

LEASE

Agreement No. XXXXX

This Lease (“Lease”) is made as of this Xth day of Month 20XX, by and between the CITY OF SANTA BARBARA (hereinafter called “Landlord”), and TENANT’S TRADING NAME, Inc., a California Corporation / Partnership (hereinafter called “Tenant”).

The following are attached hereto as Exhibits and hereby made a part of this Lease as though fully set forth herein.

EXHIBIT A – Lease Area

EXHIBIT B – Nondiscrimination Certificate

EXHIBIT C – Water and Energy Conservation Guidelines

EXHIBIT D – Tenant Improvements

Contents

I.	BASIC LEASE TERMS.....	5
A.	[§101] Site	5
B.	[§102] Term	5
C.	[§103] Title and Condition of the Site.....	5
D.	[§105] Rent	6
II.	USE, OPERATION AND MAINTENANCE OF THE SITE.....	12
A.	[§201] Use of the Site	12
B.	[§205] Operation	14
C.	[§206] Operating Hours	15
C.	[§207] City's Annual Review of the Operations of Site.....	16
D.	[§208] Repairs affecting the Site.	16
E.	[§209] Reservation of City Access Rights.	16
F.	[§210] Landlord's Obligations - Repairs	17
G.	[§211] Tenant's Obligations - Repairs.....	17
H.	[§209] Landlord's Right to Repair	18
II.	LAWS, TAXES AND UTILITIES	19
A.	[§301] Compliance with Laws	19
B.	Taxes and Assessments.....	19
C.	[§308] Services and Utilities.....	21
IV.	CONSTRUCTION AND LIENS.....	21
A.	[§401] Tenant Improvements.....	21
B.	[§402] Additional Construction, Alterations and Repairs	22
C.	[§403] General Construction Standards.....	22
D.	[§404] Remodeling and Replacement with the Same Facilities	22
E.	[§405] Reimbursable Improvements	23
V.	OWNERSHIP OF IMPROVEMENTS.....	23
A.	[§501] Ownership During Term.....	23
B.	[§502] Ownership at Termination.....	24
VI.	ASSIGNMENT AND SUBLETTING.....	24
A.	[§601] Assignment and Subletting	24
B.	[§602] Successors and Assigns.....	27
C.	[§603] Release of Landlord.....	27
VII.	INSURANCE AND INDEMNIFICATION	28
A.	[§701] Required Insurance Policies	28

B.	[§702] General Insurance Policy Requirements.....	29
C.	[§703] Hold Harmless and Indemnification	31
VIII.	SURRENDER; HOLDING OVER	31
A.	[§801] Surrender of Site.....	31
B.	[§802] Holding Over	32
IX.	DESTRUCTION	32
A.	[§901] Destruction Due to Risk Covered by Insurance	32
B.	[§902] Destruction due to Risk Not Covered by Insurance.....	33
C.	[§903] Adjustment of Minor Loss --No Insurance Trustee.....	33
D.	[§904] Adjustment of Major Loss - Insurance Trustee.....	34
E.	[§905] Procedure for Restoring Site.....	35
G.	[§906] Abatement or Reduction of Rent.....	36
H.	[§907] Waiver of Civil Code Sections.....	36
I.	[§908] Restoration Prohibited by Law.....	36
X.	EMINENT DOMAIN	36
A.	[§1001] Definition of Taking	36
B.	[§1002] Total Taking	36
C.	[§1003] Partial Taking.....	37
D.	[§1004] Application of Awards	37
E.	[§1005] Notice of Taking.....	38
F.	[§1006] Disbursement of Awards on Partial Taking	38
XI.	DEFAULT	39
A.	[§1101] Default by Tenant	39
B.	[§1102] Right of Landlord to Perform	43
C.	[§1103] Personal Service Nature of Tenant's Obligations.....	44
D.	[§1104] Default by Landlord.....	44
E.	[§1105] Abandonment -Title to Fixtures and Equipment	45
F.	[§1106] No Recourse.....	45
XII.	[§1200] UNAVOIDABLE DELAY; FORCE MAJEURE	45
XIII.	[§1300] ENTRY BY LANDLORD	46
XIV.	GENERAL	46
A.	[§1400] Estoppel Certificates	46
B.	[§1401] Waiver	46
C.	[§1402] Notices.....	47

SAMPLE CONCESSION LEASE

Lease and Agreements

In consideration of the rents to be paid hereunder and of the agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. BASIC LEASE TERMS

A. [§101] Site

Upon and subject to the terms, covenants and conditions hereof, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and takes from Landlord, the Site which is the real property and improvements described in the attached Exhibit "A" which is incorporated by this reference as though fully set forth herein. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants and conditions hereof, and that Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and observe each and all of said terms, covenants and conditions by Tenant to be kept, performed or observed, and that this Lease is made upon the condition of such performance.

As used herein, the term "Site" shall mean and include the Site and all improvements pursuant to this Lease. The Site shall be approximately x,xxx square feet of interior space and x,xxx square feet of patio space, including the existing improvements, located at Leased Premises.

B. [§102] Term

The term of this Lease shall commence when the adopting ordinance becomes effective ("Commencement Date") and terminate at 11:59 pm on Month Day, Year, ("Termination Date").

C. [§103] Title and Condition of the Site

[§103] Title to the Site

Title to the leasehold of the Site is hereby conveyed by Landlord to Tenant free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes.

[§104] Condition of Site

Except as otherwise specifically provided in this Lease, the Site shall be conveyed to Tenant in "as-is" condition. It shall be the sole responsibility of Tenant, at Tenant's sole expense, to investigate and determine the condition of the Site, the

condition of the existing improvements on the Site and the suitability of such conditions for the business to be conducted by Tenant.

D. [\$105] Rent

Tenant shall pay to Landlord, without abatement, deduction or offset whatsoever in lawful money of the United States of America, at 620 Laguna Street, Santa Barbara, CA 93102, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant, rent during the term of this Lease in accordance with the following Sections.

1. [\$106] Base Rent

Beginning with the Commencement Date and continuing throughout the term of the Lease Tenant shall pay to Landlord a total minimum annual rent, which will be defined as the Base Rent. The Base Rent is due on or before the Commencement Date, and shall be due on the first day of each twelve (12) month anniversary thereafter. **The Base Rent due for the first year of the Lease is \$xxx,xxx.xx**

At Tenant's option, Base Rent may be paid in twelve monthly installments, with each installment being due to Landlord on the first day of each month, and will be deemed late if not received by Landlord by the 15th day of each month. If Tenant elects to pay Base Rent in monthly installments, the monthly installments for November through April shall equal thirty six percent (36%) of the total Base Rent, and the monthly installments for May through October shall equal sixty four percent (64%) of the total annual Base Rent.

Example:

Base Rent of \$xxx,xxx.xx

**November – April 6 payments of \$ x,xxx.xx per month in advance.
May – October 6 payments of \$ x.xxx.xx per month in advance**

Base Rent shall be adjusted upward not downward, commencing on the first day of the one year anniversary of the Commencement Date of this Lease, and on the first day of each anniversary thereafter during the term of this Lease by using the Consumer Price Index (CPI) ("Urban Wage Earners and Clerical Workers") for Los Angeles-Riverside-Orange County Area, for May and dividing it by the CPI, same index, for the preceding May and multiplying the product times the current year's minimum annual Base Rent to obtain the succeeding year's minimum annual Base Rent.

2. [\$107] Percentage Rent

a. From the Commencement Date, and continuing throughout the term of this Lease, Tenant covenants and agrees to pay, in addition to the Base Rent hereinabove agreed to be paid to Landlord, without abatement, deduction or offset, except as

specifically set forth in Section 107c. hereof, additional rent (“Percentage Rent”) equal to the amount by which the following exceeds the Base Rent: (10%) ten percent of Tenant’s Gross Receipts.

b. Gross Receipts Defined. “Gross Receipts” shall include:

1) The entire amount of the price charged, whether wholly or partly for cash, on credit, or barter, or otherwise, for all goods, wares and merchandise sold, leased, licensed or delivered, and all charges for services sold or performed in, at, upon or from any part of, or through the substantial use of, the Site by Tenant or any other person, firm or corporation or by means of any mechanical or other vending device;

2) All gross income of Tenant or any other person, firm or corporation from any operations in, at, upon or from the Site which are neither included in nor excluded from Gross Receipts by other provisions of this Lease, but without any duplication;

3) Without limitation, all deposits received and not refunded to the purchaser in connection with any transaction;

4) All orders secured or received on the Site by telephone, mail, house-to-house, internet sales, mail order catalogue or other canvassing by personnel operating from, reporting to or under the supervision of any employee, agent or representative located at or operating out of the Site or which Tenant, in the normal and customary course of its operations, would be credited or attributed to its business on the Site, or by electronic or other means, whether or not filled elsewhere.

c. Exclusions from Gross Receipts. “Gross Receipts” shall not include, or if included, there shall be deducted (but only to the extent they have been included), as the case may be:

1) The net amount of cash or credit refunds or adjustments in fact made upon sales from the Site, where the merchandise sold or some part of it is returned by the purchaser to and accepted by Tenant (but not exceeding, in any instance, the selling price of the item in question);

2) Exchanges or transfers of merchandise between stores of Tenant, where such exchanges or transfers are made solely for the convenient operation of Tenant’s business and do not have the effect of consummating a sale which has been made in, at, upon or from the Site or of depriving Landlord of the benefit of a sale which otherwise would have been made at, upon or from the Site;

3) Returns to shippers or manufacturers;

4) Sales of fixtures, equipment and other property used after their substantial use in the conduct of Tenant’s business on the Site;

5) The amount of any Landlord, county, state or federal sales or gross

receipts taxes now or hereinafter imposed on sales from the Site where such taxes are paid to the taxing authorities by Tenant (but not by any vendor of Tenant); and

6) If, after a credit has been included in Gross Receipts, it is written off as a bad debt, the unpaid amount of said credit sale may be deducted from the Gross Receipts made for any calendar year in which said unpaid amount is written off as a bad debt, but any payments thereafter made in connection therewith shall be included in the gross sales for the calendar year in which such payments are made; however, the amount of credit so deducted in any one (1) calendar year may not exceed one percent (1%) of gross sales.

