

# **Attachment A**

Concession Agreement

**CONCESSION AGREEMENT**

by and between

**CITY OF NEWPORT BEACH,**  
a California municipal corporation and charter city

"City"

and

**Kit at the Library, Inc.,**  
a California stock corporation

"Concessionaire"

Dated \_\_\_\_\_, 2025

# CONCESSION AGREEMENT

**THIS CONCESSION AGREEMENT** ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and KIT AT THE LIBRARY, INC., a California stock corporation ("Concessionaire"). City and Concessionaire are at times individually referred to as "Party" and collectively as "Parties" herein.

## RECITALS

A. City is the owner of the Central Library located at 1000 Avocado Avenue, Newport Beach, California, Assessor's Parcel Number 988-801-27 ("Property"). The Property includes a seven hundred fifty-seven (757) square foot concession facility as depicted in Exhibit "A," which is attached hereto and incorporated herein by this reference ("Premises").

B. In October 2023, City conducted an informal solicitation seeking proposals for operation of a concession at the Property. After reviewing the proposals, City selected Concessionaire to operate a coffee and tea shop ("Concession") at the Premises.

C. Although no appraisal was conducted, Percentage Rent, as defined herein, is comparable to current market rates. While it is anticipated the Concession will generate revenue to the City equivalent to the open market value of the highest and best use of the Premises and the highest financial return, pursuant to City Council Policy F-7, Base Rent is not being charged and less than open market rent may be received by the City because the property provides an essential or unique service to the community that may not otherwise be provided were full market value of the property be required.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

## AGREEMENT

### 1. DEFINITIONS

1.1 General Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

1.1.1 Alteration – any improvements, additions, alterations, changes, or modifications of the Premises made by Concessionaire including, but not limited to fixtures and signage, and including Concessionaire Improvements.

1.1.2 Authorized City Representative - the City Manager or his/her designee.

1.1.3 Common Area - the areas within the Property which are available for non-exclusive use by City, Concessionaire, the public, and other tenants and/or users.

1.1.4 Delivery Date - the date the City provides Concessionaire access to the space prior to Rent Commencement, in order for Concessionaire to prepare space for operation.

1.1.5 Expiration - the lapse of the time specified as the Term of this Agreement, including any extension of the Term resulting from the exercise of an option to extend.

1.1.6 Good Condition - neat and broom-clean, and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

1.1.7 Law - any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the parties hereto or the Premises.

1.1.8 Maintenance or Maintain - repairs, replacement, maintenance, repainting, and cleaning.

1.1.9 Person - one (1) or more natural persons, or legal entities, including, without limitation, partnerships, corporations, trusts, estates, associations, or a combination of natural persons and legal entities.

1.1.10 Provision - any term, covenant, condition, or clause in this Agreement that defines, establishes, or limits the performance required or permitted by either party.

1.1.11 Rent - includes Base Rent, Percentage Rent, taxes, and other similar charges payable by Concessionaire under the provisions of this Agreement.

1.1.12 Rent Commencement - date Concessionaire begins paying Rent, commencing twelve (12) months from Agreement execution. For purposes of Rent Commencement, Concessionaire's catering activities that occur prior to the first day of operation from the Premises shall be included in the calculation and payment of Percentage Rent (this provision is intended to allow Concessionaire to cater events prior to conducting operations from the Premises).

1.1.13 Successor - assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of this Agreement, to the rights or obligations of either Party.

1.1.14 Termination - the termination of this Agreement, for any reason, prior to Expiration.

1.1.15 Other Definitions. - The following additional terms are defined in the following sections of this Agreement:

(1)	Base Rent	§4.2
(2)	Claim or Claims	§11.1
(3)	Concession	Recital B
(4)	Concessionaire Improvements	§9.1
(5)	Gross Sales	§4.6
(6)	Hazardous Materials	§17
(7)	Indemnified Parties	§11.1
(8)	Percentage Rent	§4.3
(9)	Property	Recital A
(10)	Premises	Recital A
(11)	Rent	§4
(12)	Term	§3

## **2. PREMISES**

City finds it to be in the public interest and consistent with public facility uses to grant an exclusive right to operate a concession at the Premises. Therefore, pursuant to the terms and conditions set forth herein, City hereby grants to Concessionaire the exclusive right, privilege and concession to conduct a business at the Premises as described in Section 6 of this Agreement. Concessionaire acknowledges that City has delivered the Premises in an "as-is" condition and accepts the Premises in such condition. Concessionaire agrees that City has made no representations or warranties with respect to the condition or suitability of the Premises or any construction or improvements except as specifically set forth in this Agreement. Concessionaire acknowledges that City, or unrelated third parties occupying the Premises prior to Concessionaire, may have constructed improvements and installed fixtures, furniture, and equipment on the Premises, and Concessionaire agrees it is relying solely on its own inspections and

investigations regarding the condition of the Premises, including fixtures, furniture, and equipment, the surrounding area and other matters related thereto.

### 3. TERM

3.1 Initial Term. The Term of this Agreement shall be five (5) consecutive years from the Commencement Date (the "Initial Term"), unless extended as provided in Section 3.2 below, or terminated in accordance with the other provisions of this Agreement.

3.2 Option Term. Provided Concessionaire is not then in default beyond applicable notice and cure periods, upon Concessionaire's written notice, and upon written approval of City, Concessionaire may extend the Term of this Agreement for two (2) additional successive terms of five (5) years each ("Option Term" or "Option Terms"), on the same terms and conditions as contained in this Agreement. Concessionaire shall give City its written notice of intention to extend the Term at least six (6) months prior to expiration of the current Term.

3.3 Terms of Agreement. The "Term" is defined as the Initial Term and, if exercised, any Option Terms.

3.4 Hold Over. Should Concessionaire, with City's consent, hold over and continue in possession of the Premises after the Initial Term or any Option Term, Concessionaire's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to all the terms and conditions of this Agreement, except the provisions of Sections 3.1 and 3.2.

### 4. RENT

4.1 General. Subject to Section 4.2, Concessionaire shall only pay Percentage Rent. Concessionaire's payment of Percentage Rent to City shall commence on the earlier of: (i) twelve (12) months from the Effective Date of this Agreement, or (ii) the first day of operation of the concession on the Premises, subject to the rent abatement provisions outlined in Section 13.

4.2 Base Rent. Base Rent shall only be paid by Concessionaire in the event that Concessionaire has not completed the Concessionaire Improvements (as defined in Section 9) within twelve (12) months from the Effective Date of this Agreement, at which point Base Rent shall be established at **Five Hundred Dollars and 00/100 (\$500.00)** per month. Base Rent shall be paid, in advance, on the first day of each month. Base Rent for any partial month shall be prorated in accordance with the actual number of days in that month and shall be due on the first day of that month that falls within the Term.

