptacles provided or required by the City of Long Beach's Commissioner of Public Works at his sole discretion, and notwithstanding any other term of this lease to the contrary; (f) remove from the Premises all rubbish resulting from and/or remaining after any fire or other similar casualty in the Premises; (g) keep all mechanical apparatus and equipment free

of vibration and noise which may be transmitted beyond the Premises; (h) keep in the Premises and maintain in good working order one or more dry chemical fire extinguishers; (i) conduct its business at the Premises in a dignified manner in accordance with high standards of beach concession operation; and, (j) prevent any odors or any noise from unreasonably transmitting beyond the Premises, to be determined at the sole discretion of the Landlord.

Section 3.6 Tenant shall not: (a) place or maintain any merchandise, show cases, tables for service, trash, refuse or other items in any vestibule or entry of the Premises, or any other area unless the Landlord provides express written consent, at the sole discretion of the Landlord; (b) obstruct, or permit its employees, contractors, customers or invitees to obstruct, any walkway, sidewalk, ramp or other area not included as the Premises; (c) use or permit the use of any advertising medium objectionable to Landlord (such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Building) which is in any manner audible or visible outside of the Premises, to be determined at the sole discretion of the Landlord; (d) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (e) cause or permit offensive odors or fumes to emanate from the Premises; (f) solicit business in any area of the Ocean Beach Park unless it is the Premises, including without limitation through distribution of handbills or other advertising matter in any part of the Ocean Beach Park other than the Premises, or the display of any merchandise in the Ocean Beach Park other than the premises; (g) receive or ship articles of any kind outside the designated loading areas, if any, for the Premises; (h) use the Premises for any activity that is inconsistent with the application(s) Tenant submitted in response to the Request For Proposals issued by Landlord on January 15, 2016, and/or not generally considered appropriate for beach concessions conducted in accordance with good and generally accepted standards of operation; (i) use the Premises for any hazardous activity or in such manner as to constitute a nuisance of any kind (public or private); (j) cause waste; or (k) do anything which, in Landlord's reasonable judgment, disturbs other visitors and Concessionaires of the Ocean Beach Park.

Section 3.7 Tenant acknowledges that Landlord intends the retail space in the Ocean Beach Park to be operated in a manner that does not offend the community that it serves. Accordingly, Tenant shall not use the Premises for any immoral or disreputable use or activity or for any use that is objectionable to the community in which the Premises are located to be determined at the sole discretion of the Landlord; and Tenant shall not sell, distribute, display, advertise or offer for sale at the Premises any item or service which, in Landlord's sole discretion, may tend to injure or detract from the image of the Ocean Beach Park within such community or that results in any picketing or protests. Without limiting the generality of the foregoing, Tenant shall not sell, distribute, display or offer for sale any item not specifically proposed in response to Landlord's request for proposals, including but not limited to: (a) any drug paraphernalia, (b) any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, recording, representation or merchandise of any kind, (c) any counterfeit goods. (d) any gun or guns, or (e) the sale of any alcoholic beverages without the prior written consent of the Landlord, in its sole discretion.

Section 3.8 The term "Sign" includes all signs, designs, monuments, logos, banners, projected images, awnings, canopies, pennants, decals, advertisements, pictures, notices, lettering, numerals, graphics, and decorations. No Sign shall be exhibited, installed, inscribed, painted or affixed, without the prior written consent of Landlord in its sole discretion, on any part of the Ocean Beach Park or on the windows or doors of the Premises.

Notwithstanding the foregoing, no neon Signs or blinking or flashing Signs are permitted. Unless otherwise expressly permitted, Tenant may not install Signs advertising anything other than their own use of the Premises. Tenant shall, at its own expense, obtain all required licenses and permits for any Signs installed by Tenant, and renew them as required by applicable Laws. In addition to the foregoing, any signs or alterations to the Premises shall require the prior written consent of the City of Long Beach's Commissioner of Public Works, at his own discretion. All Sign(s) shall be installed and removed in a good and workmanlike manner, without damaging the Real Property or the Premises, and in compliance with all applicable Laws and the applicable provisions of this lease. Prior to installing any permitted Sign, Tenant shall deliver to Landlord any permits or approvals required by applicable Laws in connection with such installation. Tenant shall maintain any permitted Signs in good, clean, neat and safe condition, and at the expiration or sooner termination of this lease, Tenant shall cause such Signs to be removed and cause the cancellation of any issued licenses or permits and agrees to reimburse Landlord for the reasonable costs associated with such removal, should tenant fail to comply with this provision. Tenant shall not change or alter any Sign approved by Landlord in any respect whatsoever, without first obtaining Landlord's prior consent to such change or alteration. Landlord may remove any Sign(s) installed or maintained in violation of this Article, and Tenant shall reimburse Landlord for all costs incurred by Landlord in so removing any such Sign promptly after being billed therefor. In addition, Landlord may, from time to time, temporarily remove any Sign in connection with any repairs, improvements, alterations, additions or replacements being made to the Real Property, and Tenant consents to same, such consent not to be unreasonably withheld.

Article 4. Condition of the Premises; Landlord's Work

Section 4.1 Tenant has examined the Premises and, (a) Tenant accepts possession of the Premises in its "AS IS" condition on the date of this lease, subject to normal wear and tear and the removal of substantially all of the existing occupant's personal property, if any, and (b) Landlord has no obligation to perform any work, supply any materials, incur any expenses or make any installations to prepare the Premises for Tenant's occupancy.

Article 5. Tenant's Work

Section 5.1 Except as may be expressly provided in this lease, Tenant shall not replace any fixtures in the Premises or make any changes, improvements, alterations or additions (collectively, "Tenant's Work"), to the Premises, the Real Property, the Ocean Beach Park, or any part thereof, without the prior written consent of the City of Long Beach's Commissioner of Public Works, in the Commissioner's sole discretion. The consent of the City of Long Beach's Commissioner of Public Works shall not be unreasonably withheld or delayed if Tenant's Work (a) is nonstructural, and (b) does not (i) affect any structural element of the boardwalk or Ocean Beach park, or (ii) adversely affect any fixture or system within or around the Premises or Ocean Beach Park, (c) is not visible outside the Premises and (d) is performed only by contractors and subcontractors first approved by the City of Long Beach's Commissioner of Public Works (which approval shall not be unreasonably withheld or delayed). Landlord's consent shall not be unreasonably withheld with respect to such of Tenant's Work as are cosmetic alterations (such as painting the interior of the Premises, carpeting, and installation of shelving and display cases) inside, and only inside, the Premises ("Cosmetic Alterations"), provided Tenant complies with the other applicable provisions of this lease and the Cosmetic Alterations are not inconsistent with the aesthetics of the Real Property as determined in the sole discretion of the Commissioner

of Public Works. Tenant's Work shall be performed, at Tenant's expense, with diligence when started so as to promptly complete it in a good and worker-like manner using materials of first class quality and in compliance with this lease, all Laws and Tenant's Plans (as defined in Section 5.2) as approved by Landlord, in Landlord's sole discretion. Tenant's Work shall be fully paid for by Tenant when payment is due and shall not be financed with any conditional sales or title retention agreements or by the granting of any security interests, liens, encumbrances or financing statements on the Premises. Tenant's Work shall be deemed, upon installation, to be improvements and betterments that become the property of Landlord at installation, and shall remain upon and be surrendered with the Premises, at the expiration of the Term (or the sooner termination of this lease in accordance with its provisions) unless Landlord notifies Tenant in accordance with the provisions of this Article that Landlord relinquishes its rights thereto, in which case Tenant shall be obligated to remove such Tenant's Work.

Section 5.2 Prior to commencing any Tenant's Work other than purely Cosmetic Alterations, Tenant shall, at Tenant's expense, deliver to Landlord detailed plans and specifications, for Tenant's Work, in form reasonably satisfactory to Landlord, prepared, certified, signed and sealed by an architect or engineer licensed to practice in the State of New York, and suitable for filing with the applicable Authority, if filing is required by applicable Laws (such plans and specifications together with revisions thereto, collectively, "Tenant's Plans"), and obtain Landlord's approval of Tenant's Plans. The City of Long Beach Commissioner of Public Works must approve of all Tenant's plans, subject to the Commissioner's sole discretion. Before commencing Tenant's Work, Tenant shall (a) obtain (and deliver to Landlord copies of) all required permits and authorizations of any Authority for such work, and (b) deliver to Landlord such security as shall be reasonably satisfactory to Landlord, and (c) deliver to Landlord certificates (in form reasonably acceptable to Landlord) evidencing the following insurance coverages from each contractor and subcontractor: (i) worker's compensation insurance covering all persons to be employed in the performance of any Tenant's Work, and (ii) commercial general liability insurance on a primary and non-contributory basis with a limit of liability approved by Landlord, and with contractual liability coverage, naming Landlord, Landlord's managing agent, if any, any Superior Landlord (hereinafter defined) and any Mortgagee (hereinafter defined) as additional insureds, and (iii) comprehensive automobile liability insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with Tenant's Work) with a limit of liability approved by Landlord and (iv) builders risk insurance for the full value of the Tenant's Work performed by such contractor and subcontractor.

Section 5.3 Tenant shall reimburse Landlord, within fifteen (15) days of being billed therefore, for any reasonable out-of-pocket expenses incurred by Landlord in connection with Landlord's review of Tenant's Plans and inspection of Tenant's Work, including outside experts retained by Landlord for that purpose. Landlord's consent to Tenant's Work and Landlord's approval of Tenant's Plans shall be without liability to or recourse against Landlord, shall not release Tenant from its obligations to comply strictly with the provisions of this lease, and shall not constitute any representation or warranty by Landlord regarding the adequacy for any purpose of Tenant's Work or Tenant's Plans or their compliance with Laws, and shall not relieve Tenant from obtaining Landlord's express written approval to revisions thereto. Promptly after substantial completion of Tenant's Work, but in no event later than six (6) months after the commencement of such work, Tenant shall, at Tenant's expense, obtain and deliver to Landlord copies of all sign-offs, letters of completion, approvals and certificates of any Authority required upon the completion of Tenant's Work (including any required amendments

to the certificate of occupancy for the Premises and/or Building) and "as-built" plans and specifications for Tenant's Work prepared as reasonably required by Landlord.

Section 5.4 If, in connection with Tenant's Work or any other act or omission of Tenant or Tenant's employees, agents or contractors, a mechanic's lien, financing statement or other lien or violation of any Laws, is filed against Landlord or all or any part of the Real Property, Tenant shall, at Tenant's expense, have such lien removed by bonding or otherwise within thirty (30) days after Tenant receives notice of the filing.

Section 5.5 All construction managers, contractors and subcontractors performing work for which a license is required by applicable Laws, shall be licensed by the appropriate Authorities and approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord's approval of such construction managers, contractors and subcontractors shall be without liability to or recourse against Landlord, shall not release Tenant from its obligations to comply strictly with the provisions of this lease, shall not constitute any warranty by Landlord regarding the adequacy, professionalism, competence or experience of the approved construction manager, contractor, or subcontractor, and shall not relieve Tenant from obtaining Landlord's express prior written approval if Tenant seeks to employ any other or additional construction manager, contractor or subcontractor. Promptly following substantial completion of Tenant's Work, but in no event later than six (6) months after the commencement of such work, Tenant shall furnish to Landlord lien waivers and releases, in form reasonably satisfactory to Landlord, from all construction managers, contractors, subcontractors, and materialmen furnishing work, services or materials in connection with Tenant's Work.

Section 5.6 Tenant shall require all its contractors and their subcontractors to work in harmony with other laborers working or providing services at the Real Property, and will prohibit the employment of people whose employment causes other laborers at the Real Property or employees of the Landlord to picket or strike. Immediately after notice from Landlord that Tenant's contractors, mechanics or laborers are interfering or causing conflict with other contractors, mechanics, laborers or Landlord's personnel or that the performance of Tenant's Work is causing a violation of any union contract affecting the Real Property, Tenant shall cause all its contractors, mechanics or laborers who are causing the interference or conflict to leave the Real Property and shall take such other action as may be reasonably necessary to resolve such interference or conflict.

Section 5.7 Notwithstanding any provision to the contrary in this lease, Landlord reserves the right to undertake construction of Tenant's Work, as approved in accordance with the provisions of this Section and this lease, with respect to any modifications, alterations, and improvements of the Premises, Building, or Real Property, and Tenant agrees to pay in full, in accordance with Landlord's payment schedule for any such modifications, alterations, and improvements.

Section 5.8 At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work to which Landlord has consented, and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

Section 5.9 Tenant shall not place a load on any floor of the Premises, Building, or Real Property exceeding the floor load per square foot which the floor was designed to carry and which is allowed by any Laws.

Section 5.10 Tenant shall be liable for any damage caused to any part of the Building, including its fixtures and equipment, arising from, or as a result of, Tenant's Work and/or its installation and/or removal of its Signs. If Tenant performs with Landlord's approval any work on the roof of the Building (for example, in connection with repair, maintenance, or installation of any air conditioning system), Tenant shall use only a contractor approved by Landlord for such work and shall not do or cause anything to be done which would invalidate Landlord's then effective roof guaranty for the Premises. Tenant shall also be responsible for promptly repairing (including any necessary replacement) any damage to the roof or Building caused by such work; provided that Landlord may, at its option, effect any such repair or replacement, in which event Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within fifteen (15) days after Tenant is billed therefor.

Section 5.11 On or before the Expiration Date or sooner termination of this lease, if applicable, Tenant shall, at Tenant's expense, remove from the Building (a) all Tenant's Work which Landlord designates for removal in a notice given by Landlord to Tenant on or before the date which is thirty (30) days prior to the Expiration Date (or prior to the sooner termination of this lease, if applicable) and (b) Tenant's trade fixtures, equipment and personal property which are removable without material damage to the Premises or the Building ("Tenant's Property"). Tenant shall repair any damage to the Premises, and/or the Real Property, caused by the installation or removal of Tenant's Property, Signs or Tenant's Work. Except as expressly provided in this Section, Tenant's Work shall not be removed. Any Tenant's Property or Tenant's Work that Tenant was required to remove and which is not removed by Tenant by the Expiration Date or sooner termination of this lease shall be deemed abandoned and may, at Landlord's option, be retained as Landlord's property or disposed of by Landlord at Tenant's expense.