7) Any donation, where no collection of monies is received by the Tenant such as promotional meals, charity meals, and meals for employees.

8) Tips for waitpersons separately identified on charge receipts or collected in cash by the waitperson.

d. Monthly Statements. Tenant shall render to Landlord on or before the fifteenth (15th) day of each calendar month following commencement of the rental period, a statement of all Gross Receipts for the preceding calendar month. The statement shall be signed by Tenant or its responsible agent under penalty of perjury, and shall be in the form reasonably prescribed by the Parks and Recreation Director or his/her designee. Each such statement shall include for the current preceding calendar month:

(1) The total "Tenant's Gross Receipts" for the period;

(2) The total exclusions from Gross Receipts permitted above, itemized as to each exclusion, providing amount and type; and

(3) The Total Percentage Rent. The total of the Percentage Rent in excess of the monthly calculated Base Rent shall represent the amount due and payable concurrent with the rendering of the statement on the (15th) day of each calendar month following. It is agreed that all computations shall be made on a monthly basis for each calendar year and shall be made separately for each month and calendar year throughout the term of this Lease without connection with any other month or accounting year. No refund will be issued to Tenant of Percentage rent based on a cumulative year's percentage rent paid, unless an error has been made in the reporting of the monthly amount of gross sales, as described below in Section 107(e).

e. Annual Statement of Gross Sales. Within sixty (60) days after the expiration of each calendar year, Tenant shall furnish to Landlord a statement setting forth (1) Tenant's gross sales during the preceding calendar year, and (2) the total amount of Percentage Rent which was required to be paid to Landlord for the preceding calendar year in accordance with this Section 107. Landlord may require said statement to be certified by a certified public accounting firm, at Landlord's discretion.

If, based upon said statement, the total amount of Percentage Rent payments

actually paid to Landlord by Tenant for such preceding calendar year is greater than the amount required to be paid under section 107a and Tenant is not in default hereunder, Landlord shall, at Landlord's option, either refund such excess to Tenant or credit the amount thereof within sixty (60) days from City's receipt of Annual Statement of Gross Sales.

If, based upon said statement, the total amount of Percentage Rent payments actually paid to Landlord by Tenant for such preceding calendar year is less than the amount required to be paid, then Tenant shall, within ten (10) days of receipt of written notice advising Tenant of the underpayment, pay to Landlord a supplementary Percentage Rent payment in an amount equal to the difference between the total amount which was actually paid and the total amount required to be paid.

Notwithstanding anything contained in Section 108 hereof, no late charge will be imposed so long as (1) the supplementary Percentage Rent payment due does not exceed two percent (2%) of the total amount of Percentage Rent payments actually paid for the preceding calendar year, and (2) the Percentage Rent payments paid for the preceding calendar year were calculated by Tenant in good faith. A late charge calculated in accordance with Section 108 hereof shall be paid by Tenant upon the entire supplementary Percentage Rent payment in the event the amount of such supplementary Percentage Rent payment exceeds two percent (2%) of the total amount of Percentage Rent payments actually paid for the preceding calendar year or in the event the Percentage Rent payments paid for the preceding calendar year were intentionally or negligently miscalculated by Tenant.

f. Tenant Records. Tenant shall keep and maintain on the Site, or, if Landlord is notified in writing, at its headquarters elsewhere in the City of Santa Barbara, full, complete and appropriate books, records and accounts relating to the Site, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Tenant's calculation of Percentage Rent. At a minimum, full, complete and appropriate books, records and accounts shall include, but not be limited to: income statements, balance sheets, general ledger, sales journal, cash receipts journal, all cash register tapes for all registers (meaning the total continuous daily register tape showing all transactions individually for the day and including the "Z-out" summary portion of the tape), all receipts, accounts of inventories, all receipts of merchandise, signed sales tax returns, signed income tax returns, cash disbursements journals, all canceled checks, all bank statements showing business receipts, lists of non-revenue deposits, if any, and documentation supporting any wholesale sales. All books, records and accounts relating, in Landlord's reasonable judgment, to Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained in accordance with generally accepted accounting principles consistently applied and shall at all times during normal business hours be open to and available for inspection by Landlord, its auditors or other authorized representatives.

All such business records must be supported by source documents, such as sales slips, unbilled accounting documents, ledgers, bank deposit receipts, sales tax returns, complete and continuous cash register, computer and other electronic memory tapes,

sales books, bank books, purchase invoices, income tax returns and any other records and documents reasonably necessary to verify the Gross Receipts reported by Tenant.

g. Landlord's Right to Audit Records. If at any time during the term hereof said books, records and accounts are deemed inadequate or incomplete in accordance with the standard set forth herein in this subparagraph (g) in the reasonable judgment of Landlord, Tenant shall, upon the request of Landlord, revise, adjust, complete, procure and maintain such books, records and accounts so that they thereafter conform to said standards in Landlord's reasonable judgment.

Copies of all sales, income, other excise tax reports and Internal Revenue tax reports or any other reports that Tenant may be required to furnish any governmental agency, including personal tax records if Tenant is a sole proprietorship, shall at all reasonable times be open for inspection and copying by Landlord at the place that the books, records and accounts of Tenant are kept.

Landlord has the right to audit and examine the books, records and accounts of Tenant necessary for a proper determination of the amount of Tenant's Gross Receipts, and all such books and records must be held available for such purpose. Tenant shall preserve records on which any statement of Gross Receipts is based for a period of not less than five (5) years after such statement is rendered.

The receipt by Landlord of any statement pursuant to this Section 107 or any payment by Tenant or acceptance by Landlord of any Percentage Rent for any period shall not bind Landlord as to the correctness of such statement or such payment. Within five (5) years after the receipt of any such statement, Landlord or any designated agent or employee of Landlord shall be entitled, at any time, to an audit of the Gross Receipts and all books, records and accounts of Tenant pertaining thereto. Such audit shall be limited to the determination of the Gross Receipts and shall be conducted during normal business hours at the principal place of business of Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable. In the event such deficiency exceeds two percent (2%) of the total amount of Percentage Rent actually due, such payment of deficient rent shall include interest from the date when said payment should have been made until the date of full payment. Interest shall be calculated at the higher of the rate of ten (10%) percent per annum, or the highest rate of interest authorized by statute of the State of California for written contracts. In addition, if Tenant's statement for any calendar year shall be found to have understated gross sales by more than two percent (2%) and Landlord is entitled to any additional Percentage Rent as a result of said understatement, then Tenant shall pay, in addition to the interest charges referenced hereinabove, all of Landlord's reasonable costs and expenses connected with any audit or review of Tenant's accounts and records. Any information obtained from such audit or review shall be confidential to the extent permitted by law and shall not be disclosed other than to carry out the purposes hereof.

h. Tenant agrees at all times during the term of this Lease to continue its

operations on the Site, subject only to closures resulting from natural catastrophes or upon the request of the Landlord, and to use the utmost skill and diligence in the conduct of Tenant's operations on the Site as is reasonably designed to produce the maximum Gross Receipts to Tenant and assure to Landlord a payment of the greatest possible amount of Percentage Rent to the fullest extent legally and commercially possible.

i. Point of Sale System. All sales and transactions made from the Site shall be recorded by means of cash registers, or other comparable devices to be approved by the Parks and Recreation Director or his/her designee, which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not re-settable and which record numerically sequenced transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day.

j. Method of Payment. If any two (2) payments of Base Rent or Percentage Rent made by check, draft or money order is returned to Landlord due to insufficient funds, or otherwise, in any given five (5) year period, Landlord shall have the right at any time thereafter, upon written notice to Tenant, to require Tenant to make all subsequent Base Rent or Percentage Rent payments by cashier's or certified check.

3. [\$108] Late Charges

Tenant recognizes that late payment of Base Rent or any other payment due hereunder from Tenant to Landlord will result in administrative and other additional expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if Base Rent or any other payment due hereunder from Tenant to Landlord remains unpaid after said payment is due, Tenant shall pay to Landlord a late charge equal to one percent (1%) per day of the amount of the delinquent Base Rent, Percentage Rent, or other payment, which late charge shall be added to and become part of the delinquent Base Rent, Percentage Rent or any other payment up to fifteen percent (15%). Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Section 108 in no way relieve Tenant of the obligation to pay Base Rent or other payments on or before the date on which they are due, nor do the terms of this Section 108 in any way affect Landlord's remedies pursuant to Article XI hereof in the event any Base Rent or other payment is unpaid after the due date.

4. [\$109] No Set-Offs

Except as otherwise expressly provided herein, Base Rent, and any and all other payments payable hereunder to or on behalf of Landlord shall be paid without notice or demand and without set-off, counter-claim, abatement, suspension, deferment,

deduction or defense, unless otherwise agreed upon in writing by the Parks and Recreation Director.

II. USE, OPERATION AND MAINTENANCE OF THE SITE

A. [\$201] Use of the Site

1. §201 Use of Site

a. Tenant shall use the Site only for the operation of a restaurant, serving breakfast, lunch and dinner, in accordance with the schedule set forth in §206 with full liquor, beer and wine service and for no other purpose or use without prior consent from the Parks and Recreation Director or his / her designee. The site may be used as a kitchen for an on/off-site catering business operating under the Tenant's brand as long as such use does not interfere with the primary purpose of serving on-site customers, and the City received percentage rent on all off-site revenues as defined in section 2 [§107].

b. Tenant may also sell merchandise of the type normally offered for sale by restaurants located in Southern California; such merchandise must be imprinted with Tenant's logo or name of restaurant. All sales and displays of merchandise must be conducted inside the perimeter of the lease area.

c. Tenant shall obtain and maintain in full force and effect the appropriate license from the Alcoholic Beverage Control Board of the State of California to provide full liquor, beer and wine service. With respect to Tenant's obligation to maintain the liquor license in force and effect, the revocation of the liquor license by the Alcoholic Beverage Control Board shall be considered a default of Tenant under this Lease.

d. Uniform

Tenant shall provide at its own cost a consistent Tenant's Trading Name and Bar branded uniform and name tags to all customer facing staff while at work. The character and design of the uniform is subject to approval by the Parks and Recreation Director or his / her designee prior to any change, such approval not to be unreasonably withheld.