#### 4.3 Percentage Rent.

4.3.1 Payment. "Percentage Rent" shall be determined each calendar month and shall be calculated by multiplying the percentage of Gross Sales, as indicated by the table below, made in, upon, or from the Premises and/or otherwise attributable to catering from the Premises for the calendar year. Gross Sales is defined in Section 4.6. Payment of Percentage Rent is due no later than twenty-five (25) days after the end of the month.

Percentage Rent of Gross Sales from Premises:

All Years, including Option Terms:

Gross Revenues of \$0 to \$300,000 – 5%

Gross Revenues of \$300,001 or above– 6%

4.3.2 Accounting and Payment. Within twenty-five (25) calendar days after the end of each calendar month for the term hereof, as may be extended as provided herein, commencing with the twenty-fifth (25th) day of the month following the Rent Commencement Date, and ending with the twenty-fifth (25th) day of the month next succeeding the last month of the term, as may be extended as provided herein, Concessionaire shall furnish to City a statement in writing, certified by Concessionaire to be correct, showing the total Gross Sales made in, upon, or from and/or otherwise attributable to the Premises or any catering authorized under Section 6.6 during the preceding calendar month (or fractional month at the beginning of the term if the Rent Commencement Date is other than the first day of a month). The Percentage Rent payment to City shall be due and payable the following month (for example, the Percentage Rent statement for the month of January is due on February 25th, and the Percentage Rent payment for the month of January is due on March 1st).

4.4 Revenue from Premises Use in Film, Television, and/or Advertising. Concessionaire may allow the Premises to be used for film, television production, advertising production, or other media vehicle only upon written approval from City and in compliance with the Newport Beach Municipal Code. One-half (1/2) of all monetary revenue received by Concessionaire as compensation or other payment for the use of the Premises in a film, television production, advertising production, or other media vehicle shall be paid to City no later than thirty (30) days after Concessionaire receives this compensation or other payment.

4.5 Payment Location. Rent shall be payable at the office of City's Revenue Division at 100 Civic Center Drive, Newport Beach, California, or at such other place or places as City may from time to time designate by written notice delivered to Concessionaire; or by electronic delivery if mutually agreed upon by City and Concessionaire at [www.newportbeachca.gov](http://www.newportbeachca.gov). Concessionaire assumes all risk of loss

and responsibility for late charges and delinquency rates if Rent is not timely received by City regardless of the method of transmittal.

4.6 Gross Sales.

4.6.1 The term "Gross Sales" means:

(1) All money, cash receipts, assets, property or other things of value, including but not limited to gross charges, sales, rentals, fees and commissions made or earned by Concessionaire and/or any assignees, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation, or any combination thereof, originating, transacted or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without, except as expressly provided in Section 4.6.2, deduction from gross receipts for any overhead or cost or expense of operations, such as, but without limitation to salaries, wages, costs of goods, interest, debt amortization, credit, collection costs, discount from credit card operations, insurance and taxes. Gross Sales shall include the amount of all sales or orders taken, received, including mail, catalog, telephone, telegraph, electronic communication (including without limitation orders received through the internet), video, computer, cell phone, smart phone, iPad, tablets, mobile technology, or other technology-based system whether existing now or developed in the future, that are taken at or made from the Premises or other orders received at the Premises. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Concessionaire receives payment therefor. Gross Sales shall include any amount allowed upon any "trade in," the full retail price of any merchandise delivered or redeemed for trading stamps or coupons and all deposits not refunded to customers;

a. A "Sale":

Shall be deemed to have been consummated at the Premises for purposes of this Agreement, and the entire amount of the sale price shall be included in gross sales, at such time as (i) where the orders originate at or is attributable to the Premises whether or not fulfilled by the Concessionaire or another related entity/delivery partner and are accepted by Concessionaire in the Premises but delivery or performance thereof is made from or at any place other than the Premises, or rendered at, in, on, from or fulfilled by the Premises by Concessionaire or another related entity/delivery partner (ii) the transaction is initially reflected in the books or records of Concessionaire, including any related entity/delivery partner, or (iii) Concessionaire or such other entity receives all or any portion of the sales price, or (iv) the applicable goods or services are delivered to the customer or picked up at the curb or store, whichever first occurs, irrespective of whether payment is made in installments, the sale is for cash or credit or otherwise, or all or any portion of the sales price has actually been paid at the time of inclusion in gross sales or at any other time.



(2) Orders taken in or from the Premises, even if the orders are filled elsewhere, and sales by any third-party delivery service provider in or from the Premises;

(3) Gross receipts of all coin-operated devices that are placed on the Premises by Concessionaire or pursuant to any rent concession, percentage or other arrangement (but excluding revenue from telephones that are collected by a public and/or private utility); and

(4) Rentals of any equipment, furniture, goods, wares or merchandise.

4.6.2 Exclusions from Gross Sales. Gross Sales shall not include, or if included shall be deducted (but only to the extent they have been included), the following:

(1) Sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price and collected from customers and paid directly by the Concessionaire to the governmental authority;

(2) The amount of returns to shippers or manufacturers;

(3) The amount of any cash refund or credit refund made upon transactions included within gross sales, not exceeding the selling price of merchandise returned by the purchaser and accepted by Concessionaire which were previously reported to the City, (except that Tenant shall not deduct from Gross Sales any refund or credit for merchandise returned by customers who did not originally purchase the merchandise from the Premises, including, but not limited to, refund or credits for sales that originated from catalog, mail order, internet sales or electronic communication; unless the sale was reported previously to Landlord). The amount of said refund shall be considered an exclusion from Gross Sales in the month during which such refund is provided by Concessionaire to the customer. The corresponding sale (whether paid in full or partial), shall be treated as a sale for the full price in the month during which such sale was consummated, irrespective of the time when Concessionaire shall receive payment (whether in full or partial) from its customers;

(4) Sales of trade fixtures or personal property to be replaced by Concessionaire that are not considered stock in trade;

(5) Sums and credits received in the settlement of claims for loss of or damage to merchandise;

(6) Meals provided for officers or employees without charge;

(7) Meals, goods or products provided for promotional or publicity purposes without charge;

(8) Value added taxes ("VAT") or other taxes added to the selling price of products and other similar taxes now or hereafter imposed upon the sale of merchandise or services, whether such taxes are added to, or included in the selling price, but only if collected from customers separately from the selling price and paid directly by the Concessionaire to the governmental authority;

(9) Discounted sales to employees of Concessionaire, who are employed at the Premises, not to exceed two percent (2%) of the monthly Gross Sales;

(10) Uncollectible credit accounts and other bad debts, not to exceed two percent (2%) of the monthly Gross Sales;

(11) Amounts paid to charge card or credit card issuers, not to exceed one percent (1%) of the monthly Gross Sales; and

(12) Any type of tips from customers given to employees of Concessionaire, provided the amount is separately stated, and actually paid in full to the employees of Concessionaire.

4.6.3 Annual Statements of Gross Sales. Within thirty (30) days after the end of each calendar year during the Term hereof and within thirty (30) days of Termination of this Agreement, Concessionaire shall furnish to City a statement in writing, certified by Concessionaire and a Certified Public Accountant to be correct, showing the total Gross Sales made in, upon, or from and/or otherwise attributable to the Premises during the preceding calendar year (or fractional year when applicable).