Article 6. Expense Payments [CHOOSE APPROPRIATE EXHIBIT G RELATING TO OPERATING EXPENSES, INSURANCE OR FUEL, ESCALATION OR PASS-THROUGH]

Section 6.1 Tenant shall pay Landlord the Expense Payments described in Exhibit G of this lease in accordance with the provisions thereof, including but not limited to the costs associated with the use of water, sewer, electric and sanitation at the Premises. Tenant shall pay Landlord, in advance, upon Landlord's request, the Expense Payment as reasonably estimated by Landlord for the calendar year. Such estimated payment shall be paid in equal monthly installments (or in such other advance periodic installments that Landlord may elect) on the first day of each month (or on the first day of such other period) during the calendar year. If Landlord first requests, or revises, the estimated monthly or other installments of the Expense Payment after the commencement of a calendar year, Tenant shall (i) until such request is made, continue paying the installments of estimated Expense Payment (if any) payable during the prior calendar year and (ii) within fifteen (15) days following Tenant's receipt of Landlord's request or revision, pay Landlord an amount equal to the requested or revised installments of the estimated Expense Payment for such calendar year retroactive to the beginning of that calendar year to the extent such amount exceeds the estimated payments (if any) paid by Tenant for that calendar year (or if they are less, Landlord shall credit the difference against the next payments under this

lease). In no event shall the Fixed Rent or any other item of Additional Rent be reduced by reason of any decrease in Expenses.

Section 6.2 Landlord shall, following the end of each calendar year, deliver to Tenant a statement showing Tenant's Expense Payment (the "Expense Statement") for that calendar year. Such Expense Statement shall be sent to Tenant within six (6) months of the end of such calendar year; provided that the foregoing time limit shall not preclude Landlord from correcting any errors or omissions in the Expense Statement after the expiration of such six (6) month period. If the aggregate estimated amounts collected by Landlord from Tenant for that calendar year (if any) are less than the Expense Payment shown on that Expense Statement, Tenant shall pay the deficiency to Landlord within fifteen (15) days following Tenant's receipt of such Expense Statement. If the aggregate estimated amounts collected by Landlord from Tenant are greater than the Expense Payment shown on such Expense Statement, Landlord shall credit the excess against Tenant's next Rent payable under this lease or, if any excess is due Tenant at the Expiration Date, Landlord shall promptly pay such excess to Tenant.

Section 6.3 An Expense Statement shall be binding and conclusive on Tenant unless Tenant, within sixty (60) days following Tenant's receipt of that Expense Statement, gives notice to Landlord disputing its accuracy and setting forth the particular respects in which that Expense Statement is claimed to be inaccurate. Tenant shall not be permitted to dispute an Expense Statement if there is a Default (hereinafter defined) on the date of Tenant's notice of dispute or if Tenant shall fail to pay Landlord the Expense Payment shown on the Expense Statement at issue pending resolution of any dispute.

Section 6.4 If the Commencement Date is a date other than the first day of a calendar year, or if the Expiration Date is a date other than the last day of a calendar year, Tenant's Expense Payment for that calendar year shall be apportioned according to the number of days of that calendar year within the Term.

Article 7. Utilities; Services

Section 7.1 Tenant shall not overload the electrical system serving the Premises, and shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, pipes, valves, or other facilities by which electric and other utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment that shall require additional utility facilities, such installation shall be subject to Landlord's prior approval of Tenant's plans and specifications therefor. If such installation is approved by Landlord and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, as Additional Rent, the cost for providing such additional utility facilities.

Section 7.2 Landlord has no obligation to provide to Tenant or the Premises any services except as expressly set forth in this lease and its exhibits. Landlord does not represent or warrant that any utility or other service provided by Landlord, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.

Section 7.3 If any utility or other service (a) becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing

same (including Landlord), or (b) is interrupted by reason of Laws, the making of any repairs or improvements, or measures taken to secure the safety of the Real Property, or the safety and welfare of its tenants or occupants, or the public, or by reason of any cause beyond Landlord's reasonable control, (i) Landlord shall not be liable to Tenant in damages or otherwise, (ii) Tenant may not abate Rent or be relieved of any of its obligations under this lease, and (iii) such lack of availability or interruption shall not constitute an actual or constructive eviction, or a disturbance of Tenant's use of the Premises.

Article 8. Repairs and Maintenance

Section 8.1 Landlord shall, at Landlord's expense, make all structural repairs needed to the exterior walls, structural columns, structural roof, and structural floors that enclose the Premises (excluding all doors, door frames, storefronts, windows and glass); provided that Tenant gives Landlord notice of the necessity for such repairs. Notwithstanding the foregoing, Tenant shall reimburse Landlord, as Additional Rent, within thirty (30) days of being billed therefor, for all such repair costs to structural elements that are necessitated by the negligence or misconduct of Tenant, its employees, contractors, agents, subtenants, employees, customers and invitees.

Section 8.2 If the Premises are sprinklered, Tenant shall be responsible, at Tenant's sole cost and expense, for maintaining, in good order and repair and in compliance with all Laws, those elements of the sprinkler system within the Premises, including the repair and replacement of the sprinkler heads and pipes. If the Premises are not sprinklered and a sprinkler system in the Premises is required under applicable Laws for Tenant's Permitted Use or manner of use of the Premises, or Tenant's Work requires the installation of a sprinkler system in the Premises, Tenant shall install such system as part of Tenant's Work, at Tenant's expense. Landlord shall not be responsible for maintenance, repairs or replacement of any element of the sprinkler system within the Premises.

Section 8.3 Subject to Article 11 and Section 8.1: Tenant shall make, at Tenant's sole expense, all repairs and replacements needed to maintain in good condition and order the Premises and all installations, equipment and facilities therein, and all repairs and replacements needed to any plumbing, water, waste, heating, ventilating and air conditioning units ("HVAC Units"), and electric conduits, lines and equipment located outside the Premises that serve only the Premises. Without limiting the foregoing, but subject to Article 11 and Section 10.1, Tenant shall make all repairs and replacements required with respect to the HVAC Units, electrical and plumbing systems within the Premises and any rooftop or exterior air conditioning equipment or HVAC Units serving only the Premises, any plumbing fixtures within the Premises (including sinks and toilets), and the plumbing lines, valves, and pipes connected to or running from such fixtures to the point at which such lines, valves and pipes connect with the Building's common plumbing lines, including such plumbing lines or ducts connecting any roof-top or exterior equipment or HVAC Units or other utility or service to the Premises. Tenant shall also make, at Tenant's expense, such repairs and replacements as are needed to keep the sidewalks and walkways abutting the Premises in good condition and order, and shall keep such sidewalks and walkways free of rubbish, and other obstructions, and otherwise in a safe and clean condition. All such repairs and replacements shall be made in compliance with the provisions of this lease (including Article 5).

Section 8.4 Tenant shall enter into and maintain, at Tenant's expense, a service, maintenance and repair contract, in scope reasonably satisfactory to Landlord, with a reputable service company, reasonably satisfactory to Landlord, for the HVAC Units serving the Premises. Tenant shall, from time to time, furnish Landlord with a copy of such service contract, within ten (10) days after request. If Tenant fails to obtain or maintain such service contract or to deliver to Landlord a copy of such contract upon request, Landlord may, at its option, enter into a service contract providing for the maintenance, repair, and servicing of the HVAC Units and bill Tenant for the charges due under such contract. Any such charges shall be paid by Tenant within fifteen (15) days after Landlord delivers a bill therefor to Tenant, and such charges shall be deemed additional rent.

Section 8.5 Subject to Section 13.4, Tenant shall reimburse Landlord, as Additional Rent, within thirty (30) days of being billed therefor, for all damage to the Premises, Building, and Real Property resulting from any act or omission of Tenant, or any of Tenant's employees, agents, employees, invitees or contractors.

Section 8.6 Landlord shall have no liability to Tenant, the Rent shall not be abated, and Tenant shall not be deemed actually or constructively evicted by reason of Landlord performing any repairs or other work to all or any portion of the Premises and/or the Real Property. Landlord shall endeavor to perform such repairs or other work in a manner that reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property, but Landlord is not required to employ overtime labor or incur additional expenses.

Article 9. Laws; Hazardous Substances

Section 9.1 Tenant shall, at Tenant's expense, comply with all present and future laws, rules, regulations, orders, ordinances, judgments, requirements and (if Landlord adopts same) recommendations (collectively, "Laws") of the United States of America, the State of New York, the city, town, village, municipality and/or county in which the Premises are located, or any present or future subdivision or instrumentality thereof, any court, agency, department, commission, board, bureau, and any fire insurance rating body (collectively, "Authority" or "Authorities") applicable to Tenant's occupancy of the Premises, Tenant's Work, Tenant's Property or the Premises. If, however, compliance requires structural work to the Premises, Tenant shall be required to effect such compliance, at Tenant's expense, only if the obligation to comply arises from Tenant's Work, Tenant's Property, Tenant's manner of using the Premises, or any acts or negligence of Tenant, its employees, contractors, agents, or invitees. Tenant shall promptly deliver to Landlord a copy of any notice, communication or other materials relating to the Premises, the Real Property (including the Building systems), Tenant's Property, Tenant's Work and/or Hazardous Substances (hereinafter defined) received by Tenant from, or sent by Tenant to, any Authority. Tenant shall have an obligation to remediate any Hazardous Substances pursuant to this Section if the need for such remediation arises from Tenant's Work, Tenant's specific manner of use of the Premises, or the actions or omissions to act of Tenant, and/or any of their employees, contractors, agents or invitees.

Section 9.2 Tenant shall not, and shall not permit employees, contractors, agents, or invitees, to introduce into the Premises or the Real Property, use in the Premises or the Real Property or cause to be released from the Premises or the Real Property any Hazardous Substances. Notwithstanding the preceding sentence, Tenant may use cleaning products in

accordance with their customary use, provided that Tenant complies with all applicable Laws in connection therewith, and further provided that in no event may Tenant release or discharge such cleaning and/or office products into the plumbing, or drainage sewer system in excessive amounts. At no time shall Tenant cause any type of waste litter and/or remain unabated on any portion of the Ocean Beach Park. If Tenant breaches its obligations hereunder, Tenant, at Tenant's expense, shall immediately take all remedial action necessary to clean up any release, spill or discharge of Hazardous Substances. "Hazardous Substances" mean any flammable or otherwise hazardous material, any explosive and/or radioactive material, hazardous waste, hazardous or toxic substance or related material, asbestos and any material containing asbestos, petroleum and any petroleum derivative, pollutants, contaminants, lubricants, food waste and any other substance or material which is defined as, determined to be, or identified as, a hazardous or toxic material or substance pursuant to any applicable Laws.

Section 9.3 If Tenant shall be obligated to remediate any Hazardous Substances, it shall remove and dispose of any such Hazardous Substances in compliance with all applicable Laws. Tenant's remediation plan shall be subject to Landlord's approval and Tenant shall keep Landlord fully apprised of the progress of Tenant's remediation efforts.

Section 9.4 Tenant shall indemnify, defend and hold harmless Landlord officers, employees, and agents, from and against all liabilities, damages, losses, fines, costs and expenses (including reasonable attorneys' fees and disbursements) resulting or arising from, or incurred in connection with any violation by Tenant of its obligations with respect to Hazardous Substances under this lease or otherwise under any applicable Laws.

Section 9.5 Tenant shall, at its own cost and expense, secure and maintain throughout the Term, all necessary licenses and permits from such Authorities as shall be necessary for, or incidental to, the conduct of its business in the Premises and shall comply with all Laws relating to the operation of its business. Landlord does not covenant, warrant or make any representation that any Authority license or permit that may be required in connection with the operation of Tenant's business will be granted, or if granted, will be continued in effect or renewed, and any failure to obtain, maintain, or renew such license or permit, or its revocation after issuance, shall not affect Tenant's obligations under this lease.

Section 9.6 Subject to the provisions of this Section, provided that Tenant is not in Default, Tenant, at Tenant's expense, may contest by appropriate proceedings prosecuted diligently and in good faith the legality or applicability of any Laws affecting the Premises for which Tenant is responsible hereunder (any such proceedings instituted by Tenant, a "Compliance Challenge"), provided however, that Tenant's delay in compliance shall not cause (a) Landlord or Tenant to be subject to imprisonment or prosecution for a crime, (b) the Real Property or any part thereof to be condemned or vacated, and/or (c) the use and enjoyment of its space by another lessee or licensee at the Real Property to be adversely affected. Tenant must give Landlord at least ten (10) business days notice before Tenant initiates a Compliance Challenge, and shall not initiate it if Landlord reasonably objects. At Landlord's request, prior to initiating a Compliance Challenge, Tenant shall furnish Landlord with either cash or a bond from a surety company reasonably satisfactory to Landlord in form and substance, in an amount equal to 120% of the sum, as reasonably estimated by Landlord, of (i) the cost of such compliance and (ii) the amount of any and all penalties and fines that may accrue by reason of non-compliance and (iii) the amount of any Landlord liability to third parties. Tenant shall keep Landlord informed regularly as to the status of any Compliance Challenge.