2. [\$202] Nondiscrimination

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the improvements to be constructed thereon, or any part thereof, and the Tenant itself, or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessee or vendees of the Site or any part thereof.

In addition, Tenant agrees to comply with the Certificate of Non-discrimination, attached as Exhibit B and incorporated herein.

3. [\$203] Restrictions Upon Use

Tenant agrees that, in connection with the use and operation of the Site, it will not:

a. Use or permit the use of any advertising medium employing sound amplifying devices and or technology, including but not limited to, loudspeakers, phonographs, public address systems, sound amplifiers, radios or broadcasts within the Site in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the perimeter of the Site, without express permission from the Parks and Recreation Director or his/her designee, and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the perimeter of the Site;

b. Cause or permit objectionable odors to emanate or be dispelled from the Site. The parties acknowledge and agree that the odors normally and customarily associated with a restaurant shall not constitute an objectionable odor;

c. Permit any use of the Site or any part thereof in a manner likely to injure the reputation of the Parks and Recreation Department;

d. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

e. To the extent feasible, Permit any materials provided to customers, visitors, clients or patrons, including beverage containers and implements and condiments to be of any material except that which is biodegradable in ocean waters. Modification to this stipulation is subject to the prior written approval of the Parks and Recreation Director or his/her designee;

f. Permit any use of the Site, or acts done by Tenant, which will cause a cancellation of any insurance policy covering the Site or any building or improvements thereon, any article which may be prohibited by any insurance policies covering the Site;

g. Waste water, gas, electricity or any other utilities.

4. [\$204] Other Use Obligations

a. No Improvements. Tenant agrees that no improvement shall be erected, placed upon, operated or maintained within the Site, nor any business or activity conducted or carried on therein or therefrom, in violation of the terms of this Lease, or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Site.

b. Signs. All signs shall be installed maintained and permitted in accordance with the Sign Regulations of the Santa Barbara Municipal Code and, in addition, shall be approved by the City Administrator. "Sign" shall have the meaning set forth in said Sign Regulations.

c. Governmental Requirements. Tenant shall at all times comply with and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with any and all laws, statutes, ordinances, which govern, apply to or are promulgated with respect to the operation and use of the Site by Tenant in connection with its business. Specifically, but without limiting the generality of the foregoing, Tenant shall make any alterations or additions required to be made to or safety appliances or devices required to be maintained or installed in or about the interior of all improvements located upon the Site under any laws, statutes and ordinances, now or hereafter adopted, enacted or made and applicable to the Site.

d. Lighting. The Site shall be lighted for security purposes during hours of darkness in a manner at least equivalent to the security lighting provided in similar properties, unless Landlord consents to a lesser amount of lighting in writing or unless to do so is contrary to any law, statute, ordinance or final judgment of any court having jurisdiction then in effect, in which event, the standards so prescribed shall be adhered to while in effect.

B. [\$205] Operation

a. Generally

The parties recognize and acknowledge that the manner in which the Site is used and operated is of critical concern to Landlord, and to the Santa Barbara Parks and Recreation Department by reason of (a) the prominence of the location of the Site, (b) the impact which the Tenant's operation is expected to have upon the rest of the building. In order to give Landlord assurance as to the manner in which the Site will be used and operated, Tenant agrees that, at all times during the term of this Lease, Tenant shall maintain a first class business with a level of quality and character of operation which is at least comparable to other locations in the Santa Barbara area with the same use and/or equal to that of Tenant's other locations, if any.

b. Parking and Service Areas

City will provide a temporary loading zone for commercial vehicles delivering goods or services to the Site at a location as close to the Site as practicable, which Tenant may utilize only as a temporary loading and unloading zone and service area in connection with Tenant's use of the Site. Tenant may not store equipment in the parking lot.

c. Marketing Program

Tenant agrees to cooperate in the formulation, approval and implementation of marketing plans and shall contribute an annual cash commitment of no less than \$x,xxx

each fiscal year in years 1-5, and no less than \$x,xxx each fiscal year in years 6-10 towards implementation of the marketing plan for the Site with the total to be committed by Tenant to be determined solely by Tenant subject only to the minimums stated. The annual marketing cash commitment shall be paid on or before the Commencement Date, and then on the first day of every twelve month anniversary thereafter.

d. On-Site Management

Tenant must supply the names of on-Site managers to the Parks and Recreation Director or his / her designee, within ten (10) days of the Commencement Date. Any change in the authorized on-Site managers shall be communicated in writing to the Parks and Recreation Director or his / her designee within ten (10) days of such change.

e. Personnel

Tenant shall, at all times, retain active, trained, qualified, competent, customer focused, and experienced personnel to supervise Tenants operation and represent and act to Tenant. Tenant shall require its attendants and employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times.

Tenant shall not employ any person(s) in or about the Site who shall use offensive language or act in a loud, boisterous or otherwise improper manner. Tenant shall maintain close supervision over attendants and employees to insure the maintenance of a high standard of service to the public.

Tenant shall prohibit employees from smoking on the Site while working. Smoking breaks shall be designated and employees shall move to an appropriate smoking area away from the Site. Employees are not permitted to smoke in the Site's exterior patio areas while working or on breaks.

At all times when the facility is open to the public, Tenant shall maintain sound volumes and programming selections for all televisions, stereos and radios to the pleasure of customers.

C. [§206] Operating Hours

In order to maximize Percentage Rent to the greatest extent possible, Tenant shall be open for business every day in accordance with the following seasonal schedule:

Facility / Service	Minimum Opening Hours	Minimum Closing Hours	
		1 April – 31 October	1 November – 31 March
Coffee Shop	15 mins prior to Sunrise	6:00 pm	5:00 pm
Snack Bar / Patio		7:00 pm	6:00 pm
Bar	11:30 am	9:00 pm	6:00 pm

Tenant shall operate every day of the year with the exception that Tenant may close the Site on Christmas Day and After 1:00 p.m. on Thanksgiving Day. Tenant may request temporary revised hours of operation.

C. [§207] City's Annual Review of the Operations of Site

City shall have the right to review annually Tenant's operation of the Site with respect to the following performance criteria:

- a. The quality of food service;
- b. Public satisfaction with the operation of the Site, and the quality of the food;
- c. The hours and days of operations set out in §206;
- d. The effect of Tenant's use of the kitchen for off-Site catering on the on-Site Service;
- e. Tenant's compliance with health and other public safety code requirements applicable to food service establishments; and
- f. Tenant's compliance with the terms of this Lease.

Included in City's review, City reserves the right to conduct a customer survey to evaluate the public's satisfaction with Tenant's service. In the event the City Parks and Recreation Director identifies problems or concerns regarding the Tenant's operation of the Site as identified in this §207, City shall formally advise Tenant of such problems and concerns in writing and provide Tenant an opportunity to cure such deficiencies. Should Tenant, at the sole determination of the Parks and Recreation Director, fail to cure the deficiencies within sixty (60) days, City may terminate this Lease.

D. [§208] Repairs affecting the Site.

If the City chooses to repair, rebuild or replace any portion of the infrastructure adjacent to the Site, and such repairs or replacements necessitate closure of all or a portion of the area occupied by the Tenant to the public, such work shall be scheduled and accomplished by the City in a manner ensuring a minimum of disruption to Tenant's business. City shall have no liability to Tenant for lost business caused by an interruption of access to the Site. Notwithstanding the foregoing, should a closure of any portion of the Site due to City repairs or construction exceed forty-eight (48) consecutive hours, Tenant's prorated Base Rent charge for the period of such closure shall be reduced in the proportion that the floor area of the closed portion of the Site bears to the total floor area of the Site. There shall be no alteration in the calculation of Percentage Rent or the obligation to pay such Percentage Rent.

E. [§209] Reservation of City Access Rights.

The Site is accepted "as is" by Tenant subject to any and all existing easements and encumbrances. City reserves the right to install, lay, construct, maintain, repair, and

operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone, telegraph and electrical lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Site so long as the installation and use of facilities does not unreasonably interfere with the business use of the Site by Tenant as intended by this Lease. City agrees that any rights granted to third parties by reason of this section shall contain provisions that the surface of the Site shall be restored as nearly as practicable to its original condition upon the completion of any construction and shall not, upon completion of construction, disrupt Tenants allowed use of the Site.

F. [§210] Landlord's Obligations - Repairs

Landlord shall be responsible for maintaining the building exterior, including the foundation, bearing and exterior walls, roof, and common areas, as such common areas are identified in Exhibit A. If repairs, or maintenance obligations of Landlord require closure of all or a portion of the Site or access to the Site by the public, it shall be done in a timely manner and shall undertake such work in a manner that causes the minimum disruption of business; provided, however, the means and method chosen by Landlord to complete the work shall be in Landlord's sole and absolute discretion. Landlord shall have no liability to Tenant for lost business caused by an interruption of access to the Site. However, should the Landlord by its sole action prevent public access to the Site for more than 72 hours under circumstances not covered by business interruption insurance, and the business would be open but for the Landlord's action, the Tenant shall be entitled to a daily offset equal to 1/30 of the minimum monthly rent for each day after the first 72 hours until public access to the Site is restored by the Landlord.

No offset shall be available to Tenant once public access is restored by Landlord. No offset shall be made available following restoration of access or after completion of improvements that are Landlord's obligation to provide, regardless of whether or not all of the Tenant's improvements are completed and regardless of any delay to the Tenant's improvement work caused by, or on account of, the work done by Landlord.