4.6.4 Sales and Charges. All sales and charges shall be recorded by point of sale (POS) systems that display the amount of the transaction certifying the amount recorded. The POS systems shall log daily sales totals and keep records of the transaction numbers and sales details.

4.6.5 Production of Statement, Records and Audit. Concessionaire shall keep at the Premises (and shall require any permitted third-party delivery service provider to keep at the Premises) full, complete and proper books, records and accounts of its daily Gross Sales, both for cash and on credit, at any time operated in the Premises. Concessionaire agrees to make available for inspection by City at the Premises, a complete and accurate set of books and records of all sales of goods, wares, and merchandise and revenue derived from the conduct of business or activity in, at or from the Premises from which Gross Sales can be determined. Concessionaire shall also make available, upon City request, all supporting records. Concessionaire shall also furnish City copies of its quarterly California sales and use tax returns at the time each is filed with the State of California. Concessionaire shall retain and preserve for at least three (3) years all records, books, bankbooks or duplicate deposit books and other

evidence of Gross Sales. City shall have the right, upon reasonable notice, during the Term and within one hundred eighty (180) days after Expiration or Termination of this Agreement to inspect and audit Concessionaire's books and records and to make transcripts to verify the Rent due to City. The audit may be conducted at any reasonable time during normal business hours. Concessionaire shall cooperate with City in making the inspection and conducting the audit. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business hours in a manner that minimizes any interference with the conduct of Concessionaire's regular business operations. Any deficiency in payment of Rent and any overpayment of Rent shall be paid or refunded, as applicable, within twenty (20) days after the completion of the audit. City shall bear its costs of the audit unless the audit shows that Concessionaire understated Gross Sales by more than two percent (2%), in which case Concessionaire shall pay all City's reasonable costs of the audit. City shall not disclose financial information received in confidence and pursuant to this Agreement except to carry out the purposes of this Agreement unless disclosure is required (rather than permitted) by law. However, City may disclose the results of any audit in connection with any financing arrangements, the sale or transfer of City's interest in the Premises, pursuant to order of a court or administrative tribunal, or to collect any outstanding Rent.

4.6.6 Concessionaire's Gross Sales Audit. In the event of any audit by City in accordance with this Agreement, Concessionaire may contest the results of City's audit by performing a confirming audit, at Concessionaire's expense, within sixty (60) days of receipt of City's audit results and supporting evidence, using an independent Certified Public Accountant reasonably acceptable to City.

4.6.7 Acceptance. The acceptance by City of any money paid to City by Concessionaire as Percentage Rent for the Premises, as shown by any statement furnished by Concessionaire, shall not be construed as an admission of the accuracy of said statement, or of the sufficiency of the amount of the Percentage Rent payment.

4.7 Late Payment. Concessionaire hereby acknowledges that the late payment of Rent or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any sum owed by Concessionaire that is not paid within five (5) days of its due date shall be subject to a ten percent (10%) late charge. City and Concessionaire agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Concessionaire.

4.8 Interest on Unpaid Sums. Unpaid sums due to either City or Concessionaire under this Agreement shall bear interest at the rate of ten percent (10%) per annum on the unpaid balance, including but not limited to late payment penalties, from the date due until paid.

## **5. SECURITY DEPOSIT**

5.1 Security Deposit. Upon execution hereof, Concessionaire shall also pay to City a security deposit ("Security Deposit") as security for faithful performance of Concessionaire's obligations hereunder. Such Security Deposit shall not be in lieu of any Rent. Said Security Deposit in the sum of Five Thousand Dollars (\$5,000.00) shall be provided to City by Concessionaire. City may, at its option, claim from the Security Deposit such amounts as are reasonably necessary to remedy Concessionaire's monetary defaults hereunder, to repair damages to the Premises, or any combination thereof caused by Concessionaire or agents of Concessionaire, exclusive to normal wear and tear. In the event the Security Deposit or any portion thereof shall be applied as provided herein, Concessionaire agrees to deposit with City within ten (10) calendar days after written demand from City, an amount sufficient to restore said Security Deposit to its original amount, and failure to do so shall constitute a breach of this Agreement. City may, only to the extent as permitted by law, commingle the Security Deposit with other funds of Concessionaire's account with the City. No interest shall accrue or be paid with respect to the Security Deposit.

## **6. BUSINESS PURPOSES AND USE OF PREMISES**

6.1 Business Purposes. The Premises are to be used by Concessionaire for the operation of a concession selling food and non-alcoholic beverages, and catering events held within the Property. Alcoholic beverages may be sold/provided by Concessionaire at catered events held at the Property with the prior written consent of the Authorized City Representative and subject to Concessionaire obtaining all required permits, licenses and insurance. The Concessionaire shall be responsible for obtaining all required permits and licenses for the provision of alcoholic beverages, including, but not limited to, Alcoholic Beverage Control license(s). Concessionaire's proposed menus are attached as Exhibit "B," and incorporated herein by reference. Pricing for these products will be comparable to prices at nearby concession facilities.

6.2 Operation of Premises. Concessionaire shall operate and manage the Premises in a manner comparable to other high-quality businesses providing similar food and services. Deliveries shall be made and completed only between 7 a.m. and 6 p.m. on non-holiday weekdays. The loading zone designated for use by Concessionaire for deliveries, as depicted in Exhibit "C," which is attached hereto and incorporated herein by reference, is shared with the Central Library and priority shall be given to deliveries for the Central Library.

6.3 Prohibited Uses. Concessionaire shall not sell or permit to be kept, used, displayed or sold in or about the Premises (a) pornographic or sexually explicit books, magazines, literature, films or other printed material, sexual paraphernalia, or other material which would be considered lewd, obscene or licentious, (b) any article which may be prohibited by standard forms of fire insurance policies, or (c) any alcoholic beverages not otherwise permitted and licensed under this Section 6 of the Agreement. Vending machines, gaming machines or video or arcade games shall not be used or installed on

the Premises unless expressly permitted by this Agreement. Concessionaire shall not use or permit the use of the Premises in any manner that (a) creates a nuisance or (b) violates any Law. Concessionaire shall not offer entertainment or broadcast music or entertainment through exterior speakers or other form of transmission without the written approval of City. In this event, Concessionaire shall obtain all required City permits and approvals.

6.4 No Smoking. No smoking or vaping is permitted on the Property and Premises. "Smoking" means and includes inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco or any other weed or plant. "Vaping" means and includes inhaling or exhaling any vaporized liquid or solid, usually from a battery-operated electronic device.

6.5 Food Packaging and Debris. Concessionaire shall use food packaging consistent with good environmental practices, including prohibiting polystyrene (also known as Styrofoam) from the Premises, minimizing the use of PVC plastics (especially plastic bags for carrying food), and providing both trash receptacles and places for customers to dispose of recyclable products.

