

RESOLUTION NO. 10602-25

WHEREAS, the NASSAU COUNTY PLANNING COMMISSION, at its regular meeting held on **Jan. 9, 2025**, reviewed as provided by law, the following zoning matters:

<u>MUNICIPALITY</u>	<u>LOCAL CASE NO.</u>	<u>APPLICANT</u>	<u>SEC.</u>	<u>BLK.</u>	<u>LOT(S)</u>
City of Long Beach (with Letter)		City Council			Amend City Charter Establishing Planning Board
Hempstead Village	2147	Ajay Choudhary	34	360	456
Great Neck		Roka Capital, LLC	1	142	71, 72
Bayville (with Letter)		Bayville on the Sound One, LLC	29	82 D D-12	2 123 1 – 4
TH Bellmore	1301	N. Bellmore Fire District	51	75	54
TNH Manhasset		Honda of Manhasset	3	J	122,125,127,424
TNH Carle Place	21663	Carle Place, LLC/ 440 Old Country Rd., LLC	10	288	48 - 51

THEREFORE, BE IT RESOLVED, that the **NASSAU COUNTY PLANNING COMMISSION** recommends that the referring agency take action as it deems appropriate, the Commission having no modifications.

Pursuant to Section 239-m of the General Municipal Law, the referring municipality shall file a report indicating its decision with the NASSAU COUNTY PLANNING COMMISSION within thirty (30) days of final action.

The resolution herein was, in accordance with all applicable laws, duly considered moved and adopted by the following vote:

Leonard Shapiro, Chair	Aye
Jeffrey Greenfield, 1 st Vice Chair	Excused
Neal Lewis, 3 rd Vice Chair	Aye
Dana Durso	Aye
Ronald Ellerbe	Excused
Murray Forman	Aye
Denise Gold	Aye
Khandan Kalaty	Aye
Reid Sakowich	Excused

The Chair declared the resolution duly adopted.

Resolution of the NASSAU COUNTY PLANNING COMMISSION adopted: **1/9/25**

Bruce A. Blakeman
County Executive

Michael Kwaschyn, P.E.
Acting Commissioner

William Nimmo
Deputy Commissioner



Nassau County Department of Public Works Nassau County Planning Commission

1194 Prospect Avenue
Westbury, New York 11590-2923
www.nassaucountyny.gov

Leonard Shapiro
Chair

Jeffrey Greenfield
1st Vice-Chair
Neal Lewis
3rd Vice Chair
Ronald J. Ellerbe
Dana Durso
Murray Forman
Denise Gold
Khandan Kalaty
Reid Sakowich

Jan. 9, 2025

Steven Pambianchi., Esq.
Assistant Corporation Counsel
City of Long Beach
Kennedy Plaza
Long Beach, N.Y. 11561

Re: Amend City of Long Beach Charter in Order to Establish a Planning Board

Dear Mr. Pambianchi:

Please be advised that pursuant to Section 239-L&M of the General Municipal Law, the above-referenced amendment to the City's Charter was presented to the Nassau County Planning Commission at its Jan. 9, 2025 meeting. A Local Determination was issued by the Planning Commission (see attached Resolution). It should be noted that the Commission expressed its strong support of the City's initiative to establish a Planning Board. In addition to the Planning Board's stated purpose of facilitating the review of site plans and subdivisions, the Commission feels that by establishing a Planning Board, the City is being proactive in best addressing critical city-wide issues that include waterfront revitalization, parking and the zoning code update to name a few in a collaborative manner.

Sincerely,

A handwritten signature in black ink that reads "Martin Katz".

Martin Katz
Nassau County DPW, Planning Division

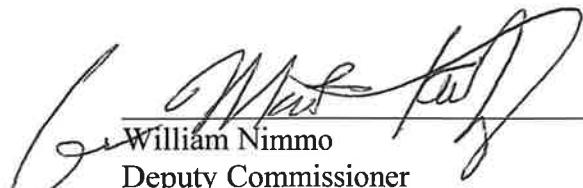
STATE OF NEW YORK)
)
COUNTY OF NASSAU) SS:
)

I, William Nimmo, Deputy Commissioner of the NASSAU COUNTY
DEPARTMENT OF PUBLIC WORKS, Division of Planning, do hereby certify that I
have compared the proceeding with the original resolution passed by the PLANNING
COMMISSION of Nassau County, New York on 1/9/25

on file in my office and recorded in the record of proceeding of the PLANNING
COMMISSION of the County of Nassau and do certify the same to be a correct transcript
therefrom and the whole said original.

I further certify that the Resolution herein above-mentioned was passed by the
concurring affirmative vote of the PLANNING COMMISSION of the County of Nassau.

IN WITNESS WHEREOF, I have hereunto set my hand,
This 9th day of Jan
In the year two thousand and twenty-five



William Nimmo
Deputy Commissioner
Division of Planning, Department of Public Works

April 19, 2016

Item No. 1
Resolution No. 33/16

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

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

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

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

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

Concession Buildings:

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

Riverside Food Market: (Food Trucks)

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

On the Beachfront:

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

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

On the Boardwalk

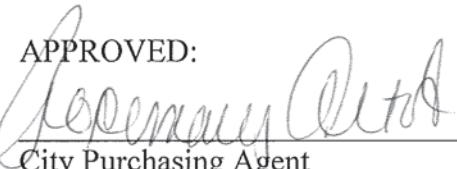
- * At New York, Lindell, Washington, Lafayette, Laurelton, Magnolia, Edwards, Riverside (ice cream only), Long Beach, Monroe and Franklin:
Beachside Services, NY Ltd., 740 W. Bay Drive, Long Beach, New York 11561
- * At National:
Cultured: Yogurt & Waffle Bar, 25 Franklin Blvd., Long Beach, New York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

NOW, THEREFORE, be it

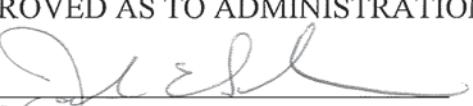
RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and he hereby is authorized to enter into agreements with the above vendors for the 2016 summer season for a total fee not less than \$181,500, plus a reimbursement of \$6,840 to be paid to the City for the cost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

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

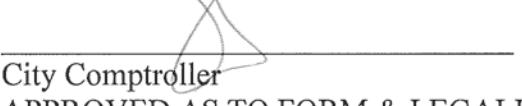
APPROVED:


City Purchasing Agent

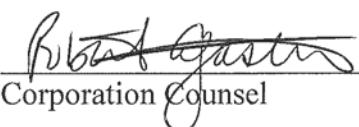
APPROVED AS TO ADMINISTRATION:


City Manager

APPROVED AS TO FUNDS:


City Comptroller

APPROVED AS TO FORM & LEGALITY:


Corporation Counsel

VOTING:

Council Member Eramo	- AYE
Council Member Goggin	- AYE
Council Member Mandel	- ABSENT
Council Member Moore	- AYE
President Torres	- AYE

December 3, 2019

Item No. 4
Resolution No. 102/19

The following Resolution was moved by Mr. Bendo
and seconded by Pres. Moore :

Resolution Authorizing the Acting City Manager to Enter into
an Agreement for the Operation of the Boardwalk Concession
at National Boulevard.

WHEREAS, pursuant to Resolution 33/16, duly adopted on April 19, 2016, Gentle Brew Coffee Roasters, 151 East Park Avenue, Long Beach, New York 11561, entered into an agreement with the City of Long Beach to be the vendor in the National Boulevard boardwalk concession, which agreement expires on November 30, 2019; and

WHEREAS, after due advertisement therefore, ten proposals were received in the Office of the City Purchasing Agent on Thursday, April 11, 2019 for a new vendor to occupy that location, beginning December 1, 2019 through December 31, 2025, with no option for renewal; and

WHEREAS, the Acting City Manager appointed a selection committee consisting of the City Purchasing Agent, the City Clerk, the Tax Assessor and the Director of Beach Park to review said proposals and they have evaluated and scored each proposal under the following categories: 1. Diversity of Food; 2. Quality of Food; 3. Local Preference; and 4. Price Response; and

WHEREAS, below is a list of the proposals received, including proposed product-types and proposed rent payments:

<u>Proposer:</u>	<u>Product Type:</u>	<u>Annual Rent:</u>
New York Acai 906 W. Beech St. Long Beach, New York	Acai bowls, avocado toast, fruit smoothies, fresh pressed juices, coffee, chopped salads, Poke bowls	\$18,000
Surfs Up Pizza 740 W. Broadway Long Beach, New York	Pizza (all varieties, including cauliflower crust) & soft serve ice cream	\$30,000
Seven Brothers Gourmet 2914 Long Beach Road Oceanside, New York 11572	Italian specialty sandwiches, beach bites, sweets & treats, non-alcoholic beverages	\$45,000
Jimmy Lin 116 East Park Ave. Long Beach, New York	Samurai shack, Hibachi cooking and frozen desserts	\$30,000
A&S Fine Foods 3382 Long Beach Road Oceanside, New York 11572	Imported Italian specialty foods, sandwiches, etc.	\$46,000

December 3, 2019

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Resolution No. 102/19

<u>Proposer:</u>	<u>Product Type:</u>	<u>Annual Rent:</u>
Neal Patel 3 Reynolds Drive Long Beach, New York	Water, Gatorade, drinks, candy, cookies, sunglasses, sunscreen, beach towels, medicine (OTC), lottery tickets	\$15,000
Marvel Frozen Dairy, Inc. 258 Lido Blvd. Lido Beach, New York	Desserts & snacks, including soft serve ice cream, yogurt & Smoothies	\$2,500 (12/19) \$40,000 (2020) \$42,000(2021) \$44,000(2022) \$46,000(2023) \$50,000(2024) \$52,000(2025)
Party Magic USA d/b/a Sunset Beach Refreshments 35 Vinton Street Long Beach, New York	A Nathan's franchise & Dip-N-Dots franchise & Coca Cola products	\$52,000
Neopolitan Express	Withdrawn	
Blacksmiths BP LLC 870 W. Beech Street Long Beach, New York ; and	Regular menu offerings, danishes & eclectic sandwiches, breads & desserts	\$30,000

WHEREAS, after tallying the scores for each proposer, the proposer with the highest total score was Marvel Frozen Dairy, Inc., 258 Lido Boulevard, Lido Beach, New York 11561;

NOW, THEREFORE, be it

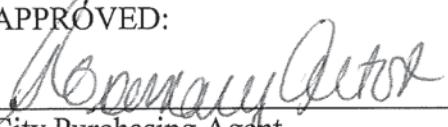
RESOLVED, by the City Council of the City of Long Beach, New York that the Acting City Manager be and he hereby is authorized to enter into an agreement with Marvel Frozen Dairy, Inc., 258 Lido Boulevard, Lido Beach, New York 11561 for the leasing of the boardwalk concession located at National Boulevard, beginning December 4, 2019 through December 31, 2025, with no option for renewal, at the annual rents as provided above; and be it further

RESOLVED, that said agreement shall contain such other terms, conditions and provisions as the Acting City Manager shall deem necessary and proper.

December 3, 2019

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APPROVED:



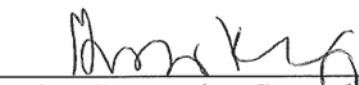
City Purchasing Agent

APPROVED AS TO ADMINISTRATION:



Acting City Manager

APPROVED AS TO FORM & LEGALITY:



Acting Corporation Counsel

VOTING:

Council Member Diamond - ABSENT

Council Member Eramo - ABSENT

Council Member Mandel - AYE

Vice President Bendo - AYE

President Moore - AYE

Beach Concession Commercial Lease

City of Long Beach,
Landlord

and

Skudin Surf, Inc.
Tenant

Premises: 1 Riverside Boulevard

Date: January____, 2025

Commercial Lease

Lease dated January_____, 2025, between the City of Long Beach, a New York State Municipal Corporation ("Landlord"), and Skudin Surf, Inc., a New York State Domestic Business Corporation ("Tenant").

Article 1. Basic Terms and Definitions

Section 1.1 Additional Rent. All sums, other than the Fixed Rent, payable by Tenant to Landlord under this lease, including the payment of deficiencies and increases in the Security, if any.

Section 1.2 Building. The building and improvements located at 1 Riverside Boulevard, Long Beach, New York.

Section 1.3 Commencement Date. September 16, 2025, subject to the provisions of Section 2.6.

Section 1.4 Expiration Date. September 15, 2035, subject to the provisions of Section 2.6.

Section 1.5 Fixed Rent. The Fixed Rent is shown on Exhibit A to this lease.

Section 1.6 Notice Address.

(a) Landlord. Corporation Counsel, 1 West Chester Street, Long Beach, New York 11561.

(b) Tenant. Skudin Surf, Inc., Attn: Cliff Skudin, 218 East Park Avenue, #552, Long Beach, New York

Section 1.7 Permitted Use. For the operation of a Beach Concession that provides a surf center use, which may include the service of minor refreshments (non-alcoholic), or any uses consented to by the Landlord in writing, and for no other purpose. Further Tenant agrees and acknowledges that Tenant shall comply with any and all applicable Federal, State, and/or local laws, codes, ordinances, and rules, applicable to the subject and permitted use(s).

Section 1.8 Premises. The property, including improvements thereon, located at 1 Riverside Boulevard, Long Beach, New York 11561.

Section 1.9 Real Property. The Building and the land on which it is located.

Section 1.10 Rent. The Fixed Rent and all Additional Rent.

Section 1.11 Security. \$6,250.00 subject to increase as provided in this Section. The amount of the Security shall be increased each time the monthly payments of Fixed Rent increase so that Landlord shall at all times have and maintain no less than two (2) full months Fixed Rent as security.

Section 1.12 Term. The period commencing on the Commencement Date and ending on the Expiration Date, subject to earlier termination or extension of this lease pursuant to the terms hereof. The initial term of this agreement is for a 10 year lease, with the Parties having one (1) five (5) year optional renewal, upon mutual written consent.

Section 1.13 Certain Definitions. Any reference in this lease to (a) “legal action”, includes any suit, proceeding or other legal, arbitration or administrative process, and any appellate proceedings in connection therewith, (b) “person” includes any individual or entity, (c) “this lease” includes the Rules and the other Exhibits to this lease, and (d) “including” means “including without limitation”.

Article 2. Demise; Rent

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

Section 2.2 Tenant shall pay Landlord the Rent, without notice, abatement, deduction or offset (except as expressly provided in this lease), in lawful money of the United States of America, by Tenant’s check or another method approved by Landlord, at Landlord’s Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid in equal monthly installments, in advance, on the last day of each calendar month, in advance of the following month (E.g. February rent is due on or before January 31). Landlord’s delay in rendering, or failure to render, any statement required to be rendered by Landlord for any Rent for any period shall not waive Landlord’s right to render a statement or to collect that Rent for that or any subsequent period. The rendering of an incorrect statement shall not waive Landlord’s right to render a corrected statement for the period covered by the incorrect statement and collect the correct amount of the Rent, which Tenant shall pay within thirty (30) days after its receipt of the corrected statement.

Section 2.3 Unless otherwise specified in this lease, all Additional Rent shall be paid by Tenant within thirty (30) days after Tenant is billed therefor.

Section 2.4 Except as otherwise specifically provided in this lease, Landlord’s calculation, determination, or estimate of any Fixed Rent adjustment, any Additional Rent, any Additional Rent adjustment, or any refund (if this lease provides for one) (a “Determination”) shall bind Tenant unless: (a) Tenant gives Landlord Notice of Tenant’s objection (with all reasonable grounds for such objection) within thirty (30) calendar days after receiving Landlord’s first invoice based on such Determination, and (b) Tenant timely pays the invoiced amount (without prejudice to Tenant’s right to object as provided in this Section).

Section 2.5 Landlord and Tenant shall execute an agreement setting forth the Commencement Date, the Fixed Rent Commencement Date and the Expiration Date in the form attached hereto as Exhibit B.

Section 2.6 Notwithstanding anything to the contrary in this lease or in any exhibit or diagram attached to it, no vault or vault space or other area outside the boundary of the Real Property is included in the Premises. If Tenant is permitted to use or occupy any such vault, space or other area, it is under a revocable license, and if such license is revoked or the size of

such vault, space or area is reduced, such revocation or reduction shall not be deemed to be an actual or constructive eviction, and shall not entitle Tenant to any abatement or reduction of Rent, or relieve Tenant from any of its obligations under this lease, or impose any liability on Landlord.

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

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

Section 3.2 Tenant shall not use the Premises, or any part thereof, in violation of the certificate of occupancy, if any, for the Premises or the Building.

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

Section 3.4 The continuous operation of Tenant's business in the Premises is of material importance to Landlord because of the adverse impact on the Building of vacant and/or unutilized beach concession space. Tenant shall cause its business to be fully stocked and staffed, and open continuously for business at the Premises at least eight hours a day and at least seven days a week excluding days observed as holidays by the Federal government, during the Ocean Beach Park season. In no event shall Tenant operate its business between the hours of 10:00pm and 5:00am. Notwithstanding the foregoing, Tenant may be temporarily closed for not more than thirty (30) consecutive days no more frequently than as necessary in order to refurbish Tenant's Work (hereinafter defined), and in connection with a transfer of the Premises to a permitted subtenant or assignee. Tenant shall not be deemed to have abandoned or vacated the Premises as a result of any closure contemplated by the preceding sentence.

Section 3.5 Tenant shall, at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean and keep all exterior store surfaces of the Premises clean; (b) replace promptly any cracked or broken glass of the Premises with glass of like color, grade, and quality; (c) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests and shall arrange for extermination at regular intervals, not less frequently than monthly and more often as necessary; (d) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises that are kept closed until removed; (e) deposit such garbage, trash, rubbish and refuse, on a daily

basis, in receptacles provided or required by the carter engaged by Tenant pursuant to the terms of this lease; (f) remove from the Premises all rubbish resulting from and/or remaining after any fire or other similar casualty in the Premises; (g) keep all mechanical apparatus and equipment free of vibration and noise which may be transmitted beyond the Premises; (h) keep in the Premises and maintain in good working order one or more dry chemical fire extinguishers; (i) conduct its business at the Premises in a dignified manner in accordance with community surf space; and, (j) prevent any odors or any noise from transmitting beyond the Premises.