G. [§211] Tenant's Obligations - Repairs

Except as provided in Section 210, Tenant, at its sole cost and expense, shall maintain the Site and the interior improvements of the Site in good condition and repair. Except as provided in Section 210, Landlord shall have no responsibility to maintain the Site or the interior improvements of the Site. Tenant shall be responsible for keeping the area within ten (10) feet of all customer entrances clean of rubbish and litter. Without limiting the generality of the foregoing, Tenant's obligation to maintain and repair hereunder shall exist throughout the term of this Lease. Tenant shall be responsible for maintenance of all glass windows and glass doors, screens, screen doors, doors, and locks. Tenant shall be responsible for maintenance of all electrical and plumbing services and facilities on the customer side of the utility meter. Tenant shall also be responsible

for electrical conduits, circuit breakers, conductors, ground equipment, outlets, switches, light bulbs, ballasts and all other associated electrical devices on the customer side of the meter. Tenant shall be responsible for maintenance of all telephone, cable TV and other communications equipment and services on the customer side of the outlet box or junction provided by Landlord or the utility company.

Tenant shall be responsible for maintenance of sewer plumbing upstream of the final connection to City lateral sewer pipe buried under pavement near the Site. Tenant is responsible for installing and maintaining grease traps at Tenant's sole cost.

Tenant shall be responsible for all mechanical equipment, as well as ancillary connections to the equipment, including, but not limited to, electrical, gas and water utility service, vents, drains, supporting structures and aesthetic architectural structures.

Tenant shall initiate repairs to all structures necessitated by utility malfunction for which Tenant is responsible within one (1) business day of initial discovery and pursue the repairs diligently until completion, subject to the approval of the Parks and Recreation Director or his/her designee.

Tenant shall keep the Site clean, sanitary, and functional at all times. No offensive materials, sand or refuse matter nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health shall be permitted on or within ten (10) feet of the Site. Tenant shall see that all garbage or refuse is collected as often as necessary to maintain the Site in a clean and sanitary condition. All garbage shall be placed in an approved trash enclosure designated by Landlord.

Tenant shall pressure wash or steam clean its trash enclosure areas shown on Exhibit "A" at least once per week.

Tenant shall install and maintain humane bird prevention measures to discourage birds from standing, sitting or nesting on the roof of the building.

H. [§209] Landlord's Right to Repair

If Tenant fails to maintain or make repairs or replacements as required herein, Landlord may notify Tenant in writing of said failure. Should Tenant fail to correct the situation within a reasonable time thereafter, as established by Landlord, Landlord may make the necessary correction and the cost thereof, including, but not limited to, the cost of labor, materials and equipment and administration, shall be paid by Tenant within ten (10) days of receipt of a statement of said cost from Landlord. Landlord may, at its option, choose other remedies available herein, or by law.

II. LAWS, TAXES AND UTILITIES

A. [§301] Compliance with Laws

Tenant agrees to comply with all City, State, and federal laws, rules and regulations, now or hereinafter in force, pertaining to Tenant's use of the Site pursuant to this Lease. Tenant shall, at its sole cost and expense, comply with and shall cause all its operators, licensees and customers to comply with the Uniform Fire Code in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Site.

Tenant shall comply with each and every requirement of all policies of public liability, fire and other insurance, which at any time may be in force with respect to the Site. The judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against it, whether Landlord be a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Site shall be conclusive of that fact as between Landlord and Tenant.

B. Taxes and Assessments

1. [§302] Generally

Tenant acknowledges and agrees that this Lease may create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, as additional rent for the Site during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Site and the execution of this Lease), assessments, fees, levies, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, and unforeseen or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes" for all purposes under this Lease) which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Site, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or which may be levied upon or measured by the rent payable hereunder, including, without limitation, any gross receipts tax levied by the City of Santa Barbara, the State of California, the federal government or any other governmental body with respect to receipt of such rent by Landlord whether or not the same shall have been in the express contemplation of Landlord and Tenant.

2. [§303] Additional Rent

In the event the site or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on

such property, Tenant shall pay taxes upon the assessed value of the entire Site and not merely upon the assessed value of its leasehold interest.

3. [§304] Evidence of Non-payment

The certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, of nonpayment of such taxes shall be prima facie evidence that such taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

4. [§305] Landlord's Attorney-in-Fact

Landlord appoints Tenant the attorney-in-fact of Landlord for the purpose of making all payments to be made by Tenant pursuant to any of the provisions of this Lease to persons or entities other than Landlord. Tenant shall provide Landlord with satisfactory evidence of payment. In case any person or entity to whom any sum is directly payable by Tenant under any of the provisions of this Lease shall refuse to accept payment of such sum from Tenant, Tenant shall thereupon give written notice of such fact to Landlord and shall pay such sum directly to Landlord at the address specified in Section 1402 hereof, and Landlord shall thereupon pay such sum to such person or entity.

5. [§306] Landlord's Right to Cure

If Tenant, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, Landlord may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the maximum rate permitted by law shall be deemed to be and shall be payable by Tenant as additional rent and shall be reimbursed to Landlord by Tenant on demand.

6. [§307] Permitted Contests

Tenant shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Site or any part thereof, so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to Landlord prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Site or any part thereof, to satisfy the same, and provided, further, that Tenant shall, prior to the date such taxes are due and payable, have given such reasonable security as may be required from time to time in order to ensure the payment of such taxes to prevent any sale, foreclosure or forfeiture of the Site or any part thereof, by reason of such nonpayment. Such security shall be not less than a sum equal to one and one-quarter times the amount of such taxes and all penalties, fines and interest which may be assessed thereon and may be in the form of a bond issued by a surety acceptable to Landlord.

In the event of any such contest and the final determination thereof adversely to Tenant, Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant, and after such payment and discharge by Tenant, Landlord will promptly return to Tenant such security as Landlord shall have received in connection with such contest. Any such proceedings to contest the validity or amount of taxes or to recover back any taxes paid by Tenant shall be brought by Tenant, at Tenant's expense, in the name of Tenant; provided, however, that if any such proceeding shall be brought by Tenant, Tenant shall indemnify and save harmless Landlord against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Landlord in connection therewith.

C. [§308] Services and Utilities

1. Except as otherwise provided in this Lease, utility companies shall provide all required utilities up to a point on the Site convenient to and at the discretion of Landlord, and Landlord may arrange for separate meters to monitor the consumption of utilities on the Site. Landlord shall not be liable for the failure or malfunction of utilities or services to the Site when the failure of utilities or services to the site is not caused by willful negligence of the City.

2. Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for gas, electricity, sewer, air conditioning, telephone, water and all other services and utilities of whatever kind furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Site or any part thereof. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Site or any part thereof when such defect, deficiency, failure or impairment is not caused by the willful negligence of the City. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Site, gas, electric, cable or telephone services.

IV. CONSTRUCTION AND LIENS

A. [§401] Tenant Improvements

As a condition of this agreement, Tenant covenants to purchase and install equipment, fixtures and improvements listed in Exhibit D within x months of the Commencement Date. All improvements and installations pursuant to this section shall conform to designs and specifications approved by the Parks and Recreation Director or his

/ her designee. Failure to complete any installation or improvement within the allotted time shall be deemed an event of default entitling City to exercise the remedies provided under Section 1101.

B. [§402] Additional Construction, Alterations and Repairs

Prior to making any alterations to the Site, Tenant shall obtain the written approval of the Parks and Recreation Director or his/her designee.

C. [§403] General Construction Standards

1. All Tenants' construction, alteration or repair work permitted herein shall be accomplished expeditiously and diligently. Tenant shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Tenant shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition, which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated therewith and shall indemnify and hold Landlord harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area.

2. Any remodeling or reconstruction work undertaken on any existing building shall at all times be of first quality construction and architectural design and in accordance with plans therefore submitted to and approved by Landlord. Any remodeling or reconstruction of any building shall conform to the original design concepts so that the exterior of all buildings, including, without limitation, the exterior elevations and color thereof, and all other improvements, will be architecturally and aesthetically compatible and harmonious with the other buildings and improvements in the surrounding area to create a uniform general plan for the Site and the surrounding area, to the satisfaction of the City of Santa Barbara design review boards.

D. [§404] Remodeling and Replacement with the Same Facilities

Notwithstanding anything to the contrary contained in this Lease, no requirement for Landlord's consent for any plan or proposal for any construction work on the Site shall apply in the case of reconstruction of buildings or improvements which have been damaged or destroyed by fire or other casualty or which have become worn out or obsolete, so long as any such reconstruction will not substantially alter the design, size, height, bulk, suitability for allowed uses, and exterior appearance of the improvements as they existed prior to the event or condition requiring reconstruction, and provided that notice of intent to reconstruct or construct is given by Tenant to Landlord at least thirty (30) days prior to the commencement of any work thereon, except in the case of emergency reconstruction or repair in which case the Tenant shall have the obligation to obtain all the necessary

approvals and permits prior to any construction or reconstruction.

E. [§405] Reimbursable Improvements

Tenant may qualify certain improvements that landlord agrees will increase the value of the building or prolong the life of the Site as Reimbursable Improvements under the provisions of this section. Reimbursable Improvements may include major repairs to building components that typically endure more than forty (40) years (i.e. foundations or structural elements), extensive works of restoration or modernization, and work required for environmental compliance, or historical preservation; provided, however, "Reimbursable Improvements" shall not include work that is the responsibility of Tenant under Section 207 Tenant's Obligations, or reconstruction of insured improvements pursuant to Article IX Destruction or other casualty losses. Reimbursement from Landlord to Tenant will be in the form of a credit against percentage rent due ("Rent Credit") but will not be credited against Base Rent; provided, however, that any balance not applied to Percentage Rent shall be paid in cash to Tenant within thirty (30) days of the termination of the Lease.

1. Prior Approval for Reimbursable Improvement.

A proposed Reimbursable Improvement may qualify for a Rent Credit if and only if Tenant receives the prior written approval of the Rent Credit from the Parks and Recreation Director. Any such approval shall specify a maximum Rent Credit amount. The Parks and Recreation Director may withhold approval of a proposed Reimbursable Improvement at his/her absolute discretion.

2. Reimbursement Procedure

Tenant shall submit invoices to Landlord to substantiate actual out-of-pocket expenses for which Tenant seeks a Rent Credit.

Rent Credit shall be provided through a credit against Total Rent owed by Tenant in the month or months next following the month in which Landlord approves the payment. In no event shall any unused portion of Tenant's Rent Credit accumulate twenty-four (24) months from the date the Rent Credit was approved by the Landlord.