6.6 Catering. Concessionaire shall be listed on the approved caterer list for the Civic Center Community Room at Concessionaire's request.

6.7 Outdoor Dining. Concessionaire shall be permitted to use tables, in a non-exclusive manner, within the entry atrium adjacent to the Premises, and on the paved area outside of the Premises as depicted in Exhibit A. Concessionaire's use of the outdoor dining area shall be in accordance with any applicable City zoning codes and State requirements. The layout of the tables is subject to approval by the City. Concessionaire may not expand into the Library area, or place any temporary furniture or objects in the public areas of the Property without prior written approval of the City. All furniture and associated equipment shall be capable of being moved or relocated to provide adequate circulation and paths of travel around the Premises.

6.8 Operation. Concessionaire shall keep the Premises in operation and open to the public for business in accordance with the following schedule:

Monday through Thursday from 7:00 a.m. to 4:00 p.m. (but in no event earlier than 6:30 a.m., and no later than 9:00 p.m.)

Friday from 7:00 a.m. to 4:00 p.m. (but no earlier than 6:30 a.m.)

Saturday from 8:00 a.m. to 4:00 p.m.

Sunday from 12:00 p.m. to 4:00 p.m. (but no earlier than 11:00 a.m.)

Concessionaire shall be closed on all City observed holidays, including but not limited to New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, 4th of July, Labor Day, Veteran's Day, Thanksgiving Day and Friday following, Christmas Day, and

any other day the Central Library may be closed as designated by the City Manager or the Library Services Director.

Concessionaire may close the Concession during periods of remodeling, reconstruction, inventory, and emergencies or to comply with Laws with prior written approval from the City.

6.9 Notice to Public Temporary Change in Operation. Concessionaire shall, at least thirty (30) calendar days in advance of any closures for construction, or change in hours of operation, notify City in writing and post notices in and upon the Premises, and to Concessionaire's website and social media pages, informing customers of the changes. Concessionaire shall immediately, or whenever reasonable at least forty-eight (48) hours in advance, post notices in and upon the Premises, and to its website and social media pages informing customers of any temporary change in hours of operation due to early closures of the Central Library.

6.10 Food Preparation. Concessionaire shall install, at Concessionaire's own expense, fire protective systems which are required by City, County, and state fire ordinances. Concessionaire shall also install adequate ventilation systems to operate the Premises. Concessionaire shall install, at Concessionaire's own expense, additional equipment as listed in Exhibit "D," which is attached hereto and incorporated herein by reference, required to prepare foods included on the proposed menu, which may be necessary to operate Concessionaire's business. Concessionaire shall ensure that additional equipment is installed properly pursuant to the manufacturer's specifications, does not exceed the electrical or other utility loads designated for the Premises, and is in compliance with all applicable local and state building codes and health department regulations.

6.11 Advertising Display. Concessionaire may, at its own expense, place unlit signs in or upon the Premises and Property subject to the prior written consent of City as to the size, type, number, design and method of installation and in compliance with City's sign code regulations. All signage placed by Concessionaire on, in or about the Premises and Property shall remain the property of Concessionaire and shall be removed by Concessionaire upon Termination or Expiration of this Agreement at Concessionaire's expense; and any damage caused by removal shall be repaired at Concessionaire's expense.

6.12 Marketing. Concessionaire may, at its own expense, promote KIT at the Library, Inc. and distribute marketing materials consistent with the marketing plan attached hereto as Exhibit "E," and incorporated herein by reference, subject to the written approval of the City and the conditions and restrictions of the Agreement of Mutual Understanding Regarding Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May 8, 1992 as Instrument No. 92-304757 by and between The Irvine Company LLC and the City of Newport Beach, which is attached hereto as Exhibit "F," and incorporated herein by reference.

6.13 Personnel. Concessionaire shall be responsible for hiring the necessary personnel to conduct the daily operation of Concession. Concessionaire shall comply with all federal, state, and local Laws related to minimum wage, social security, nondiscrimination, ADA, unemployment compensation, and workers' compensation. If required by City, employees shall wear a uniform and/or identification badge.

6.14 Independent Contractor. It is understood that Concessionaire is an independent contractor and not an agent or employee of City. The manner and means of operating the Premises are under the control of Concessionaire, except to the extent they are limited by statute, rule or regulation and/or the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Concessionaire's employees. Nothing in this Agreement shall be deemed to constitute approval for Concessionaire or any of Concessionaire's employees or agents, to be the agents or employees of City. City shall have no interest in the business of Concessionaire.

6.15 No Distress Sales. No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises without the prior written consent of an Authorized City Representative, which approval will not be unreasonably withheld but may be conditioned.

6.16 Restroom Facilities for Employees. Concessionaire, its employees and customers shall have full use of restroom facilities located within the Central Library as called out on Exhibit "C". Restroom facilities are shared with the Central Library employees and visitors, and are considered Common Area.

6.17 Parking for Employees. Concessionaire may use up to three (3) non-exclusive parking spaces for Concessionaire and its employees' vehicles, located within the parking structure at the Project on level two (2) or above.

## **7. TAXES, LICENSES AND OTHER OBLIGATIONS**

7.1 Payment of Taxes. Concessionaire shall pay directly to the appropriate taxing authorities all taxes applicable to this Agreement, fixtures and Concessionaire's personal property on the Premises, that are levied or assessed against Concessionaire during the Term. Taxes shall be paid at least ten (10) days before delinquency and before any fine, interest or penalty is due or imposed by operation of law. Concessionaire shall, upon request, promptly furnish to City satisfactory evidence of payment. Concessionaire acknowledges that this Agreement may create a possessory interest subject to property taxation and that Concessionaire may be subject to the payment of property taxes levied on such interest. Concessionaire shall pay, before delinquency all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed against Concessionaire's interest in the Premises or any personal property installed on the Premises.

7.2 Payment of Obligations. Concessionaire shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by Concessionaire in connection with Concessionaire's occupation and use of the Premises.

7.3 Challenge to Taxes. Concessionaire shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes on or attributable to this Agreement, the Premises, Concessionaire's personal property, or Concessionaire's occupation and use of the Premises, including the right to apply for reduction. If Concessionaire seeks a reduction or contests such taxes, Concessionaire's failure to pay the taxes shall not constitute a default as long as Concessionaire complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Concessionaire unless the provisions of any Law require that the proceeding or contest be brought by or in the name of City or any owner of the Premises. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name as long as City is not required to bear any cost. If requested by Concessionaire, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest. Concessionaire, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties. Concessionaire shall indemnify, defend and hold harmless City, including its City Council, appointed and elected officers, boards and commissions, employees, Authorized City Representatives, agents and volunteers, from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest by Concessionaire pursuant to this Section.

## **8. UTILITIES**

Concessionaire shall be responsible for paying their pro-rata share of utilities furnished to or used on the Premises, including, without limitation, gas, electricity, sewer, water, refuse collection, telephone service, internet, and cable TV. Concessionaire's pro-rata share shall be included on base rent invoices each quarter. Concessionaire may use City's trash enclosures or public trash cans, provided however, that City may, at City's discretion, require Concessionaire to arrange for its own refuse collection. Refuse collection shall occur between 7 a.m. and 6 p.m. on non-holiday weekdays.