Section 3.6 Tenant shall not (a) place or maintain any merchandise, show cases, tables for service, trash, refuse or other items in any vestibule or entry of the Premises, or on the walkways, sidewalks or elsewhere outside the Premises; (b) obstruct, or permit its employees, contractors, customers or invitees to obstruct, any driveway, walkway, sidewalk, parking area, or other Common Areas (hereinafter defined); (c) use or permit the use of any advertising medium objectionable to Landlord (such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Building) which is in any manner audible or visible outside of the Premises; (d) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (e) cause or permit odors or fumes to emanate from the Premises; (f) solicit business in any Common Areas, including without limitation through distribution of handbills or other advertising matter in any Common Areas or the display of any merchandise in the Common Areas; (g) receive or ship articles of any kind outside the designated loading areas, if any, for the Premises; (h) conduct or permit to be conducted any auction, fire sale (except to liquidate inventory in response to an actual fire and only if such sale is not conducted for more than forty-five (45) days), going out of business sale (except, one time only, to liquidate inventory at the end of the term of this lease and only if such sale is not conducted for more than forty-five (45) days), bankruptcy sale (unless directed by court order), or other similar type sale in or connected with the Premises (but this provision is not intended to limit Tenant's freedom in setting its own selling prices); (i) use the Premises for any activity that is not generally considered appropriate for retail and/or surf center business conducted in accordance with good and generally accepted standards of operation; (j) use the Premises for any hazardous activity or in such manner as to constitute a nuisance of any kind (public or private); (k) cause waste; (l) do anything which, in Landlord's reasonable judgment, disturbs other occupants of the Building; or (m) permit its employees, invitees or deliverymen to loiter immediately outside the Premises or the Building or within the Common Areas or to park cars in the Common Areas with "For Sale" signs (or signs of similar import) on them.

Section 3.7 Tenant acknowledges that Landlord intends the Beach Concession at the Premises to be operated in a manner that does not offend the community that it serves. Accordingly, Tenant shall not use the Premises for any immoral or disreputable use or activity or for any use that is objectionable to the community in which the Premises are located; and Tenant shall not sell, distribute, display, advertise or offer for sale at the Premises any item or service which, in Landlord's good faith judgment, may tend to injure or detract from the image of the Building within such community or that results in any picketing or protests. Without limiting the generality of the foregoing, Tenant shall not sell, distribute, display or offer for sale (a) any drug paraphernalia, (b) any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, recording, representation or merchandise of any kind, (c) any counterfeit goods or (d) any gun(s).

Section 3.8 The term “Sign” includes all signs, designs, monuments, logos, banners, projected images, awnings, canopies, pennants, decals, advertisements, pictures, notices, lettering, numerals, graphics, and decorations. No Sign shall be exhibited, installed, inscribed, painted or affixed, without the prior consent of Landlord, on any part of the outside of the Building or on the windows or doors of the Premises; except that Landlord’s consent shall not be required for any Sign placed inside the windows or doors of the Premises if such Signs are attractive and professionally produced and do not violate any other provisions of this lease. Notwithstanding the foregoing, no neon Signs or blinking or flashing Signs are permitted. Unless otherwise expressly permitted, Tenant may not install Signs advertising a fire sale, liquidation sale, distress sale, foreclosure sale, receiver’s or sheriff’s sale, going out of business sale, lost lease sale, or Signs of similar import. Tenant shall, at its own expense, obtain all required licenses and permits for any Signs installed by Tenant, and renew them as required by applicable Laws. All Sign(s) shall be installed and removed in a good and workerlike manner, without damaging the Real Property, and in compliance with all applicable Laws and the applicable provisions of this lease. Prior to installing any permitted Sign, Tenant shall deliver to Landlord any permits or approvals required by applicable Laws in connection with such installation. Tenant shall maintain any permitted Signs in good, clean, neat and safe condition, and at the expiration or sooner termination of this lease, Tenant shall cause such Signs to be removed and cause the cancellation of any issued licenses or permits. Tenant shall not change or alter any Sign approved by Landlord in any respect whatsoever, without first obtaining Landlord’s prior consent to such change or alteration. Landlord may remove any Sign(s) installed or maintained in violation of this Article, and Tenant shall reimburse Landlord for all costs incurred by Landlord in so removing any such Sign promptly after being billed therefor. In addition, Landlord may, from time to time, temporarily remove any Sign in connection with any repairs, improvements, alterations, additions or replacements being made to the Real Property.

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

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

Article 5. Tenant’s Work

Section 5.1 Except as may be expressly provided in this lease, Tenant shall not replace any fixtures in the Premises or make any changes, improvements, alterations or additions (collectively, “Tenant’s Work”), to the Premises, the Real Property, the Building systems, or any part thereof, without Landlord’s prior consent at the Landlord’s sole discretion provided that Landlord’s consent shall not be unreasonably withheld or delayed if Tenant’s Work (a) is nonstructural, and (b) does not (i) affect any part of the Real Property outside the Premises (including the Building roof) or the exterior of the Premises, (ii) affect any structural element of the Building, (iii) adversely affect any Building system, or (iv) require an amendment of the certificate of occupancy for the Premises or the Building, (c) is not visible outside the Premises and (d) is performed only by contractors and subcontractors first approved by Landlord (which approval shall not be unreasonably withheld or delayed). Landlord’s consent shall not be required with respect to such of Tenant’s Work as are cosmetic alterations (such as painting the

interior of the Premises, carpeting, and installation of shelving and display cases) inside the Premises (“Cosmetic Alterations”), provided Tenant complies with the other applicable provisions of this lease. Tenant’s Work shall be performed, at Tenant’s expense, with diligence when started so as to promptly complete it in a good and worker-like manner using new materials of first class quality and in compliance with this lease, all Laws and Tenant’s Plans (as defined in Section 5.2) as approved by Landlord. As part of Tenant’s Work, Tenant shall soundproof the Premises and install appropriate ventilation if required so that Tenant’s use of the Premises shall not result in noise and/or odors being transmitted outside the Premises. Tenant’s Work shall be fully paid for by Tenant when payment is due and shall not be financed with any conditional sales or title retention agreements or by the granting of any security interests, liens, encumbrances or financing statements. Tenant’s Work shall be deemed, upon installation, to be improvements and betterments that become the property of Landlord at installation, and shall remain upon and be surrendered with the Premises, at the expiration of the Term (or the sooner termination of this lease in accordance with its provisions) unless Landlord notifies Tenant in accordance with the provisions of this Article that Landlord relinquishes its rights thereto, in which case Tenant shall be obligated to remove such Tenant’s Work.

Section 5.2 Prior to commencing any Tenant’s Work other than purely Cosmetic Alterations, Tenant shall, at Tenant’s expense, deliver to Landlord detailed plans and specifications, for Tenant’s Work, in form reasonably satisfactory to Landlord, prepared, certified, signed and sealed by an architect or engineer licensed to practice in the State of New York, and suitable for filing with the applicable Authority, if filing is required by applicable Laws (such plans and specifications together with revisions thereto, collectively, “Tenant’s Plans”), and obtain Landlord’s approval of Tenant’s Plans. Landlord’s approval of Tenant’s Plans shall not be unreasonably withheld or delayed to the extent Landlord’s consent to Tenant’s Work shown on Tenant’s Plans is not to be unreasonably withheld or delayed pursuant to this Article. Before commencing Tenant’s Work, Tenant shall (a) obtain (and deliver to Landlord copies of) all required permits and authorizations of any Authority for such work, and (b) deliver to Landlord such security as shall be reasonably satisfactory to Landlord, and (c) deliver to Landlord certificates (in form reasonably acceptable to Landlord) evidencing the following insurance coverages from each contractor and subcontractor: (i) worker’s compensation insurance covering all persons to be employed in the performance of any Tenant’s Work, and (ii) commercial general liability insurance on a primary and non-contributory basis with a limit of liability approved by Landlord, and with contractual liability coverage, naming Landlord, Landlord’s managing agent, if any, any Superior Landlord (hereinafter defined) and any Mortgagee (hereinafter defined) as additional insureds, and (iii) comprehensive automobile liability insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with Tenant’s Work) with a limit of liability approved by Landlord and (iv) builders risk insurance for the full value of the Tenant’s Work performed by such contractor and subcontractor.

Section 5.3 Tenant shall reimburse Landlord, within fifteen (15) days of being billed therefore, for any reasonable out-of-pocket expenses incurred by Landlord in connection with Landlord’s review of Tenant’s Plans and inspection of Tenant’s Work, including outside experts retained by Landlord for that purpose. Landlord’s consent to Tenant’s Work and Landlord’s approval of Tenant’s Plans shall be without liability to or recourse against Landlord, shall not release Tenant from its obligations to comply strictly with the provisions of this lease, and shall not constitute any representation or warranty by Landlord regarding the adequacy for any purpose of Tenant’s Work or Tenant’s Plans or their compliance with Laws, and shall not

relieve Tenant from obtaining Landlord's express written approval to revisions thereto. Promptly after substantial completion of Tenant's Work, but in no event later than six (6) months after the commencement of such work, Tenant shall, at Tenant's expense, obtain and deliver to Landlord copies of all sign-offs, letters of completion, approvals and certificates of any Authority required upon the completion of Tenant's Work (including any required amendments to the certificate of occupancy for the Premises and/or Building) and "as-built" plans and specifications for Tenant's Work prepared as reasonably required by Landlord.

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

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

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

Section 5.7 At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work to which Landlord has consented, and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

Section 5.8 Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot which the floor was designed to carry and which is allowed by any Laws.

Section 5.9 Tenant shall be liable for any damage caused to any part of the Building, including its fixtures and equipment, arising from, or as a result of, Tenant's Work and/or its installation and/or removal of its Signs. If Tenant performs without Landlord's approval any work on the roof of the Building (for example, in connection with repair, maintenance, or installation of any air conditioning system), Tenant shall use only a contractor approved by Landlord for such work and shall not do or cause anything to be done which would invalidate Landlord's then effective roof warranty for the Building. Tenant shall also be responsible for promptly repairing (including any necessary replacement) any damage to the roof or Building caused by such work; provided that Landlord may, at its option, effect any such repair or replacement, in which event Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within fifteen (15) days after Tenant is billed therefor.

Section 5.10 On or before the Expiration Date or sooner termination of this lease, if applicable, Tenant shall, at Tenant's expense, remove from the Building (a) all Tenant's Work which Landlord designates for removal in a notice given by Landlord to Tenant on or before the date which is thirty (30) days prior to the Expiration Date (or prior to the sooner termination of this lease, if applicable) and (b) Tenant's trade fixtures, equipment and personal property which are removable without material damage to the Premises or the Building ("Tenant's Property"). Tenant shall repair any damage to the Premises, and/or the Real Property, caused by the installation or removal of Tenant's Property, Signs or Tenant's Work. Except as expressly provided in this Section, Tenant's Work shall not be removed. Any Tenant's Property or Tenant's Work that Tenant was required to remove and which is not removed by Tenant by the Expiration Date or sooner termination of this lease shall be deemed abandoned and may, at Landlord's option, be retained as Landlord's property or disposed of by Landlord at Tenant's expense.

Article 6. Utilities; Services

Section 6.1 Landlord shall not be responsible for providing any utility service to the Premises nor for providing meters, submeters or other devices for the measurement of utilities supplied to the Premises, and Tenant shall arrange for the furnishing to the Premises of such utility services as it may require, as well as for the installation of all such meters, submeters or other devices. Tenant shall be solely responsible for and shall promptly pay, to Landlord or the utility company, as applicable, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone, cable service, internet service, steam, and any other utility or other communication device used or consumed in the Premises and supplied by a public utility or public authority or any other person, firm, or entity supplying same. If Landlord has designated any person or persons to provide one or more utility services to the Real Property, Tenant shall use the designated person(s) to obtain the applicable utility services.

Section 6.2 Tenant shall not overload the electrical system serving the Premises, and shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits, pipes, valves, or other facilities by which electric and other utilities are supplied to, distributed in or serve the Premises. If Tenant desires to install any equipment that shall require additional utility facilities, such installation shall be subject to Landlord's prior approval of Tenant's plans and specifications therefor. If such installation is approved by Landlord and if Landlord provides such additional facilities to accommodate Tenant's installation, Tenant agrees to pay Landlord, on demand, as Additional Rent, the cost for providing such additional utility facilities.

Section 6.3 Landlord has no obligation to provide to Tenant or the Premises any services except as expressly set forth in this lease. Without limiting the foregoing, Landlord is not responsible for providing heat, electric, water, gas, air conditioning, steam, sewer service, cleaning service, trash collection, extermination, cable or internet service or ventilation to the Premises. Landlord does not represent or warrant that any utility or other service provided by Landlord, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.

Section 6.4 If any utility or other service (a) becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing same (including Landlord), or (b) is interrupted by reason of Laws, the making of any repairs or improvements, or measures taken to secure the safety of the Real Property, or the safety and welfare of its tenants or occupants, or the public, or by reason of any cause beyond Landlord's reasonable control, (i) Landlord shall not be liable to Tenant in damages or otherwise, (ii) Tenant may not abate Rent or be relieved of any of its obligations under this lease, and (iii) such lack of availability or interruption shall not constitute an actual or constructive eviction, or a disturbance of Tenant's use of the Premises.

Section 6.5 Tenant shall enter into, and maintain at all times during the Term, a contract for the daily removal of Tenant's trash from the Building, with the carter selected by Tenant and approved by Landlord, to provide trash removal services to the Building, subject to any applicable Rules.

Article 7. Common Areas

Section 7.1 The "Common Areas" are those areas and facilities which may be furnished by Landlord (or others on behalf of Landlord) in or near the Building for the non-exclusive common use of tenants and other occupants of the Building, their employees, customers, and invitees, including parking areas, access areas (other than public streets), driveways, loading docks and loading areas, sidewalks, lighting facilities, and other similar common areas, facilities or improvements.

Section 7.2 Landlord will operate and maintain, or shall cause to be operated and maintained, the Common Areas in a manner deemed by Landlord to be reasonable and appropriate. Landlord shall have the right (i) to establish, modify and enforce reasonable rules and regulations with respect to the Common Areas; (ii) to enter into, modify and terminate any easement and other agreements pertaining to the use and maintenance of the Common Areas; (iii) to close all or any portion of the Common Areas to such extent as may, in the opinion of Landlord, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; (iv) to close temporarily any or all portions of the Common Areas; (v) to discourage non-customer parking; and (vi) to do and perform such other acts in and to said areas and improvements as Landlord shall determine to be advisable.

Article 8. Repairs and Maintenance

Section 8.1 Tenant shall, at Tenant's expense, make all structural repairs needed to the exterior walls, structural columns, structural roof, and structural floors that enclose the Premises (excluding all doors, door frames, storefronts, windows and glass); provided that Tenant gives Landlord notice of the necessity for such repairs.

Section 8.2

Section 8.3 Landlord shall have no liability to Tenant, the Rent shall not be abated, and Tenant shall not be deemed actually or constructively evicted by reason of Landlord performing any repairs or other work to all or any portion of the Premises and/or the Real Property. Landlord shall endeavor to perform such repairs or other work in a manner that reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property, but Landlord is not required to employ overtime labor or incur additional expenses.

Article 9. Laws; Hazardous Substances

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

Section 9.2 Tenant shall not, and shall not permit any of its subtenants, employees, contractors, agents, or invitees, to introduce into the Premises or the Real Property, use in the Premises or the Real Property or cause to be released from the Premises or the Real Property any Hazardous Substances. Notwithstanding the preceding sentence, Tenant may use cleaning and office products in accordance with their customary use, provided that Tenant complies with all applicable Laws in connection therewith, and further provided that in no event may Tenant release or discharge such cleaning and/or office products into the plumbing, drainage or sewer system in excessive amounts. If Tenant breaches its obligations hereunder, Tenant, at Tenant's expense, shall immediately take all remedial action necessary to clean up any release, spill or discharge of Hazardous Substances. "Hazardous Substances" mean any flammable or otherwise hazardous material, any explosive and/or radioactive material, hazardous waste, hazardous or toxic substance or related material, asbestos and any material containing asbestos, petroleum and any petroleum derivative, pollutants, contaminants and any other substance or material which is defined as, determined to be, or identified as, a hazardous or toxic material or substance pursuant to any applicable Laws.

Section 9.3 If Tenant shall be obligated to remediate any Hazardous Substances, it shall remove and dispose of any such Hazardous Substances in compliance with

all applicable Laws. Tenant's remediation plan shall be subject to Landlord's approval and Tenant shall keep Landlord fully apprised of the progress of Tenant's remediation efforts.

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

Section 9.5 If Tenant conducts any auction, fire sale, going out of business sale, bankruptcy sale, or similar type of sale at the Premises in accordance with the provisions of this lease, Tenant shall obtain, and deliver to Landlord, prior to commencement of such auction or sale, any necessary permits, licenses and/or approvals required by any applicable Laws in connection therewith.

Section 9.6 Tenant shall, at its own cost and expense, secure and maintain throughout the Term, all necessary licenses and permits from such Authorities as shall be necessary for, or incidental to, the conduct of its business in the Premises and shall comply with all Laws relating to the operation of its business. Landlord does not covenant, warrant or make any representation that any Authority license or permit that may be required in connection with the operation of Tenant's business will be granted, or if granted, will be continued in effect or renewed, and any failure to obtain, maintain, or renew such license or permit, or its revocation after issuance, shall not affect Tenant's obligations under this lease.

Section 9.7 Subject to the provisions of this Section, provided that Tenant is not in Default, Tenant, at Tenant's expense, may contest by appropriate proceedings prosecuted diligently and in good faith the legality or applicability of any Laws affecting the Premises for which Tenant is responsible hereunder (any such proceedings instituted by Tenant, a "Compliance Challenge"), provided however, that Tenant's delay in compliance shall not cause (a) Landlord or Tenant to be subject to imprisonment or prosecution for a crime, (b) the Real Property or any part thereof to be condemned or vacated, (c) the certificate of occupancy for the Building or any part thereof to be suspended or cancelled, and/or (d) the use and enjoyment of its space by another lessee or licensee at the Real Property to be adversely affected. Tenant must give Landlord at least ten (10) business days notice before Tenant initiates a Compliance Challenge, and shall not initiate it if Landlord reasonably objects. At Landlord's request, prior to initiating a Compliance Challenge, Tenant shall furnish Landlord with either cash or a bond from a surety company reasonably satisfactory to Landlord in form and substance, in an amount equal to 120% of the sum, as reasonably estimated by Landlord, of (i) the cost of such compliance and (ii) the amount of any and all penalties and fines that may accrue by reason of non-compliance and (iii) the amount of any Landlord liability to third parties. Tenant shall keep Landlord informed regularly as to the status of any Compliance Challenge.