V. OWNERSHIP OF IMPROVEMENTS

A. [§501] Ownership During Term

Title to the Building Shell shall remain with City. All improvements to real property constructed on the Site by Tenant as permitted or required by this Lease shall, during this Lease term, be and remain the property of Tenant, provided however, that Tenant shall have no right to waste, destroy, demolish or remove the improvements, and provided, further, that Tenant's rights and powers with respect to the improvements are subject to the terms and limitations of this Lease.

B. [§502] Ownership at Termination

1. At the expiration or sooner termination of this Lease term, Landlord may, at Landlord's election, demand the removal from the Site, at Tenant's sole cost and expense, of all improvements, fixtures, and/or furnishings that Tenant made to the Site, as specified in the notice provided for below. A demand to take effect at the normal expiration of the term shall be effected by notice given at least thirty (30) days before the expiration date. A demand to take effect on any other termination of this Lease shall be effectuated by notice given concurrently with notice of such termination or within ten (10) days after such termination.

2. Any fixtures or furnishings not removed by Tenant within thirty (30) days of the termination of this Lease shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, then become the Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

3. Upon termination of this Lease, whether by expiration of the term or otherwise, all improvements not required to be removed by Tenant as hereinabove provided shall, without compensation to Tenant, then remain Landlord's property, free and clear of all claims to or against them by Tenant or any third party.

4. Tenant shall defend and indemnify Landlord against all liability and loss arising from any such claims or from Landlord's exercise of the rights conferred by this Section 502.

5. Notwithstanding any provision in this Lease to the contrary, in the event Tenant fails to remove any property as demanded by Landlord, then Landlord after ten days written notice to Tenant, and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to) place such property in storage for the account of and at the expense of Tenant in which event the provisions of Section 1105 shall be applicable.

VI. ASSIGNMENT AND SUBLETTING

A. [§601] Assignment and Subletting

In view of the fact that the Site constitutes a major and indispensable component of the Parks and Recreation Department's plan for the Premesis and that, therefore, the identity of the Tenant of the Site is of the utmost concern to the Landlord, Tenant, its successors and assigns, shall not assign, either voluntarily or by operation of law, its interest in this Lease to all or any part of the Site or allow any other person or entity (1) to occupy or use all or any part of the Site without the prior written consent of Landlord, which consent may be withheld in the sole and absolute discretion of Landlord.

Tenant shall not have the right to sublease or sublet under any circumstances, and any attempt to sublease shall be a breach of this Lease and any such subtenant is unlawfully in possession of Site.

In giving its consent at its sole discretion pursuant to the above paragraph, Landlord shall, in addition to any other requirements or conditions, require compliance with the following:

1. Any proposed transferee shall have the qualifications and financial responsibility, as determined by Landlord, necessary and adequate to fulfill the obligations undertaken in this Lease by Tenant. In addition, for the purposes of this provision, the following acts of Tenant are examples of and shall be considered assignments and shall require the prior written consent of Landlord to be effective:

a. Partnership and L.L.C. Transfers If Tenant is a partnership or a California limited liability company, a transfer of capital interest to a new partner or partners (or member or members) which computed alone or cumulatively with previous transfers would result or has resulted in the transfer of ownership of a more than twenty-five percent (25%) interest in the capital or profits of the partnership or limited liability company; provided that the following transfers shall not be considered in computing whether a cumulative total of more than twenty-five percent (25%) of the capital of the partnership or limited liability company has been transferred:

(1) Transfers to persons who are related by blood or marriage to the transferring partner or member or to a trust established for the benefit of the transferring partner or member or such persons;

(2) Transfers resulting from the death of the partner or member whether such transfers are made pursuant to the will of the deceased partner or member an inter vivos or testamentary trust instrument or the laws of intestacy.

b. Corporations: The transfer of more than fifty percent (50%) of the voting stock in a corporation which is either itself the Tenant, or is a general partner in a partnership which is the Tenant; provided that the following transfers shall not be considered in computing whether a cumulative total of more than fifty percent (50%) of the voting stock has been transferred:

(1) Transfers to persons who are related by blood or marriage to the transferring shareholder or to a trust established for the benefit of the transferring shareholder or such persons;

(2) Transfers resulting from the death of the shareholder whether such transfers are made pursuant to the will of the deceased shareholder an inter-vivos trust instrument or the laws of intestacy.

c. Sole Proprietorship and Joint Tenants: Transfers to persons who are related by blood or marriage to the transferring partner or member established for the benefit of the transferring partner or member or such persons if the transfer is a result of the death of the sole proprietor or joint tenant, such transfer shall be reviewed by the Parks and Recreation Director or his/her designee to ensure that the transferee meets the requirements of subdivisions 1 – 5 herein.

2. Any proposed transferee shall have expressly assumed, by instrument in writing, for itself and its successors and assignees, and expressly for the benefit of Landlord, all of the obligations of Tenant under this Lease. Any proposed transferee shall have agreed to be subject to all of the conditions and restrictions to which Tenant is subject. However, the failure for any reason, of any transferee, or any successor in interest whatsoever to this Lease, to have assumed such obligations, shall not relieve or except such transferee or successor of or from such obligations, conditions or restrictions or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Site or any required construction of improvements. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that transfer of this Lease, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall not operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Site and construction of improvements that Landlord would have had, had there been no such transfer or change.

3. There has been submitted to Landlord for review, and Landlord has approved, all instruments and other legal documents involved in effecting transfer of the leasehold interest.

4. A processing fee of \$3,000 has been paid to Landlord for review of each proposed assignment.

5. If, notwithstanding the provisions of this section, this Lease is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have a right of first refusal to purchase this Lease. If any trustee or debtor in possession (collectively "trustee") receives an acceptable offer to purchase this Lease, such trustee shall notify Landlord in writing of the terms of such offer. If Landlord within thirty (30) days after receipt of such notice indicates in writing its agreement to purchase this Lease on the terms stated, the trustee shall sell and convey this Lease to Landlord on the terms stated in the notice. If the Landlord does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign this Lease to the party making the offer on the terms of such offer. If such offeror does not purchase this Lease on such terms and conditions, Landlord shall have a right of first refusal to purchase this Lease in the event of any later offer for the purchase of this Lease. If an offeror purchases this Lease in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, Landlord shall have the option to purchase

this Lease from such party for an amount equal to the amount such party paid for this Lease, at any time within one (1) year from the date of such offerors' purchase thereof.

Tenant represents and agrees for itself and any successor in interest of itself that without the prior written approval of Landlord, there shall be no significant change (voluntary or involuntary) in the membership, management or control of Tenant which would prevent or impair the ability of Tenant to complete its obligations under this Lease.

Tenant shall promptly notify Landlord of any and all significant changes in the membership, management or control of Tenant whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Tenant, or with respect to the identity of the parties in control of Tenant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Lease may be terminated by Landlord hereof if there is any significant change in the membership, management or control of Tenant whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Tenant, or with respect to the identity of the parties in control of Tenant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, shall be effective until there shall have been delivered to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Lease to the end of the term hereof.

The consent by Landlord to an assignment hereunder shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment.

Notwithstanding an assignment by Tenant hereunder to which Landlord has consented, Tenant shall remain liable for all liabilities and obligations incurred by Tenant hereunder prior to the date of said assignment.

B. [§602] Successors and Assigns

The terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto, if approved by Landlord pursuant to Section 601. If the Lease is transferred to a party not approved in advance, Landlord may terminate Lease in its sole discretion.

C. [§603] Release of Landlord

In the event of a sale, assignment, transfer or conveyance by Landlord of the Site or its rights hereunder, the same shall operate to release Landlord from any liability incurred following the effective date of such assignment upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event, Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to the Site or this Lease. This Lease shall not be affected by any such sale, assignment, transfer or conveyance, and Tenant agrees to attorn to any such purchaser or assignee.

VII. INSURANCE AND INDEMNIFICATION

A. [§701] Required Insurance Policies

Tenant shall maintain and keep in force during the term of this Lease, for the mutual benefit of Landlord and Tenant, at Tenant's sole cost and expense, the following insurance applicable to the Premises:

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations with limits of no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Tenant has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
3. **Workers' Compensation:** In accordance with the provisions of the California Labor Code, Tenant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Tenant's staff while performing any work incidental to the performance of this agreement.
4. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. The policy shall include business interruption coverage, with adequate limits to cover the term of this agreement.

If the Tenant maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to coverage for the higher coverage limits maintained by the

Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Tenant's obligations to rebuild or replace shall be as set forth in Article IX (DESTRUCTION).

B. [§702] General Insurance Policy Requirements

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

1) Additional Insured Status

The City of Santa Barbara, its officers, employees, and agents, shall be covered as additional insured on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Tenant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Tenant. Additional Insured coverage shall be provided in the form of an endorsement to the Tenant's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85). A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.

2) Subcontractors

Tenant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that the City is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.

3) Notice of Cancellation

A provision that coverage will not be cancelled or subject to reduction without written notice given to the Parks and Recreation Director or his/her designee, addressed to 620 Laguna Street, Santa Barbara, California 93102 and the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.

4) Primary Coverage

For any claims related to this contract, the Tenant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be excess of the Tenant's insurance and shall not contribute with it.

5) Waiver of Subrogation

Tenant hereby agrees to waive rights of subrogation which any insurer of Tenant may acquire from Tenant by virtue of the payment of any loss. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Tenant, its employees, agents and subcontractors.

Acceptability of Insurers

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

Coverage Limits Specifications

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Tenant may be held responsible for payment of damages resulting from Tenant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, Tenant fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Tenant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Tenant, City may deduct from sums due to Tenant any premium costs advanced by City for such insurance.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Tenant shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Tenant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Evidence of Coverage

Tenant must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the City or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by Tenant's insurer or its agent and submitted to the City prior to execution of this Agreement by the City.

Tenant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Tenant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Insurance Revisions: Landlord shall retain the right at any time to review the coverage, form and amount of insurance required hereby. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for Landlord and for members of the public using the Site, Landlord may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection.

Landlord's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the Site.

C. [§703] Hold Harmless and Indemnification

Tenant shall investigate, defend, indemnify and hold the City of Santa Barbara and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against the City of Santa Barbara or its respective officers, agents and employees arising out of or in any way connected to Tenant's possession or use of the Site.