## **9. CONCESSIONAIRE IMPROVEMENTS; ALTERATIONS TO THE PREMISES**

9.1 Concessionaire Improvements. Concessionaire acknowledges that City has delivered the Premises with the improvements depicted in Exhibit "A". Subject to all applicable laws, it shall be Concessionaire's responsibility to install or replace any improvements to the Premises as necessary for the Concessionaire to operate in a responsible, safe and lawful manner as described in Section 6 of this Agreement, including those improvements depicted in Exhibit "G," which is attached hereto and incorporated herein by reference ("Concessionaire Improvements"). Concessionaire shall submit plans, diligently pursue their approval, and complete construction of Concessionaire Improvements within twelve (12) months of the Effective Date of this Agreement. Final design of the Concessionaire Improvements shall be subject to the prior



written approval by City, as may be modified in order to obtain certain permits as may be necessary. The installation of Concessionaire Improvements shall be in strict compliance with the approved final design, and construction shall be performed between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays.

9.2 Concessionaire's Architects and Contractors. All Concessionaire Improvements and any subsequent repairs, alterations, additions or improvements to any of the foregoing shall be designed, selected or constructed, as applicable, by qualified and licensed (where required) architectural, design, engineering, and construction firms selected by Concessionaire. Any contractors hired by Concessionaire shall be fully licensed and bonded. Concessionaire's contractors and any subcontractors shall obtain insurance in an amount and form to be approved by City's Risk Manager, including workers compensation insurance as required by law, general liability, automobile liability and builder's risk insurance covering improvements to be constructed, all pursuant to standard industry custom and practice. City, its elected or appointed officers, officials, employees, agents and volunteers shall be named as an additional insured on the contractors and any subcontractors policies.

9.3 Schedule for Required Improvements. Concessionaire shall submit plans, diligently pursue their approval, and begin construction of Concessionaire Improvements according to the following schedule:

Design Coordination, Preparation of Construction Documents, and Obtain Building Permits	Upon execution of this Agreement Concessionaire shall coordinate with City to coordinate all kitchen and dining area designs, delivery conditions, and construction drawings. Concessionaire shall obtain building permits no later than April 30, 2025.
Complete Construction	Within one hundred twenty (120) days of delivery of Premises from City.
Open for Business	Concessionaire shall be ready to open for business no later than August 1, 2025.

9.3.1 Construction Period. The period commencing the date on which the Concessionaire receives possession of the Premises from the City and ending on the Commencement Date (the "Construction Period"), Concessionaire shall be permitted to enter the Premises for the sole purpose of installing furniture, fixtures and equipment (including data and telephone lines and equipment), furnishings and decorations herein Concessionaire Improvements, provided that (a) prior to Concessionaire's entry in the Premises, Concessionaire shall furnish to City certificates of insurance satisfactory to City evidencing Concessionaire's compliance with the requirements of Section 11.3, and a schedule, for City's approval, which shall detail the timing and purpose of

Concessionaire's entry; and (b) Concessionaire's work in the Premises prior to the Commencement Date shall comply with the requirements of Section 9. Concessionaire's occupancy of the Premises during the Construction Period shall be subject to all of the terms, covenants and conditions of this Agreement, including, without limitation, Concessionaire's indemnity obligations set forth in Section 11.3, except that City agrees that Concessionaire's obligation to pay Base Rent and Percentage Rent (defined in Section 4) shall be waived. Concessionaire shall, however, pay the cost of all utilities and other services provided to the Premises prior to the Commencement Date that are required by reason of Concessionaire's early occupancy.

9.3.2 Construction Coordination. Concessionaire shall be responsible for coordinating with City to ensure that Concessionaire's proposed scope of Concessionaire Improvements to the Premises complies with the energy and resource efficient requirements, design guidelines for the project, points of connection with the utilities, during the development of Concessionaire's design and construction drawings, and coordination of trades and access to the Premises during Concessionaire's construction of the Concessionaire Improvements at Concessionaire's sole cost.

9.4 Permits. Unless restricted by law, Concessionaire shall obtain, and be responsible for the costs for all building permits, health department permits, alcohol licensing permits, and other required permits prior to commencement of Concessionaire improvements and operations. If applicable, Concessionaire shall be responsible, at its sole cost and expense, for compliance with the California Environmental Quality Act ("CEQA") and the California Coastal Act in connection with Concessionaire's operation and use of the Property.

9.5 Quality of Work Performed. All Concessionaire Improvements, alterations, maintenance and other work shall be performed in a good and workmanlike manner, shall comply with the plans and specifications submitted to City, and shall comply with all applicable governmental permit requirements and Laws in force at the time permits are issued.

9.6 Payment of Costs. Concessionaire shall pay all costs related to the construction of the Concessionaire Improvements and any alterations by Concessionaire or its agents.

9.7 Liens Prohibited. Concessionaire shall keep the Premises free from any liens and shall not permit to be imposed, recorded or enforced against the Premises or Property, any portion thereof or any structure or Concessionaire Improvement thereon, any mechanics, materialmen's, contractors or other liens arising from, or any claims for damages growing out of, any work or repair, construction or alteration of Concessionaire Improvements on the Premises.

9.7.1 Release/Removal of Liens. In the event any lien or stop notice is imposed or recorded on the Premises or Property, or a Concessionaire Improvement permanently affixed to the Premises or Property during the Term, Concessionaire shall

pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the Premises or Property or the Concessionaire Improvement. Notwithstanding the foregoing, if Concessionaire legitimately contests the validity of such lien, claim or demand, then Concessionaire shall, at its expense, defend against such lien, claim or demand provided that it provides City the indemnity in this Agreement and provided Concessionaire shall pay and satisfy any adverse judgment that may be rendered before any enforcement against City or the Premises or Property.

9.8 Costs of Construction. Concessionaire shall bear all costs and expenses associated with the design and construction of the Premises, which costs and expenses include without limitation all modifications, alterations and improvements to the Premises which are further described and depicted in Exhibit G.

9.9 Prevailing Wages. Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime work for each craft or type of workman needed to execute the work contemplated under this Section shall be paid to all workmen employed on the work to be done according to this Section by the Concessionaire's contractors and any subcontractor. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Concessionaire Improvements. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. Concessionaire's contractors and subcontractors are required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of Concessionaire's contractors or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

9.10 Disposition of Concessionaire Improvements at Expiration or Agreement Termination. Any Concessionaire Improvements or other alterations made to the Premises, as well as any City common area furniture (excluding Concessionaire's fixtures, equipment, furniture, and moveable decorations) shall remain on, and be surrendered with, the Premises on Expiration or Termination of this Agreement. Except in the case of termination for default as set forth under Section 15 of this Agreement, City may require Concessionaire to remove any Concessionaire Improvements or alterations that Concessionaire has made to the Premises by providing notice at least thirty (30) days prior to the Expiration or Termination of this Agreement. If City requires such removal, Concessionaire shall, at its cost, remove the Concessionaire Improvements or alterations and restore the Premises to Good Condition before the last day of the Term, or within thirty (30) days after notice is given, whichever is earlier. Prior to Expiration or within fifteen (15) days after Termination of this Agreement, Concessionaire may remove any moveable partitions, machinery, equipment, furniture, and trade fixtures previously

installed by Concessionaire, provided that Concessionaire repairs any damage to the Premises caused by removal.