Article 10. Insurance

Section 10.1 Tenant shall, at Tenant's expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises such insurance as shall be required by Landlord, including: (a) commercial general liability insurance (or successor form of insurance designated by Landlord) in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than three million (\$3,000,000) dollars naming as additional insureds Landlord and any other person designated by Landlord, (b) property insurance in an amount equal to one hundred (100%) percent of full replacement value (with a deductible not exceeding five thousand (\$5,000) dollars) covering Tenant's Work (including improvements and betterments, whether or not the improvements and betterments are restored), Tenant's Property and the property of third parties located in the Premises, against fire and other risks included in the standard New York form of property insurance, (c) workers' compensation and employer's liability insurance providing statutory benefits for Tenant's employees at the Premises (d) such other insurance as Landlord may reasonably require. Such liability insurance policy shall include contractual liability, fire and legal liability coverage. Landlord shall have the right at any time and from time to time, but not more frequently than once every two (2) years, to require Tenant to increase the amount of the commercial general liability insurance required to be maintained by Tenant under this lease provided the amount shall not exceed the amount then generally required of tenants entering into leases for similar Permitted Uses in similar buildings in the general vicinity of the Real Property.

Section 10.2 Tenant shall deliver to Landlord and each additional insured (a) certificates in form reasonably acceptable to Landlord evidencing the insurance required by this lease to be maintained by Tenant before the Commencement Date (and with respect to any insurance required pursuant to Article 5, before the commencement of any Tenant's Work), and at least fifteen (15) days before the expiration of any such insurance, and (b) upon request, a copy of each insurance policy. All required insurance (including insurance required pursuant to Article 5) shall be primary and non-contributory (as shown on endorsement), issued by companies satisfactory to Landlord and contain a provision whereby it cannot be canceled unless Landlord and any additional insureds are given at least thirty (30) days' prior written notice of the cancellation. Tenant may carry any required insurance under a blanket policy if that policy complies with the requirements of this lease and provides that Tenant's insurance for the Premises is on a "per location basis".

Section 10.3 Provided its right of full recovery under its insurance policy is not adversely affected, Tenant releases Landlord and Landlord's agents and employees with respect to any claim (including a claim for negligence) it may have against Landlord for damage or loss covered by Tenant's property insurance (including business interruption and loss of rent). Landlord and Tenant shall, to the extent obtainable, each procure a clause in, or endorsement on, any property insurance carried by it, pursuant to which the insurance company waives its right of subrogation against the other party to this lease and its agents and employees or consents to a waiver of the right of recovery against the other party to this lease and its agents and employees. If an additional premium is required for the waiver or consent, the other party shall be advised of that amount and may, but is not obligated to, pay the same. If that party elects not to pay the additional premium, the waiver or consent shall not be required in favor of that party.

Article 11. Casualty

Section 11.1 If (a) the Premises are damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or so that the Premises or any part of the Premises is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (i) Landlord shall, at Landlord's expense, reasonably repair the damage to the Premises, excluding the damage to Tenant's Work or Tenant's Property and (ii) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage and shall promptly after Landlord's substantial completion of the repair to the Premises, commence to diligently repair Tenant's Work and Tenant's Property in order to resume its normal business in the Premises. Until the repairs to be performed by Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises and which Tenant does not actually use.

Section 11.2 If (a) the Premises are rendered wholly untenable, or (b) the Premises are damaged by any cause which is not covered by Landlord's insurance, or (c) the Premises are damaged in whole or in part during the last two (2) years of the Term, or (d) the cost of repairing any damage to the Building by fire or other casualty exceeds twenty-five percent (25%) of the replacement cost thereof, as reasonably estimated by a reputable contractor, architect or engineer selected by Landlord, Landlord shall have the right, by notice given to Tenant within sixty (60) days following the date of the damage, to terminate this lease. If this lease is terminated pursuant to this Section, the Term shall expire on the fifteenth (15th) day after the notice is given as fully and completely as if such date were the stated Expiration Date.

Section 11.3 This Article constitutes an express agreement governing any damage to or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, and any other similar Laws shall have no application to a fire or other casualty.

Article 12. Assignment and No Subletting

Section 12.1 Except as provided in this Article, Tenant shall not, without Landlord's prior consent, assign, encumber or otherwise transfer this lease or any interest in this lease, by operation of law or otherwise, or sublet or permit others to occupy all or any part of the Premises, or license concessions or lease departments in the Premises, and any assignment, encumbrance, transfer, sublet, occupancy agreement, license or department lease shall be void ab initio if not in accordance with this Article. The transfer or issuance (by one or more related or unrelated transactions) of ownership interests of Tenant, or any Guarantor, or any direct or indirect owner of Tenant, which results in 50 percent or more of the ownership interests of that person being held by persons who did not hold 50 percent or more of those ownership interests on the date of this lease shall be considered an assignment of this lease which requires Landlord's consent, unless such ownership interests are publicly traded on a national stock exchange or over-the-counter market.

Section 12.2 Notwithstanding any provision of this lease to the contrary, Subletting of the Premises contained in this lease is expressly forbidden without the Landlord's prior written consent, subject to the Landlord's sole discretion.

Section 12.3 If Tenant desires to assign this lease, then upon Landlord's receipt of the Consent Request (hereinafter defined), together with the documents and information required under Section 12.4(d), Landlord may, at its option, elect to terminate this lease by notice given to Tenant, which notice shall specify a date for the termination of this lease (the "Recapture Termination Date"). Such option shall be exercised by giving Tenant notice of exercise within thirty (30) days after the date Landlord receives the Consent Request and the documents and information required under Section 12.4(d). The Recapture Termination Date shall be a date no earlier than two (2) months and no later than four (4) months after the date the Consent Request and such supplemental documents and information are delivered to Landlord. Upon the Recapture Termination Date, this lease and the term thereof shall end and expire as fully and completely as if such date were the date set forth herein as the stated Expiration Date. Tenant shall thereupon quit, surrender and vacate the Premises, without prejudice, however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to the Recapture Termination Date or with respect to periods prior to the Recapture Termination Date, and any Rent owing shall be paid up to such date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. If Landlord so terminates this lease, Landlord may, at its option and without liability to Tenant, lease the Premises to any person or entity that was negotiating with Tenant or that signed a lease, sublease or assignment agreement with Tenant for the Premises.

Section 12.4 Tenant acknowledges that the character and nature of the stores, store management and operations within the Building are important to Landlord and to the success of the Premises. Therefore, the Landlord may grant an assignment of this lease subject to its sole discretion and judgment. Any such assignment must comply with the foregoing:

(a) Such assignee shall use and occupy the Premises only for the Permitted Use.

(b) Such assignment shall not, in Landlord's judgment, adversely affect the quality and type of business operation which Tenant has conducted theretofore at the Premises in compliance with the provisions of this lease.

(c) The principal(s) of such assignee shall possess qualifications for operating Tenant's business that are substantially equivalent to Tenant's qualifications, and have demonstrated recognized experience in successfully operating such a business.

(d) Tenant delivers to Landlord a written request (the "Consent Request") for Landlord's consent which shall include (i) the name and address of the proposed assignee, (ii) the nature and character of the business of the proposed subtenant or assignee, (iii) current bank, financial and other credit information on the proposed subtenant or assignee, and (iv) a copy of the proposed assignment or sublease, fully executed, which assignment or sublease shall be in compliance with the requirements of this Article. Tenant shall promptly supply Landlord with such additional information as Landlord may reasonably request.

(e) At the time of such assignment, there is no Default.

(f) Tenant reimburses Landlord on demand for any out-of-pocket costs incurred by Landlord in connection with said assignment, including the costs of investigating the proposed assignee or subtenant and Landlord's reasonable legal costs.

(g) If Tenant assigns this lease, Tenant delivers to Landlord a fully executed assignment and assumption agreement, duly acknowledged, in form and substance reasonably satisfactory to Landlord.

(h) If Tenant subleases the Premises, Tenant delivers to Landlord a fully executed sublease, in form reasonably satisfactory to Landlord, that, among other things, provides that: (i) the sublease is subject and subordinate to this lease and to the matters to which this lease is or shall be subject and subordinate; (ii) the subtenant shall not, without Landlord's prior consent or approval, take any action, which, if to be taken by Tenant, would require Landlord's consent or approval; (iii) the subtenant shall, upon notice from Landlord that Tenant is then in default of this lease, pay the rent under the sublease directly to Landlord, to be applied to the Rent under this lease (and Tenant hereby consents to that payment and agrees that any such payment shall be credited against the subtenant's rent obligation under the sublease); (iv) the subtenant shall carry the insurance, and furnish to Landlord the evidence thereof, required by this lease to be carried and furnished by Tenant, and shall name Landlord and any other party designated by Landlord as additional insureds on its commercial general liability insurance, and (v) in the event of any termination, re-entry or dispossession by Landlord under this lease, the subtenant shall, at Landlord's option, vacate the Premises or attorn to Landlord pursuant to the then executory provisions of the sublease, except that Landlord shall not be (A) liable for any previous act or omission of Tenant under the sublease, (B) subject to any offset not expressly provided in the sublease, (C) be required to pay any construction allowance or other monetary payment due or payable from or by Tenant as sublandlord, or (D) bound by any change or extension of the sublease or prepayment of more than one (1) month's rent to which Landlord did not consent in writing.

(i) Any Guarantor delivers to Landlord such agreements as Landlord may reasonably require confirming Guarantor's continuing liability under its guaranty of this lease, but no failure to execute or deliver such documents shall impair such Guarantor's continuing liability under such guaranty in accordance with the terms of such guaranty.

Section 12.5 If this lease is assigned or the Premises are sublet, in whole or in part, Tenant shall remain liable for the performance of all of the terms, covenants and conditions of this lease on the part of Tenant to be performed or observed and any Guarantor shall continue to remain liable under the terms of its guaranty of this lease. Tenant's liability hereunder shall not be affected by any modification of this lease or agreement made between Landlord and any assignee or subtenant, or by reason of any delay or failure on Landlord's part to enforce any of its rights under this lease; provided that if any such modification or agreement increases the obligation of the assignee under this lease, the liability of the assignor-Tenant under this lease shall continue to be no greater than if such modification or agreement had not been made unless such assignee is a person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

Section 12.6 The consent by Landlord to any assignment, transfer, occupancy, encumbrance or other transaction described in Section 12.1, shall not in any way be deemed to relieve Tenant from obtaining the express consent of Landlord prior to any further such

transaction or any proposed assignment, which consent may be granted or denied at Landlord's discretion.

Section 12.7 The acceptance by Landlord of Rent following any assignment, sublease, encumbrance, license, occupancy, or other transaction in violation of this Article, shall not be deemed a consent by Landlord to such transaction, nor a waiver of any right or remedy of Landlord hereunder.

Article 13. Access; Changes in Building and Real Property

Section 13.1 Landlord reserves the right to (a) place (and have access to) concealed ducts, pipes and conduits through the Premises (without a material reduction or reconfiguration of the useable area of the Premises), and (b) enter the Premises at reasonable times on reasonable prior notice, which may be oral (but prior notice shall not be required in an emergency), to inspect the Premises, to show the Premises to others or to perform any work or make any improvement Landlord deems necessary or desirable to the Premises or the Building or for the purpose of complying with Laws. If Tenant is not present when Landlord desires to enter the Premises, Landlord or Landlord's contractors may enter the Premises (by force, in the event of an emergency) without liability to Tenant.

Section 13.2 Landlord reserves the right at any time and from time to time to (a) make changes or revisions in the Real Property, including but not limited to the Building areas, walkways, driveways, parking areas, or other Common Areas, (b) construct improvements in the Real Property, (c) construct additions to, or additional stories on, the Premises (which right includes the right to make use of structural elements of the Premises, including without limitation columns and footings, for such construction, provided such use does not materially encroach on the interior of the Premises), and (d) change the name, number or designation by which the Real Property and/or Building is known.

Section 13.3 If there is to be any excavation or construction adjacent to the Building, Tenant shall permit Landlord and/or any other person to enter the Premises to perform such work as Landlord or that person deems necessary to protect the Real Property, without any abatement of the Rent or liability to Tenant.

Section 13.4 Landlord shall have the exclusive right to use all or any part of the roof of the Building for any purpose, and to erect temporary scaffolds and other aids to construction on the exterior of the Premises in connection with alterations, repairs, improvements, and/or additions Landlord may make to the Building, provided that access to the Premises shall not be denied. Landlord may make any use it desires of the side exterior walls or rear walls of the Building.

Section 13.5 Landlord shall exercise Landlord's rights under this Article in a manner which reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

Article 14. Default

Section 14.1 Each of the following (a "Default") is a material default by Tenant under this lease:

(a) Tenant fails to pay when due any Rent and the failure continues for three (3) days following Landlord's notice (which notice shall also be considered any demand required by any Laws). If, however, Landlord gives such a notice of failure to pay Rent twice in any twelve (12) month period, any additional failure to pay any Rent when due within that twelve (12) month period shall be considered a Default, without the requirement of any notice by Landlord.

(b) Tenant fails to comply with Article 15 or makes any misrepresentation under Section 20.1.

(c) Tenant fails to comply with any other term of this lease and the failure continues for thirty (30) days following Landlord's notice. If, however, compliance cannot, with diligence, reasonably be fully accomplished within that thirty (30) day period, Tenant shall have an additional period not to exceed forty-five (45) days to fully comply, provided Tenant notifies Landlord of its intention to comply (with reasonably detailed steps to be taken) and commences compliance within that thirty (30) day period and thereafter pursues compliance to completion with diligence and provides Landlord with status updates on the progress at least every fifteen (15) days.

(d) A third party institutes against Tenant, any legal action seeking any relief from its debts under any applicable bankruptcy or insolvency Laws which is not dismissed within ninety (90) days, or Tenant or Guarantor, if any, institutes any legal action seeking such relief, and/or a receiver, trustee, custodian or other similar official is appointed for Tenant or Guarantor, if any, or for all or a substantial portion of its assets, or Tenant or Guarantor, if any, commits any other act indicating insolvency such as making an assignment for the benefit of its creditors.

(e) Except as otherwise expressly permitted under this lease, Tenant vacates or abandons the Premises prior to the Expiration Date.

(f) Tenant fails to comply with Rules and Food Use Rider, if applicable, more than three (3) times in any Ocean Beach Park Season and upon written notice of same by Landlord.