In case any action or proceeding is brought against Landlord or the City of Santa Barbara or its respective officers, agents and employees by reason of any such claim, Tenant, upon written notice from the City of Santa Barbara, shall at Tenant's expense resist and defend such action or proceeding by counsel approved by the City of Santa Barbara in writing.

VIII. SURRENDER; HOLDING OVER

A. [§801] Surrender of Site

1. At least ninety (90) days before the last day of the term hereof, Tenant

shall give to Landlord a written notice of its intention to surrender the Site on that date. Nothing contained herein shall be construed as an extension of the term hereof or as consent of Landlord to any holding over by Tenant.

2. At the end of the term, or other sooner termination of this Lease, Tenant will surrender and deliver to Landlord the possession of the Site, together with all fixtures and improvements, in good order, condition and repair, free and clear of all occupancies, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by Landlord, without payment or allowance whatsoever by Landlord on account of any such improvements. Tenant may, upon or prior to the termination of this Lease, remove, at Tenant's sole cost and expense, all movable furniture, trade fixtures and equipment belonging to Tenant, provided that upon any such removal, Tenant, at Tenant's sole cost and expense, shall repair all damage, of any kind or nature, caused by such removal. Property not so removed shall be deemed abandoned by Tenant, and title to the same shall thereupon immediately pass to Landlord without payment or allowance whatsoever by Landlord on account of such property. At Landlord's sole discretion and upon Landlord's written request, Tenant shall remove, at Tenant's sole cost and expense, any and all improvements constructed or installed by or at the expense of Tenant, and, at no cost and expense to Landlord, Tenant shall repair or cause the repair of any damage resulting from such removal.

B. [§802] Holding Over

If Tenant shall retain possession of the Site or any part thereof without Landlord's prior written consent following the expiration or sooner termination of this Lease for any reason, then Tenant shall pay to Landlord for each day of such retention double the amount of the daily Base Rent in effect on the date of such expiration or termination. Tenant shall also indemnify and hold Landlord harmless from any loss or liability resulting from delay by Tenant in surrendering the Site, including, without limitation, any claims made by any succeeding Tenant founded on such delay. Alternatively, if Landlord in its sole discretion gives written notice to Tenant of Landlord's election thereof, such holding over shall constitute renewal of this Lease on a month to month basis. Except after delivery by Landlord of such written notice, acceptance of rent by Landlord following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 802 shall waive Landlord's right of re-entry or any other right. Unless Landlord exercises the option hereby given to it, Tenant shall be only a Tenant at sufferance, whether or not Landlord accepts any rent from Tenant while Tenant is holding over without Landlord's written consent.

IX. DESTRUCTION

A. [§901] Destruction Due to Risk Covered by Insurance

If, during the term, the Site is totally or partially destroyed from a risk covered by the Tenant's insurance described in Article VII Insurance and Indemnification, rendering the Site totally or partially inaccessible or unusable, Tenant, at its sole cost and expense, shall

restore the Site including Tenant's improvements, alterations and fixtures to substantially the same condition as they were immediately before destruction, from the insurance proceeds. Such destruction shall not terminate this Lease.

B. [§902] Destruction due to Risk Not Covered by Insurance

1. If, during the term, the Building Shell in which the Site is located is totally or partially destroyed from a risk not covered by insurance, rendering the Site or the Building in which the Site is located totally or partially inaccessible or unusable, Landlord, in its sole discretion, shall comply with either paragraph 2 or paragraph 3 of this section.

2. Landlord may, at its sole cost and expense, restore the Building Shell in which the Site is located, to substantially the same condition as it was in immediately before destruction.

3. Within one hundred eighty (180) days after the destruction of the Building Shell, Landlord may terminate the Lease. If Landlord so elects to terminate the Lease, Tenant at its option and sole cost may elect to keep the Lease in force by constructing a new Building Shell and the Site. Notice of any such election by Tenant shall be given in writing to Landlord within sixty (60) days after Tenant's receipt of written notice of Landlord's decision to terminate the Lease. Should Tenant so exercise its right to keep the Lease in force by reconstructing the Building Shell and the Site, then all provisions of this Lease, including, without limitation, rental and other financial terms, shall remain in effect. Should Tenant so exercise its right to keep the Lease in effect by reconstructing the Building Shell and the Site, Tenant shall submit to Landlord for review and approval the plans and specifications and estimated cost to rebuild the Building Shell. If Landlord approves the plans and specifications including the cost estimate therefore as submitted by Tenant and Tenant thereafter completes the construction of the Building Shell and Site in accordance therewith, Tenant shall thereafter receive from Landlord a rent credit from subsequent rent payments hereunder in an amount equal to the actual cost incurred by Tenant to reconstruct the Building Shell.

4. If the Tenant chooses to construct a new Building Shell and Site, Tenant's work shall be completed within three (3) years from the date of destruction or this Lease shall terminate.

C. [§903] Adjustment of Minor Loss --No Insurance Trustee

If, during the term, Tenant's improvements, alterations and fixtures are destroyed from a risk covered by the insurance described in Article VII, and the total amount of loss does not exceed Twenty Five Thousand Dollars (\$25,000), Tenant shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Tenant for the sole purpose of making the restoration of Tenant's improvements, alterations and fixtures in accordance with Sections 403 and 905.

D. [§904] Adjustment of Major Loss - Insurance Trustee

If Tenant's improvements, alterations and fixtures are destroyed from a risk covered by the insurance described in Article VII, and the total amount of loss exceeds Twenty Five Thousand Dollars (\$25,000), Tenant shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company doing business within the City of Santa Barbara and approved by the Landlord.

All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The deposited sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. A ten percent (10%) retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the site is free of all mechanic's liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration, Tenant in the case of a restoration pursuant to Section 901 shall deposit the amount of the deficiency with the Insurance Trustee within twenty (20) days after request by the Insurance Trustee indicating the amount of the deficiency.

Any sums not disbursed by the Insurance Trustee after restoration has been completed and final payment has been made to Tenant's contractor shall be delivered to the party entitled to the proceeds within fifteen (15) days (after demand made by either party on the Insurance Trustee).

Any undisbursed funds after compliance with the provisions of this section shall be delivered to Landlord to the extent of Landlord contribution to the fund, if any, and the balance, if any, shall be paid to Tenant.

All actual costs and charges of the Insurance Trustee shall first be paid by insurance proceeds and thereafter by the Tenant. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, Landlord shall substitute a new trustee in the place of the designated Insurance Trustee.

Both parties shall promptly execute all documents and perform its obligations under this Section.

E. [§905] Procedure for Restoring Site

Within ninety (90) days after the date that Tenant is obligated to restore the Site, Tenant at its cost or from insurance proceeds shall prepare final plans and specifications and Site drawings complying with applicable laws that will be necessary for restoration of the Site. The plans and specifications and working drawings must be approved by Landlord. Landlord shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans and specifications and working drawings and return them to Tenant. In the event of re-submittal, Landlord shall have a maximum of fifteen (15) days to respond and approve or disapprove. If Landlord disapproves the plans and specifications and working drawings, Landlord shall notify Tenant of its objections and Landlord's proposed solution to each objection. Tenant acknowledges that the plans and specifications and working drawings shall be subject to approval of the appropriate government bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

1. Tenant shall complete any restoration required of Tenant under Section 901 within one hundred and forty (140) working days after final plans and specifications and working drawings have been approved by the appropriate government bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Tenant's reasonable control). Said period shall be extended to two (2) calendar years for any restoration by Tenant under Section 902.

2. Tenant shall retain a licensed contractor. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 702. Such insurance shall contain waiver of subrogation clauses in favor of Landlord and Tenant in accordance with the provisions of Section 702.

3. Tenant shall notify Landlord of the date of commencement of the restoration not later than two (2) days before commencement of the restoration to enable Landlord to post and record notices of non-responsibility.

4. Tenant shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Site.

5. On completion of the restoration Tenant shall immediately record a notice of completion with the County of Santa Barbara.

6. The restoration shall not be commenced until sums sufficient to cover the costs of restoration are placed with the insurance trustee in the case of restoration under Section 901 or proof of available financing to complete the project is provided by Tenant to Landlord in the same manner as such proof of available financing is required for Tenant's initial construction under this Lease, in the case of any restoration by Tenant under Section 902.

G. [§906] Abatement or Reduction of Rent

In case of destruction of the Site for any risk covered under the business interruption insurance required of Tenant under Section 702, Tenant shall pay Landlord rent for the twenty-four (24) month period following the destruction. After said twenty-four month period, if the Site is being reconstructed, there shall be a total abatement of rent until the Site is fully restored as determined by the issuance of a certificate of occupancy by the City's Chief Building Inspector. Should Landlord terminate the Lease under Section 902 and should Tenant not elect to reconstruct the Building Shell, any rent paid by Tenant during said twenty-four (24) month period shall be rebated to Tenant by Landlord.

H. [§907] Waiver of Civil Code Sections

Tenant waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) with respect to any destruction of the Site.

I. [§908] Restoration Prohibited by Law

If existing law prohibits the restoration of the Site or the Building Shell to substantially the same design and functionality as existed immediately prior to such partial or total destruction, either the Tenant or the Landlord may terminate this Lease immediately by giving notice to the other party, regardless of whether the Site or Building Shell is destroyed by a risk covered by insurance or not.

X. EMINENT DOMAIN

A. [§1001] Definition of Taking

The term "taking" as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain or the exercise of any similar governmental power to take and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

B. [§1002] Total Taking

In the case of a taking (other than for temporary use or of only the leasehold estate hereunder) of the fee of the entire Site, this Lease shall terminate as of the date on which such taking shall be effective. In case of a taking (other than for temporary use

or of only the leasehold estate hereunder) of such substantial part of the Site as shall result, in the good faith judgment of Tenant, in the Site remaining after such taking (even if restoration were made) being economically unsuitable for the use being made of the Site at the time of such taking, Tenant, at its option, may terminate this Lease by written notice given to Landlord within sixty (60) days after such taking. Any taking of the Site of the character referred to in this Section 1002, which results in the termination of this Lease, is referred to as a "total taking."