## 10. MAINTENANCE OF PREMISES

10.1 Maintenance by Concessionaire. All furnishings, equipment, facilities, Concessionaire Improvements, Alterations, attachments and appurtenances provided by City or installed by Concessionaire, and required for concession operations, including all kitchen equipment and interior and exterior furnishings, including items under warranty, shall be maintained in Good Condition and repair by Concessionaire at its cost. Graffiti shall be called in to City's Graffiti Hotline for removal.

10.1.1 Atrium Maintenance. The City shall be responsible for the repair and maintenance of the areas of the Property immediately outside of and adjacent to the Premises ("Atrium"), as it is part of the Property, and will provide daily janitorial services to ensure the area remains clean and presentable. The Concessionaire shall be responsible for the upkeep of any furniture placed in the Atrium. During operational hours, Concessionaire's staff shall manage the cleanliness of the Atrium by clearing dishes, removing debris, disposing of trash, wiping down tables, cleaning the floors in Atrium, and performing any necessary spot-cleaning to maintain a welcoming environment. City may perform Maintenance or repairs in the event Concessionaire fails to commence required Maintenance or repairs within the time provided by City in the notice requesting such Maintenance or repair. The cost of any Maintenance or repairs by the City pursuant to this Section shall be payable as additional Rent. City may perform required cleaning and charge the costs to Concessionaire if the Concessionaire fails to perform within the time provided by City in the notice requesting the cleaning and continue to Maintain the area as required by this Agreement.

10.1.2 Water Heater. The Concessionaire shall be responsible for the cost of general maintenance, repair, and replacement of the water heater servicing the Premises to ensure it remains in proper working condition. The City will be responsible for performing or coordinating with a vendor to perform said maintenance and repair work with the cost of such work reimbursed to City by Concessionaire as additional Rent. The Concessionaire shall promptly notify the City of any issues or required repairs related to the water heater to facilitate timely maintenance. If the Concessionaire causes damage to the water heater, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.2 Maintenance by City. City may perform maintenance in the event Concessionaire fails to commence required maintenance within three (3) business days after receipt of notice to do so. The cost of any maintenance by City pursuant to this Section shall be payable as additional Rent. City may perform required cleaning and charge the costs to Concessionaire if the Concessionaire fails to perform within five (5) days after notice to do so and continue to maintain the area as required by this Agreement.

10.2.1 Dumbwaiter. The City shall be responsible for the general maintenance, repair, and replacement of the dumbwaiter located within the Premises, as necessary to ensure it remains in safe and operable condition throughout the Term. The Concessionaire shall promptly notify the City of any issues or required repairs concerning the dumbwaiter to support timely maintenance. If the Concessionaire causes damage to the dumbwaiter, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.2.2 Security Gate. The City shall be responsible for the general maintenance and repair of the security gate located within the Premises. The City agrees to ensure the security gate remains in safe and functional condition throughout the Term of this Agreement. The Concessionaire is responsible for promptly notifying the City of any issues with the security gate to allow for timely maintenance and repairs. If the Concessionaire causes damage to the security gate, the cost of repairs will be borne by the Concessionaire, while the City will coordinate and carry out the necessary repairs.

10.3 Entry by City. Upon twenty-four (24) hour notice to Concessionaire, City and its Authorized City Representatives may enter upon and inspect the Premises at any reasonable time for any lawful purpose. In case of emergency, City or its Authorized City Representative may enter the Premises by whatever force necessary if Concessionaire is not present to open and permit an entry. Any entry to the Premises by City shall not be construed as a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Concessionaire from the Premises or any portion thereof.

## **11. INDEMNITY AND EXCULPATION; INSURANCE**

11.1 Hold-Harmless Clause. Concessionaire agrees to indemnify, defend and hold harmless City, its City Council, Boards, Commissions, officers, agents, volunteers, employees, and the State of California (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature

whatsoever (individually, a "Claim"; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to Concessionaire's possession, occupation or use of the Premises, specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:

- 11.1.1 The death or injury to any Person or damage to personal property caused or allegedly caused by the condition of the Premises or an act or omission of Concessionaire or an agent, contractor, subcontractor, supplier, employee, servant, sublessee or concessionaire of Concessionaire;
- 11.1.2 Any work performed on the Premises or materials furnished to the Premises at the request of Concessionaire or any agent or employee of Concessionaire, with the exception of maintenance performed by City; and/or
- 11.1.3 Concessionaire's failure to perform any provision of this Agreement or to comply with any requirement of Law or any requirement imposed on the Premises by any duly authorized governmental agency or political subdivision.

Concessionaire's obligations pursuant to this Subsection shall not extend to any Claim proximately caused by the sole negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the Indemnified Parties. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable.

11.2 Exculpation of City. Except as otherwise expressly provided in this Agreement, City shall not be liable to Concessionaire for any damage to Concessionaire or Concessionaire's property from any cause other than the sole negligence, intentional or willful acts of the Indemnified Parties. Except as otherwise expressly provided in this Agreement, Concessionaire waives all claims against the Indemnified Parties arising for any reason other than the sole negligence, intentional or willful acts of the Indemnified Parties. City shall not be liable to Concessionaire for any damage to the Premises, Concessionaire's property, Concessionaire's goodwill, or Concessionaire's business income, caused in whole or in part by acts of nature including, without limitation, waves, wind and ocean currents.

11.3 Insurance. In addition to insurance required of Concessionaire to be obtained, provided, and maintained during the construction of the Concessionaire Improvements, and without limiting Concessionaire's indemnification of City, Concessionaire shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts specified in Exhibit "H," which is attached hereto and incorporated herein by this reference.

## **12. DAMAGE OR DESTRUCTION OF PROPERTY/PREMISES**

12.1 Destruction of Premises. If the Premises are totally or partially destroyed, rendering the Premises or any portion thereof totally or partially inaccessible or unusable, Concessionaire shall restore the Premises to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, Concessionaire Improvements and Alterations as are installed by Concessionaire or its contractors or subcontractors, which shall be replaced by Concessionaire at its expense). Concessionaire may elect to terminate this Agreement by giving notice of such election to City within sixty (60) days after the date of the occurrence of any casualty if the cost of the restoration exceeds the amount of any available insurance proceeds, if the damage has been caused by an uninsured casualty or event, or if Concessionaire reasonably estimates that repairs of the Premises will take more than six (6) months. Upon such termination, insurance proceeds applicable to reconstruction of the Premises (excluding Concessionaire's personal property therein) shall be paid to City and Concessionaire shall have no further liability or obligations under this Agreement.