Section 14.2 If a Default occurs, this lease is subject to the conditional limitation that Landlord may, at any time during the continuance of the Default, give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than five (5) days after Landlord gives such notice to Tenant. If Landlord gives that notice, this lease and the Term shall expire and come to an end on the date set forth in that notice as if said date were the date originally fixed in this lease as the Expiration Date and Tenant shall quit and surrender the Premises to Landlord (but Tenant shall remain liable as provided in this lease).

Section 14.3 If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to

be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit.

Article 15. Remedies

Section 15.1 If this lease is terminated pursuant to Article 14 or Landlord re-enters or obtains possession of the Premises by summary proceedings or any other legal action or by force or otherwise (which Landlord may do without further notice and without liability or obligation to Tenant or any occupant of the Premises), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this lease).

(a) Tenant, and all other occupants, shall vacate and surrender to Landlord the Premises in accordance with this lease.

(b) Landlord, at Landlord's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this lease), and (ii) make any changes to the Premises as Landlord, in Landlord's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability under this lease.

(c) Tenant shall pay Landlord all Rent payable to the date on which this lease is terminated or Landlord re-enters or obtains possession of the Premises.

(d) Tenant shall also pay to Landlord, as damages, any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term and (ii) the rents, if any, applicable to that period collected under any reletting of all or any portion of the Premises. Tenant shall pay any deficiency in annual installments on the days specified in this lease for payment of installments of the Fixed Rent, and Landlord shall be entitled to recover from Tenant each annual deficiency as the same arises. No suit to collect the deficiency for any year shall prejudice Landlord's right to collect the deficiency for any subsequent year. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent. If Landlord relets the Premises, or any portion of the Premises, together with other space in the Building, the rents collected under the reletting and the expenses of the reletting shall be equitably apportioned for the purposes of this Article.

(e) Landlord may recover from Tenant, and Tenant shall pay Landlord, on request, in lieu of any further deficiency pursuant to the preceding paragraph of this Section (as liquidated damages for such deficiency) the amount by which (i) the unpaid Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding the termination, re-entry or obtaining of possession) exceeds (ii) the then fair market rental value of the Premises, including the Additional Rent for the same period, both discounted to present value at an annual rate of interest equal to five (5%) percent. If, before presentation of proof of liquidated damages, Landlord relets the Premises or any portion of the Premises for any period pursuant to a bona fide lease with an unrelated third party, the net rents

(after deducting reletting costs) payable in connection with the reletting shall be considered to be the fair market rental value for the Premises or the portion of the Premises relet during the term of the reletting.

(f) Tenant shall also pay Landlord, as additional damages, any expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting.

(g) Nothing contained in this lease shall be considered to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages or otherwise by any Laws.

Section 15.2 Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, except as provided in this lease and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Laws to redeem the Premises, to re-enter or repossess the Premises, or to restore this lease, after (i) Tenant is dispossessed pursuant to any Laws or by any Authority, (ii) Landlord reenters or obtains possession of the Premises, or (iii) the Expiration Date, whether by operation of law or pursuant to this lease. The words "re-enter," "re-entry" and "re-entered" as used in this lease shall not be considered to be restricted to their technical legal meanings. Landlord shall have the right to enjoin any Default and the right to invoke any remedy allowed by any Laws in addition to any remedies provided in this lease. All remedies provided in this lease are cumulative and Landlord's right to invoke, or the invocation of, any remedy shall not preclude Landlord from invoking any other remedy under this lease or under any and all Laws.

Section 15.3 Landlord and Tenant each hereby waive trial by jury in any legal action brought by either party against the other in connection with this lease. If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding (unless the failure to impose the counterclaim would preclude Tenant from asserting in a separate legal action the claim which is the subject of the counterclaim), and shall not seek to consolidate the proceeding with any other legal action.

Section 15.4 If Tenant fails to comply with any of its obligations under this lease, Landlord may, at its option, cure such breach of this lease. All costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Landlord in that connection shall be paid by Tenant to Landlord as Additional Rent within fifteen (15) days after Tenant is billed therefor.

Section 15.5 Tenant shall also reimburse Landlord for all costs and expenses (including reasonable attorneys' fees and disbursements), incurred by Landlord in connection with a default by Tenant, including instituting, prosecuting and/or defending any legal action by or against Tenant whether a non-payment or holdover proceeding, or other proceeding, if Landlord prevails in such legal action, together with interest thereon at the Default Rate (hereinafter defined). Any attorney's fees shall be calculated at the prevailing market hourly rate.

Section 15.6 The failure of Landlord to seek redress for a Default, or of Landlord or Tenant to insist upon the strict performance of any term of this lease, shall not prevent Landlord from redressing a subsequent Default or Landlord or Tenant from thereafter insisting on strict performance. The receipt by Landlord of the Rent with knowledge of a Default or Tenant's failure to strictly perform under this lease shall not be deemed a waiver of the Default or failure. No term of this lease shall be considered waived by Landlord or Tenant unless the waiver is in a writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the next installment of the Rent, or as Landlord may elect to apply same. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

Section 15.7 If Tenant fails to pay any installment of the Fixed Rent or any Additional Rent within five (5) days after the due date thereof, in addition to any other right or remedy of Landlord, Tenant shall pay to Landlord within fifteen (15) days following Landlord's invoice (a) a late charge equal to the greater of one hundred (\$100.00) dollars and four (4%) percent of the amount unpaid and (b) interest at the rate (the "Default Rate") of twelve (12%) percent per annum on the amount unpaid, from the date the payment was first due to and including the date paid and, (c) and Landlord's bank charges for the return of any Tenant's check.

Section 15.8 All legal actions relating to this lease shall be adjudicated in the courts of the State of New York having jurisdiction in the county in which the Premises is located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this lease or any guaranty of Tenant's obligations under this lease, and Tenant shall not assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for Tenant or any principal of Tenant.

Article 16. Security

Section 16.1 Tenant has deposited with Landlord, as security for Tenant's compliance with this lease, the Security, in cash. If Tenant defaults in performing any of its obligations under this lease, Landlord may use all or any portion of the Security to cure such breach or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. If Landlord uses all or any part of the Security, Tenant shall, within fifteen (15) days following Landlord's notice, deposit with Landlord an amount sufficient to restore the full amount of the Security. Landlord shall not, unless required by any Laws, pay interest to Tenant on the Security, and if Landlord is required to maintain the Security in an interest bearing account or pay any interest to Tenant, Landlord shall retain the maximum amount of interest permitted under any Laws (which Landlord may withdraw and retain annually or at any other times). Tenant shall not assign (other than to a permitted assignee of this lease) or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured breach, the

Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease.

Article 17. Notices; Consents and Approvals

Section 17.1 Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at its Notice Address. Either party may, by notice given in accordance with this Article, designate a different Notice Address, which address change shall become effective upon receipt, the date rejected or the date of attempted delivery (if the receiving party is not present).

Section 17.2 Any notice or other communication sent as provided in this Article shall be effective (a) on the date received, the date rejected, or the date of attempted delivery (if the receiving party is not present) if sent by overnight courier service, or (b) three (3) business days after mailing by registered or certified mail.

Section 17.3 If any provision of this lease requires Landlord's consent or approval, such consent or approval shall be effective only if given in writing.

Section 17.4 Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's attorney with the same force and effect as if signed and given by Landlord.

Article 18. No Representations; Liability; Tenant Indemnity

Section 18.1 Landlord has not made any warranties, representations, statements or promises with respect to the Premises, the Real Property, the Building systems, any Additional Rent, any Laws or any other matter, unless expressly set forth in this lease. This lease contains the entire agreement between Landlord and Tenant with respect to the subject matter of this lease, and any previous agreements between Landlord and Tenant are merged in this lease, which alone expresses their agreement. Tenant is entering into this lease after full investigation, and is not relying on any warranties, representations, statements or promises made by Landlord or any other person not expressly set forth in this lease, and is not acquiring any rights of any nature, by implication or otherwise, except as expressly set forth in this lease.

Section 18.2 Neither Landlord nor its officers, employees, agents, or contractors, if any, shall be liable for any injury, damage or loss to Tenant, Tenant's Property, Tenant's Work, Tenant's business or to any other person or property resulting from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, Landlord's managing agent, if any, or their respective employees, agents or contractors, subject to Section 13.4. Tenant agrees to fully defend and indemnify Landlord for any claim made against Landlord for injury, damage, or loss arising out of Tenant's use or occupation of the Premises, including any Tenant's Work.

Section 18.3 In no event shall Landlord, its affiliates, agents, partners, members, officers, directors and principals, disclosed or undisclosed, be liable for incidental or consequential damages or have any personal liability under or in connection with this lease. No assets of Landlord shall be subject to lien, levy, execution or other enforcement procedure for the

satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

Section 18.4 If Tenant requests Landlord's consent or approval and Landlord fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold its consent.

Section 18.5 This lease and the obligations of Tenant to pay the Rent and perform Tenant's other obligations under this lease are separate, distinct and independent of Landlord's obligations under this lease.

Section 18.6 Tenant's obligations shall not be waived, delayed or otherwise affected in any manner, and Landlord shall have no liability, if Landlord is unable to comply with, or is delayed in complying with, any of Landlord's obligations under this lease by reason of any strike, labor trouble, accident, war, government action, Laws or other cause beyond Landlord's control.

Section 18.7 Tenant shall not perform or permit to be performed any act which may subject Landlord, its partners, members, managers, officers, employees, agents and principals to any liability. Tenant shall, to the extent not caused by the negligence or willful misconduct of Landlord or its contractors or agents, indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, from and against all (a) claims arising from any act or omission of Tenant, its subtenants, contractors, agents, employees, invitees or visitors, (b) claims arising from any accident, injury or damage to any person or property in the Premises during the Term or when Tenant is in possession of the Premises, and (c) Tenant's failure to comply with Tenant's obligations under this lease (whether or not a Default), and all liabilities, damages, losses, fines, violations, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with any such claim or failure.

Article 19. End of Term

Section 19.1 On the Expiration Date (a) Tenant (and all other occupants) shall vacate and surrender the Premises, leaving the Premises vacant, broom clean and in good order and condition, except for ordinary wear and tear and damage for which Tenant is not responsible under this lease, and otherwise as may be required by this lease, and (b) Tenant shall remove all of Tenant's Property and any Tenant's Work required to be removed pursuant to this lease. If the last day of the Term is not a business day, this lease shall expire on the immediately preceding business day. Tenant waives, for itself and for any person claiming under Tenant, any right which Tenant or any such person may have under Section 2201 of the New York Civil Practice Law and Rules or under any similar Laws.

Section 19.2 If the Premises are not vacated and surrendered in accordance with this lease (whether by Tenant or any occupant related to Tenant), on the date required by this lease, Tenant shall indemnify and hold harmless Landlord against all losses, costs, liabilities, claims, damages and expenses incurred by Landlord in connection therewith, including

reasonable attorneys' fees and disbursements whether in an action by or against Tenant or a third party, and including claims and liabilities of Landlord made by any succeeding tenant(s) or other third party. In addition, Tenant shall be liable to Landlord for per diem use and occupancy in respect of the Premises at a rate equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant agree is the Rent that is contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

Section 19.3 If during the last ninety (90) days of the Term, Tenant removes substantially all of Tenant's Property from the Premises, Landlord or any person designated by Landlord may immediately enter and alter the Premises, without releasing Tenant from any obligation or liability under this lease, including the payment of Rent, or incurring any liability or obligation to Tenant.

Section 19.4 Unless otherwise specifically provided: (a) any obligation of Landlord or Tenant under this lease which by its nature or under the circumstances can only be, or by the terms of this lease may be, performed after the Expiration Date; (b) any liability for a payment with respect to any period ending on or before the Expiration Date; and, (c) all indemnity and hold harmless provisions in this lease, shall survive the Expiration Date.

Article 20. Miscellaneous

Section 20.1 Patriot Act. Tenant certifies and represents, both on the date of execution and delivery of this lease and during the entire Term, that neither Tenant nor any subtenant of Tenant nor any person or entity that owns any direct or indirect beneficial interest in Tenant or such subtenant is, or is acting directly or indirectly for or on behalf of, any group, entity, or nation, named by any Executive Order of the President of the United States or the United States Treasury Department as a terrorist or other "Specially Designated National and Blocked Person," or other person, entity, nation or transaction banned or blocked pursuant to any law, order, rule or regulation that is enforced or administered by the United States Office of Foreign Assets Control or any successor entity, agency or department (an "SDN"). If Tenant is a privately owned entity, the persons listed on Exhibit I annexed hereto constitute all of the officers, directors, general partners, and persons and/or entities owning twenty-five (25%) percent or more of the shares, membership interests, or partnership interests (as the case may be) of Tenant (collectively, the "Principals") as of the date of execution and delivery of this lease. If Tenant is comprised of more than one person or entity, the foregoing certification is made as to each person and entity comprising Tenant. Any renewal right contained in this lease is void and of no force or effect if Tenant, or any of the persons and/or entities comprising Tenant (if Tenant is comprised of more than one person or entity), or any of the Principals of Tenant, are listed as an SDN at the date of renewal. If Tenant is a privately owned entity, Tenant shall, from time to time, furnish Landlord with a list of Principals of Tenant.

Section 20.2 General. (a) Subject to the provisions of this lease, this lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns. No person is intended to be a third party beneficiary of this lease.

(b) This lease may not be changed or terminated, in whole or in part, except in a writing signed by Landlord and Tenant.

(c) Notwithstanding any provision of this lease, or any Laws, to the contrary, or the execution of this lease by Tenant, this lease shall not bind or benefit Landlord or Tenant, unless and until this lease is signed and delivered by both Landlord and Tenant.

(d) No act or omission of Landlord or Tenant, or their respective employees, agents or contractors, including the delivery or acceptance of keys, shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless it is in a writing signed by Landlord.