Article 10.Subordination; Estoppel Certificates

Section 10.1 This lease, and the rights of Tenant under this lease, are subject and subordinate in all respects to all present and future underlying leases of the Real Property, including all modifications, extensions and replacements thereof ("Superior Leases") and all

present and future mortgages on any Superior Lease or on the Building and/or the Real Property including all increases, renewals, modifications, extensions, supplements, consolidations and replacements thereof (“Mortgages”), and all advances under any Mortgage. This Section is self-operative and no further instrument of subordination is required. Tenant shall, within fifteen (15) days following receipt of Landlord’s request, sign, acknowledge and deliver any instrument that Landlord, any landlord under a Superior Lease (“Superior Landlord”) or any mortgagee under a Mortgage (“Mortgagee”) may request to evidence such subordination.

Section 10.2 If any Mortgagee or any Superior Landlord or any successor or assignee thereof or any purchaser at a foreclosure sale or by deed in lieu of foreclosure succeeds to the rights of Landlord under this lease, then at the request of same, Tenant shall attorn to such Mortgagee, Superior Landlord, successor, assignee or purchaser as Tenant’s landlord under this lease. Tenant shall, within fifteen (15) days following request by such Mortgagee, Superior Landlord, successor or assignee, sign, acknowledge and deliver any instrument that such Mortgagee, Superior Landlord, successor, assignee, or purchaser requests to evidence the attornment.

Section 10.3 If any Mortgagee or Superior Landlord requires any modifications of this lease, Tenant shall, within fifteen (15) days following Tenant’s receipt of a request, sign, acknowledge and deliver to Landlord instruments in form and substance reasonably requested by Landlord providing for those modifications (provided they do not materially adversely affect Tenant).

Section 10.4 Landlord and Tenant shall, at any time and from time to time, within fifteen (15) days following its receipt of a request from the other party, sign, acknowledge and deliver to the requesting party or any other person designated by that party a certification (a) that this lease is in full force and effect and has not been modified (or, if modified, setting forth all modifications), (b) stating the date to which the Rent has been paid, (c) stating whether or not, to its actual knowledge, the other party is in default of its obligations under this lease and if so, describing the default, including any event that has occurred which, with the serving of notice or the passage of time, or both, would give rise to a default, and (d) stating to its actual knowledge, any other factual matters reasonably requested by the other party or any person designated by the other party. Any certification delivered pursuant to this Section may be relied upon by the third party for whom the certification is requested but shall not, as between Landlord and Tenant, affect their respective rights

Article 11.Insurance

Section 11.1 Tenant shall, at Tenant’s expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises such insurance as shall be required by Landlord, including: (a) commercial general liability insurance (or successor form of insurance designated by Landlord) in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than three million (\$3,000,000) dollars naming as additional insureds Landlord and any other person designated by Landlord, (b) property insurance in an amount equal to one hundred (100%) percent of full replacement value (with a deductible not exceeding five thousand (\$5,000) dollars) covering Tenant’s Work (including improvements and betterments, whether or not the improvements and betterments are restored), Tenant’s Property and the property of third parties located in the Premises, against fire and other risks included in the standard New York form of property

insurance, including business interruption insurance covering a period of twelve (12) months, (c) workers' compensation and employer's liability insurance providing statutory benefits for Tenant's employees at the Premises (d) such other insurance as Landlord may reasonably require. Such liability insurance policy shall include contractual liability, fire and legal liability coverage. Landlord shall have the right at any time and from time to time, but not more frequently than once every two (2) years, to require Tenant to increase the amount of the commercial general liability insurance required to be maintained by Tenant under this lease provided the amount shall not exceed the amount then generally required of tenants entering into leases for similar Permitted Uses in similar buildings in the general vicinity of the Real Property.

Section 11.2 Tenant shall deliver to Landlord and each additional insured (a) certificates in form reasonably acceptable to Landlord evidencing the insurance required by this lease to be maintained by Tenant before the Commencement Date (and with respect to any insurance required pursuant to Article 5, before the commencement of any Tenant's Work), and at least fifteen (15) days before the expiration of any such insurance, and (b) upon request, a copy of each insurance policy. All required insurance (including insurance required pursuant to Article 5) shall be primary and non-contributory (as shown on endorsement), issued by companies satisfactory to Landlord and contain a provision whereby it cannot be canceled unless Landlord and any additional insureds are given at least thirty (30) days' prior written notice of the cancellation. Tenant may carry any required insurance under a blanket policy if that policy complies with the requirements of this lease and provides that Tenant's insurance for the Premises is on a "per location basis".

Section 11.3 Tenant shall not do or permit to be done any act which shall invalidate or be in conflict with Landlord's insurance policies, or increase the rates of insurance applicable to the Real Property. If, as the result of a Default, Tenant's occupancy of the Premises (whether or not such occupancy is a Permitted Use), and/or specific hazards attributable to Tenant's occupancy, the insurance rates for the Real Property or Building increase, Tenant shall reimburse Landlord for one hundred (100%) percent of such increase in premium(s), within fifteen (15) days after Tenant is billed therefor.

Section 11.4 Compliance with this section is of material importance and any non-compliance with this Section 12 and/or any interruption in insurance coverage shall be construed as a non-curable default pursuant to Article 17 of this lease and shall require no type of notice from the Landlord to the Tenant and be sufficient cause for immediate eviction.

Article 12. Casualty

Section 12.1 If (a) the Premises are damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or so that the Premises or any part of the Premises is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (i) Landlord shall, at Tenant's expense, repair the damage to the Premises, excluding the damage to Tenant's Work or Tenant's Property and (ii) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage and shall promptly after Landlord's substantial completion of the repair to the Premises, commence to diligently repair Tenant's Work and Tenant's Property in order to resume its normal business in the Premises. Until the repairs to be performed by

Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises and which Tenant does not actually use.

Section 12.2 If (a) the Premises are rendered wholly untenantable, or (b) the Premises are damaged by any cause which is not covered by Landlord's insurance, or (c) the Premises are damaged in whole or in part during the last two (2) years of the Term, or (d) the cost of repairing any damage to the Building by fire or other casualty exceeds twenty-five percent (25%) of the replacement cost thereof, as reasonably estimated by a reputable contractor, architect or engineer selected by Landlord, Landlord shall have the right, by notice given to Tenant within sixty (60) days following the date of the damage, to terminate this lease. If this lease is terminated pursuant to this Section, the Term shall expire on the fifteenth (15th) day after the notice is given as fully and completely as if such date were the stated Expiration Date.

Section 12.3 This Article constitutes an express agreement governing any damage to or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, and any other similar Laws shall have no application to a fire or other casualty.

Article 13. Condemnation

Section 13.1 If as the result of a taking by condemnation or similar legal action of an Authority or a taking by an Authority effected in any other manner (a) all of the Premises, or so much thereof as renders the Premises wholly unusable by Tenant, is taken, (b) Tenant no longer has reasonable access to or use of the Premises, (c) all or substantially all of the Building is taken or (d) a portion of the Building is taken resulting in Landlord's determination to demolish the Building, or (e) the number of parking spaces in or serving the Real Property are reduced by such taking below the number of spaces required by any Laws and such reduction adversely impacts the use of the Premises, the Term shall expire on the date of the vesting of title as fully and completely as if such date were the stated Expiration Date. In the event of any such taking of all or any part of the Premises or the Real Property, Landlord shall be entitled to receive the entire award. Tenant shall have no claim against Landlord or any Authority for the value of the unexpired portion of the Term or Tenant's Work, and Tenant hereby assigns to Landlord all of its right in and to any such award. Tenant may, however, at Tenant's expense, make a separate claim to the appropriate Authority for the value of Tenant's Property and for moving expenses, provided such claim and award, if any, do not result in a reduction of the award which would otherwise be paid to Landlord. If a taking does not result in the termination of this lease (i) Landlord shall, at Landlord's expense, as soon as practicable, restore that part of the Premises or the Real Property not taken to the extent reasonably practicable, so that the Premises are usable, and (ii) from and after the date of the vesting of title, the Rent shall be reduced in the same proportion as the area of the Premises, if any, which was taken.

Article 14. No Assignment and No Subletting

Section 14.1 Except as provided in this Article, Tenant shall not, without Landlord's prior consent provided at the Landlord's sole discretion, assign, encumber or otherwise transfer this lease or any interest in this lease, by operation of law or otherwise, or sublet or permit others to occupy all or any part of the Premises, or license concessions or lease

departments in the Premises, and any assignment, encumbrance, transfer, sublet, occupancy agreement, license or department lease shall be void ab initio if not in accordance with this Article. The transfer or issuance (by one or more related or unrelated transactions) of ownership interests of Tenant, or any Guarantor, or any direct or indirect owner of Tenant, which results in 50 percent or more of the ownership interests of that person being held by persons who did not hold 50 percent or more of those ownership interests on the date of this lease shall be considered an assignment of this lease which requires Landlord's consent. Tenant shall not permit any advertising or circulars regarding availability of the Premises for sublease or assignment.

Section 14.2 Landlord's consent shall be required with respect to the following transactions: (a) a merger, or consolidation of Tenant with another entity; and (b) an assignment of this lease to an entity in connection with such entity's purchase of all or substantially all of Tenant's assets; and (c) an assignment of this lease or a sublease of all or part of the Premises, to an entity that is controlled by, in control of, or under common control with, Tenant, and remains under such control for the remainder of the Term; and (d) any type of change of ownership the Tenant's corporation.

Section 14.3 If Tenant assigns this lease or sublets the Premises after Landlord shall have consented, in writing and at Landlord's sole discretion, to such sublease or assignment, Tenant shall pay Landlord, within fifteen (15) days following payment to Tenant, fifty (50%) percent of: (a) all sums and other consideration paid in connection with an assignment (including key money, bonus money, and any payments for assets, inventory, fixtures, furniture and equipment transferred by Tenant to the assignee), after Tenant recovers therefrom all reasonable costs incurred by Tenant in connection with that assignment which have been paid or are then due and payable; and (b) the excess, if any, of the rents, additional charges and/or other consideration paid in connection with a sublease over the Rent allocable to the subleased premises (which Rent shall be allocated equally throughout the Premises) accruing during the term of that sublease.

Section 14.4 If this lease is assigned or the Premises are sublet, in whole or in part, Tenant shall remain liable for the performance of all of the terms, covenants and conditions of this lease on the part of Tenant to be performed or observed and any Guarantor shall continue to remain liable under the terms of its guaranty of this lease. Tenant's liability hereunder shall not be affected by any modification of this lease or agreement made between Landlord and any assignee or subtenant, or by reason of any delay or failure on Landlord's part to enforce any of its rights under this lease; provided that if any such modification or agreement increases the obligation of the assignee under this lease, the liability of the assignor-Tenant under this lease shall continue to be no greater than if such modification or agreement had not been made unless such assignee is a person or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

Section 14.5 The consent by Landlord to any assignment, transfer, sublet, occupancy, encumbrance or other transaction described in this Section 15, shall not in any way be deemed to relieve Tenant from obtaining the express consent of Landlord prior to any further such transaction or any proposed assignment of sublease or sub-sublease, which consent may be granted or denied at Landlord's sole discretion.

Section 14.6 The acceptance by Landlord of Rent following any assignment, sublease, encumbrance, license, occupancy, or other transaction in violation of this Article, shall

not be deemed a consent by Landlord to such transaction, nor a waiver of any right or remedy of Landlord hereunder.

Article 15. Access; Changes in Building and Real Property

Section 15.1 Landlord reserves the right to (a) place (and have access to) concealed ducts, pipes and conduits through the Premises (without a material reduction or reconfiguration of the useable area of the Premises); (b) have exclusive access to the utility room and be permitted to enter the Premises at any time to do so; and (c) enter the Premises at reasonable times on reasonable prior notice, which may be oral (but prior notice shall not be required in an emergency), to inspect the Premises, to show the Premises to others or to perform any work or make any improvement Landlord deems necessary or desirable to the Premises or the Building or for the purpose of complying with Laws. If Tenant is not present when Landlord desires to enter the Premises, Landlord or Landlord's contractors may enter the Premises (by force, in the event of an emergency) without liability to Tenant.

Section 15.2 Landlord reserves the right at any time and from time to time to (a) make changes or revisions in the Real Property, including but not limited to the Building areas, walkways, driveways, parking areas, or other Common Areas, (b) construct improvements in the Real Property, (c) construct additions to, or additional stories on, the Building (which right includes the right to make use of structural elements of the Premises, including without limitation columns and footings, for such construction, provided such use does not materially encroach on the interior of the Premises), and (d) change the name, number or designation by which the Real Property and/or Building is known. Landlord's exercise of its rights pursuant to this Section shall not reduce the number of parking spaces serving the Real Property below that required by any Laws.

Section 15.3 If there is to be any excavation or construction adjacent to the Building, Tenant shall permit Landlord and/or any other person to enter the Premises to perform such work as Landlord or that person deems necessary to protect the Building, without any abatement of the Rent or liability to Tenant.

Section 15.4 Landlord shall have the exclusive right to use all or any part of the roof of the Building for any purpose, and to erect temporary scaffolds and other aids to construction on the exterior of the Premises in connection with alterations, repairs, improvements, and/or additions Landlord may make to the Building, provided that access to the Premises shall not be denied. Landlord may make any use it desires of the side exterior walls or rear walls of the Building.

Section 15.5 Landlord shall exercise Landlord's rights under this Article in a manner which reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

Article 16. Default

Section 16.1 Each of the following (a "Default") is a material default by Tenant under this lease:

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

(b) Tenant fails to comply with Article 12 or Article 15 or makes any misrepresentation under Section 25.2.

(c) Tenant fails to comply with Section 18.4 of this Agreement

(d) Tenant fails to comply with any other term of this lease and the failure continues for ten (10) days following Landlord's notice. If, however, compliance cannot, with diligence, reasonably be fully accomplished within that thirty (10) day period, Tenant shall have an additional period not to exceed thirty (30) days to fully comply, provided Tenant notifies Landlord of its intention to comply (with reasonably detailed steps to be taken) and commences compliance within that ten (10) day period and thereafter pursues compliance to completion with diligence and provides Landlord with status updates on the progress at least every fifteen (15) days.

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

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

(g) Guarantor, if any, shall be in breach of its obligations under its guaranty of Tenant's obligations under this lease.

(h) Tenant fails to stay open seven days a week when the Ocean Beach Park is operational, with the exception days where a local or state government agency declares a weather emergency and/or the Ocean Beach Park is not operational.

Section 16.2 If a Default occurs, this lease is subject to the conditional limitation that Landlord may, at any time during the continuance of the Default, give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than five (5) days after Landlord gives such notice to Tenant. If Landlord gives that notice, this lease and the Term shall expire and come to an end on the date set forth in that notice as if said date were the date originally fixed in this lease as the Expiration Date and Tenant shall quit and surrender the Premises to Landlord (but Tenant shall remain liable as provided in this lease).

Section 16.3 If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to

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

Article 17. Remedies

Section 17.1 If this lease is terminated pursuant to Article 17 or Landlord reenters or obtains possession of the Premises by summary proceedings or any other legal action or by force or otherwise (which Landlord may do without further notice and without liability or obligation to Tenant or any occupant of the Premises), all of the provisions of this Section shall apply (in addition to any other applicable provisions of this lease).

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

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

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

(d) Tenant shall also pay to Landlord, as damages, any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the monthly Additional Rent for each year thereof to be 1/12th of Additional Rent that was payable for the year immediately preceding the termination, re-entry or obtaining of possession) and (ii) the rents, if any, applicable to that period collected under any reletting of all or any portion of the Premises. Tenant shall pay any deficiency in monthly installments on the days specified in this lease for payment of installments of the Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent. If Landlord relets the Premises, or any portion of the Premises, together with other space in the Building, the rents collected under the reletting and the expenses of the reletting shall be equitably apportioned for the purposes of this Article.

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

presentation of proof of liquidated damages, Landlord relets the Premises or any portion of the Premises for any period pursuant to a bona fide lease with an unrelated third party, the net rents (after deducting reletting costs) payable in connection with the reletting shall be considered to be the fair market rental value for the Premises or the portion of the Premises relet during the term of the reletting.

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

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

Section 17.2 Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, except as provided in this lease and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Laws to redeem the Premises, to re-enter or repossess the Premises, or to restore this lease, after (i) Tenant is dispossessed pursuant to any Laws or by any Authority, (ii) Landlord reenters or obtains possession of the Premises, or (iii) the Expiration Date, whether by operation of law or pursuant to this lease. The words "re-enter," "re-entry" and "re-entered" as used in this lease shall not be considered to be restricted to their technical legal meanings. Landlord shall have the right to enjoin any Default and the right to invoke any remedy allowed by any Laws in addition to any remedies provided in this lease. All remedies provided in this lease are cumulative and Landlord's right to invoke, or the invocation of, any remedy shall not preclude Landlord from invoking any other remedy under this lease or under any and all Laws.

Section 17.3 Landlord and Tenant each hereby waive trial by jury in any legal action brought by either party against the other in connection with this lease. If Landlord commences any summary proceeding against Tenant, Tenant shall not interpose any counterclaim in that proceeding, and shall not seek to consolidate the proceeding with any other legal action.

Section 17.4 Tenant expressly waives its right to bring any declaratory judgment action with respect to any provision of this Lease or with respect to any notice sent pursuant to the provisions of this Lease. Tenant expressly waives its right to obtain any type of injunctive relief in connection to any provision of this Lease or with respect to any notice sent pursuant to the provisions of this Lease. Tenant expressly waives its right to make any application for relief pursuant to *First Nat. Stores, Inc. v. Yellowstone Shopping Center, Inc.*, 21 N.Y.2d 630 (1968), commonly referred to as a *Yellowstone* injunction. Tenant's breach of this paragraph, in any way, shall constitute a breach of substantial obligations of the tenancy, and shall be grounds for the immediate termination of this Lease, without any notice. It is the express intention of the parties hereto that their disputes be adjudicated exclusively via summary proceedings in the City Court of the City of Long Beach.

Section 17.5 If Tenant fails to comply with any of its obligations under this lease, Landlord may, at its option, cure such breach of this lease. All costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Landlord in that connection shall be paid by Tenant to Landlord as Additional Rent within fifteen (15) days after Tenant is billed therefor. Reasonable attorneys' fees shall be calculated by usage of the lodestar method.