12.2 Replacement of Concessionaire's Property. In the event of damage or destruction of Concessionaire Improvements located on the Premises not giving rise to Concessionaire's option to terminate this Agreement, Concessionaire shall, at its own expense, replace and repair all Concessionaire's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as reasonably possible to permit the prompt continuation of the Concession.

12.3 Destruction of the Property. In the event that all or a portion of the Property is damaged, and the Premises or a material portion becomes inaccessible or commercially unusable, and the damage or destruction cannot reasonably be repaired within twelve (12) months after the date of the casualty, City shall have the right to either:

12.3.1 Terminate this Agreement. City shall give Concessionaire written notice of termination within thirty (30) days following the date of the casualty, which shall be effective sixty (60) days after the date of the notice; or

12.3.2 Repair the damage at City's expense. City shall give Concessionaire written notice of its intention to repair such damage as soon as reasonably possible at City's expense, in which event this Agreement shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 13. If City fails to commence repairs within one hundred twenty (120) days after its notice of its intention to repair, then Concessionaire may terminate this Agreement by giving City written notice at any time prior to the commencement of repairs. In such event, this Agreement shall terminate as of the date of notice from Concessionaire to City, and City shall have no liability under this Agreement.

### **13. ABATEMENT OF RENT**

13.1 Concessionaire Improvements; Approved Construction. Concessionaire's payment of Percentage Rent shall be abated during the construction of Concessionaire Improvements not to exceed twelve (12) months from the Effective Date of this Agreement. Concessionaire shall provide documentation of construction activity at least forty-five (45) calendar days prior to the commencement of the scheduled construction and the City's subsequent written approval. In no way shall abatement of Percentage Rent pursuant to this subsection: (a) exceed Twenty-Five Thousand Dollars (\$25,000) in the aggregate during the Term of this Agreement, and (b) exceed twelve (12) months, whether consecutively or collectively. "Construction" shall mean the installation of Concessionaire Improvements in strict compliance with the design plans approved in writing by City.

13.2 Damage or Destruction. In the event of damage or destruction of the Premises or damage to the Property that impacts the Premises where this Agreement is not terminated, Concessionaire shall continue to utilize the Premises for the operation of its business as permitted in Section 6 to the extent it may be practicable and commercially reasonable. Concessionaire's obligation to pay taxes pursuant to this Agreement shall not be abated or reduced. Rent shall not abate if the damage or destruction to the Premises is the result of the negligence or willful conduct of Concessionaire or its employees, officers or agents.

13.3 No Abatement for Maintenance. Concessionaire shall not be entitled to any abatement of Base Rent or Percentage Rent for any temporary closures for general maintenance of the Premises to keep the Concession operating in a manner comparable to other high-quality concession businesses.

### **14. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING AND ENCUMBERING**

14.1 Prohibition of Assignment. City and Concessionaire acknowledge that City is entering into this Agreement in reliance upon the experience and abilities of Concessionaire. Consequently, Concessionaire shall not voluntarily assign or encumber its interest in this Agreement or in the Premises, or assign substantially all or any part of the Premises, or allow any other person or entity (except Concessionaire's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of City. City's consent to any assignment or other transfer is subject to Concessionaire providing City with evidence reasonably satisfactory to City that the proposed transferee has financial strength and restaurant or food service experience comparable to Concessionaire and the use of the Premises by the proposed transferee is consistent with the terms of this Agreement. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, reorganization of Concessionaire, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Concessionaire, shall be deemed a voluntary assignment; provided, however, that the sale or transfer of a controlling percentage of the capital stock of Concessionaire pursuant



to a public offering(s) of equity or debt instruments issued by Concessionaire, or other transfers of publicly traded capital stock or debt instruments shall not constitute a voluntary assignment and shall not require City's consent or approval. The phrase "controlling percentage" means the ownership of, or the right to vote, stock possession of at least fifty percent (50%) of the total combined voting power of all classes of Concessionaire's capital stock issued, outstanding, and entitled to vote for the election of directors, except for ownership of publicly traded shares, warrants or similar equity interests in Concessionaire traded on a national exchange or over-the-counter markets.

## **15. DEFAULT**

15.1 Default by Concessionaire. The occurrence of any one (1) or more of the following events shall constitute a default and material breach of this Agreement by Concessionaire:

- 15.1.1 The vacating or abandonment of the Premises by Concessionaire for more than fifteen (15) consecutive days that was not otherwise expressly permitted under this Agreement or pre-approved in writing by City;
- 15.1.2 The revocation of any of Concessionaire's licenses issued by the State;
- 15.1.3 The failure by Concessionaire to make any payment of Rent or any other payment required by this Agreement, as and when due, when such failure shall continue for a period of ten (10) days after written notice of default from City to Concessionaire;
- 15.1.4 Except as specified in Subsection 15.1(2), the failure of Concessionaire to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire where such failure shall continue for a period of ten (10) days after written notice thereof from City to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than ten (10) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion;
- 15.1.5 The making by Concessionaire of any general arrangement or assignment for the benefit of creditors;
- 15.1.6 Concessionaire becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a

petition filed against Concessionaire, the same is dismissed within ten (10) days);

15.1.7 The appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where such appointment is not discharged within ten (10) days; and

15.1.8 The attachment, execution or the judicial seizure of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where such seizure is not discharged within sixty (60) days.

## 15.2 Remedies.

15.2.1 Cumulative Nature of Remedies. If any default by Concessionaire shall continue without cure as required by this Agreement, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

15.2.2 Reentry without Termination. City may reenter the Premises, and, without terminating this Agreement, re-let all or a portion of the Premises. City may execute any agreements made under this provision in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Concessionaire shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Concessionaire under this Agreement, plus City's expenses in conjunction with re-letting, less the proceeds of any re-letting or atonement. No act by or on behalf of City under this provision shall constitute a Termination of this Agreement unless City gives Concessionaire specific written notice of Termination.

15.2.3 Termination. City may terminate this Agreement by giving Concessionaire notice of Termination. In the event City terminates this Agreement, City may recover possession of the Premises (which Concessionaire shall surrender and vacate upon demand) and remove all Persons and property. City shall be entitled to recover the following as damages:

(1) The value of any Rent or other charges that are unpaid at the time of Termination;

(2) The value of the Rent and other charges that would have accrued after Termination less the amount of Rent and charges City received or could have received through the exercise of reasonable diligence as of the date of the award;

(3) Any other amount necessary to reasonably compensate City for the detriment proximately caused by Concessionaire's failure to perform its obligations under this Agreement; and

(4) At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable California law. City shall be entitled to interest at the rate of ten percent (10%) per annum on all Rent and other charges from the date due or the date they would have accrued. City shall also be entitled to an award of the costs and expenses incurred by City in maintaining or preserving the Premises after default, preparing the Premises for re-letting, or repairing any damage caused by the act or omission of Concessionaire.