(e) The captions in this lease are for reference only and do not define the scope of this lease or the intent of any term. All Article and Section references in this lease shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this lease.

(f) If any provision of this lease, or the application thereof to any person or circumstance, is invalid or unenforceable, then in each such event the remainder of this lease or the application of such provision to any other person or any other circumstance (other than those as to which it is invalid or unenforceable) shall not be affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by all applicable Laws.

(g) There shall be no presumption against Landlord because Landlord drafted this lease or for any other reason.

(h) If there is then no Default, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming under Landlord, subject however, to the terms of this lease.

(i) If Tenant is comprised of two or more persons, the liability of those persons under this lease shall be joint and several. Wherever appropriate in this lease, personal pronouns shall be considered to include the other gender and the singular to include the plural.

(j) Tenant shall not record this lease or any memorandum of this lease.

(k) This lease shall be governed by, and construed in accordance with, the Laws of the State of New York.

In Witness Whereof, Landlord and Tenant have executed this lease on the date of this lease.

Landlord

The City of Long Beach

By: 

Name: Jack Schnirman

Title: City Manager

Tenant

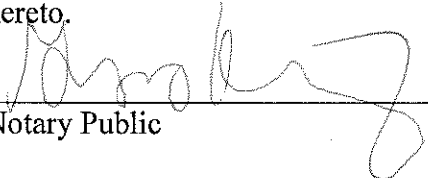
Gregg LaPenna

By: 

Name: Gregg LaPenna

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this 28th day of April, in the year 2016, before me personally came Gregg LaPenna, to me known, who, being by me duly sworn did depose and say that he/she has a principal place of business at 916 West Beech Street, Long Beach, New York; and that he/she signed his/her name hereto.

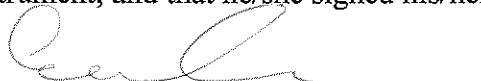


Notary Public

GREGORY KALNITSKY
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KA6306137
Qualified in Nassau County
My Commission Expires June 16, 20

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this ~~27~~²⁹ day of April, in the year 2016, before me personally came Jack Schnirman, to me known, who, being by me duly sworn did depose and say that maintains a principal place of business at 1 West Chester Street, Long Beach, New York; that he/she is the City Manager of the City of Long Beach, the municipal corporation described in and which executed the above instrument; and that he/she signed his/her name hereto.



Notary Public

ERASMIA AMOROSA
Notary Public, State of New York
No. 01AM6070030
Qualified in Nassau County
Commission Expires Feb. 19, 2018

Exhibit A

City Council Resolution

The following Resolution was moved by Pres. Torres
and seconded by Ms. Moore :

Resolution Authorizing the City Manager to Enter into
Agreements for the Operation of Beach Concessions at
Various Locations throughout the City of Long Beach.

WHEREAS, in response to community feedback, the City has provided more concessions situated along the beach and on the boardwalk in order to provide residents and visitors with an abundance of choices in convenient locations, a greater diversity of food products, excellent quality foods with a local flavor, while showing preference to local food merchants and/or those who have previously provided food services; and

WHEREAS, this summer there will be five more concessions located in our new buildings up on the boardwalk and it is the City's desire to continue to provide a wide variety of foods and refreshments at various locations throughout the City; and

WHEREAS, after due advertisement therefore, proposals were received in the Office of the City Purchasing Agent on Wednesday, February 10, 2016, and the following vendors submitted proposals that best meet the needs and desires of the community all while offering diverse, delicious and quality local fair:

Concession Buildings:

Grand: Beach Local Café, Sean Sullivan, 97 Wisconsin Street, Long Beach, New York;
National: Gentle Brew Coffee Roasters, 151 East Park Avenue, Long Beach, New York;
Edwards: Mavericks, c/o Sand Castle LBNY, Inc., 740 West Bay Drive, Long Beach, NY;
Riverside: Skudin Surf Center, 218 East Park Avenue, Long Beach, NY;
Lincoln: Cones and Cups on the Boardwalk, c/o Lookout Deli, 1 Lido Boulevard, Pt. Lookout, New York;
Pacific: Whales Tale/Lookout Deli, 1 Lido Boulevard, Pt. Lookout, New York;

Riverside Food Market: (Food Trucks)

* Corazon de Cuba, 25 E. Park Avenue, Long Beach, New York
* Tiki, Inc. d/b/a Lido Kosher Deli, 641 E. Park Avenue, Long Beach, New York
* L Sano Corp., 157 E. Park Avenue, Long Beach, New York
* Beach Buns & Bites by Sugo Café Corp., 62 W. Park Avenue, Long Beach, New York
* Let's Get Delicious, 3355 Merrick Road, Wantagh, New York
* NY ACAI Co., P.O. Box 769, Point Lookout, New York
* Lookout Deli/The Whales Tale, 1 Lido Boulevard, Point Lookout, New York
* Don Juan-Taco Tuesday Truck, 124 East Park Ave., Long Beach, New York
* Poseidon's Kitchen, 99 Grand Avenue, Rockville Centre, New York

On the Beachfront:

* Mobile on the Beach between Maple and Neptune Boulevards:
Lookout Deli/Whales Tale, 1 Lido Boulevard, Point Lookout, New York 11569
* Neptune at the Beach Entrance:
Hakeem Josephs-Mr. Flavors Ice Cream, 1321-32 155th St., Jamaica, New York 11434

- * Edwards on the Beach:
Odie's Ocean Grill, 25 Franklin Blvd., Long Beach, New York
- * Mobile on the Beach between Nevada cast to Neptune:
Beachside Services, NY Ltd., 740 W. Bay Drive, Long Beach, New York 11561

On the Boardwalk

- * At New York, Lindell, Washington, Lafayette, Laurelton, Magnolia, Edwards, Riverside (ice cream only), Long Beach, Monroe and Franklin:
Beachside Services, NY Ltd., 740 W. Bay Drive, Long Beach, New York 11561
- * At National:
Cultured: Yogurt & Waffle Bar, 25 Franklin Blvd., Long Beach, New York 11561
- * At Riverside:
Skudin Surf Shack, 218 East Park Avenue, Long Beach, New York 11561
- * At Lincoln:
Cones and Cups on the Boardwalk, c/o Lookout Deli, 1 Lido Boulevard, Pt. Lookout, New York

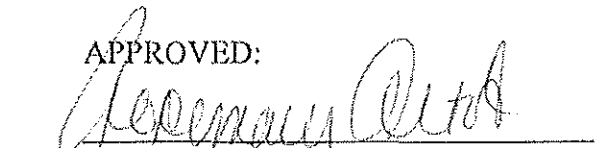
NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and he hereby is authorized to enter into agreements with the above vendors for the 2016 summer season for a total fee not less than \$181,500, plus a reimbursement of \$6,840 to be paid to the City for the cost to maintain and keep clean the Shoregasboard area, for a total of not less than \$188,340 for the summer season; and be it further

RESOLVED, that said agreements shall contain such other terms, conditions and provisions as the City Manager and the Commissioner of Public Works shall deem necessary and proper.

APPROVED:

VOTING:

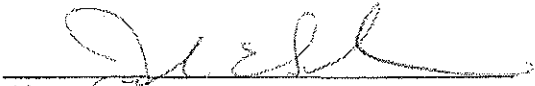


 City Purchasing Agent

Council Member Eramo - AYE

APPROVED AS TO ADMINISTRATION:

Council Member Goggin - AYE

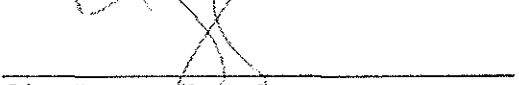


 City Manager

Council Member Mandel - ABSENT

APPROVED AS TO FUNDS:

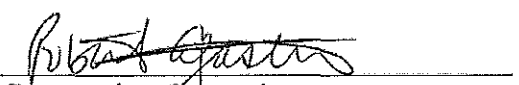
Council Member Moore - AYE



 City Comptroller

President Torres - AYE

APPROVED AS TO FORM & LEGALITY:



 Corporation Counsel

Exhibit B

Fixed Rent

Lincoln Concession Building

2016.....\$12,000

2017.....\$12,360

2018.....\$12,730

2019.....\$13,112

2020.....\$13,506

Pacific Concession Building

2016.....\$12,000

2017.....\$12,360

2018.....\$12,730

2019.....\$13,112

2020.....\$13,506

Exhibit C

Premises

(not drawn to scale)

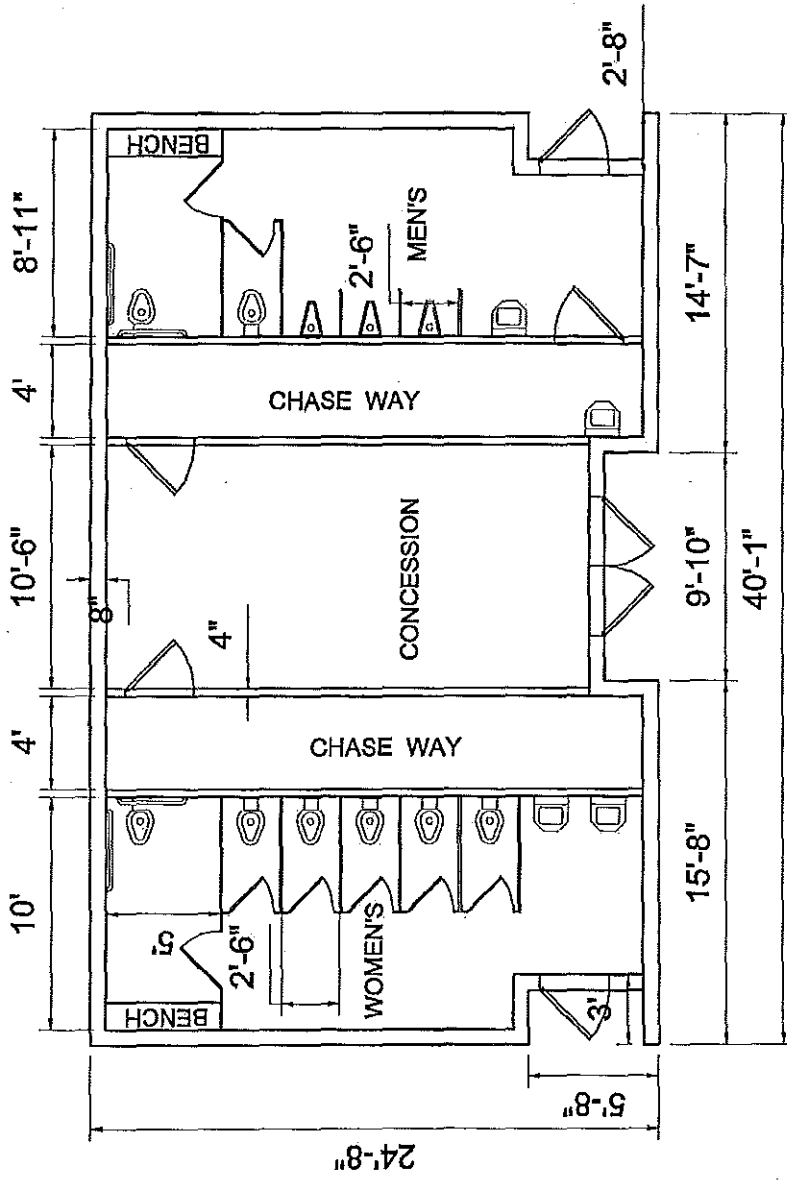


Exhibit B
Lincoln Blvd.

Exhibit D

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT made as of the 27th day of April, 2016, between the City of Long Beach ("Landlord") and Gregg LaPenna ("Tenant").

RECITALS

- A. Landlord and Tenant are landlord and tenant under that certain lease dated as of April 27, 2016, (the "Lease") pursuant to which Landlord has leased certain premises more particularly described therein to Tenant (the "Premises"). (Capitalized terms not described herein are described in the Lease.)
- B. The Commencement Date has occurred, the Fixed Rent Commencement Date and the Expiration Date are now known and Landlord and Tenant wish to confirm the dates.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

- 1. The Commencement Date is May 1, 2016.
- 2. The Fixed Rent Commencement Date is May 1, 2016.
- 3. The Expiration Date is September 15, 2020.
- 4. This Commencement Date Agreement is the document that Landlord and Tenant intended to execute pursuant to the Lease.

5. Landlord and Tenant hereby ratify and confirm the terms and provisions of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this instrument as of the date above written.

City of Long Beach, Landlord

By: _____


Jack Schirman, Authorized Signatory

Gregg LaPenna, Tenant

By: _____


Gregg LaPenna

Exhibit E
Rules

The following are the Rules adopted by Landlord, as of the date of the lease to which these Rules are attached, with respect to the Building. A violation of any of the following Rules shall be deemed a material breach of the lease.

1. Tenant shall not engage in any conduct which will unreasonably interfere with the business, use and occupancy of any other tenant at the Building or Real Property. Tenant shall not make or permit to be made any unseemly or disturbing noises or disturb or interfere with the occupants of the Building, Real Property, or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, television, talking machine, bullhorn or other amplifying device, noise, or in any other way.
2. Tenant shall not store any materials or objects outside of the Premises.
3. Tenant shall not drill holes into the exterior walls or roof of the Building or Premises, nor will Tenant attach wires or other devices to the exterior walls or roof without the prior written consent of the Landlord. No curtains, blinds, shades, or screens shall be attached to or hung upon, or used in connection with, any windows or doors of the Premises without the prior written consent of Landlord.
4. Tenant shall not use the bathrooms or other Building systems or any plumbing fixtures for any purpose or in any manner other than for the purposes and in the manner they were intended to be used, and no rubbish, rags, paper towels or other inappropriate materials shall be thrown therein. Tenant shall keep the interior heat in the Premises at such a level that pipes will not freeze in the winter months. Any and all damage resulting from any failure to comply with the foregoing requirements shall be borne by the tenant who, or whose agents, employees, contractors, visitors, or licensees have, caused such damage.
5. Landlord shall have the right to prohibit any advertising by any Tenant which in Landlord's sole judgment, tends to impair the reputation of the Premises or the desirability of the Ocean Beach Park. Upon notice from Landlord, any such advertising shall immediately cease.
6. Tenant shall not bring into, or permit in, the Premises any animals (except service animals for the disabled).
7. No hand trucks or similar devices may be used for moving articles in or out of the Premises, except those equipped with rubber tires, side guards and such other safeguards as Landlord requires.
8. Under no circumstances shall Tenant allow or cause any type of vehicle to be used on the Ocean Beach Park without the prior written consent of the Commissioner of Public Works of the City of Long Beach, consent to be issued at the Commissioner's sole discretion.
9. Tenant shall, at all times, keep a copy of all keys for the Premises with the Landlord together with instructions for disarming any security systems. No additional locks or bolts of any kind shall be placed upon any of the doors or

windows by Tenant, nor shall changes be made to any existing locks or the mechanisms thereof without the prior written consent of Landlord. Upon the termination of the tenancy, Tenant shall restore all keys to the Landlord including keys to stores, bathrooms, and/or offices.