Section 17.6 Tenant shall also reimburse Landlord for all costs and expenses (including reasonable attorneys' fees and disbursements), incurred by Landlord in connection with a default by Tenant, including instituting, prosecuting and/or defending any legal action by or against Tenant whether a non-payment or holdover proceeding, or other proceeding, if Landlord prevails in such legal action, together with interest thereon at the Default Rate (hereinafter defined).

Section 17.7 The failure of Landlord to seek redress for a Default, or of Landlord or Tenant to insist upon the strict performance of any term of this lease, shall not prevent Landlord from redressing a subsequent Default or Landlord or Tenant from thereafter insisting on strict performance. The receipt by Landlord of the Rent with knowledge of a Default or Tenant's failure to strictly perform under this lease shall not be deemed a waiver of the Default or failure. No term of this lease shall be considered waived by Landlord or Tenant unless the waiver is in a writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the next installment of the Rent, or as Landlord may elect to apply same. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

Section 17.8 If Tenant fails to pay any installment of the Fixed Rent or any Additional Rent within five (5) days after the due date thereof, in addition to any other right or remedy of Landlord, Tenant shall pay to Landlord within fifteen (15) days following Landlord's invoice (a) a late charge equal to the greater of one hundred (\$100.00) dollars and four (4%) percent of the amount unpaid and (b) interest at the rate (the "Default Rate") of twelve (12%) percent per annum on the amount unpaid, from the date the payment was first due to and including the date paid and, (c) and Landlord's bank charges for the return of any Tenant's check.

Section 17.9 All legal actions relating to this lease shall be adjudicated in the courts of the State of New York having jurisdiction in the county in which the Building is located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action relating to this lease or any guaranty of Tenant's obligations under this lease, and Tenant shall not assert, by way of motion, as a defense or otherwise, any objection to any such court being the venue of such legal action or claim that such venue is an inconvenient forum for Tenant or any principal of Tenant.

Article 18. Security

Section 18.1 Tenant has deposited with Landlord, as security for Tenant's compliance with this lease, the Security, in cash. If Tenant defaults in performing any of its obligations under this lease, Landlord may use all or any portion of the Security to cure such breach or for the payment of any other amount due and payable from Tenant to Landlord in

accordance with this lease. If Tenant shall, during any twelve (12) month period, twice be in breach of its obligation to pay Rent on the first of the month, Tenant shall promptly after Landlord's request, remit to Landlord an amount equal to six months of the then current amount of the monthly installment of Fixed Rent so that the amount of Security required under this lease shall then be equal to eight months' of then current Fixed Rent. If Landlord uses all or any part of the Security, Tenant shall, within fifteen (15) days following Landlord's notice, deposit with Landlord an amount sufficient to restore the full amount of the Security. Landlord shall not, unless required by any Laws, pay interest to Tenant on the Security, and if Landlord is required to maintain the Security in an interest bearing account or pay any interest to Tenant, Landlord shall retain the maximum amount of interest permitted under any Laws (which Landlord may withdraw and retain annually or at any other times). Tenant shall not assign or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured breach, the Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease. If Landlord's interest in the Real Property is sold or leased, Landlord shall transfer the Security and any accrued and unpaid interest thereon, or any balance, to the new Landlord and, upon such transfer, the assignor shall thereupon be automatically released by Tenant from all liability for the return of the Security or any interest (and Tenant agrees to look solely to the assignee for the return of the Security or any interest).

Section 18.2 Notwithstanding any other provision of this lease to the contrary, Tenant may, at any time except if a Default has occurred, substitute the cash Security with an irrevocable, unconditional, "clean", "evergreen" (i.e. automatic renewal) letter of credit in form and substance acceptable to Landlord, issued by a federally insured bank with a Standard & Poor's credit rating of at least AA, whose office for the presentation of a letter of credit to be drawn upon is in Nassau County or New York City and is reasonably acceptable to Landlord. Tenant shall keep any such letter of credit, including without limitation such amendments or replacements as are necessary to increase the amount of the letter of credit as the amount of the required Security increases and after Landlord has drawn on the letter of credit, in full force and effect for not less than sixty (60) days after the Expiration Date of the Term. Landlord may draw upon the letter of credit in whole or in part and apply the proceeds for the same reasons, and in the same manner, as the cash Security. In addition, Landlord may draw upon the letter of credit if (a) Tenant has not supplied an amendment or replacement at least ninety (90) days prior to (i) the expiry date, if any, or (ii) the date on which the amount of the letter of credit is required to be increased; (b) Landlord asks the letter of credit issuer to confirm the current expiry date and the issuer does not do so within ten (10) days after Landlord's request; (c) Tenant fails to pay any bank charges with respect to any Landlord transfer of the letter of credit; (d) the issuer ceases, or announces that it will cease, to maintain an office in New York City where Landlord may present draw requests; or (e) the letter of credit issuer has a credit rating by Standard & Poor's of less than AA and, within thirty (30) days following Landlord's notification to Tenant that the letter of credit issuer's Standard & Poor's credit rating is less than AA, Tenant has not provided Landlord with a replacement letter of credit from an issuer with a Standard & Poor's credit rating of at least AA. Tenant shall not seek to enjoin, prevent or otherwise interfere with Landlord's draw against the letter of credit. Tenant acknowledges that the only effect of an erroneous draw would

be to substitute cash Security for the letter of credit, which would not cause Tenant any legally recognizable damage. The letter of credit shall provide that the letter of credit is freely transferable by Landlord, its successors and assigns, as its beneficiary without payment by Landlord (or any subsequent transferee) of any fee or other consideration for such transfer. If Landlord transfers its interest in the Premises, Tenant shall, at Tenant's expense, within ten (10) days after receipt of Landlord's request, deliver to Landlord or its transferee, an amendment to the letter of credit naming Landlord's transferee as substitute beneficiary of the letter of credit.

Article 19.Broker

Section 19.1 Tenant represents to Landlord that it has dealt with no broker in connection with this lease. Tenant shall indemnify, defend and hold harmless Landlord from and against any claims for any brokerage commissions or other compensation which are made by any broker alleging to have dealt with Tenant in connection with this lease, and all costs, expenses, liabilities and damages in connection therewith, including reasonable attorneys' fees and expenses. Landlord shall pay any commission due the Broker pursuant to a separate agreement between Landlord and the Broker. Landlord shall indemnify, defend and hold harmless Tenant from and against all claims, costs, expenses, liabilities and damages including reasonable attorneys' fees and expenses (a) arising from Landlord's failure to comply with its obligation in the preceding sentence and (b) any claims for any brokerage commissions or other compensation by any broker (other than the Broker) with whom Landlord, but not Tenant, has had dealings in connection with this lease.

Article 20.Notices; Consents and Approvals

Section 20.1 Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at its Notice Address. Either party may, by notice given in accordance with this Article, designate a different Notice Address, which address change shall become effective upon receipt, the date rejected or the date of attempted delivery (if the receiving party is not present).

Section 20.2 Any notice or other communication sent as provided in this Article shall be effective (a) on the date received, the date rejected, or the date of attempted delivery (if the receiving party is not present) if sent by overnight courier service, or (b) three (3) business days after mailing by registered or certified mail.

Section 20.3 If any provision of this lease requires Landlord's consent or approval, such consent or approval shall be effective only if given in writing. Notwithstanding any provision of this lease to the contrary, any type of Landlord's consent shall be provided at the sole discretion of the Landlord.

Section 20.4 Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's attorney or managing agent, if any, with the same force and effect as if signed and given by Landlord.

Article 21.No Representations; Liability; Tenant Indemnity

Section 21.1 Neither Landlord nor Landlord's managing agent, if any, has made any warranties, representations, statements or promises with respect to the Premises, the Real

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

Section 21.2 Any employee of Landlord, Landlord's managing agent, if any, or the Real Property to whom any property is entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to that property and neither Landlord nor Landlord's managing agent, if any, shall be liable for any damages to or loss of property of Tenant or others entrusted to employees, agents or contractors of Landlord, Landlord's managing agent, if any, or the Real Property.

Section 21.3 Neither Landlord nor Landlord's managing agent, if any, shall be liable for any injury, damage or loss to Tenant, Tenant's Property, Tenant's Work, Tenant's business or to any other person or property resulting from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, Landlord's managing agent, if any, or their respective employees, agents or contractors, subject to Section 13.4.

Section 21.4 In the event of a transfer or lease of the entire Building (a) the transferor or lessor shall be and hereby is relieved of all obligations and liabilities of Landlord under this lease accruing after the effective date of the transfer or lease, and (b) the transferee or lessee shall be deemed to have assumed all of Landlord's obligations and liabilities under this lease effective from and after the effective date of the transfer or lease.

Section 21.5 In no event shall Landlord, its affiliates, agents, partners, members, managers, shareholders, officers, directors and principals, disclosed or undisclosed, be liable for incidental or consequential damages or have any personal liability under or in connection with this lease. Tenant shall look only to Landlord's interest in the Real Property for the satisfaction of Tenant's remedies or to collect any judgment requiring the payment of money by Landlord under or in connection with this lease, and no other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

Section 21.6 If Tenant requests Landlord's consent or approval and Landlord fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval.

Section 21.7 This lease and the obligations of Tenant to pay the Rent and perform Tenant's other obligations under this lease are separate, distinct and independent of Landlord's obligations under this lease.

Section 21.8 Tenant's obligations shall not be waived, delayed or otherwise affected in any manner, and Landlord shall have no liability, if Landlord is unable to comply

with, or is delayed in complying with, any of Landlord's obligations under this lease by reason of any strike, labor trouble, accident, war, government action, Laws or other cause beyond Landlord's control.

Section 21.9 Tenant shall not perform or permit to be performed any act which may subject Landlord, its partners, members, managers, shareholders, officers, directors and principals or Landlord's managing agent, if any, to any liability. Tenant shall, to the extent not caused by the negligence or willful misconduct of Landlord or its contractors or agents, indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, from and against all (a) claims arising from any act or omission of Tenant, its subtenants, contractors, agents, employees, invitees or visitors, (b) claims arising from any accident, injury or damage to any person or property in the Premises or any adjacent walkway during the Term or when Tenant is in possession of the Premises, and (c) Tenant's failure to comply with Tenant's obligations under this lease (whether or not a Default), and all liabilities, damages, losses, fines, violations, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with any such claim or failure.

Article 22. End of Term

Section 22.1 On the Expiration Date (a) Tenant (and all other occupants) shall vacate and surrender the Premises, leaving the Premises vacant, broom clean and in good order and condition, except for ordinary wear and tear and damage for which Tenant is not responsible under this lease, and otherwise as may be required by this lease, and (b) Tenant shall remove all of Tenant's Property and any Tenant's Work required to be removed pursuant to this lease. If the last day of the Term is not a business day, this lease shall expire on the immediately preceding business day. Tenant waives, for itself and for any person claiming under Tenant, any right which Tenant or any such person may have under Section 2201 of the New York Civil Practice Law and Rules or under any similar Laws.

Section 22.2 If the Premises are not vacated and surrendered in accordance with this lease (whether by Tenant or any occupant related to Tenant), on the date required by this lease, Tenant shall indemnify and hold harmless Landlord against all losses, costs, liabilities, claims, damages and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees and disbursements whether in an action by or against Tenant or a third party, and including claims and liabilities of Landlord made by any succeeding tenant(s) or other third party. In addition, Tenant shall be liable to Landlord for per diem use and occupancy in respect of the Premises at a rate equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant agree is the Rent that is contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

Section 22.3 If during the last ninety (90) days of the Term, Tenant removes substantially all of Tenant's Property from the Premises, Landlord or any person designated by Landlord may immediately enter and alter the Premises, without releasing Tenant from any obligation or liability under this lease, including the payment of Rent, or incurring any liability or obligation to Tenant.

Section 22.4 Unless otherwise specifically provided: (a) any obligation of Landlord or Tenant under this lease which by its nature or under the circumstances can only be, or by the terms of this lease may be, performed after the Expiration Date; (b) any liability for a payment with respect to any period ending on or before the Expiration Date; and, (c) all indemnity and hold harmless provisions in this lease, shall survive the Expiration Date.

Article 23. Miscellaneous

Section 23.1 Patriot Act. Tenant certifies and represents, both on the date of execution and delivery of this lease and during the entire Term, that neither Tenant nor any subtenant of Tenant nor any person or entity that owns any direct or indirect beneficial interest in Tenant or such subtenant is, or is acting directly or indirectly for or on behalf of, any group, entity, or nation, named by any Executive Order of the President of the United States or the United States Treasury Department as a terrorist or other “Specially Designated National and Blocked Person,” or other person, entity, nation or transaction banned or blocked pursuant to any law, order, rule or regulation that is enforced or administered by the United States Office of Foreign Assets Control or any successor entity, agency or department (an “SDN”). If Tenant is a privately owned entity, the persons listed on Exhibit I annexed hereto constitute all of the officers, directors, general partners, and persons and/or entities owning twenty-five (25%) percent or more of the shares, membership interests, or partnership interests (as the case may be) of Tenant (collectively, the “Principals”) as of the date of execution and delivery of this lease. If Tenant is comprised of more than one person or entity, the foregoing certification is made as to each person and entity comprising Tenant. Any renewal right contained in this lease is void and of no force or effect if Tenant, or any of the persons and/or entities comprising Tenant (if Tenant is comprised of more than one person or entity), or any of the Principals of Tenant, are listed as an SDN at the date of renewal. If Tenant is a privately owned entity, Tenant shall, from time to time, furnish Landlord with a list of Principals of Tenant.

Section 23.2 Financial Statements. Within thirty (30) days after Landlord’s request (which request may be made no more than twice for each fiscal year of Tenant), Tenant shall deliver to Landlord Tenant’s financial statements, in form and scope reasonably satisfactory to Landlord, for Tenant’s most recent fiscal year (or the preceding fiscal year, if the most recent fiscal year ended only within the last 90 days before Landlord’s request). The financial statements Tenant delivers to Landlord shall be audited only if such financial statements are audited for any other purpose, and if not audited, shall be certified as true and complete by Tenant’s chief operating officer or chief financial officer. Tenant shall promptly notify Landlord of any material event or occurrence that relates to Tenant’s or any Guarantor’s creditworthiness.

Section 23.3 General. (a) Subject to the provisions of this lease, this lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns. No person is intended to be a third party beneficiary of this lease.

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

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

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

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

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

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

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

(i) Tenant hereby waives any rights Tenant may have in connection with any zoning lot merger, zoning application, or subdivision or transfer of development rights with respect to the Real Property or any part thereof, including any rights Tenant may have to be a party to or to execute or contest any instrument providing for such merger, subdivision or transfer.

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

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

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

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

Landlord

City of Long Beach

By: _____

Name: Daniel Creighton
Title: City Manager

Tenant

Skudin Surf, Inc.

By: _____

Name: Will Skudin
Title: President

Exhibit A

Fixed Rent

The Fixed Rent payable on the last day of each month in advance of the following month (E.g. The Rent for February is Due on or before January 31).

- 2025: \$37,500.00 (\$3,125.00 payable on the last day of the month)**
- 2026: \$38,250.00 (\$3,187.50 payable on the last day of the month)**
- 2027: \$39,015.00 (\$3,251.25 payable on the last day of the month)**
- 2028: \$39,795.30 (\$3,313.27 payable on the last day of the month)**
- 2029: \$40,591.20 (\$3,382.60 payable on the last day of the month)**
- 2030: \$41,403.02 (\$3,450.25 payable on the last day of the month)**
- 2031: \$42,231.08 (\$3,519.26 payable on the last day of the month)**
- 2032: \$43,075.70 (\$3,589.64 payable on the last day of the month)**
- 2033: \$43,937.21 (\$3,661.43 payable on the last day of the month)**
- 2034: \$44,815.95 (\$3,734.66 payable on the last day of the month)**
- 2035: \$45,712.27 (\$3,809.36 payable on the last day of the month)**

***Note:** Mathematically all calculations were rounded to the second decimal space, which would account for any minor inconsistencies.

****Note 2:** The initial term of this agreement is for a 10 year lease, with the Parties having one (1) five (5) year optional renewal, upon mutual written consent.

*****Note 3:** Should the extension option be exercised the rent shall continue to increase annually at 2%.

Exhibit B

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT made as of the _____ day of January, 2019, between the City of Long Beach (“Landlord”) and Skudin Surf, Inc. (“Tenant”).

RECITALS

- A. Landlord and Tenant are landlord and tenant under that certain lease dated as of December ___, 2024 (the “Lease”) pursuant to which Landlord has leased certain premises more particularly described therein to Tenant (the “Premises”). (Capitalized terms not described herein are described in the Lease.)
- B. The Commencement Date has occurred, the Fixed Rent Commencement Date and the Expiration Date are now known and Landlord and Tenant wish to confirm the dates.

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

1. The Commencement Date is September 16, 2025
2. The Fixed Rent Commencement Date is September 16, 2025, for the first payment, with the second payment due on the 1st day of October 2025, and then the 1st day of each month thereafter.
3. The Expiration Date is September 15, 2035.
4. This Commencement Date Agreement is the document that Landlord and Tenant intended to execute pursuant to the Lease.
5. The initial term of this agreement is for a 10 year lease, with the Parties having one (1) five (5) year optional renewal, upon mutual written consent.

(Space Intentionally Left Blank)

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

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

Landlord
City of Long Beach

By: _____
Name: Daniel Creighton
Title: City Manager

Tenant
Skudin Surf, Inc.

By: _____
Name: Will Skudin
Title: President

Exhibit C
Rules

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

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

11. Tenant shall file a list of items to be sold and the prices to be charged with the Landlord and shall post a price list reflecting same at the Premises.

Exhibit D

Principals (owning a 25% or greater interest in Tenant)

Cliff Skudin (50%)

Will Skudin (50%)

Beach Concession Lease

City of Long Beach,

Landlord

and

Sand Castle LBNY, Inc.

Tenant

Premises: Edward Boulevard and the Boardwalk Concession

Date: January____, 2025

Beach Concession Lease

Lease dated January_____, 2025, between the City of Long Beach (“City”), a municipal corporation with a principal place of business at 1 West Chester Street (“Landlord”), and Sand Castle LBNY, Inc., a New York Corporation, d/b/a Riptides, (“Tenant”) with a principal place of business at 740 West Bay Drive. This lease is being made pursuant to City Council Resolution_____/____, annexed hereto and made a part hereof as Exhibit A.

Article 1. Basic Terms and Definitions

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

Section 1.2 Building. The building and improvements located at Edwards Boulevard and the Boardwalk.

Section 1.3 Commencement Date. September 16, 2025, subject to the provisions of Section 2.6.