C. [§1003] Partial Taking

In the event of a taking of a portion of the Site which is not a total taking (a "partial taking"), then and in that event:

1. This Lease shall remain in full force and effect as to the portion of the Site remaining immediately after such partial taking, without any abatement of Base Rent, Percentage Rent or any other payment payable hereunder; and,

2. Tenant will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned in Article XII [Section 1200 et seq.]) restoration of the Site as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, Tenant shall not be required to effect such restoration until such partial taking is terminated. Such restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Landlord in accordance with Sections 401 and 402 hereof and otherwise in accordance with the applicable provisions of this Lease.

D. [§1004] Application of Awards

Awards and other payments on account of a taking (less costs, fees and expenses incurred by Landlord, and Tenant in connection with the collection thereof) shall be applied as follows:

1. Net awards and payments received on account of taking, other than (a) a taking for temporary use, (b) a taking of only the leasehold estate hereunder, or (c) a total taking, shall be held and applied to pay the cost of restoration of the Site. The balance, if any, remaining after restoration shall be divided between Landlord and Tenant as they may agree and, in the absence of such agreement, such balance shall be paid to Landlord and Tenant in the ratio, as nearly as practicable, which (a) the sum of (1) the then fair market value of Landlord's reversionary interest in the improvements and (2) the fair market value of the land, valued as unencumbered by this Lease, unimproved and to be used for the uses specified in this Lease bears to (b) the then fair market value of Tenant's interest in the improvements for the remainder of the term of this Lease, provided, however, that Tenant's share of any such balance shall be applied first to any payment of any past due Base Rent, Percentage Rent or any other payment payable hereunder, including, without limitation, any

past due tax payments.

2. Net awards and payment received on account of (a) a taking for temporary use or (b) a taking of only the leasehold estate created by this Lease shall be paid to Tenant, except that:

a. If any portion of any such award or payment is made by reason of any damage to or destruction of the Site, and there exists in this Lease an obligation to restore said Site, such portion shall be held and applied to pay the cost of restoration thereof; and

b. If any portion of any award or payment on account of a taking for temporary use relates to a period beyond the date of termination of this Lease term, such portion shall be paid to Landlord; and

c. If, at any time such award becomes payable to Tenant, any Base Rent, Percentage Rent or other payments payable hereunder (including, without limitation, any tax payments) shall be due and unpaid, such award shall be first applied to the payment thereof.

3. With the exception of payments to tenant for loss of business goodwill and Tenant improvements at cost less depreciation in accordance with the Internal Revenue Code, any award and payment received on account of a total taking shall be paid to the Landlord, including any and all payments for leasehold bonus value, fixtures and equipment not considered Tenant improvements and severance damages.

E. [§1005] Notice of Taking

In case of a taking of all or any part of the Site or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. Landlord and Tenant shall jointly prosecute their claims for an award in a single proceeding. Landlord and Tenant shall not prosecute separate claims for an award, except that Tenant and any subtenant may prosecute separate claims for awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any subtenant, but only to the extent that any such separate award shall not diminish the award made to Landlord and Tenant in respect of their joint claim.

F. [§1006] Disbursement of Awards on Partial Taking

All awards or other payments received on account of a partial taking shall be paid to the Landlord, to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award(s) remaining after completion of any

restoration shall be disbursed by the Landlord to the parties pursuant to subsection 1 of Section 1004.

XI. DEFAULT

A. [§1101] Default by Tenant

1. Any of the following occurrences or acts shall constitute an “Event of Default” under this Lease:

a. If Tenant fails to pay the rent when due as described herein. Landlord may give Tenant notice to pay all sums due within three (3) days, and if such payment is not made within three (3) days, Landlord may terminate the tenancy without discharging any amount due.

b. If Tenant at any time during the term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Tenant from complying with the terms of this Lease) shall fail to observe or perform any of Tenant’s other covenants, agreements or obligations hereunder (with the exception of the obligation to pay rent); and if any such default shall not be cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default (or, in the case of any default which cannot with diligence be cured within such thirty-day period, if Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such thirty-day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence); or

c. If Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petitioner or answer proposing the adjudication of Tenant as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

d. If a receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant or of the Site shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Tenant and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Tenant shall acquiesce in or consent to such appointment; or

e. If Tenant shall be liquidated or dissolved or shall begin proceedings

toward its liquidation or dissolution; or

f. If Tenant shall fail:

1. To timely pay any taxes not being disputed in good faith when due; or

2. To observe or perform any of Tenant's other covenants, agreements or obligations under any agreement with Landlord relating to taxes; or

g. If Tenant shall commit or suffer to be committed any waste or impairment of the Site or any part thereof; or

h. If Tenant shall materially alter the improvements in any manner, except as expressly permitted by this Lease; or

i. If Tenant shall fail to maintain insurance as required by this Lease; or

j. If Tenant shall engage in any financing (except as approved by Landlord and permitted by the terms of this Lease), or any other transaction creating any mortgage on the Site, or place or suffer to be placed thereon any lien or other encumbrance to the Site, or suffer any levy or attachment to be made thereon; or

k. If Tenant uses the Site for purposes other than those provided for in this Lease without the prior written approval of Landlord; or

l. If Tenant fails to be open for business on the Site for more than seventy-two consecutive hours, except in the case of such closures as may be allowed or provided for by this Lease, (hereafter "abandonment.") An abandonment shall constitute an automatic event of default and forfeiture of this Lease and entitle Landlord to reenter and retake the Site pursuant to the provisions of Section 1101 (2) without allowing Tenant a period to cure the event of default; or

m. If Tenant fails to comply with any applicable laws and such failure continues for a period of thirty (30) days after a notice of violation issued by the applicable enforcement agency. In the case of health or fire agency enforcement, an event of default shall occur when the Tenant receives a notice of a violation of health or fire regulations and fails to cure the violation within the initial time period set by the enforcement agency in its first notice of violation; or

n. If Tenant fails to obtain written approval of the Parks and Recreation Director or his/her designee before construction, renovation or material/substantial repair of any portion of the Site and fails to conform to and abide by all rules and regulations relative to the Site and uses herein authorized, which Site and uses are subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the City of Santa

Barbara, County of Santa Barbara, State of California, the Federal Government and all other governmental agencies when applicable; or

o. If Tenant fails to obtain all required permits or licenses for repair, construction or renovation of any portion of the Site or use therein from the regulatory body having jurisdiction thereof before such repair or use is undertaken; or

p. If Tenant fails to complete Tenant improvements as detailed in Exhibit C, if any, within the time prescribed in section 401, to the satisfaction of the Parks and Recreation Director or his / her designee; or

q. If Tenant attempts to assign, lease, or sublease any part of the Site without Landlord's advanced approval; or

r. If Tenant's liquor license is revoked and Tenant is unable to obtain a reinstatement within 10 days; or

s. If Tenant fails to correct any operational deficiencies identified in Section 207 within sixty (60) days written notice from Landlord to Tenant.

2. Upon the occurrence of any such Event of Default, in addition to any and all other rights or remedies of Landlord hereunder or by law or in equity, it shall be, at the option of Landlord, without further notice or demand of any kind to Tenant or any other person:

a. The right of Landlord to declare the term hereof ended and to terminate this Lease, in which event Tenant shall promptly surrender possession of the Site to Landlord, and pay to Landlord all Base Rent and all other payments due Landlord hereunder to the date of such termination. If Tenant does not so promptly surrender the Site, Landlord shall have the immediate right to re-enter the Site and take possession thereof including the right to refuse to permit and to deny the right of the Tenant to remove any or all of Tenant's movable furniture, trade fixtures, equipment, improvements or personal property, notwithstanding any other provision of this Lease, located in, or upon the Site, and take exclusive possession of same as a guarantee of payment for past due rents, without any obligation or liability to the Tenant, and remove all persons therefrom, and Tenant shall have no further claim thereon or thereunder.

b. The right of Landlord, without terminating this Lease, to enter the Site and occupy the whole or any part thereof for and on account of Tenant and to collect said rent and any other rent that may thereafter become payable, to refuse, notwithstanding any other term or provision of this Lease, to permit and to deny the right of Tenant to remove any or all of Tenant's movable furniture, trade fixtures, equipment, improvements or personal property located in, on or upon the Site, and to use and take exclusive possession of same without payment to Tenant or cost to Landlord for so long as Landlord so occupies the Site or until this Lease is terminated pursuant to subsection c. below; and

c. The right of Landlord, even though it may have re-entered the Site pursuant to subsection b. above, to thereafter elect to terminate this Lease.

3. Tenant further acknowledges and agrees that the service by Landlord of any notice pursuant to the unlawful detainer or similar such statute of the State of California and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease. Tenant hereby irrevocably appoints Landlord as agent and attorney-in-fact of and for Tenant to so enter upon the Site in the Event of Default by Tenant hereunder, to remove any and all furniture and personal property whatsoever situated upon the Site, and to place such furniture and personal property in storage for the account of and at the expense of Tenant. In the event that Tenant shall not have paid the cost of such storage after ninety (90) days, Landlord may, at its discretion, sell any or all of such furniture and personal property at public or private sale in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant or any demand upon Tenant. If Landlord so elects to sell such furniture and personal property, Landlord shall apply the proceeds of such sale first, to the cost and expenses of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the costs of or charges for removing and storing any such furniture and personal property, third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms of this Lease, and fourth, the balance, if any, to Tenant. Tenant hereby waives all claim for damages that may be caused by Landlord's re-entering and taking possession of the Site or removing and storing furniture and personal property as herein provided, and will save Landlord harmless from any losses, costs or damages occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry as the same is defined in the Code of Civil Procedure of the State of California.

4. Should Landlord elect to terminate this Lease pursuant to any of the provisions of above, Landlord may recover from Tenant as damages:

a. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

b. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in maintaining or preserving the Site after such default, preparing the Site for re-letting to a new tenant, any repairs or alterations to the Site for such re-letting, leasing commissions or other costs necessary or proximate to re-letting the Site ; plus

c. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used hereinabove, the term "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. For purposes of determining Landlord's

damages under this subsection 4, the annual rent payable hereunder shall be deemed to be equal to the average rent paid by Tenant for the calendar year immediately preceding the date of Tenant's default.