10. Tenant must adequately staff Concession stands to provide proper and appropriate service to be determined in the sole discretion of the Commissioner of Public Works.
11. Tenant shall file a list of items to be sold and the prices to be charged with the Landlord and shall post a price list reflecting same at the Premises.

Exhibit F

Terms and Conditions of Request for Proposal



CITY OF LONG BEACH

PURCHASING DEPARTMENT

1 WEST CHESTER STREET, ROOM 509

LONG BEACH, NY 11561

(516) 431-1006

FAX: (516) 431-1839

CONTRACT DOCUMENTS

FOR

REQUEST FOR PROPOSALS

OPERATION OF BEACH CONCESSIONS

February 10, 2016

**CITY OF LONG BEACH
NEW YORK**

CITY MANAGER

JACK SCHNIRMAN

CITY COUNCIL

LEN TORRES, PRESIDENT

**ANTHONY ERAMO, V.P.
SCOTT J. MANDEL**

**EILEEN J. GOGGIN
ANISSA D. MOORE**

CORPORATION COUNSEL

ROBERT M. AGOSTISI

ATTENTION*****

Read thoroughly "Instructions to Proposers" and the legal advertisement relative to proposal and other details on submitting offers.

If proposer is a partnership, all partners must execute the proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.

If a proposer is a limited liability business entity, the President and Secretary shall execute the proposal.

The Corporate Seal must be affixed.

In the event that this proposal is executed by a Vice-President in lieu of the President, please attach hereto a certified copy of that section of Corporate By-Laws / LLC Operating Agreement authorizing the Vice-President to execute contracts of this kind.

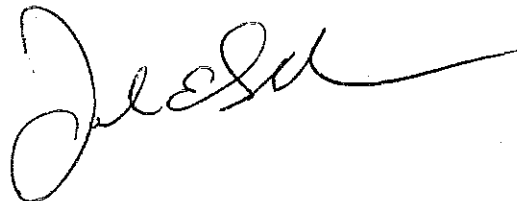
NOTICE TO PROPOSERS

PLEASE TAKE NOTICE that sealed proposals will be received in Room 509, Purchasing Department, City Hall, Long Beach, New York up until 3:00 p.m. on Wednesday, February 10, 2016 for the following:

OPERATION OF BEACH CONCESSIONS

Specifications may be obtained on the City's website at www.longbeachny.gov or by contacting the Purchasing Department, Room 509, City Hall, Long Beach, New York (516-431-1006). The City of Long Beach reserves the right to reject any and all proposals, to waive all formalities on same and to accept those proposals which are in the best interest of the City of Long Beach.

Dated: Long Beach, New York
January 15, 2016

A handwritten signature in black ink, appearing to read 'Jack Schnirman', with a long horizontal flourish extending to the right.

JACK SCHNIRMAN
City Manager

**SPECIFICATIONS FOR OPERATION OF
BEACH CONCESSIONS**

Objective

The City of Long Beach is seeking proposals for the operation of beach concessions at various locations throughout the City of Long Beach. Proposers should provide a proposal for **each location individually**. Proposers may bid on as many individual locations as they desire. *As part of its economic development program, the City is looking to extend the season. The City will seek to promote any business in these locations.* Such locations shall include the following areas:

Category 1 – Concession Buildings
(Ability to cook - electric, sanitation and water/sewer provided.)

- A. Operation of the concession building located at Grand Boulevard and the Boardwalk (see Exhibit “A”);
- B. Operation of the concession building located at Edwards Boulevard and the Boardwalk (see Exhibit “A”);
- C. Operation of concession building located at Riverside Boulevard and the Boardwalk (see Exhibit “A”);
- D. Operation of concession building located at Lincoln Boulevard and the Boardwalk (see Exhibit “B”);
- E. Operation of concession building located at Pacific Boulevard and the Beach.

CONCESSION BUILDING SITE VISITS

Site visits pertaining to **Category 1-A through D - Concession Buildings**, will take place on **Wednesday, January 27, 2016, at 10:00 a.m.** Interested parties should meet at the **Concession Building located at Riverside Boulevard and the Boardwalk.**

Category 2 – Mobile Vending

- A. Right to sell refreshments along the beach west of New York Avenue;
- B. Right to sell refreshments along the beach east of Neptune Boulevard.

Category 3 – Stationary Carts or Small Stations
(Examples: Ice Cream, Refreshments, Pre-Packaged Foods)

- A. New York Avenue;
- B. Grand Boulevard;
- C. Lindell Boulevard;
- D. Washington Boulevard;
- E. Lafayette Boulevard;
- F. Laurelton Boulevard;
- G. Magnolia Boulevard;
- H. National Boulevard;
- I. Edwards Boulevard;
- J. Riverside Boulevard;
- K. Long Beach Boulevard;
- L. Monroe Boulevard;
- M. Lincoln Boulevard; and
- N. Franklin Boulevard.

Category 4 - Food Trucks/Trailers
(Ability to cook - electric, sanitation and water/sewer provided.)

- A. Neptune Boulevard on the beach;
- B. Various locations at the Riverside Food Market (a/k/a Shoregasboard).¹

¹ The cost of providing staff to clean the Shoregasboard location (Category 4-B above) shall be imposed upon the Shoregasboard vendors in the form of an enhanced permit fee.

The City reserves the right to award each of these locations either individually or as a whole. Such determination will be made after opening of the proposals.

Further, the City reserves the right to designate exclusivity brands and/or products that must be sold.

Background and Available Information

1. City of Long Beach employees and their immediate families may not bid on these beach concessions.
2. After receipt and review of proposals, the City may elect to allow for the sale and consumption of alcohol in its sole discretion at certain of the above locations (**Category 1**) under strict guidelines. It would be the awarded vendor's responsibility to maintain all applicable permits, licenses, etc. with any and all appropriate authorities. No tobacco products may be sold at these concessions; nor will the rental of umbrellas or chairs be permitted.
3. **No proposals will be accepted from anyone who is in arrears for prior expenses or fees owed to the City.** In addition, no proposals will be accepted from any individual or entity that is in violation of the City's Code of Ordinances. Compliance with the City's Code of Ordinances, as well as all other applicable laws, rules, and regulations are continuing obligations of the bidders.
4. The beach is open to the public on weekends only between Memorial Day and the third weekend of June; and from the commencement of the Beach Park Season and everyday thereafter until Labor Day. **All concessions must be open and operational when the Beach Park is open.** In addition, all concessions will be allowed to operate from May 1st to September 30th (the "Prime Season") during the hours of 9:00 a.m. to 9:00 p.m. seven days a week. All concessions must be closed by 9:00 p.m. each night. During City sponsored concerts, vendors may remain open until 10:00 p.m. As stated above, the City is seeking to extend the season and will help promote the businesses located therein through its economic development program. Extra consideration will be given to any proposer who seeks to extend the season through the City's economic development program. Accordingly, hours of operation for periods other than the Prime Season shall be negotiated between the City and the awarded vendor(s).
5. For all locations that are part of **Category 4**, each of the successful proposers **must** provide and utilize their own waste water tanks and electrical hook-ups.

6. No stationary sales shall be permitted, except as stated above (**Category 3**).
7. Proposers must submit a resume in writing of their experience in the relative business along with their proposal. **Unless a resume is submitted, the proposal will not be considered.**
8. Signs may be permitted. Drawings of proposed signs including dimensions, colors and wording, shall be submitted to the City for approval in its sole discretion, prior to construction and installation at each of the above Concession locations. Any and all attachment points on the Concession Buildings for the purpose of placing a sign shall be approved by the City through its Commissioner of the Department of Public Works prior to installation.
9. The successful proposer(s) shall obtain a Mercantile/Peddler License from the City Clerk of the City of Long Beach.
10. The successful proposer(s) shall be responsible for all permits, fees and other costs associated with the proper operation of the concession.
11. The successful proposer(s) shall be required prior to the commencement of the operation of any Concession awarded hereunder to obtain and maintain all required approvals and permits pertaining to Food Concessions including, but not limited to, Nassau County Department of Health.
12. Access to the public bathrooms and showers shall NOT be hindered by any concession operation.
13. The successful proposer(s) shall not interfere with the operation of the gates to the Ocean Beach Park or separate entrances pursuant to Section 18-17 of the Code of Ordinances of the City of Long Beach.
14. Adequate insurance policies shall be maintained by the successful proposer(s) at all times in compliance with the Insurance Requirement Section set forth below (Page 13). Copies of all policies shall be provided to the City with the City named as certificate holder and additional insured prior to commencement of the operation of any Concession awarded hereunder.
15. Proposers must include a sworn statement setting forth whether the corporate bidder, its principals or employees (acting on proposer's behalf) have been convicted, or pled guilty to any crime or violation within the past five (5) years. Set forth the relevant facts and circumstances surrounding said conviction. Failure to provide this statement shall result in the rejection of the proposal. Any such conviction shall not necessarily be determinative of whether an award shall be made.

16. Staffing of the concessions shall be adequate at all times to provide proper service. Adequate staffing shall be determined at the sole discretion of the City. Employment shall be obtained from local work forces as much as possible. Concessions must be open any day the beach is open.
17. The concessionaires must supply all mobile trucks, pushcarts and/or equipment for the beach walkers, where applicable.
18. The lessee shall file a list of items to be sold and the prices to be charged. The City reserves the right to restrict or prohibit the sale of any item. No tobacco, drugs or other dangerous items shall be offered for sale.
19. The successful proposer(s) shall conspicuously post a price list at the site of each concession whenever said concession is in operation.
20. The term of the agreement for concessions located in Categories 1, 2 and 3 above shall be for a period of up to five (5) years, with an option to renew for a second term of up to five (5) additional years based on the consent of the City, in the City's sole discretion. The term of the agreement for Category 4 concessions shall be for one (1) year (May 1st through September 30th) with two (2) separate options to renew for one (1) year (May 1st through September 30th) periods based on the consent of the City, in the City's sole discretion. For operation of the Category 4 concessions outside of Prime Season, additional fees will be incurred.
21. The City reserves the right, in its sole discretion, to:
 - Suspend the contract at any time due to inadequate or poor vendor performance.
 - Enter the unit and inspect same for compliance with Local, County, State and Federal Codes/Laws at any time.
 - Remove from the concession, at any time, vendor employees or persons who are violating any law, code, rule or ordinance.
22. The successful proposer(s) for Beach Concession Areas Categories 1 and 4 above shall maintain the area around each of the concessions in a clean and proper way subject to violations being imposed. **Garbage and trash shall be properly stowed and disposed of in accordance with Section 25 of the City's Code of Ordinances and as directed by the City. Failure to comply with such Section will subject all violators to prosecution in the Long Beach City Court. If they plead guilty or are found guilty after trial of committing such a violation, such concessionaire shall be subject to a penalty of \$750.00 in addition to any fines imposed by the Long Beach City Court. Failure to immediately remedy the situation may jeopardize the vendor's right to continue to operate any such concession(s) for the remainder of the contract period.** City owned receptacles both on the boardwalk and the beach may not be used. The successful proposer(s) shall

provide chairs, tables and umbrellas for their patrons.

23. All Concession Stands shall be kept clean of graffiti. The lessee has 24 hours to correct a graffiti situation before the City corrects it and bills the lessee for time and materials.
24. All Concession Stands shall be responsible for costs associated with water, sewer, electric and sanitation.
25. No storage is allowed at any time; unless permission is granted by the City in writing. Storage can only be used inside the concession buildings by the vendor awarded such.
26. Absolutely no generators may be used in conjunction with any vending.
27. Motor vehicles are not allowed on the boardwalk even to facilitate the location of vendor wagons. Electric vehicles may be permitted only upon prior written consent in the sole discretion of the City, and with a City escort.
28. Carts and wagons will not be allowed to block access to the Beach Park at any entrance.
29. The terms of this proposal are incorporated in and shall be included as part of the agreement being executed.
30. In the event that the vendor is found by the City to have violated its Concession agreement with the City or any terms or specifications contained in this Request for Proposals, in addition to penalties set forth elsewhere in this document, the penalties shall be as follows:
 - 1st violation – Warning
 - 2nd violation - \$100 Payment to City's General Fund
 - 3rd violation - \$400 Payment to City's General Fund
 - 4th violation – TERMINATION OF THIS AGREEMENT
31. During a City-sponsored event in the leased premises (i.e., Arts & Crafts festival and the City-sanctioned Historical Society Arts and Crafts Festival), the Tenant(s) located in such area(s) may have, at no additional charge, their concession(s). Hours of operation and rules of the event coordinators must be adhered to. Any questions concerning location on any portion of the Ocean Beach Park shall be determined by the City.
32. During certain events sponsored by not-for-profit organizations, the City may in its sole discretion forbid the operation of concessions during such events.

33. Subletting of Contract:

No contract shall be assigned or any part of the same subcontracted without the written consent of the City and in no case shall such consent relieve the Contractor from his obligation, or change the terms of the contract.