Section 1.4 Expiration Date. September 15, 2035, subject to this lease and the Extension Option Rider.

Section 1.5 Extension Option. The Parties will have a five (5) year extension option, upon mutual written consent.

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

Section 1.7 Notice Address.

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

(b) **Tenant.** Riptides, c/o Brian Braddish and Gina Braddish, 740 West Bay Drive, Long Beach, New York 11561.

Section 1.8 Permitted Use. The operation of a food and beverage services establishment, including but not limited to the preparation and cooking of various food and other menu items as well as beverages with associated table service.

Section 1.9 Premises. The building and improvements located at Edwards Boulevard and the Boardwalk, including the use and occupancy of the area under

the Premises for storage. The Premises also includes two (2) parking spaces, along with a shed that houses an ice machine and walk-in box behind the Premises, and an icebox on the west side of the Premises

Section 1.10 Real Property. The Building, the Premises, the land on which it is located, abutting Ocean Beach Park as it is defined in the City of Long Beach Charter and Code of Ordinances.

Section 1.11 Ocean Beach Park. Consistent with the definition of the Ocean Beach Park of the City of Long Beach Charter and Code of Ordinances, and any subsequent resolutions redefining same, which do not constitute a taking of the property or the use, the entirety of which is wholly incorporated herein and made reference to hereto.

Section 1.12 Rent. The Fixed Rent and all Additional Rent.

Section 1.13 Term. The period commencing on the Commencement Date and ending on the Expiration Date, subject to earlier termination or extension of this lease pursuant to the terms hereof.

Section 1.14 Certain Definitions. Any reference in this lease to (a) "legal action", includes any suit, proceeding or other legal, arbitration or administrative process, and any appellate proceedings in connection therewith, (b) "person" includes any individual or entity, (c) "this lease" includes the Rules and the other Exhibits to this lease, and (d) "including" means "including without limitation".

Article 2. Demise; Rent

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

Section 2.2 The Term of this lease shall be for a period of ten (10) consecutive years with the Parties having one five (5) year optional renewal period, upon mutual written consent, under the same terms herein with a two (2) percent increase in rent due on the 10th year herein, and as set forth in the "Fixed Rent" schedule at Exhibit B . However, notwithstanding any other item in this lease to the contrary, Tenant may elect to terminate this lease without any further liability at the conclusion of any Ocean Beach Park Season but in no event later than December of the year preceding the following Ocean Beach Park Season.

Section 2.3 Tenant shall pay Landlord the Rent, without notice, abatement, deduction or offset (except as expressly provided in this lease), in lawful money of the United States of America, by Tenant's check or another method approved by Landlord, at Landlord's Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid on a monthly basis on the last day of the month for the following month, pursuant to the fixed rent schedule, Exhibit B. Landlord's delay in rendering, or failure to render, any statement required to be rendered by Landlord for any Rent for any period shall not waive Landlord's right to render a statement or to collect

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

Section 2.4 Unless otherwise specified in this lease, all Additional Rent shall be paid by Tenant within thirty (30) days after Tenant is billed therefor.

Section 2.5 Except as otherwise specifically provided in this lease, Landlord's calculation, determination, or estimate of any Fixed Rent adjustment, any Additional Rent, any Additional Rent adjustment, or any refund (if this lease provides for one) (a "Determination") shall bind Tenant unless: (a) Tenant gives Landlord Notice of Tenant's objection (with all reasonable grounds for such objection) within thirty (30) calendar days after receiving Landlord's first invoice based on such Determination, and (b) Tenant timely pays the invoiced amount (without prejudice to Tenant's right to object as provided in this

Section 2.6 Landlord and Tenant shall execute an agreement setting forth the Commencement Date, the Commencement Date and the Expiration Date in the form attached hereto as Exhibit D.

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

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

Section 3.2 Tenant shall not use the Premises, or any part thereof, in violation of any directive from the Landlord, if any, for the Premises or the Real Property. Tenant shall not use the property in any way which is inconsistent with a food and beverage service establishment.

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

Section 3.4 The continuous operation of Tenant's business in the Premises is of material importance to Landlord because of the adverse impact on the Real Property of vacant retail space. Tenant shall cause its business to be fully stocked and staffed, and open continuously for business at the Premises at least eight (8) hours a day, such hours to occur at all times when the Ocean Beach Park is open for business, up to 7 days a week. In no event shall Tenant operate its business between the hours of 9 p.m. and 5 a.m., unless the Landlord provides prior written consent at its sole discretion.

Section 3.5 Tenant shall, at its expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean and keep all exterior store surfaces of the Premises clean; (b) replace immediately any cracked or broken glass of the Premises with glass of like color, grade, and quality; (c) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests and shall arrange for extermination at regular intervals, not less frequently than monthly and more often as necessary; (d) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises that are kept closed until removed, unless otherwise permitted by the City of Long Beach's Commissioner of Public Works; (e) deposit such garbage, trash, rubbish and refuse, on a daily basis, in receptacles provided or required by the City of Long Beach's Commissioner of Public Works at his sole discretion, and notwithstanding any other term of this lease to the contrary; (f) remove from the Premises all rubbish resulting from and/or remaining after any fire or other similar casualty in the Premises; (g) keep all mechanical apparatus and equipment free of vibration and noise which may be transmitted beyond the Premises; (h) keep in the Premises and maintain in good working order one or more dry chemical fire extinguishers; (i) conduct its business at the Premises in a dignified manner in accordance with high standards of beach concession operation; and, (j) prevent any odors or any noise from unreasonably transmitting beyond the Premises, to be determined at the sole discretion of the Landlord.

Section 3.6 Tenant shall not: (a) obstruct, or permit its employees, contractors, customers or invitees to obstruct, any walkway, sidewalk, ramp or other area not included as the Premises; (b) use or permit the use of any advertising medium objectionable to Landlord (such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Building) which is in any manner audible or visible outside of the Premises, to be determined at the sole discretion of the Landlord; (c) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (d) cause or permit offensive odors or fumes to emanate from the Premises; (e) receive or ship articles of any kind outside the designated loading areas, if any, for the Premises; (f) use the Premises for any activity that is inconsistent with the operation of a food and beverage service concession; (g) use the Premises for any hazardous activity or in such manner as to constitute a nuisance of any kind (public or private); or (h) cause waste.

Section 3.7 Tenant acknowledges that Landlord intends the retail space abutting the Ocean Beach Park and the tables on the boardwalk to be operated in a manner that does not offend the community that it serves. Accordingly, Tenant shall not use the Premises for any immoral or disreputable use or activity or for any use that is objectionable

to the community in which the Premises are located to be determined at the sole discretion of the Landlord; and Tenant shall not sell, distribute, display, advertise or offer for sale at the Premises any item or service which, in Landlord's sole discretion, may tend to injure or detract from the image of the Ocean Beach Park within such community. Without limiting the generality of the foregoing, Tenant shall not sell, distribute, display or offer for sale any item not specifically proposed in response to Landlord's request for proposals, including but not limited to: (a) any drug paraphernalia, (b) any pornographic, lewd, suggestive, or "adult" newspaper, book, magazine, film, picture, recording, representation or merchandise of any kind, (c) any counterfeit goods or (d) any gun or guns.

Section 3.8 The term "Sign" includes all signs, designs, monuments, banners, projected images, awnings, canopies, pennants. No Sign shall be exhibited, installed, inscribed, painted or affixed, without the prior written consent of Landlord in its sole discretion, on any part of the Ocean Beach Park. Notwithstanding the foregoing, no neon Signs or blinking or flashing Signs are permitted. Unless otherwise expressly permitted, Tenant may not install Signs advertising anything other than their own use of the Premises. Tenant shall, at its own expense, obtain all required licenses and permits for any Signs installed by Tenant, and renew them as required by applicable Laws. In addition to the foregoing, any signs or alterations to the Premises shall require the prior written consent of the City of Long Beach which shall not be unreasonably withheld. All Sign(s) shall be installed and removed in a good and workmanlike manner, without damaging the Real Property or the Premises, and in compliance with all applicable Laws and the applicable provisions of this lease. Prior to installing any permitted Sign, Tenant shall deliver to Landlord any permits or approvals required by applicable Laws in connection with such installation. Tenant shall maintain any permitted Signs in good, clean, neat and safe condition, and at the expiration or sooner termination of this lease, Tenant shall cause such Signs to be removed and cause the cancellation of any issued licenses or permits and agrees to reimburse Landlord for the reasonable costs associated with such removal, should tenant fail to comply with this provision. Tenant shall not change or alter any Sign approved by Landlord in any respect whatsoever, without first obtaining Landlord's prior consent to such change or alteration. Landlord may remove any Sign(s) installed or maintained in violation of this Article, and Tenant shall reimburse Landlord for all costs incurred by Landlord in so removing any such Sign promptly after being billed therefor. In addition, Landlord may, from time to time, temporarily remove any Sign in connection with any repairs, improvements, alterations, additions or replacements being made to the Real Property, and Tenant consents to same, such consent not to be unreasonably withheld.

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

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

Article 5. Tenant's Work

Section 5.1 Except as may be expressly provided in this lease, Tenant shall not replace any fixtures in the Premises or make any changes, improvements, alterations or additions (collectively, “Tenant’s Work”), to the Premises, the Real Property, the Ocean Beach Park, or any part thereof, without the prior written consent of the City of Long Beach’s Commissioner of Public Works, in the Commissioner’s sole discretion. The consent of the City of Long Beach’s Commissioner of Public Works shall not be unreasonably withheld or delayed if Tenant’s Work (a) is nonstructural, and (b) does not (i) affect any structural element of the boardwalk or Ocean Beach park, or (ii) adversely affect any fixture or system within or around the Premises or Ocean Beach Park, (c) is not visible outside the Premises and (d) is performed only by contractors and subcontractors first approved by the City of Long Beach’s Commissioner of Public Works (which approval shall not be unreasonably withheld or delayed). Landlord’s consent shall not be unreasonably withheld with respect to such of Tenant’s Work as are cosmetic alterations (such as painting the interior of the Premises, carpeting, and installation of shelving and display cases) inside, and only inside, the Premises (“Cosmetic Alterations”), provided Tenant complies with the other applicable provisions of this lease and the Cosmetic Alterations are not inconsistent with the aesthetics of the Real Property as determined in the sole discretion of the Commissioner of Public Works. Tenant’s Work shall be performed, at Tenant’s expense, with diligence when started so as to promptly complete it in a good and worker-like manner using materials of first class quality and in compliance with this lease, all Laws and Tenant’s Plans (as defined in Section 5.2) as approved by Landlord, in Landlord’s sole discretion. Tenant’s Work shall be fully paid for by Tenant when payment is due and shall not be financed with any conditional sales or title retention agreements or by the granting of any security interests, liens, encumbrances or financing statements on the Premises. Tenant’s Work shall be deemed, upon installation, to be improvements and betterments that become the property of Landlord at installation, and shall remain upon and be surrendered with the Premises, at the expiration of the Term (or the sooner termination of this lease in accordance with its provisions) unless Landlord notifies Tenant in accordance with the provisions of this Article that Landlord relinquishes its rights thereto, in which case Tenant shall be obligated to remove such Tenant’s Work.

Section 5.2 Prior to commencing any Tenant’s Work other than purely Cosmetic Alterations, Tenant shall, at Tenant’s expense, deliver to Landlord detailed plans and specifications, for Tenant’s Work, in form reasonably satisfactory to Landlord, prepared, certified, signed and sealed by an architect or engineer licensed to practice in the State of New York, and suitable for filing with the applicable Authority, if filing is required by applicable Laws (such plans and specifications together with revisions thereto, collectively, “Tenant’s Plans”), and obtain Landlord’s approval of Tenant’s Plans. The City of Long Beach Commissioner of Public Works must approve of all Tenant’s plans, subject to the Commissioner’s sole discretion. Before commencing Tenant’s Work, Tenant shall (a) obtain (and deliver to Landlord copies of) all required permits and authorizations of any Authority for such work, and (b) deliver to Landlord such security as shall be reasonably satisfactory to Landlord, and (c) deliver to Landlord certificates (in form

reasonably acceptable to Landlord) evidencing the following insurance coverages from each contractor and subcontractor: (i) worker's compensation insurance covering all persons to be employed in the performance of any Tenant's Work, and (ii) commercial general liability insurance on a primary and non-contributory basis with a limit of liability approved by Landlord, and with contractual liability coverage, naming Landlord, its agents, employees and elected officials as additional insureds, and (iii) comprehensive automobile liability insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with Tenant's Work) with a limit of liability approved by Landlord and (iv) builders risk insurance for the full value of the Tenant's Work performed by such contractor and subcontractor.

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

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

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

commencement of such work, Tenant shall furnish to Landlord lien waivers and releases, in form reasonably satisfactory to Landlord, from all construction managers, contractors, subcontractors, and materialmen furnishing work, services or materials in connection with Tenant's Work.

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

Section 5.7 At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work to which Landlord has consented, and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

Section 5.8 Tenant shall not place a load on any floor of the Premises, Building, adjacent Boardwalk and Boardwalk Ramps, or Real Property exceeding the floor load per square foot which the floor was designed to carry and which is allowed by any Laws.

Section 5.9 Tenant shall be liable for any damage caused to any part of the Building, adjacent Boardwalk and Boardwalk Ramps caused by Tenant, including its fixtures and equipment, arising from, or as a result of, Tenant's Work and/or its installation and/or removal of its Signs. If Tenant performs with Landlord's approval any work on the roof of the Building (for example, in connection with repair, maintenance, or installation of any air conditioning system), Tenant shall use only a contractor approved by Landlord for such work and shall not do or cause anything to be done which would invalidate Landlord's then effective roof guaranty for the Premises. Tenant shall also be responsible for promptly repairing (including any necessary replacement) any damage to the roof or Building caused by such work; provided that Landlord may, at its option, effect any such repair or replacement, in which event Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within fifteen (15) days after Tenant is billed therefor.

Section 5.10 On or before the Expiration Date or sooner termination of this lease, if applicable, Tenant shall, at Tenant's expense, remove from the Building (a) all Tenant's Work which Landlord designates for removal in a notice given by Landlord, as well as any equipment, material or fixtures installed by Tenant if demanded to be removed by Landlord to Tenant on or before the date which is thirty (30) days prior to the

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

Article 6. Expense Payments

Section 6.1 Tenant shall pay Landlord the Expense Payments in accordance with the provisions thereof, including but not limited to the costs associated with the use of water, sewer, electric and sanitation at the Premises. Tenant shall pay 100% of the electricity usage From April through October. Tenant shall pay Landlord, in advance, upon Landlord's request, the Expense Payment as reasonably estimated by Landlord for the calendar year. Such estimated payment shall be paid in equal monthly installments (or in such other advance periodic installments that Landlord may elect) on the first day of each month (or on the first day of such other period) during the calendar year. If Landlord first requests, or revises, the estimated monthly or other installments of the Expense Payment after the commencement of a calendar year, Tenant shall (i) until such request is made, continue paying the installments of estimated Expense Payment (if any) payable during the prior calendar year and (ii) within fifteen (15) days following Tenant's receipt of Landlord's request or revision, pay Landlord an amount equal to the requested or revised installments of the estimated Expense Payment for such calendar year retroactive to the beginning of that calendar year to the extent such amount exceeds the estimated payments (if any) paid by Tenant for that calendar year (or if they are less, Landlord shall credit the difference against the next payments under this lease). In no event shall the Fixed Rent or any other item of Additional Rent be reduced by reason of any decrease in Expenses.

Article 7. Utilities; Services

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

Section 7.2 Landlord has no obligation to provide to Tenant or the Premises any services except as expressly set forth in this lease and its exhibits. Tenant shall be responsible for the full cost of its utility usage, but for electric, Tenant shall pay 50% of the electrical usage calculated by Electrical Meter No. 96737477, each year this agreement is in effect, from April through and including September. Landlord does not represent or warrant that any utility or other service provided by Landlord, or any utility or other service used or to be used by Tenant at the Premises, (a) shall be adequate for Tenant's particular purposes or (b) shall be free from interruption or reduction.

Section 7.3 If any utility or other service (a) becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing same (including Landlord), or (b) is interrupted by reason of Laws, the making of any repairs or improvements, or measures taken to secure the safety of the Real Property, or the safety and welfare of its tenants or occupants, or the public, or by reason of any cause beyond Landlord's reasonable control, (i) Landlord shall not be liable to Tenant in damages or otherwise, (ii) Tenant may not abate Rent or be relieved of any of its obligations under this lease, and (iii) such lack of availability or interruption shall not constitute an actual or constructive eviction, or a disturbance of Tenant's use of the Premises.

Article 8. Repairs and Maintenance

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

Section 8.2 Tenant has installed and maintained a fire alarm system on the Premises, components of which are in the public bathrooms. In the event, components in the public bathroom need to be replaced due to wear and tear or damage, Landlord shall reimburse Tenant for the repair of said wear and tear or damage. Subject to Article 11 and Section 8.1: Tenant shall make, at Tenant's sole expense, all repairs and replacements needed to maintain in good condition and order the Premises and all installations, equipment and facilities therein, and all repairs and replacements needed to any plumbing, water, waste, and electric conduits, lines and equipment located outside the Premises that serve only the Premises. Without limiting the foregoing, but subject to Article 11 and Section 10.1, Tenant shall make all repairs and replacements required with respect to the, electrical and plumbing systems within the Premises, , and the plumbing lines, valves, and pipes connected to or running from such fixtures to the point at which such lines, valves and pipes connect with the Building's common plumbing lines, including such plumbing lines or ducts connecting any roof-top or exterior equipment or other utility or service to the Premises. Tenant shall also make, at Tenant's expense, such repairs and replacements as are needed to keep the sidewalks and walkways abutting the Premises in good condition

and order, and shall keep such sidewalks and walkways free of rubbish, and other obstructions, and otherwise in a safe and clean condition. All such repairs and replacements shall be made in compliance with the provisions of this lease (including Article 5).

Section 8.3 Landlord shall have no liability to Tenant, the Rent shall not be abated, and Tenant shall not be deemed actually or constructively evicted by reason of Landlord performing any repairs or other work to all or any portion of the Premises and/or the Real Property. Landlord shall endeavor to perform such repairs or other work in a manner that reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property, but Landlord is not required to employ overtime labor or incur additional expenses.