5. Trade Fixtures and Equipment. Notwithstanding Section 501 and 502, if an Event of Default occurs, all of Tenant's fixtures, equipment, improvements, additions, alterations shall remain on the Site and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same without payment to Tenant or any other party.

6. Remedies Not Exclusive. No right or remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

7. Waiver of Rights of Redemption. Tenant hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Site after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent.

8. Termination Upon Two or More Defaults. In the event Landlord issues two (2) or more Notices of Default to Tenant in any twelve (12) month period, Landlord may terminate Tenant's right to possession of the Site by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Site to Landlord. In such event, Landlord shall be entitled to recover from Tenant:

a. The worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; and

b. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in maintaining or preserving the Site after such default, preparing the Site for re-letting to a new Tenant and any repairs or alterations to the Site.

B. [§1102] Right of Landlord to Perform

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. Subject to any rights of Tenant to contest, if Tenant shall fail to pay any sum of money, other than Base Rent which is required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and

such failure shall continue for fifteen (15) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs and expenses, together with interest thereon at the rate of ten (10%) percent per annum from the date of such payment by Landlord shall be payable, as additional rent to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of the rent.

If Tenant fails to maintain quality of character and operation in the manner specified in this Lease, then:

1. Landlord shall notify Tenant in writing, specifying the complaint and, if possible, requesting means of cure.

2. If Tenant has not cured the condition specified in the complaint within thirty (30) days after receipt of notice, or if cure cannot be achieved within thirty (30) days and Tenant has not commenced cure and is not proceeding diligently, then:

a. Landlord may re-enter the Site without terminating this Lease and, as Tenant's attorney-in-fact, cure the default for the account of Tenant; and

b. If sums of money are expended by Landlord, Tenant agrees to repay such sums immediately upon demand and, if not paid, said sums shall bear interest at the rate of ten (10%) per annum until paid. All said sums shall constitute additional rent due hereunder.

C. [§1103] Personal Service Nature of Tenant's Obligations

Tenant acknowledges that the Site constitutes a major and indispensable component of Santa Barbara City Parks and Recreation Department's plan for the premises and that, therefore, the identity and qualifications of the Tenant as a restaurant as further described in paragraph [§ 201], Use of the Site, is of the utmost concern to the City of Santa Barbara. The parties acknowledge that pursuant to this Lease, Tenant is, to a significant degree, performing personal services for Landlord and that the provisions in this Lease relating to assignment and default are based upon the particular and unique circumstances under which this Lease is made.

D. [§1104] Default by Landlord

In the event Landlord shall fail to perform or observe any of the covenants or provisions contained in this Lease on the part of Landlord to be performed or observed within thirty (30) days after written notice from Tenant to Landlord specifying the particulars of such default or breach of performance, or if more than thirty (30) days shall

be reasonably required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after such notice, then in that event, Tenant shall have all rights and remedies provided by law.

E. [§1105] Abandonment -Title to Fixtures and Equipment

If Tenant shall abandon, subject to Section 1101, vacate or surrender said Site or be dispossessed by process of law, or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to Tenant and left on the Site shall, at the option of Landlord, be deemed to be abandoned and title thereto shall thereupon pass to Landlord without any payment or allowance whatever by Landlord on account of such property. In such event such property may be retained by Landlord as Landlord's property or be disposed of, without accountability, in such manner as Landlord elects, or if Landlord shall give written notice to Tenant to remove such property, such property shall be removed by Tenant at Tenant's sole cost and expense.

F. [§1106] No Recourse

Tenant, other than judicial award, agrees that it shall have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease, or otherwise, against any incorporator, shareholder, officer, director or attorney, past, present or future of Landlord, or against any other person than Landlord, and against Landlord only to the extent of the value of the land and improvements, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise, all such liability, by Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder being expressly waived.

XII. [§1200] UNAVOIDABLE DELAY; FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failures to act of any public or governmental agency or entity (except acts or failures to act of Landlord shall not excuse performance by Landlord); or any other similar causes, without fault and beyond the reasonable control of the party claiming an extension of time to perform, performance of such act shall be excused for the period of the delay, provided, however, that nothing in this Section 1200 shall excuse Tenant from the prompt payment of any Base Rent or other monetary charges required of Tenant, and provided, further, that the party delayed or prevented from the performance of any act as above described has notified the other of such delay or prevention within thirty (30) days of the inception thereof, and has thereafter kept said party regularly informed of the status of such delay or prevention.

XIII. [§1300] ENTRY BY LANDLORD

A. Landlord and its agents may enter and examine the Site at all reasonable times in order to determine whether Tenant is in compliance with the provisions hereof. Landlord will exercise this right of inspection in a way that will cause as little interference, inconvenience, and disturbance to Tenant's operation as possible.

B. Landlord and its authorized representatives reserve and shall have the right to enter upon the Site at all reasonable times to inspect the same, to make necessary repairs and adjustments, to show said Site to prospective purchasers, mortgagees or tenants or to post notices, including, without limitation, notices of non-responsibility, all of the foregoing without abatement of rent. Except in the event of an emergency, Landlord shall use all reasonable efforts to limit such entry to regular business hours after giving reasonable notice to Tenant of the time and purpose of the entry. In the event of an emergency, Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open any doors in order to obtain entry to any portion of the Site, and any entry to the Site, or portions thereof obtained by Landlord by any of said means or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into or detainer of, the Site or an eviction, actual or constructive of Tenant from the Site or any portions thereof.

XIV. GENERAL

A. [§1400] Estoppel Certificates

Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to or for the benefit of the other or to or for the benefit of any Lender, at any time, from time to time, at the expense of the party requesting a certificate as herein below described, promptly upon request, its certificate certifying (1) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (2) the dates, if any, to which all rents due hereunder have been paid, (3) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord or Tenant of any agreement, covenant or condition hereof on the part of the other party to be performed or observed (and, if so, specifying the same), and (4) whether there are then existing any defaults by Tenant and known by Landlord in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Site or the leasehold estate hereunder or any part thereof.

B. [§1401] Waiver

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in

exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt and acceptance by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default.

Failure by Landlord or Tenant, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of Landlord to insist thereafter upon strict performance by Tenant.

C. [§1402] Notices

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the United States mail, and (1) if intended for Landlord shall be addressed to:

City Clerk
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102-1990

With a copy to:

Parks and Recreation Director
City of Santa Barbara
620 Laguna Street
Santa Barbara, CA 93102

and (2) if intended for Tenant shall be addressed to:

Mr. Tenant
Mrs. Tenant
Tenant's Trading Name
Tenant Address

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

D. [§1403] Corporate Authority

If Tenant signs as a corporation, Tenant covenants that each of the persons executing this Lease on behalf of Tenant is a duly authorized and existing officer of the corporation, that Tenant has, is and shall remain during the term of this Lease qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease and that each, both or all of the persons signing on behalf of the corporation were authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties.

E. [§1404] No Light, Air or View Easement

Tenant covenants and agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction or abatement of Base Rent or other amount payable under this Lease, result in any liability of Landlord to Tenant or in any other way affect this Lease or Tenant's obligations hereunder.

F. [§1405] Landlord's Covenant of Quiet Enjoyment

Landlord hereby covenants to Tenant that Landlord has good and marketable fee simple title to the Site, free and clear of all claims, liens and encumbrances except the Tidelands Grant restrictions. Upon Tenant paying the Base Rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall peaceably hold and quietly enjoy the Site for the entire term hereof without hindrance, molestation or interruption by Landlord or any party claiming through or under Landlord.

G. [§1406] No Joint Venture

It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

H. [§1407] Provisions Subject to Applicable Law

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

I. [§1408] Miscellaneous

1. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Lease.

2. Tenant shall not pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by the City of Santa Barbara, the State of California or any governmental public or judicial body, agency or department relating in any manner to conflicts of interest or if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the development, use or occupancy of the Site or any part thereof or with respect to the enforcement or interpretation of this Lease.

3. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

4. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein.

5. The words "Landlord" and "Tenant" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord and Tenant, the obligations hereunder imposed upon Landlord and Tenant shall be joint and several.

6. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

7. Time is of the essence of each and all of the agreements, covenants and conditions of this Lease.

8. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Landlord or Tenant.

9. Tenant agrees to comply with the attached Exhibit "C" - Water and Energy Conservation Guidelines.

10. The area, if any, under sidewalks, driveways or passageways adjoining the Site or any part thereof is subject to all prior and existing rights of the City of Santa Barbara, and, furthermore, any tax, charge, assessment or rental of whatever form or nature and however denominated, which may hereafter be imposed, at any time or from time to time, by the City of Santa Barbara or by its authority or by any other public authority for the use or occupancy of such area shall be borne and paid by Tenant, except as otherwise herein expressly provided.

11. This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing, approved by the Landlord Council and signed by Landlord and Tenant.

12. Landlord hereby represents, by executing this Lease, that Tenant has been informed of Tenant's right to have this Lease reviewed by legal counsel of Tenant's choice and has been afforded a reasonable opportunity to seek such advice.

[signatures appear on following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease by proper persons thereunto duly authorized as of the date first hereinabove written.

LANDLORD:

CITY OF SANTA BARBARA, a municipal corporation

By: _____
Jill E. Zachary
Parks and Recreation Director

ATTEST:

Sarah Gorman
City Clerk Services Manager

APPROVED AS TO CONTENT:

Mark D. Sewell
Parks and Recreation Business Manager

APPROVED AS TO FORM:

By: _____
Robin Lewis
Assistant City Attorney

APPROVED AS TO INSURANCE:

Mark Howard
Risk Manager

BUSINESS TAX COMPLIANCE:
Certificate No. _____

By: _____

TENANT:

TENANT'S TRADING NAME., a California corporation / Partnership

Mr. / Mrs. Tenant, Chief Executive Officer

Mr. / Mrs. Tenant, Secretary

SAMPLE CONCESSION LEASE