Criterion

Diversity of Product - The proposer's overall selection, including diversity of products will be evaluated under this criterion. Also considered will be past performance in ventures of this or similar nature.

Quality of Product – The proposer's selection, including quality of product, will be evaluated under this criterion. Any references for past performance for quality of product in ventures of this or similar nature should be submitted herein.

Local Preference—Local merchants and/or those who have previously provided services will be given additional credit under this criterion.

Extended Season – Proposer(s) who seeks to extend the season through the City's economic development program will be given additional credit under this criterion.

Price Response – The proposer's costing proposal will be weighed heavily under this criterion.

General Requirements

Proposals will be received up to 4:00 p.m. on Wednesday, February 10, 2016. An original and six (6) copies of all proposals must be submitted in a sealed envelope with title of RFP, due date and time, and name of proposer so marked clearly on the outside envelope. Costing sheet must be submitted in separate envelope marked with title of RFP, due date and time, and name of proposer so marked clearly on the outside of

envelope and the words "COSTING PROPOSAL". Each proposer must submit two (2) envelopes. Costing proposal must contain a deposit of not less than 10% of the total amount of the first year's fee. Proposals should be sent to:

**Purchasing Department
City of Long Beach
1 West Chester Street, Room 509
Long Beach, NY 11561**

Proposers must submit a 10% deposit of the annual fee, payable by certified check or money order, with their proposal. Please be advised that electric, sanitation and water services will be supplied by the City of Long Beach, where applicable. **The fees for usage of such utilities are the responsibility of the vendor(s).** The balance of the year's fee must be paid upon execution of an agreement with each successful proposer.

The decision of the City Council as to which proposal(s) offered is in the best interest of the City of Long Beach shall be final. The City reserves the right to reject any and all proposals.

Proposals will only be considered from companies which have an established reputation in this field.

The City of Long Beach hereby notifies all proposers that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on grounds of race, color or national origin in consideration for an award.

Any changes to these specifications must be by written consent of both the successful vendor and the City of Long Beach. No oral, telegraph or telephone bids or modifications will be considered.

This RFP constitutes only an invitation to make a proposal to the City. The City reserves, holds, and may in its sole discretion exercise the following rights and options with respect to the RFP and subsequent agreement:

- To waive any informalities with respect to the submission requirements.
- To reject any or all proposals.
- To cancel this RFP with or without the substitution of another RFP.
- To supplement, amend, or otherwise modify this RFP, prior to the due date.
- To issue additional and or subsequent RFPs.

- To negotiate with the proposers for amendments or other modifications to their proposals.
- To select and enter into an agreement with a vendor or vendors whose proposal(s) best satisfies the overall interests of the City.

This RFP is not a strictly competitive bid. The City reserves the right to select a proposal or proposals, without the amount offered being the sole determinative factor. The City's decision-making process, which may include a public hearing before the City Council, will be discretionary and will be in the best interests of the City. The City Council will consider awards to responsible proposers, who best demonstrate relevant experience and expertise; who, upon evaluation of all proposals received, best responds to this Request for Proposals and who, in the judgment of The City of Long Beach, will best serve the public interest.

Insurance Requirements

- A) Workmen's Compensation Insurance – in accordance with the Laws of the State of New York.
 - B) Comprehensive General Liability Insurance
 1. Bodily Injury: \$1,000,000 each person, \$1,000,000 each occurrence.
 2. Excess Liability: \$5,000,000.
 - C) Personal Injury Liability Insurance – to protect the City from claims arising from the employees of the Concession owner and/or operator for damages of personal injury being described as willful torts, to wit: False arrest, detention and/or imprisonment, malicious prosecution, libel, slander and/or defamation of character, invasion of privacy, wrongful eviction and/or wrongful entry; for the amounts specified under the Comprehensive General Liability Insurance (sub-paragraph b. (1) (2).
2. "Hold Harmless" Clause – Responsibility for Injuries to Persons and Property:
- A) Concession owner and/or operator shall be solely responsible for all physical injuries (including death) to persons (including, but not limited to, employees of the concession owner and/or operator and employees of the City) or damage to property (including, but not limited to, property of the City or the concession owner and/or operator) occurring on account of or in connection with the performance of the work hereunder or sustained by any employee of

the concession owner and/or operator or other persons while at the site of the unit, and shall indemnify and save harmless the City from loss and liability upon any and all claims on account of such injuries to persons (including death) or damage to property, and from all costs and expenses in suits which may be brought against the City of Long Beach on account of any such injuries to persons or damage to property, irrespective of the actual cause of the accident and irrespective of whether it shall have been due to negligence of the concession owner and/or operator or negligence of the City, their respective agents, servants and employees.

- B) The obligation of the concession owner and/or operator shall be solely responsible for all injuries to persons or damage to property therein occurring on account of the performance of work under this contract whether due to negligence, fault or default of the concession owner and/or operator, and irrespective whether it shall have been due to negligence, fault, or default of the City, its respective agents, servants or employees. The concession owner and/or operator shall fully protect, indemnify and save harmless the City from loss and from liability upon any and all claims on account of such injuries to employees or other persons or damage to property, which may be brought against the City.
- C) The obligation of the concession owner and/or operator to indemnify and save harmless the City as hereinabove set forth is absolute and not dependent upon any question of negligence on the part of the concession owner and/or operator, the City, their respective agents, servants or employees. The approval by the City of the methods of doing the work or the failure of the City to call attention to improper or inadequate methods or to require a change in methods or to direct the concession owner and/or operator to take any particular precautions or to refrain from doing any particular thing shall not excuse the concession owner and/or operator in case of any such injury to persons or damage to property.

3. COST AND PROOF OF CARRIAGE OF INSURANCE

The concession owner and/or operator shall furnish the City with copies of all insurance policies, each of which shall contain the following provisions:

“Such insurance shall not be cancelled, terminated, modified or changed by concession owner and/or operator or Insurance Company, except on thirty (30) days prior written notice sent by the Insurance Company via certified mail to the City.”

3. SUITS AT LAW

The concession owner and/or operator shall indemnify and save harmless the City from and against all suits, claims, demand, or actions for any injury sustained or alleged to be sustained by any party or parties in connection with the concession or any part thereof or any commission or omission of the concession owner and/or operator, his employees or agents and in case of any such action shall be brought

against the City, the concession owner and/or operator shall immediately take charge of and defend the same at his own cost and expense.

4. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this lease shall be deemed to be inserted herein and the lease shall be read and enforced as though it were included here, and if through mistake or otherwise, any such provision is not inserted or if not correctly inserted, then, upon the application of either party, the lease shall forthwith be physically amended to make such insertion

6. QUALIFICATIONS FOR EMPLOYMENT

No person under the age of sixteen (16) years and no person currently serving sentence in a penal or correctional institution shall be employed to perform any work on the project under this lease. No person convicted of a sex-offense shall be eligible for employment. No person whose age or physical condition is such as to make this employment dangerous to his health or safety, or the health or safety of others, shall be employed to perform any work on/or in this concession; provided, however, that such restrictions shall not operate against the employment of physically handicapped persons, otherwise employable, where each person may be safely assigned to work which they can ably perform.

7. NON-DISCRIMINATION

There shall be no discrimination because of race, creed, religion, sex or color in the employment of persons for work under this agreement, whether performed by the lessee and/or operator. Neither shall the lessee and/or operator discriminate in any manner against or intimidate any employee hired for the performance of work under this agreement on account of race, creed, religion, sex or color.

8. PAYMENT OF EMPLOYEES

The lessee and/or operator shall pay each of his employees engaged in work in/or on this concession under this agreement in full (less deductions made mandatory by law) in cash or check, and not less often than once each week. The lessee shall comply with all wage laws and working conditions as required by the New York State Department of Labor.

9. REPRESENTATION OF LESSEE AND/OR OPERATOR

The lessee and/or operator represent and warrants:

- A. That it is financially solvent and that it is experienced in and competent to perform the type of work involved under this agreement and able to furnish

the beach concession unit, materials, supplies and/or equipment to be furnished for the work; and

- B. That it is familiar with all Federal, State, County and Municipal Laws, Ordinances and Regulations which may, in any way affect the work of those employed hereunder, including but not limited to any special acts relating to the work.
- C. That it is and will remain current with any payment to the City and does not owe the City any payment with respect to any obligation to the City.

10. THE CITY'S RIGHT TO STOP WORK OR TERMINATE CONTRACT, IF

A. The lessee and/or operator shall be adjudged bankrupt or make an assignment for the benefit of creditors, or

B. A receiver or liquidator shall be appointed for the lessee and/or operator for any of his property and shall not be dismissed within 20 days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days, or

C. The lessee and/or operator shall fail or refuse to regard laws, ordinances, or the instructions of the City or otherwise be guilty of a substantial violation of any provision of this lease, then and in such event, the City without prejudice to any other rights or remedy it may have, may on seven (7) days notice to the lessee and/or operator, terminate the employment of the lessee and/or operator and his rights to proceed either as to the entire lease or (at the option of the City) as to any portion thereof as to which delay shall have occurred, and take possession of the work and complete the work by lease or otherwise as the City may deem expedient.

CATEGORIES 1, 2 and 3

PROPOSAL FORM

PROPOSAL DATE: February ____, 2016

Proposal of _____

Hereafter referred to as "Bidder/Vendor" to the City Council of the City of Long Beach hereafter referred to as "owner".

Gentlemen:

The Bidder in compliance with your Request for Proposals for the rental of the Beach Concessions hereby agrees to the terms of the specifications attached hereto and proposes to pay the following seasonal rent to the City:

CONCESSION AREA _____

2016 Annual Rent for Concession Area _____ \$ _____ /per yr.

2017 Annual Rent for Concession Area _____ \$ _____ /per yr.

2018 Annual Rent for Concession Area _____ \$ _____ /per yr.

2019 Annual Rent for Concession Area _____ \$ _____ /per yr.

2020 Annual Rent for Concession Area _____ \$ _____ /per yr.

The balance of the 2016 rent is payable upon signing of a contract with the City. For subsequent years, the annual fees will be due on the 1st of January of each consecutive year.

FIRM: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

CATEGORY 4

PROPOSAL FORM

PROPOSAL DATE: February _____, 2016

Proposal of

Hereafter referred to as "Bidder/Vendor" to the City Council of the City of Long Beach hereafter referred to as "owner".

Gentlemen:

The Bidder in compliance with your Request for Proposals for the rental of the Beach Concessions hereby agrees to the terms of the specifications attached hereto and proposes to pay the following seasonal rent to the City:

2016 Annual Rent (May 1 - September 30 th)	\$ _____
January, 2016 Additional Rent	\$ _____
February, 2016 Additional Rent	\$ _____
March, 2016 Additional Rent	\$ _____
April, 2016 Additional Rent	\$ _____
October, 2016 Additional Rent	\$ _____
November, 2016 Additional Rent	\$ _____
December, 2016 Additional Rent	\$ _____

TOTAL 2016 RENT \$ _____

2017 Annual Rent (May 1 - September 30 th)	\$ _____
January, 2017 Additional Rent	\$ _____
February, 2017 Additional Rent	\$ _____
March, 2017 Additional Rent	\$ _____
April, 2017 Additional Rent	\$ _____
October, 2017 Additional Rent	\$ _____
November, 2017 Additional Rent	\$ _____
December, 2017 Additional Rent	\$ _____

TOTAL 2017 RENT \$ _____

2018 Annual Rent (May 1 - September 30th) \$ _____

January, 2018 Additional Rent \$ _____
February, 2018 Additional Rent \$ _____
March, 2018 Additional Rent \$ _____
April, 2018 Additional Rent \$ _____
October, 2018 Additional Rent \$ _____
November, 2018 Additional Rent \$ _____
December, 2018 Additional Rent \$ _____

TOTAL 2018 RENT

\$ _____

The balance of the 2016 rent is payable upon award by the City. For subsequent years, the annual fees will be due on the 1st of May of each consecutive year.

FIRM: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

- OR -

ALTERNATE BID

[Conceptual Proposal]

PROPOSAL FORM

PROPOSAL DATE: February ____, 2016

Proposal of

Hereafter referred to as "Bidder/Vendor" to the City Council of the City of Long Beach hereafter referred to as "owner".

(you may attach a separate sheet)

2016 Annual Rent for Concession Area _____ \$ _____ /per yr.
2017 Annual Rent for Concession Area _____ \$ _____ /per yr.
2018 Annual Rent for Concession Area _____ \$ _____ /per yr.
2019 Annual Rent for Concession Area _____ \$ _____ /per yr.
2020 Annual Rent for Concession Area _____ \$ _____ /per yr.

FIRM: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

CITY OF LONG BEACH

LONG BEACH, NEW YORK

Bid submitted by: _____

NAME

ADDRESS

TELEPHONE

Is in accordance with specifications attached, it being further understood that the CITY reserves the right to make an award on the basis of the best overall proposal and not necessarily to the highest bidder.

TO: City Purchasing Agent
City of Long Beach
1 West Chester Street
Long Beach, NY 11561

The undersigned, desiring to submit a bid to the City of Long Beach, New York, does hereby accept all terms, conditions and agreements contained and set forth in the Notice to Bidders, Information for Bidders and Specifications and the undersigned does hereby certify, agree and propose as follows:

The undersigned declares that it has examined all of the attached documents and hereby proposes and agrees that, if this bid is accepted, it will contract with the City to supply said materials and services and to perform the specified work in the manner and time required pursuant to the attached documents.

By submission of this bid, each bidder and each person signing on behalf of any bidder, or in the case of a joint bid, each party thereto, certifies, under the penalty of perjury, that to the best of each of their knowledge and belief:

- A. That the prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of

restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and

- B. That unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder, directly or indirectly, by the bidder to any other bidder or to any competitor, prior to opening of all bids upon this proposal; and
- C. That no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; and
- D. That neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix any overhead, profit or cost element of the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Long Beach or any person interested in the proposed contract; and
- E. That the price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owner, employees or parties in interest, including this affiant.