Article 9. Laws; Hazardous Substances

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

Section 9.2 Tenant shall not, and shall not permit employees, contractors, agents, or invitees, to introduce into the Premises or the Real Property, use in the Premises or the Real Property or cause to be released from the Premises or the Real Property any Hazardous Substances. Notwithstanding the preceding sentence, Tenant may use cleaning products in accordance with their customary use, provided that Tenant complies with all applicable Laws in connection therewith, and further provided that in no event may Tenant release or discharge such cleaning and/or office products into the plumbing, or drainage sewer system in excessive amounts. At no time shall Tenant cause any type of waste litter and/or remain unabated on any portion of the Ocean Beach Park. If Tenant breaches its obligations hereunder, Tenant, at Tenant's expense, shall immediately take all remedial action necessary to clean up any release, spill or discharge

of Hazardous Substances. "Hazardous Substances" mean any flammable or otherwise hazardous material, any explosive and/or radioactive material, hazardous waste, hazardous or toxic substance or related material, asbestos and any material containing asbestos, petroleum and any petroleum derivative, pollutants, contaminants, lubricants, food waste and any other substance or material which is defined as, determined to be, or identified as, a hazardous or toxic material or substance pursuant to any applicable Laws.

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

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

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

Article 10. Insurance

Section 10.1 Tenant shall, at Tenant's expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises such insurance as shall be required by Landlord, including: (a) commercial general liability insurance (or successor form of insurance designated by Landlord) in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than three million (\$3,000,000) dollars naming as additional insureds Landlord and any other person designated by Landlord, (b) property insurance in an amount equal to one hundred (100%) percent of full replacement value (with a deductible not exceeding five thousand (\$5,000) dollars) covering Tenant's Work (including improvements and betterments, whether or not the improvements and betterments are restored), Tenant's Property and the property of third parties located in the Premises, against fire and other risks included in the standard New York form of property insurance, (c) workers' compensation and employer's liability insurance providing statutory benefits for Tenant's employees at the Premises, (d) such other insurance as Landlord may reasonably require. Such liability insurance policy shall include contractual

liability, fire and legal liability coverage. Landlord shall have the right at any time and from time to time, but not more frequently than once every two (2) years, to require Tenant to increase the amount of the commercial general liability insurance required to be maintained by Tenant under this lease provided the amount shall not exceed the amount then generally required of tenants entering into leases for similar Permitted Uses in similar buildings in the general vicinity of the Real Property.

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

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

Article 11.Casualty

Section 11.1 If (a) the Premises are damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or so that the Premises or any part of the Premises is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (i) Landlord shall, at Landlord's expense, reasonably repair the damage to the Premises, excluding the damage to Tenant's Work or Tenant's Property and (ii) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage and shall promptly after Landlord's substantial completion of the repair to the

Premises, commence to diligently repair Tenant's Work and Tenant's Property in order to resume its normal business in the Premises. Until the repairs to be performed by Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises and which Tenant does not actually use.

Section 11.2 If (a) the Premises are rendered wholly untenable, or (b) the Premises are damaged by any cause which is not covered by Landlord's insurance, or (c) the Premises are damaged in whole or in part during the last two (2) years of the Term, or (d) the cost of repairing any damage to the Building by fire or other casualty exceeds seventy-five percent (75%) of the replacement cost thereof, as reasonably estimated by a reputable contractor, architect or engineer selected by Landlord, Landlord shall have the right, by notice given to Tenant within sixty (60) days following the date of the damage, to terminate this lease. If this lease is terminated pursuant to this Section, the Term shall expire on the fifteenth (15th) day after the notice is given as fully and completely as if such date were the stated Expiration Date.

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

Article 12. Assignment and No Subletting

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

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

Section 12.3 If Tenant desires to assign this lease, then upon Landlord's receipt of the Consent Request (hereinafter defined), together with the documents and information required under Section 12.4(d), Landlord may, at its option, elect to terminate

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

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

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

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

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

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

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

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

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

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

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

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

or entity that directly or indirectly controls, is controlled by or is under common control with Tenant.

Section 12.6 The consent by Landlord to any assignment, transfer, occupancy, encumbrance or other transaction described in Section 12.1, shall not in any way be deemed to relieve Tenant from obtaining the express consent of Landlord prior to any further such transaction or any proposed assignment, which consent may be granted or denied at Landlord's discretion.

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

Article 13. Access; Changes in Building and Real Property

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

Section 13.2 If there is to be any excavation or construction adjacent to the Building, Tenant shall permit Landlord and/or any other person to enter the Premises to perform such work as Landlord or that person deems necessary to protect the Real Property, without any abatement of the Rent or liability to Tenant.

Section 13.3 Landlord shall have right to use all or any part of the roof of the Building and to erect temporary scaffolds and other aids to construction on the exterior of the Premises in connection with alterations, repairs, improvements, and/or additions Landlord may make to the Building, provided that access to the Premises shall not be denied.

Section 13.4 Landlord shall exercise Landlord's rights under this Article in a manner which reasonably minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense), but Landlord is not required to employ overtime labor or incur additional expenses.

Article 14. Default

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

(a) Tenant fails to pay when due any Rent and the failure continues for three (3) days following Landlord’s notice (which notice shall also be considered any demand required by any Laws). If, however, Landlord gives such a notice of failure to pay Rent twice in any twelve (12) month period, any additional failure to pay any Rent when due within that twelve (12) month period shall be considered a Default, requiring Landlord to serve, by certified mail/return receipt requested, a Notice of Default to Tenant advising Tenant that Tenant has 14 days from receipt of said Notice of Default to cure the default with the payment of the outstanding Rent.

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

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

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

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

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

Section 14.2 If a Default occurs, this lease is subject to the conditional limitation that Landlord may, at any time during the continuance of the Default, give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than fourteen (14) days after Landlord gives such notice to Tenant. If Landlord gives that notice, this lease and the Term shall expire and come to an end on the date set

forth in that notice as if said date were the date originally fixed in this lease as the Expiration Date and Tenant shall quit and surrender the Premises to Landlord (but Tenant shall remain liable as provided in this lease).

Section 14.3 If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit.

Article 15. Remedies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 16.Notices; Consents and Approvals

Section 16.1 Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at its Notice Address. Either party may, by notice given in accordance with this Article, designate a different Notice Address, which address change shall become effective upon receipt, the date rejected or the date of attempted delivery (if the receiving party is not present).

Section 16.2 Any notice or other communication sent as provided in this Article shall be effective (a) on the date received, the date rejected, or the date of attempted delivery (if the receiving party is not present) if sent by overnight courier service, or (b) three (3) business days after mailing by registered or certified mail.

Section 16.3 If any provision of this lease requires Landlord's consent or approval, such consent or approval shall be effective only if given in writing.

Section 16.4 Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's attorney with the same force and effect as if signed and given by Landlord.

Article 17.No Representations; Liability; Tenant Indemnity

Section 17.1 Landlord has not made any warranties, representations, statements or promises with respect to the Premises, the Real Property, the Building systems, any Additional Rent, any Laws or any other matter, unless expressly set forth in this lease. This lease contains the entire agreement between Landlord and Tenant with respect to the subject matter of this lease, and any previous agreements between Landlord and Tenant are merged in this lease, which alone expresses their agreement. Tenant is entering into this lease after full investigation, and is not relying on any warranties, representations, statements or promises made by Landlord or any other person not expressly set forth in this lease, and is not acquiring any rights of any nature, by implication or otherwise, except as expressly set forth in this lease.

Section 17.2 Neither Landlord nor its officers, employees, agents, or contractors, if any, shall be liable for any injury, damage or loss to Tenant, Tenant's Property, Tenant's Work, Tenant's business or to any other person or property resulting from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, Landlord's managing agent, if any, or their respective employees, agents or contractors, subject to Section 13.4. Tenant agrees to fully defend and indemnify Landlord for any claim made against Landlord for injury, damage, or loss arising out of Tenant's use or occupation of the Premises, including any Tenant's Work.

Section 17.3 In no event shall Landlord, its affiliates, agents, partners, members, officers, directors and principals, disclosed or undisclosed, be liable for

incidental or consequential damages or have any personal liability under or in connection with this lease. No assets of Landlord shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies or the collection of any judgment under or in connection with this lease. If Tenant acquires a lien on such other property or assets by judgment or otherwise, Tenant shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

Section 17.4 If Tenant requests Landlord's consent or approval and Landlord fails or refuses to give such consent or approval, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent or approval, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold its consent.

Section 17.5 This lease and the obligations of Tenant to pay the Rent and perform Tenant's other obligations under this lease are separate, distinct and independent of Landlord's obligations under this lease.

Section 17.6 Tenant's obligations shall not be waived, delayed or otherwise affected in any manner, and Landlord shall have no liability, if Landlord is unable to comply with, or is delayed in complying with, any of Landlord's obligations under this lease by reason of any strike, labor trouble, accident, war, government action, Laws or other cause beyond Landlord's control.

Section 17.7 Tenant shall not perform or permit to be performed any act which may subject Landlord, its partners, members, managers, officers, employees, agents and principals to any liability. Tenant shall, to the extent not caused by the negligence or willful misconduct of Landlord or its contractors or agents, indemnify, defend and hold harmless Landlord and Landlord's managing agent, if any, from and against all (a) claims arising from any act or omission of Tenant, its subtenants, contractors, agents, employees, invitees or visitors, (b) claims arising from any accident, injury or damage to any person or property in the Premises during the Term or when Tenant is in possession of the Premises, and (c) Tenant's failure to comply with Tenant's obligations under this lease (whether or not a Default), and all liabilities, damages, losses, fines, violations, costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with any such claim or failure.

Article 18. Force Majeure

Section 18.1 Tenant shall not be responsible or liable for the delays in the performance of its obligations hereunder, including rent, when caused by, related to, or arising out of acts of God, government orders, restrictions, limitations, regulations, shutdowns, or controls, pandemics, quarantines, storms, earthquakes, tsunamis, strikes, lockouts, or labor disputes, embargoes, supply chain disruptions, inability to obtain labor or goods, war, terrorism, insurrection, riots, and other causes beyond Tenant's reasonable

control. In the event of such delays after the second payment of rent on August 15th, Landlord will issue a Rent credit prorated for the time that Tenant has not been able to conduct business as a result of any of the above delays.

Article 19. End of Term

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

Section 19.2 If the Premises are not vacated and surrendered in accordance with this lease (whether by Tenant or any occupant related to Tenant), on the date required by this lease, Tenant shall indemnify and hold harmless Landlord against all losses, costs, liabilities, claims, damages and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees and disbursements whether in an action by or against Tenant or a third party, and including claims and liabilities of Landlord made by any succeeding tenant(s) or other third party. In addition, Tenant shall be liable to Landlord for per diem use and occupancy in respect of the Premises at a rate equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant agree is the Rent that is contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

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

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

Article 20. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

(k) This lease is subject to any enhancements agreed to by the Landlord and Tenant with the understanding that such enhancements will be at Tenant's expense and will result in a proportionate increase adjustment in rent and that the time the Parties may amend/extend the terms of this agreement based upon the potential enhancements.

(l) Landlord agrees to keep the public bathrooms adjacent to Tenant's Premises open to the public from the time Tenant is preparing the Premises for business in the morning until Tenant closes the Premises at night. Landlord will also provide to Tenant a key to open the public bathrooms at the Premises.

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

(n) Landlord hereby gives Tenant permission to place sixteen (16) tables and associated chairs/benches including two (2) tables directly in front of the entrance of the building, another (1) table on the eastside of the westerly ramp, another (1) table on the west side of the easterly ramp and twelve (12) tables running east of the easterly ramp passed the light pole, on the northern side of the boardwalk to provide table service to Tenant's patrons, on the Boardwalk. No tables are permitted west of the ramp located on the western side of the subject premises.

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

Landlord

City of Long Beach

By: _____
Name: Daniel Creighton
Title: City Manager

Tenant

Sand Castles LBNY, Inc.

By: _____
Name: Brian Braddish
Title: President

Exhibit A

City Council Resolution

Exhibit B

Fixed Rent

The Fixed Rent payable on the last day of each month in advance of the following month (E.g. The Rent for February is Due on or before January 31)

2025 -----	\$52,000.00 (\$4,333.33 payable at the end of each month)
2026 -----	\$53,000.00 (\$4,416.67 payable at the end of each month)
2027 -----	\$54,100.00 (\$4,508.33 payable at the end of each month)
2028 -----	\$55,180.00 (\$4,598.33 payable at the end of each month)
2029 -----	\$56,300.00 (\$4,691.67 payable at the end of each month)
2030 -----	\$57,400.00 (\$4,783.33 payable at the end of each month)
2031 -----	\$58,800.00 (\$4,900.00 payable at the end of each month)
2032 -----	\$60,300.00 (\$5,025.00 payable at the end of each month)
2033 -----	\$61,800.00 (\$5,150.00 payable at the end of each month)
2034 -----	\$63,350.00 (\$5,279.17 payable at the end of each month)
2035 -----	\$64,900.00 (\$5,408.33 payable at the end of each month)

FIVE YEAR OPTION IF EXERCISED

2036 -----	\$66,850.00 (\$5,570.83 payable at the end of each month)
2037 -----	\$68,850.00 (\$5,737.50 payable at the end of each month)
2038 -----	\$70,900.00 (\$5,908.33 payable at the end of each month)
2039 -----	\$73,050.00 (\$6,087.50 payable at the end of each month)
2040 -----	\$75,200.00 (\$6,266.67 payable at the end of each month)

****Tenant agrees and acknowledges that any enhancement of the business, or
enlargement of the leased premises shall constitute a proportional, reasonable, increase in
rent.****

*****Security. \$8,666.66, subject to increase as provided in this Exhibit. The amount of
the Security shall be increased each time the monthly payments of Fixed Rent increase so
that Landlord shall at all times have and maintain two (2) full months Fixed Rent as
security*****

Exhibit C
Commencement Date Agreement

THIS COMMENCEMENT DATE AGREEMENT made as of the ____th day of January, 2025, between the City of Long Beach (“Landlord”) and Sand Castles LBNY, Inc. (“Tenant”).

RECITALS

- A. Landlord and Tenant are landlord and tenant under that certain lease dated as of January ____ , 2025, (the “Lease”) pursuant to which Landlord has leased certain premises more particularly described therein to Tenant (the “Premises”). (Capitalized terms not described herein are described in the Lease.)
- B. The Commencement Date and the Expiration Date are now known and Landlord and Tenant wish to confirm the dates.

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

1. The Commencement Date is September 16, 2025.
3. The Expiration Date is September 15, 2035. In the event the Parties exercises the 5 year extension option, upon mutual written consent, the Expiration Date is September 15, 2040.
4. This Commencement Date Agreement is the document that Landlord and Tenant intended to execute pursuant to the Lease.
5. Landlord and Tenant hereby ratify and confirm the terms and provisions of the Lease.

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

City of Long Beach, Landlord

By: _____
Daniel Creighton
City Manager

Sand Castles LBNY, Inc., Tenant

By : _____
Brian Braddish
President

Exhibit D
Rules

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

1. Tenant shall not store any materials or objects outside of the Premises, other than what has already provided in this Lease.
2. Tenant shall not drill holes into the exterior walls or roof of the Building or Premises, nor will Tenant attach wires or other devices to the exterior walls or roof without the prior written consent of the Landlord. No curtains, blinds, shades, or screens shall be attached to or hung upon, or used in connection with, any windows or doors of the Premises without the prior written consent of Landlord.
3. Tenant shall not use the bathrooms or other Building systems or any plumbing fixtures for any purpose or in any manner other than for the purposes and in the manner they were intended to be used, and no rubbish, rags, paper towels or other inappropriate materials shall be thrown therein.
4. Tenant shall not bring into, or permit in, the Premises any animals (except service animals for the disabled).
5. Under no circumstances shall Tenant allow or cause any type of vehicle to be used on the Ocean Beach Park without the prior written consent of the Commissioner of Public Works of the City of Long Beach, consent to be issued at the Commissioner's sole discretion.

Exhibit E
List of Shareholders

1. Brian Braddish
2. Gina Braddish

Food Use Rider

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

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

AGREEMENT between The City of Long Beach and Atlantic Beach Fire District
FOR AUTOMATIC AID TO ATLANTIC BEACH FIRE DISTRICT
January 1, 2025- December 31, 2029

THIS AGREEMENT, effective this 1st day of January 2025 between the City of Long Beach, a municipal corporation organized under the laws of the State of New York and having its principal place of business at 1 West Chester Street, Long Beach, New York, 11561, party of the first part, (hereinafter, the "City" or 'Long Beach" and the Atlantic Beach Fire District, a political subdivision of the state of New York, organized under the laws of the State of New York, with its offices at 1 Rescue Road PO BOX 95, Atlantic Beach, New York, 11509, part of the second part (hereinafter "Atlantic Beach").

WHEREAS, the party of the first part own and maintains sufficient fire apparatus, rescue equipment, and ambulances properly manned by sufficient personnel to staff the same; the City of Long Beach represents that their fire and rescue operations and equipment comply with and/or satisfy the Nassau County Emergency Medical Services protocol, and where applicable, New York State Department of Health, Bureau of EMS Standards;

WHEREAS, the Atlantic Beach Fire District desires to enter into an agreement with the " City" to render certain fire protection and rescue services including, but not limited to, aiding of victims and **supplemental ambulance transportation**, pursuant to the terms of this contract within the Atlantic Beach Fire District for the period of five (5) Years; with a revocable and non-binding option to renew for an additional five (5) years, upon mutual consent of the Parties;

WHEREAS all parties have all completed all necessary legal prerequisites and consequently are duly authorized to enter a contract for fire/rescue protection to the Atlantic Beach Fire District for a period of five (5) years, commencing January 1, 2025, and terminating December 31, 2029, upon the terms and provisions explicitly outlined herein; and

WHEREAS this Agreement is being entered into on behalf of the City of Long Beach via authority conferred onto its City Manager by the City Council of the City of Long Beach in Resolution No _____ annexed hereto and made a part hereof;

NOW, THEREFORE, in consideration of the promises and the agreement set forth herein, the parties hereto agree as follows:

1. Long Beach shall be the **primary provider of fire protection 24/7** for the protection of property within the limits of the Atlantic Beach Fire District with relation to the prevention and/or extinguishment of fires and conflagrations therein and will direct and engage in fire drills as required. **Long Beach shall be the supplemental responder of ambulance, engagement of medical rescue and remain primary responder to non-medical emergencies** of any nature affecting the lives of residents or persons within Atlantic Beach 24/7 and shall utilize its best efforts for the supplemental transportation of ambulance services, if needed, for the protection of the property and life within the limits of Atlantic Beach Fire District, as follows:



2. The City of Long Beach shall provide Dispatch Services and, according to the terms of this agreement, shall be responsible to engage in rescue operations and emergencies of any nature affecting the lives of residents or persons and property within the Atlantic Beach Fire District in the relevant times set forth in this Agreement, and provide supplemental ambulance and medical rescue services to the residents or persons of the Atlantic Beach Fire District as provided by the terms of this agreement.

3. The Long Beach Fire Department shall provide automatic aid (at the "time of the alarm or time an alarm is received") with personnel, equipment, and apparatus if needed and necessary to assist in the protection of lives and property within the Atlantic Beach Fire District.

4. The Atlantic Beach Rescue Unit and Lawrence Cedarhurst Rescue currently provide and will continue to provide primary response for ambulance transportation and medical rescue services within Atlantic Beach Fire District.

5. If the Atlantic Beach Rescue Unit or Lawrence Cedarhurst Rescue are unable to provide response for a primary ambulance transportation during the times set forth herein, Long Beach shall provide ambulance transportation and rescue services in place of the Atlantic Beach Rescue Unit and/or Lawrence Cedarhurst Rescue.

6. Long Beach shall give prompt notice by radio to the Atlantic Beach Rescue Unit, Lawrence Cedarhurst Rescue, its members, chiefs, and commissioners, of any signal 8, 9, 9A,

10, 99, 100, or automatic alarms within the boundaries, land, or waterways, of the Atlantic Beach Fire District.

7. Long Beach and automatic aid are hereby authorized to use any and all fire hydrants within and not limited to the Atlantic Beach Fire District to carry out the provisions of this Agreement. These fire hydrants shall be maintained in good working order by the Atlantic Beach Fire District or the owner and/or lessor/lessee thereof.

8. This Agreement shall be deemed to have commenced for the purposes of payment as of January 1, 2025, and shall terminate on December 31, 2029, unless extended for one (1) year pursuant to option, terms, and conditions of which are delineated in Paragraph 9, below, in this Agreement.

9. In consideration of the performance by Long Beach of the covenants and agreements on its part to be performed, Atlantic Beach Fire District agrees to pay Long Beach the total sum according to the following schedule:

<u>Year</u>	<u>Dispatching</u>	<u>Fire</u>	<u>EMS</u>	<u>Annual Total</u>
2025	\$17,000.00	\$50,000.00	\$8,000.00	\$75,000.00
2026 (+2.5%)	\$17,425.00	\$51,250.00	\$8,200.00	\$76,875.00

(Q)

2027 (+2.5%)	\$17,860.63	\$52,531.25	\$8,405.00	\$78,796.88
2028 (+2.5%)	\$18,307.15	\$53,844.53	\$8,615.13	\$80,766.81
2029 (+2.5%)	\$18,764.83	\$54,190.64	\$8,830.51	\$82,785.98

Atlantic Beach agrees to pay Long Beach in two (2) annual payments per year on April 1st, but no later than May 1st and October 1st, but no later than November 1st of each year this agreement is in effect. Should this agreement be terminated by either party for any reason, a portion of any payment shall be repaid on a pro-rata basis.

10. The City of Long Beach, upon mutual consent of the Atlantic Beach Fire District may execute a five (5) year extension of this agreement upon identical terms, conditions and payment details specified in the year 2029 contained herein based on the total five (5) year sum of \$408,929.90 pursuant to the following schedule modified as follows:

Years 2030-2034, annual payments \$81,785.98 in semi-annual installments of \$40,892.99 on April 1st but no later than May 1st and on October 1st but no later than November 1st and terminating December 31, 2034.

11. Long Beach shall maintain liability insurance, for the benefit of all parties to this Agreement, for injuries to person and property in the amount not less than \$1,000,000.00/\$2,000,000.00. Each party shall arrange for notice to the others of any lapse, cancellation or termination of coverage. All parties shall promptly provide notice of any potential claim or suit against itself or another so as to allow the other party to notify their insurance provider.

12. The City of Long Beach agrees to defend, indemnify, and hold the Fire District harmless for any and all judgments, fines, penalties, assessments, negotiated settlements, arising out of any civil, criminal or administrative action in any jurisdiction or forum, arising out of the performance of any acts and omissions, which are in any way related to providing or failing to provide fire and/or emergency ambulance protection within the Atlantic Beach Fire District.

13. City shall be solely responsible for maintaining Workers Compensation coverage of their own volunteer firefighters (VFBL) and/or paid firefighters and ambulance workers (VAWBL) and no Party shall be liable for any benefits or liabilities whatsoever to the other party's personnel.

14. Each party to this Agreement shall be an independent contractor of the other and shall remain liable to the other only for the negligent, grossly negligent, reckless or intentional acts or omissions caused by their own, individual volunteers and/or employees, and for their acts and/or omissions, shall hold each other party harmless and shall defend and indemnify the other parties for such acts or omissions only.

(a)

15. The Atlantic Beach Fire District shall ensure that there are sufficient signs in the District to define the primary borders of such District.

16. Prior to the execution of this Agreement, the Atlantic Beach Fire District will supply to the City, if not already filed with the City:

- A. an up-to-date hydrant map of the Atlantic Beach Fire District; and
- B. submit a copy of all relevant fire inspections within the Atlantic Beach Fire District to the Long Beach Fire Commissioner.

17. This Agreement is for automatic and not mutual aid, and notwithstanding anything to the contrary in the law, the Atlantic Beach Fire District shall not be liable for any loss or damage that may occur to any of the fire apparatus, equipment or personnel used by any party to this Agreement.

18. The City of Long Beach, as it is dispatching for all parties of the automatic aid shall email on a monthly basis to the Atlantic Beach Fire District, a computer printout report setting forth all alarms, the type of call, fire, and rescue responses within the Atlantic Beach Fire District.

19. The City of Long Beach will use its best efforts to engage and aid in all emergency procedures, but not limited to, storm emergencies, hurricane emergencies, flooding, and any other mass catastrophes.

20. The failure of any party of this Agreement to insist upon strict performance of any of the terms, conditions, and covenants herein shall not be deemed to waive any rights or remedies that either any of the parties may have and shall not be deemed a waiver or subsequent breach or default in the terms, conditions, and covenants herein contained.

21. The City of Long Beach covenants that, pursuant to the provisions of the laws of the State of New York, it will not discriminate against the appointment of the volunteer/paid personnel of their perspective organizations on any criteria prohibited by law.

22. The Atlantic Beach Fire District may terminate this Agreement by giving written ninety (90) days' notice in writing of such election to cancel this Agreement, and this Agreement shall terminate at the end of such 90-day period. In the event of such termination, the unearned payments from the time of such termination shall be provided to Long Beach pro rata. The Atlantic Beach Fire District may only exercise the aforementioned option to terminate for good cause.

23. Under no Circumstances shall one party of this Agreement be liable to another party for any special consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this Agreement, or any activities performed in connection to this Agreement, regardless of whether a claim made by that party is based on contract or tort.

(g)

24. Modification, Assignment, and Amendment. This Agreement may not be modified, nor may compliance with any terms be waived, except by written executed and approved in the same manner as this Agreement. This Contract may not be assigned without express written consent of each party.

25. Entire Agreement. This Agreement sets forth the entire agreement between each party and all parties and supersedes all other written or oral provisions.

26. Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be the original document, and all of which together shall constitute one and the same document.

27. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any Party by virtue of authorship of any provisions of this Agreement.

28. All notices of this Agreement shall be sent in writing by First Class Mail, Return Receipt Requested to each affected party to their place of business address as listed in this Agreement.

IN WITNESS WHEREOF, the City of Long Beach and the Atlantic Beach Fire District have hereunto set their hands and respective seals of the parties above, in triplicate, the day and year first above mentioned.

ATLANTIC BEACH FIRE DISTRICT

By:  Dated: 12/4/24
Joseph Montilli, Chairman

CITY OF LONG BEACH

By: _____ Dated: _____
Daniel Creighton
City Manager





City of Long Beach

INTEROFFICE MEMO

To: Daniel Creighton, City Manager
Frank Dikranis, Corporation Counsel
Inna Reznik, City Comptroller

From: Russell Darress, Interim Commissioner of Public Works

Subject: **Request for City Council Resolution – On-Call Professional Construction Inspection Services**

Date: January 8, 2025

Please prepare a resolution for the regularly scheduled January 21, 2025 City Council Meeting for the above stated project.

On December 5, 2025, this office received ten (10) proposals for the above stated services to provide on-call construction inspection services on an as needed basis for various ongoing Department of Public Works projects. The Inspector will be required at the construction site at all times that work is being performed, deliveries are received, or contractor(s) are on site. Additionally, the Construction Inspector will maintain detailed field inspection records, including reports, forms, job diaries, photographs, detailed procedures, etc.

This Consultant is currently performing similar services for several other municipalities. They are very familiar with the project area and are fully aware of the project requirements. The proposal is for a not to exceed fee of \$122,200.00 for up to 180 days.

L.K. McLean Associates, D.P.C.
Engineering and Surveying
437 South Country Road
Brookhaven, NY11719\$122,200.00

Funding will be provided with Budget Code: H1025.52249 (Road Reconstruction)

cc: Steven Pambianchi, Dep. Corporation Counsel

II. GENERAL INFORMATION

A. Submission Period

Respondents must submit their Proposals on or before 4:00 P.M. Thursday 12/5/2024 (the Submission Deadline). The City of Long Beach expects to select a firm for the Project (the "Awardee") at a regularly scheduled meeting of the Council.

B. Preparation of Proposal

The Consultant shall demonstrate that it has relevant experience in inspecting projects of comparable value and scope to the type contemplated by this RFP. Each Proposal shall be prepared concisely, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation.

C. Number of Copies of Proposal

Four (4) copies of the proposal must be submitted to the City.

D. Inquiries and Submission of Proposal

Questions about the RFP and the submission of Proposals shall be directed in writing to:

Mr. Russell Darress
Interim Commissioner of Public Works
Department of Public Works – Room 404
City Hall
One West Chester Street
Long Beach, New York 11561
(516)431-1000 ext. 1011
(516)431-5008 (fax)

All Proposals must be received at the above address before the end of the submission period, either by hand delivery, courier or by certified mail in a sealed envelope, to the above office. The cost proposal shall be provided in a separate sealed envelope.

Questions or requests for any clarifications about the RFP will only be accepted up until Tuesday, 12/3/2024.

E. Longevity of Proposals

A proposal may be withdrawn at any time prior to the date specified as the Submission Deadline. However, no Proposer may withdraw or cancel a Proposal for a period of forty-five (45) days following the Submission Deadline, nor shall the successful proposer withdraw or cancel or modify the Proposal, after having been notified that the Proposal has been accepted by the City, except at the request of the City or with the City's written consent.

F. Selection of Awardee

The City Selection Committee will evaluate each Proposal with emphasis on the following factors:

- Demonstrated relevant *experience* in performing projects of comparable value and scope to the type contemplated by this RFP including familiarity with Federal, State, and Local requirements (25 points)
- References, reputation and strength of current team financials (25 points)
- Quality of the Proposal/*Understanding* – adherence to Section III. Requirements (following) to include conciseness, clarity and readability (25 points)
- Scheduling to meet the timeline imposed (25 points)

Final selection of the Consultant will be made solely by the City Council with a recommendation from the Department of Public Works

G. Right of Rejection by the City

Notwithstanding any other provisions of this RFP, the City reserves the right to select the respondent that best meets the requirements of the RFP, and not necessarily to the lowest priced proposal. Further, the City, reserves the right, for any or no reason and in its sole and absolute discretion, to (1) amend, in whole or part, (2) withdraw or cancel this RFP, and (3) accept or reject any or all Proposals prior to execution of the contract for the Project for any or no reason and with no penalty to the City.

H. Notice of Award

The City shall inform the Awardee that they have been selected by means of a Notice of Award issued by the City. Neither the selection of a respondent as the Awardee nor the issuance of a Notice of Award shall constitute a binding commitment on behalf of the City to enter into any contract with the Awardee, as any binding arrangement must be set forth in definitive documentation negotiated between and signed by the Awardee and the City.

I. Contract Negotiations

The City intends to enter into contract negotiations with the firm or firms selected, who shall be required to enter into a written contract (hereinafter, the "Contract") with the City in a form satisfactory to the City Council. The terms of the Agreement will be similar to the draft agreement included herein in Appendix B.

The City reserves the right to negotiate the terms and conditions of the Contract(s) with the selected Proposer(s), if any. These negotiations could include all aspects of services and fees. Neither the selection of a Proposer nor the negotiation of the Contract with such Proposer(s) shall constitute a binding commitment on behalf of the City to enter into a Contract with such Proposer(s), as any binding arrangement must be set forth in the Contract signed by both parties and is subject to all requisite approvals.

J. Schedule

The proposal shall include 180 days of construction inspection services for a one year period. This is an on-call service contract for various Department of Public Works projects. These projects are in various stages of construction from bid award to closeout. The frequency and number of days needed for inspection will vary depending on the project and City's need at the time. The City reserves the right to use all, some or none of the 180 days of services.

The typical working hours will be from 8am to 4am Monday thru Friday with no work on City Holidays or as the project requires.

The Consultant shall be prepared to start work within ten (10) days of notice of award.

K. The Executive Summary shall provide a description of the key points of the Proposal, specifically addressing why your firm is qualified to provide the construction services in connection with the scope of services in this RFP. This section must include the name, email address, telephone number and facsimile number of the key contact person for this proposal.

The Qualifications Section shall include background information on your firm including but not limited to:

1. Firm Overview
2. Please provide the resumes of the individuals who would comprise your inspection team and The principal-in-charge. Describe only the people who would actually work on this City Project. Specify the role each would play, as well as what backup coverage would be available in time of conflicting engagements. Provide an organizational chart.

6. The Non-Collusive Proposal Submission Certification signed by a duly authorized representative of the Proposer, set forth in Appendix A, attached hereto and made a part hereof.

L. Fee Proposal

The consultant shall submit a Fee Proposal. **The cost proposal is required to be submitted in a separate sealed envelope. The pricing should only be for the onsite inspector**

The Fee Proposal shall also include a list of hourly rates, anticipated man-hours for field and multiplier utilized. The maximum hourly wage rate (including multiplier) that is permitted to be utilized is \$275.00/hr.

The fee will incorporate, but not be limited to, all costs associated with printing, reimbursables (travel, phone, fax, mailings, etc.,), soil borings (as necessary), mark outs, filing fees, permits, meetings, etc.



**CITY OF LONG BEACH, NEW YORK 11561
REQUEST FOR PROPOSALS**

ON-CALL ENGINEERING CONSTRUCTION INSPECTION SERVICES

NOVEMBER 2024

FEE PROPOSAL SHEET

Cost – Construction Inspection Services

(in figures)

This cost includes the daily rate for one (1) inspector to perform onsite inspection services for any given Department of Public Works project that they may be assigned to.

Submitted By: _____
(Name of Company)

Name of Authorized Representative: _____
(Print Name)

Signature of Authorized Representative: _____

Date: _____

INSURANCE REQUIREMENTS

The CONSULTANT shall maintain during the performance of the Contract the following insurance coverage in the amounts specified:

1. Commercial General Liability and Property Damage insurance covering the liability of the consultant including Contractual insurance defending indemnifying and holding harmless the City, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this agreement with a combined single limit (bodily injury/property damage) of \$2,000,000.00 per occurrence.
2. Professional Liability, \$1,000,000.00 per claim, \$2,000,000, aggregate.
3. Automobile Liability and Property Damage, Bodily Injury and Property Damage \$1,000,000.00 per occurrence.
4. Professional document / Valuable papers insurance in the minimum amount of \$100,000.00.
5. Professional errors and omissions insurance in the minimum amount of \$1,000,000.
6. Workers Compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).

The City shall be named as additional insured on these policies and the provider will be subject to the approval of the Corporation Counsel.

At the time of execution of the Contract, the Awardee shall furnish the City with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) day's prior written notice is given to the City and the Commissioner of Public Works.

ON-CALL PROFESSIONAL CONSTRUCTION INSPECTION SERVICES

NOVEMBER 2024

III. REQUIREMENTS

A. Overview (Project Description, Location, and Scope of Work)

The City of Long Beach is seeking to retain the services of a professional engineering firm to provide on-call construction inspection services on an as needed basis for various ongoing Department of Public Works projects within the City. The projects that the inspector will be asked to assist in are in various stages of construction. The inspector will be expected to confirm that these projects are in adherence to the projects specifications and standards of good workmanship.

Report to the City's Commissioner of Public Works & City Engineer for design and construction issues that may arise during construction.

B. Project Classification –

Classifications under New York State Environmental Quality Review Act (SEQR) Part 15, Title 17 of the Official Compilation of Codes, Rules and Regulations of New York State (17 NYCRR Part 15) is assumed to be a Type II Project.

C. Scope of Services - Categorization of Work

The scope of work shall include and not limited to the tasks listed below. It will be the consultant's responsibility to familiarize itself with the overall construction projects, review the available information and to identify and justify any additional tasks that will be required beyond those described in the SOW contained herein. Additional tasks beyond that described in this SOW, but which the consultant believes are necessary to complete this project, must be approved prior to the acceptance of the consultants final proposal.

Construction Inspection Services:

The detailed duties of the position include, but are not limited to:

Provide detailed inspections to ensure construction is competed in conformance with the approved plans and specifications. The Consultant's Inspector shall be required at the construction site at all times when there is work being performed, deliveries received, or contractor or his subcontractor(s) are on site. The Inspector shall maintain a detailed diary of all work performed at the site in accordance with all NYSDOT/CLB requirements and the and in compliance with all Federal Aid Program Projects Policies. The diary will document inspections, delivery verifications, quality of materials and work performance to ensure construction is in accordance with the plans and specifications. As a minimum, the following shall be performed:

- a. Perform the on-site inspection of items of work and inspect, and approve or recommend rejection, construction materials accepted by certification, or tested by other agencies as hereafter noted.
- b. Prepare and maintain detailed field inspection records; including reports, forms, job diary, photographs, detailed procedures, etc.

Further, construction inspection records and source documents must be retained and utilized as the basis for payment of completed work and reimbursement of project funds if applicable. Construction contract source documents are the material receipts and handwritten notes of exactly what was delivered, how many or how much and handwritten logs or work performed in accordance with plans and specifications. They are the single most important form of documentation that substantiate quality and quantities and proved the required basis for payment to the contractor. The inspector will be responsible for coordinating these daily quantities of installed materials and verifying them for the contractor's monthly payment requisitions.