Enclosed is depositor' certified check in the amount of _____ made payable to the City Treasurer, City of Long Beach, as a proposal guarantee which it is understood will be forfeited in case the contractor fails to comply with the requirements of the specifications.

(SIGN ATTACHED PAGE AND/OR PAGES)

SIGNATURES

(If an individual)

Date _____, 20 _____

Signature of Bidder _____
(Owner and Proprietor)

Business Name D/B/A

Business Address

SUBSCRIBED AND SWORN TO before me

this _____ day of _____, 20 _____

(If a partnership)

Date _____, 20____

Firm Name _____
(Seal)

By _____

Business Address _____

Name and Address of all Members of the Firm: _____

SUBSCRIBED AND SWORN to before me

This _____ day of _____, 20____

Notary Public

(If a corporation / limited liability business entity)

Date _____, 20_____

Corporate Name _____

By: _____

President

Business Address

CORPORATE SEAL

President _____

Vice President _____

Secretary _____

Treasurer _____

Attest

Secretary

SUBSCRIBED AND SWORN TO BEFORE ME

This _____ day of _____, 20_____

Notary Public

INSTRUCTIONS TO BIDDERS

1. General:

Read all documents contained in the bid specifications.

Upon submitting a proposal, each bidder shall be assumed to have made a careful examination of the conditions and specifications and to have fully informed himself as to any special conditions, contracts and/or other documents.

Bidders are responsible for submitting their bids to the appropriate location at or prior to the time indicated in the specifications. No bids will be accepted after the designated time or date indicated in the bid specifications.

All bids must be filled out in ink or be typewritten. Bids submitted in pencil may be rejected as unresponsive. In the case of a discrepancy between the numerical number and written number, the written number will be controlling and will be considered to be the actual bid of the bidder.

The competency and responsibility of bidders will be considered in determining whether a bidder is qualified to perform the services or items required for the purpose of making the award.

The City may reject any and/or all bids. Any bid may be withdrawn prior to the scheduled time for the opening of bids.

No bid shall be considered which is not based upon these specifications and other contract documents attached or made a part there-to. Further no bid will be considered which contains any letters or memorandum modifying the bid, or which is not properly executed, or which is not accompanied with bid security in the form and amount as set forth herein. In case of discrepancy between the numerical number and written number, the written number will be controlling and will be considered to be the actual bid of the bidder.

No oral, telegraph, or telephone bids or modifications will be considered.

2. Submission of Proposals

All prospective bidders shall submit sealed proposals.

The sealed envelope submitted by the prospective bidder shall carry the following information on the FACE of the envelope: bidder's name, address, subject matter of proposal, advertised date of bid opening and the hour designated for bid opening as shown on the legal advertisement.

Where proposals are sent by mail to the City Purchasing Agent, the bidders shall be responsible for their delivery to the City Purchasing Agent before the advertised date and hour for the opening of bids. If the mail is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered. Under no circumstances is it necessary to submit the technical specifications with the bid.

3. Receipt and Opening for Bids:

Bids will be received and opened by the City Purchasing Agent as outlined in the Notice to Bidders or by her authorized representative.

4. Proposal Security

Each bid shall be accompanied by a certified check equal to ½ the first years rent.

5. Liquidated Damages for Failure to Enter into Contract:

The successful bidder, upon his failure or refusal to execute and deliver the Contract and Bonds required within fifteen (15) days after he has received notice of the acceptance of his bid, shall forfeit the proposal security deposited with his bid to the City as liquidated damages, not as a penalty, for such failure or refusal, it being now agreed that said sum is a fair estimate of the amount of damages that said City will sustain due to the bidder's failure or refusal to execute and deliver the executed Contract and Bonds as stated above.

6. Signatures:

Bids shall be signed with the full name of the bidder or an authorized agent of the bidder. If the bidder is a corporation the bid shall be signed by a properly authorized officer of the corporation.

The bid shall indicate whether the bidder is an individual, a partnership or a corporation. In case of a partnership, the full name of each individual partner shall be given. In case of a corporation, the corporate name, the State of incorporation, and the names of its officers shall be submitted.

7. Acceptance of Bid and its Effect:

Within thirty (30) days after the opening of the bids, the City will act upon them. The acceptance of a Bid will be given to the successful bidder by notice in writing signed by a duly authorized representative of the City. No other act of the City or any official shall constitute the acceptance of a Bid. The acceptance of a bid shall bind the successful bidder to execute the contract and to be responsible for liquidated damages as provided in paragraph 5 above. The rights and obligations provided for in the contract shall become effective and binding upon the parties only upon the formal execution of the contract.

8. Competency of Bidder:

No proposal will be accepted from or a contract awarded to any person, firm or corporation that is in arrears or is in default to the City upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said City or who had failed to perform faithfully any previous contract with the City.

9. Obligation of Bidders:

At the time of the opening of the bids, each bidder will be presumed to have read and to be thoroughly familiar with the specifications and all contract documents. The failure or omission of any bidder to receive or examine any form, instrument or document shall in no-way relieve any bidder from any obligation in respect to his proposal.

10. Time for Executing the Contract:

The bidder whose bid shall be accepted will be required to execute a Contract in the form hereto attached within fifteen (15) days after the notice that his proposal has been accepted. Failure or neglect to execute the Contract within the said period of Fifteen (15) days shall constitute a breach of the agreement affected by the acceptance of the bid and the proposal security shall thereupon become forfeited. The provisions contained in the said contract shall be considered a part of the Instructions and Specifications.

11. Interpretation of Contract Documents:

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the specifications or other contract documents, he may submit to the Purchasing Agent a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be mailed or delivered to each person receiving a set of such contract documents and to such other prospective bidders as shall have requested that they be furnished with a copy of each addendum. Failure on the part of the prospective bidder to receive a written interpretation prior to the time of the opening of bids will not be grounds for withdrawal of the proposal. If, after award of the contract, questions arise concerning interpretation of contract documents, it is understood that the decision of the Purchasing Agent will be final and binding.

12. Non-Discrimination:

The Contractor, in performing under this contract, shall not discriminate against any worker, employee or applicant for employment because of race, creed, color or national origin. The Contractor further agrees that each subcontract made under this contract will contain a similar provision with respect to non-discrimination.

13. HOLD HARMLESS:

It is agreed that the Contractor shall indemnify, save and keep the City harmless against all liabilities, judgments, loss, costs, damages and expenses which may in any way be incurred by the City or its licensees, permittees, and assignees, respectively, by reason of the performance hereunder by the lease

:

14. Time of Commencement and Performance:

The time of commencement, rate of progress and time of completion are essential conditions of this contract; however, if the time of performance of the contract is for any reason, either expressly or by implication, extended, such extension shall not affect the validity of this contract or the liability of the sureties upon the bid given for the faithful performance of the same.

The City reserves the right finally to decide all questions arising as to the proper performance of this contract, and in case of failure by the Contractor to comply with this contract in any manner, then to declare the same forfeited, either as to a portion or the whole thereof, and to rebid the same with or without further advertising.

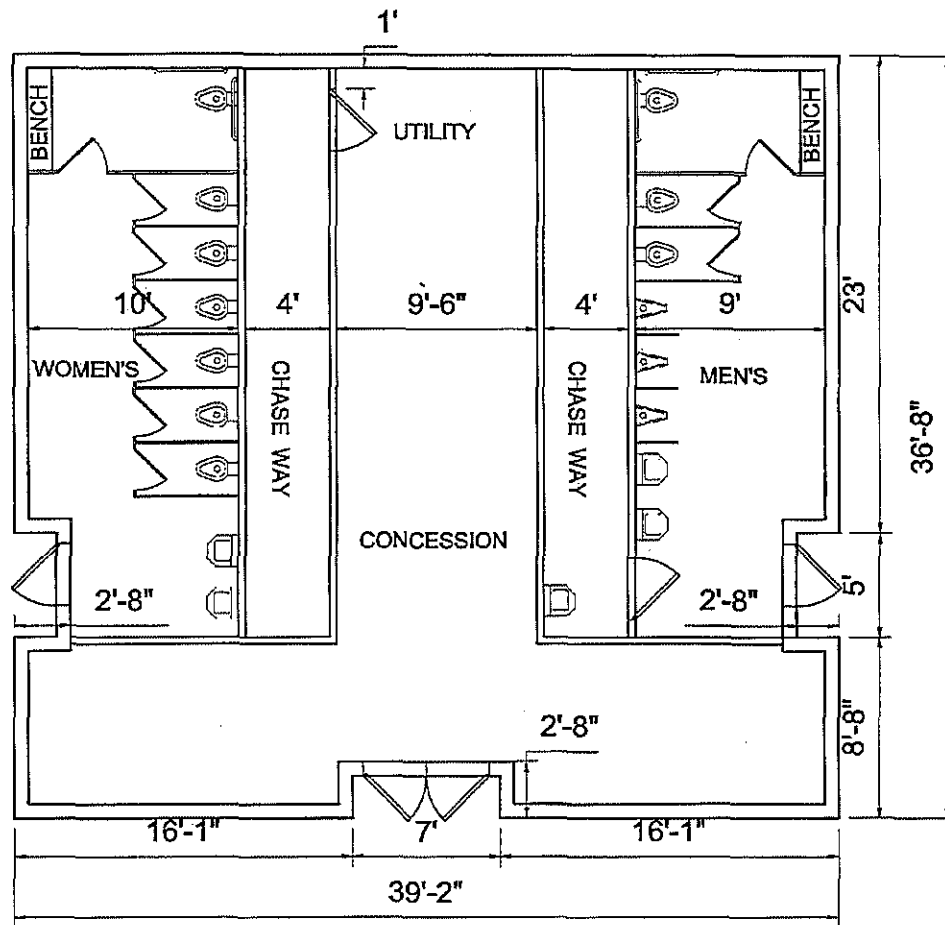


Exhibit A
Grand Blvd., Edwards Blvd., Riverside Blvd.

EXTENSION OPTION RIDER

Tenant may, at its option and with the consent of the Landlord in its sole discretion, extend the Term for a total of five (5) years, commencing on May 1, 2021 and ending on September 15 2026 (the "Extension Term"):

1. At least 12 months prior to the originally scheduled Expiration Date, Tenant gives Landlord written notice of Tenant's exercise of its option to extend the Term ("Extension Notice").
2. For each subsequent year, Tenant must provide Extension Notice at least six (6) months prior to the commencement of the following Ocean Beach Park season.
3. On or before January 1 of each year of this Extension Option, Tenant must pay the Security, as that term is defined in Section 1.14 and as provided in Article 16 of this lease. If Landlord does not receive the Security from Tenant on or before January 1 of each and every year of this Extension Option, the Premises shall be deemed abandoned in accordance with Section 14.1(e) of this lease.
4. This lease is in full force and effect at the time the Extension Notice is given and thereafter through the Extension Term of this lease.
5. Tenant is not in Default of this lease either at the time the Extension Notice is given or at the commencement of the Extension Term; and
6. Tenant has paid each installment of Fixed Rent within 10 days of the due date thereof; and
7. This Lease has not been assigned and the Premises have not been subleased in whole or in part other to an affiliate or successor of Tenant; and
8. Tenant shall be open to the public and operating its business in accordance with the Permitted Use in the Premises, as well as all provisions of this lease including but not limited to all terms and conditions of this lease, the Rules, the terms and conditions of the Request for Proposal.

Such extension shall be upon all of the terms and conditions of this lease except that:

- i. The Fixed Rent to be paid by Tenant during the Extension Term shall be as follows:
- ii. If this Lease provides for a rent concession, Landlord's Contribution or other work allowance, or Landlord's Work, such provisions shall not apply to the Extension Term.
- iii. The base years (if any) for Expenses shall be unchanged.
- iv. This lease shall not be subject to further extension of the Term pursuant to this Rider.

FOOD USE RIDER

If the Permitted Use is a restaurant use or otherwise involves the sale of food or beverage, the following shall apply:

1. Tenant shall keep any garbage, trash, rubbish or other refuse in vermin-proof refrigerated containers within the interior of the Premises that are kept closed until removed.
2. Every two (2) weeks Tenant shall clean all hood grease filters and clean all grease traps and grease interceptors by physically removing the grease and cleaning with a chemical degreasing agent. Tenant shall maintain cleaning records for periodic inspection by Landlord.
3. Tenant shall, every calendar quarter, steam clean ventilation hoods, clean exhaust fans and roof vents. Tenant shall maintain records of such cleaning for periodic inspection by Landlord.
4. As part of Tenant's Work, Tenant shall perform the following work in accordance with the provisions of this lease: (a) shall not permit unreasonably loud noise, (b) shall install screens and traps in sinks to prevent food and grease from clogging the waste line(s) serving the Premises and any waste line(s) serving other areas of the Real Property; and (c) install ventilation equipment including hoods and exhaust fans of adequate quality, capacity and size to keep the Premises free of smoke, odors, vapors and fumes;
5. Landlord does not warrant that the Premises may be lawfully used for the business to be conducted by Tenant in the Premises; nor that any governmental certificate, license or permit which may be required for the business to be conducted by Tenant in the Premises, will be granted, or if granted, will be continued in effect or renewed. Tenant shall, upon Landlord's request, promptly deliver to Landlord duplicate copies of any governmental certificate, license or permit required for the lawful conduct of Tenant's business. Tenant shall at all times comply with the terms and conditions of each such certificate, license or permit. It is understood and agreed that Tenant's obligations under this lease shall in no way be affected or impaired by reason of Tenant's inability to secure and/or maintain such certificates, licenses or permits.
6. Tenant shall maintain, in addition to the insurance required by Article 10, (a) personal injury liability including, without limitation, coverage for libel, slander, false arrest and malicious prosecution, and (b) check room liability.
7. The Premises shall not be used for a dance hall, cabaret or discotheque.