Projects that the inspector may be called to inspect and are expected to be proficient in include but not limited to;

- ***Sanitary Sewer - Replacement of the sanitary sewer system including main, manholes and existing and future house connections.*** House connections shall extend from the main to a point in the sidewalk/utility strip, where a tie-in to the existing service line will be made. Dewatering, trench shoring, sewage bypassing, post-installation T.V. inspection operations shall be included.
- ***Potable Water System – Replacement of the potable water system including main hydrants, valves and water services.*** Services shall be replaced from the main to a sidewalk/utility strip curb stop. An adequate number of hydrants must be provided and must be placed as not eliminate parking spaces or impact upon private property usage. Dewatering, trench shoring, chlorination and testing operations shall be included. The water and sanitary sewer may be in close proximity and in violation of Nassau County Department of Health requirements.
- ***Storm Sewer System – Replacement/improvements to the storm water system including drain lines, laterals, catch basins, outfalls, and manholes to eliminate flooding on this road.*** Dewatering, trench shoring, bypassing, post-installation T.V. inspection operations may be included.
- ***Street Lighting System – Rehabilitation of existing system.*** Upgrades to the street lighting system, which include replacement of all existing street lights, poles, foundations, buried conduit, wire and service. It will be also required that the contractor install a temporary “overhead” lighting system prior to initiating roadway excavations. It has been City policy during roadway reconstruction projects to replace all direct burial cable with cable in conduit and to eliminate side yard feeds.
- ***Pavement – The existing road surface will be removed and replaced with an asphalt composite pavement installed atop recycled concrete aggregate (RCA).*** Due to the minimum change in grade along this roadway, runoff management represents the most complex element in roadway design. It will be the intent of all projects to maximize the roadway height. It will be the intent of this project to maximize the roadway elevation without negatively impacting private property.

- **Masonry** – The rehabilitated streets will include new concrete gutters, sidewalks, ADA compliant corner ramps, curbs and driveway aprons. The installation of concrete gutters is routine to maintain runoff flow and avoid pooling issues. The inspector should have expertise in slump, aeration and cylinder testing.
- **Landscaping – Removal and installation of curbside trees and sod.**
- **Maintenance of Traffic** – A major construction concern will be ingress and egress procedures during contractor operations. The inspector will work with the City in developing a strategy to facilitate traffic flow during all contractor operations.
- **Stormwater Pollution Prevention Plan** – A major construction concern is projecting the existing stormwater catch basins, piping and outfalls from construction debris. The inspector will work with the contractor to install the correct means of sediment control.
- **Playground Rehabilitation** – Installation of play equipment, basketball and tennis courts, fencing, etc.

Inspector Certifications are not required but encouraged.

City reserves the right to dismiss the inspector, if at any point the City deems that the provided inspector is not qualified in the respective area of expertise required by them. The consultant will be required to replace that inspector with one that is qualified for the respective scope of work.

E. Standard Practices

All daily reports submitted to the City for final acceptance shall be accompanied by all necessary backup including but not limited to construction log, delivery tickets, progress photographs, etc.

Notwithstanding any of these provisions, the consultant shall, in all cases, conform to any special requirements of other governmental agencies where such conformity is a required condition for funding, grant approval, or submission/approval of applications and the like.

Copies of all correspondence received and sent by the consultant relative to this work shall be provided to the Commissioner of Public Works.

The consultant shall prepare and distribute minutes of all meetings held relevant to this work.

The consultant, on a monthly basis, shall prepare a letter reporting on its monthly activities, progress and any unresolved problems that are impeding the performance of the work.

F. Consultant Liability

The consultant shall be responsible for all damage to life and property due to activities of the consultant, its sub-contractors, agents or employees, in connection with his services under this agreement. The consultant specifically agrees that its sub-contractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Further, it is expressly understood that the consultant shall indemnify and hold harmless the City from claims suits, actions, damages

and costs of every name and description resulting from the negligent performance of the services of the consultant under this agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this provision, shall include, in addition to negligence founded upon tort, negligence based upon the consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work.

Nothing in this provision or in the agreement shall create or give to third parties any claim or right of action against the consultant or the City beyond such as may legally exist irrespective of this provision of this agreement.

G. Extra Work

If the consultant is of the opinion that any work that the consultant has been directed to perform is beyond the scope of their agreement and constitutes extra work, the consultant shall promptly notify the Commissioner of Public Works of that fact, in writing. Extra work shall not be initiated without approval, in writing, from the City Manager and/or the City Council.

I. Independent Contractor

The consultant, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as nor claim to be an officer or employee of the City by reason hereof, and that he will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including, but not limited to, Workmen's Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

The consultant shall not engage, on a full-time or part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of the agreement in the employ of the Federal Highway Administration or the Public Works organization of any State, County or City or City except regularly retired employees, without the consent of the public employer of such person.

J . Additional Conditions

All materials submitted in response to this RFP will become the property of the City.

The City reserves the right to conduct discussions with, and to request additional information from, one or more respondents. No respondent shall have any rights against the City as a result of such discussions.

The City reserves the right to negotiate separately with any source whatsoever.

The City reserves the right to waive any irregularity in any Proposal received or any other aspect of this procurement.

Each proposal prepared in response to this RFP will be prepared solely at the cost and expense of the respondent with the express understanding that there will be no claim whatsoever for reimbursement from the City.

Submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to become the Awardee, and to enter into a contract to undertake or complete the Project.

News releases or other public announcements relating to this RFP shall not be made by any party receiving this RFP without the prior written approval of the City.

The City and its respective officials and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the City does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the webpage on which the RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

**L. THE NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2) SHALL BE FILLED OUT IN ITS ENTIRETY AND BE
INCORPORATED IN THE RFP SUBMITTAL**

APPENDIX A

NON-COLLUSIVE PROPOSAL SUBMISSION CERTIFICATION (ONE PAGE)

NON-COLLUSIVE PROPOSAL SUBMISSION CERTIFICATION

By submission of this proposal, each proposed and each person signing on behalf of any proposal certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposed and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt has been made or will be made by the proposed to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

I, the undersigned, attest under penalty of perjury that I am an authorized representative of the Proposer and that the foregoing statements are true and accurate.

Name of Proposer: _____

Signature of Authorized Representative: _____

Title _____

Date _____

APPENDIX B

CONTRACT FOR SERVICES

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), dated as of the date this Agreement is executed by the City of Long Beach, between (i) City of Long Beach, a municipal corporation having its principal office at One West Chester Street, Long Beach, New York 11561 (the "City") acting on behalf of the City Department of Public Works, having its principal office at same (the "Department") and (ii) XXXXX., an engineering firm having its principal office at (_____) (Firm or the "Contractor").

W I T N E S S E T H:

WHEREAS, the City desires to hire the Firm to perform the services described in this Agreement; and

WHEREAS, the Firm desires to perform the services described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term.

The term of this Agreement shall commence on the date on which this Agreement is executed by the City (the "Commencement Date") and terminate on _____ (the "Expiration Date") unless sooner completed, terminated or extended in accordance with its terms.

2. Services.

(a) The services to be provided by Contractor specific work divisions and deliverables related to this project as more particularly described in the "Detailed Scope of Services," - proposal submitted by Firm dated _____, 2023 attached hereto and hereby made a part hereof as Exhibit "A".

(b) If Firm is authorized, in writing, by the Department, to provide extra services, and the requirements for such extra services are not due to the fault or negligence of Firm, the Firm shall be compensated for the additional costs of the extra services in accordance with the terms and conditions contained herein.

3. Payment.-

Amount of Consideration. The amount to be paid to Firm as full consideration for Firm services under this Agreement is \$XXXXX dollars and shall be payable as set forth in the "Payment Schedule" annexed hereto as Exhibit "B".

4. Ownership and Control of Work Product

(a) Copyrights.

(i) Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items, shall become the exclusive property of the City.

(ii) Any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Firm hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Firm shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the Firm for no other purpose without the prior written permission of the City.

(iii) The Firm acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright registrations. The Firm shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(iv) The Contractor represents and warrants that the Copyrightable Materials: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do not constitute defamation or invasion of the right of privacy or publicity, and (4) are not an infringement of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Firm has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

(b) Patents and Inventions. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(c) Pre-existing Rights. In no case shall 4(a) or 4(b) above apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

(d) Infringements of Patents, Trademarks, and Copyrights. The Contractor shall indemnify and hold the City harmless against any claim for any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement. The Contractor shall indemnify and hold the City harmless regardless of whether or not the infringement arises out of compliance with the scope of services/scope of work.

(e) Antitrust. The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of New York or of the United States relating to the particular goods or services procured by the City under this Agreement.

4. Independent Contractor. Firm is an independent contractor of the City. Firm shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a City employee, (ii) commit the City to any obligation, or (iii) hold itself, himself, or herself out as a City employee or Person with the authority to commit the City to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

5. No Arrears or Default.

Contractor is not in arrears to the City upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the City, including any obligation to pay taxes to, or perform services for or on behalf of, the City.

6. Compliance with Law.

(a) Generally. Contractor shall comply with any and all applicable Federal, State and local Laws and regulations. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. Contractor acknowledges that Contractor's Information in the City's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the City shall make reasonable efforts to notify Contractor of such request prior to disclosure of the Information so that Contractor may take such action as it deems appropriate.

(c) Protection of Client Information. Contractor acknowledges and agrees that all information that Contractor acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of the City, and shall not be disclosed to third parties except (I) as permitted under this Agreement, (ii) with the written consent of the City (and then only to the extent of the consent), or (iii) upon legal compulsion.

7. Minimum Service Standards. Regardless of whether required by Law:

(a) Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which Contractor operates. Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

8. Indemnification; Defense; Cooperation.

(a) To the fullest extent permitted by law, the Firm shall indemnify the City, and its councilmembers, officers, and employees from and against all liabilities, regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Firm, or its employees, agents, or subcontractors. Liabilities subject to the duty to indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Firm shall have no obligation to indemnify where such liabilities are caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Firm's indemnification obligation shall be reduced in proportion to the established comparative liability.

9. Insurance.

The Firm shall not commence work under this contract until he has obtained all insurance required under this paragraph and copies of such insurance have been provided to and approved by the City of Long Beach, New York. Said insurance premiums are to be paid up front and not by installments; the Firm shall not allow any subcontractor to commence work on his subcontract until the subcontractor has obtained the same insurance coverage. The required insurance coverage is as follows:

- (1) Workmen's Compensation Insurance - in accordance with the Laws of the State of New York.
- (2) Comprehensive General Liability Insurance - to protect the Contractor and any subcontractor performing work in connection with this contract from claims for damages for bodily injury (personal injury, sickness or disease, including death resulting there from, as well as injury claimed to be sustained resulting from false arrest, detention and/or imprisonment, malicious prosecution, liable, slander and/or wrongful entry), as well as from claims for property damage which may arise from operations connected with this contract, by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:
 - (a) Bodily Injury: 1,000,000 each person;
1,000,000 each occurrence.
 - (b) Property Damage 300,000 each occurrence;
1,000,000 Aggregate.

The parties to this agreement specifically and without ambiguity agree that the Firm shall purchase a contract of general liability insurance (amounts of coverage specified elsewhere in this agreement) naming the City of Long Beach as an additional named insured.

In the event that a claim arises against the City as a result of the Firm's services under this agreement, and it shall be found that the Firm's services caused the claimant's damages and it shall be found that the Firm failed to purchase the insurance coverage specified in the contract, the Firm shall be liable to the City for full indemnity for any judgment rendered against the City, including the costs of defense of the claim, but only to the extent that the Firm's services caused the claimant's damages which the City was obligated to pay. Nothing in this paragraph, however, limits or should be construed as limiting the Firm's obligations with respect to its subcontractors, as set forth in Section 8 of this Agreement.

10. Termination

(a) Generally. This Agreement may be terminated (i) for any reason by the City upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the City immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the City and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

11. Accounting Procedures; Records. Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

12. Limitations on Actions and Special Proceedings against the City. No action or special proceeding shall lie or be prosecuted or maintained against the City upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief Firm shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the City Manager for adjustment and the City shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. Firm shall send or deliver copies of the documents presented to the City Manager under this Section to each of (i) the Department and the (ii) the Corporation Counsel (at the address specified above for the City) on the same day that documents are sent or delivered to the City Manager. The complaint or necessary moving papers of Firm shall allege that the above-described actions and inactions preceded the Firm's action or special proceeding against the City.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

13. Work Performance Liability. Firm is and shall remain primarily liable for the successful completion of all work in accordance with this Agreement irrespective of whether Firm is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the City.

14. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court of the State of New York, County of Nassau and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

15. All Legal Provisions Deemed Included; Severability; Supremacy; Construction

In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

16. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

17. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

18. Executory Clause. Notwithstanding any other provision of this Agreement,

(a) The City shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all City approvals have been obtained, including, if required, approval by the City Council, and (ii) this Agreement has been executed by the City Manager (as defined in this Agreement).

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, Contractor and the City have executed this Agreement as of the date first above written.

By : _____
Name: _____

Title: _____

Date: _____

CITY OF LONG BEACH

By: _____

Name: _____

Title: City Manager

Date: _____

PLEASE EXECUTE IN BLUE INK

STATE OF NEW YORK)

) ss.:

CITY OF LONG BEACH)

On this _____ day of _____ in the year 2025 before me personally came

to me known, and known to me to be the person described herein and
who executed the above instrument; and he duly acknowledged that he executed the same.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss.:

CITY OF LONG BEACH)

On the _____ day of _____ in the year 2025 before me personally came

to me personally known, who, being by me duly sworn, did depose and
say that he or she resides in the County of Nassau; that he or she is a City Manager of the City of
Long Beach, the municipal corporation described herein and which executed the above instrument;
and that he or she signed his or her name thereto pursuant to Section 205 of the City Charter City of
Long Beach.

NOTARY PUBLIC

EXHIBIT A

Payment Schedule

The amount to be paid to the Contractor as full consideration for services under this Agreement, **including** any extra services that may be so authorized, shall be payable as set forth below. Notwithstanding the foregoing, the maximum amount to be paid to Contractor for services under this Agreement shall not exceed.

Payments shall be made to contractor in arrears and shall be contingent upon (i) contractor submitting a claim voucher (the "Voucher") in a form satisfactory to the City , that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the City supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the City Comptroller or his or her duly designated representative (the "Comptroller").

Part 1 Construction Inspection Services

Under this task the Consultant shall perform all work described herein necessary for the successful award and completion of this road improvement project. The Contractor shall be paid on a basis of X times the actual salary of the technical personnel engaged in the work.

Timing of Claims for Payment. Contractor shall submit claims no later than one (3) months following the City's receipt of the services that are the subject of the claim and no more frequently than once a month.

Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Firm following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Firm received notice that the City did not desire to receive such services.

On-Call Professional Construction Inspection Services

RATING SHEET

	<u>IMEG</u>	<u>ZOFS</u>	<u>LKMA</u>	<u>D&B</u>	<u>Cashin</u>	<u>URO</u>	<u>De Bruin</u>	<u>H2M</u>	<u>NV5</u>	<u>Ai-Alt</u>
Daily Rate	\$ 985.00	\$ 774.00	\$ 678.88	\$ 660.40	\$ 1,020.00	\$ 1,120.00	\$ 1,150.00	\$ 1,416.00	\$ 1,000.00	\$ 960.00
Total 180 days	\$ 177,300.00	\$ 139,320.00	\$ 122,200.00	\$ 118,872.00	\$ 183,600.00	\$ 201,600.00	\$ 207,000.00	\$ 254,880.00	\$ 180,000.00	\$ 172,800.00

On-Call Professional Construction Inspection Services

RATING SHEET

	<u>IMEG</u>	<u>ZOFS</u>	<u>LKMA</u>	<u>D&B</u>	<u>Cashin</u>	<u>LIRO</u>	<u>De Bruin</u>	<u>H2M</u>	<u>NVS</u>	<u>Ai-Ait</u>
Daily Rate	\$ 985.00	\$ 774.00	\$ 678.88	\$ 660.40	\$ 1,020.00	\$ 1,120.00	\$ 1,150.00	\$ 1,416.00	\$ 1,000.00	\$ 960.00
Total 180 days	\$ 177,300.00	\$ 139,320.00	\$ 122,200.00	\$ 118,872.00	\$ 183,600.00	\$ 201,600.00	\$ 207,000.00	\$ 254,880.00	\$ 180,000.00	\$ 172,800.00



L. K. McLean Associates, D.P.C.

❖ 437 South Country Road • Brookhaven • New York • 11719
❖ 25 Newbridge Road • Suite 212 • Hicksville • New York • 11801

(631) 286-8668 • FAX (631) 286-6314
<https://www.lkma.com>

ROBERT A. STEELE, P.E. PRESIDENT and CEO
JAMES L. DEKONING, P.E., VICE PRESIDENT
CHRISTOPHER F. DWYER, VICE PRESIDENT
KEITH J. MASSERIA, P.E., VICE PRESIDENT
MATTHEW JEDLICKA, LEED AP, PRINCIPAL
TAMARA STILLMAN, P.L.S., PRINCIPAL-DIRECTOR OF SURVEY
CHRISTINE L. BELSON, MBA, SHRM-SCP, PRINCIPAL-CONTROLLER

Associates

STEVEN W. EISENBERG, P.E.
ANDREW B. SPEISER
VINCENT CORRADO, P.E.
KEVIN J. PETERMAN, P.E.
KARA M. O'NEILL, GISP, MBA

December 12, 2024

Mr. Russell Darress
Interim Commissioner of Public Works
City of Long Beach
Department of Public Works – Room 404
One West Chester Street
Long Beach, NY 11561

RE: ON CALL PROFESSIONAL CONSTRUCTION INSPECTION SERVICES

Dear Mr. Darress:

L.K. McLean Associates Engineering & Surveying, D.P.C. (LKMA) is pleased to respond to your Request for Proposals for the above referenced project. We trust this submission will serve to inform you of the qualifications and experience our Project Team possesses to perform the services defined in the City's Request for Proposals.

As requested, we are providing four (4) hard copies of our Technical Proposal for your review and consideration, as well as four (4) copies of our Cost Proposal in a separate envelope. This proposal will remain valid for 45 days from today's date.

We appreciate the opportunity to provide services requested by the City on this project. We would be pleased to meet with you at your convenience to discuss our firm's background and capabilities, or any other matters you may wish to review.

Very truly yours,

Christopher Dwyer
Vice President

CD:efr

Established 1950