15.2.4 Use of Concessionaire's Personal Property. City may use Concessionaire's personal property and trade fixtures located on the Premises or any of such property and fixtures without compensation or liability to Concessionaire for use or damage. In the alternative City may store the property and fixtures at the cost of Concessionaire. City shall not operate the Premises in any manner tending to indicate that the Premises are affiliated with, part of or operated in conjunction with Concessionaire's business.

15.3 City's Right to Cure Concessionaire's Default. Upon continuance of any default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Concessionaire's cost. If City pays any money or performs any act required of, but not paid or performed by, Concessionaire after notice, the payment and/or the reasonable cost of performance shall be due as additional Rent not later than five (5) days after service of a written demand accompanied by supporting documentation. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance.

## **16. WASTE OR NUISANCE**

Concessionaire shall not commit or permit the commission of any waste on the Premises. Concessionaire shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Premises. Concessionaire shall not use or permit the use of the Premises for any unlawful purpose, including, but not limited to, any use that violates City's charter or Municipal Code.

## **17. NO CONFLICTS OF USE, HAZARDOUS MATERIALS**

City represents and warrants that, to the best of City's knowledge, (i) Concessionaire's use of the Premises does not conflict with applicable Laws, and City knows of no reason why Concessionaire would be unable to obtain all required permits, licenses and approvals from the appropriate governmental authorities; (ii) the Property is not in violation of any environmental laws, rules or regulations and Concessionaire's contemplated uses will not cause any such violation; and (iii) the Property is free of any and all Hazardous Materials as of the date of this Agreement. In the event that the presence of any Hazardous Materials not caused by Concessionaire is detected at the Property at any time during the Term of this Agreement all remedial work shall be performed by City at City's expense. Concessionaire's obligation to open shall be delayed until the remedial work is completed if the remedial work is performed prior to

Concessionaire opening for business. Concessionaire's obligation to pay Rent shall be abated in direct proportion to the extent Concessionaire is unable to conduct its business upon the Premises as a result of any remedial work that is performed subsequent to Concessionaire opening for business. Concessionaire shall have the right (but not the obligation) to terminate this Agreement, upon thirty (30) days advance written notice to City in the event that Hazardous Materials are detected at the Property and the presence or the remediation materially affects Concessionaire's ability to conduct its business in the Premises. "Hazardous Materials" shall mean any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under applicable federal, state and local laws, ordinances and regulations.

## **18. FORCE MAJEURE; EXTENSIONS OF TIME OF PERFORMANCE**

18.1. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (hereinafter "Force Majeure"): acts of God, war, terrorist act, government-mandated quarantine restrictions, riot, natural catastrophes, Federal or state governmental acts or omissions, national strikes, fire, or explosion, provided that the Force Majeure is unforeseeable, beyond the control of, and not due to the fault or negligence of the Party claiming the Force Majeure. For the avoidance of doubt, Force Majeure shall not include (a) the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement; (b) financial distress or the inability of either Party to make a profit or avoid a financial loss, (c) changes in the market prices or conditions, or (d) a Party's financial inability to perform its obligations hereunder.

18.2. A Party's excuse in liability from failure or delay in performing an obligation under this Agreement due to Force Majeure shall only be to the extent caused by the Force Majeure and shall not be any longer than the period commencing from when the requisite written notice is given and ending when the Party is no longer delayed or prevented from performing on account of the Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party in writing, no later than five (5) days after the commencement of delay or inability to perform, and the Party shall continue with commercially reasonable diligence in an effort to limit the period of nonperformance or delay. Time of performance under this Agreement may also be extended in writing by City and Concessionaire.

## **19. CITY'S DEFAULTS/CONCESSIONAIRE'S REMEDIES**

City shall be in default if it materially interferes with Concessionaire's use of the Premises for its intended purpose and City fails to cure such default within ten (10) days after a second demand by Concessionaire.

**20. EVENT OF BANKRUPTCY**

20.1 If this Agreement is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* or any similar or successor statute ("Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to City, shall be and remain the exclusive property of City and shall not constitute property of Concessionaire or of the estate of Concessionaire within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting City's property under this Section not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid or delivered to City.

20.2 Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment, including the obligation to operate the business which Concessionaire is required to operate under this Agreement.

**21. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give shall be in writing and shall be deemed given three (3) days after deposit into the United States registered mail, postage prepaid, by registered or certified mail, return receipt requested. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City, to:	CITY OF NEWPORT BEACH Attn: Real Property Administrator 100 Civic Center Drive Newport Beach, CA 92660
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If to Concessionaire, to:	Eunice Hwang c/o KIT at the Library, Inc. 39 Blossom Irvine, CA 92620 (714) 606-3471
---------------------------	--

**22. SURRENDER OF PREMISES**

At the Expiration or earlier Termination of this Agreement, Concessionaire shall surrender to City the possession of the Premises. Concessionaire shall leave the surrendered Premises, required personal property and fixtures, in Good Condition, reasonable wear and tear excepted. All property that Concessionaire is not required to surrender, but that Concessionaire does abandon shall, at City's election, become City's property.

**23. COMPLIANCE WITH ALL LAWS**

Concessionaire shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Concessionaire shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of an Authorized City Representative.

**24. WAIVERS**

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

**25. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**26. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

**27. ENTIRE AGREEMENT; AMENDMENTS**

27.1 The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire agreement of the parties with respect to the subject matter of this Agreement.

27.2 This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between Concessionaire and City.

27.3 No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

27.4 The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Concessionaire and City.

27.5 If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

27.6 Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

27.7 Each party has relied on its own inspection of the Premises and examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in this Agreement. The failure or refusal of either party to inspect the Premises, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

## **28. TIME IS OF THE ESSENCE**

Time is of the essence for this Agreement. Concessionaire agrees to proceed in an efficient and timely manner to obtain all necessary approvals, licenses and permits required to engage in the business services as described under Section 6.

## **29. SUCCESSORS**

Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

## **30. INTERPRETATION**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **31. TABLE OF CONTENTS; HEADINGS**

The table of contents of this Agreement and the captions of the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

**32. GENDER; NUMBER**

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity whenever the context requires. The singular number includes the plural whenever the context so requires.

**33. EXHIBITS**

All exhibits to which reference is made in this Agreement are incorporated by reference. Any reference to "this Agreement" includes matters incorporated by reference.

**34. MEMORANDUM OF CONCESSION AGREEMENT**

A Memorandum of Concession Agreement, in a form and content similar to that contained in Exhibit "I," which is attached hereto and incorporated by reference, shall be recorded by the parties promptly upon execution of this Agreement. Upon execution by both parties, the Memorandum of Concession Agreement shall be recorded against the Premises in the office of the Orange County Clerk-Recorded, as required by Government Code Section 37393.

**35. CITY BUSINESS LICENSE**

Concessionaire shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

**36. NO ATTORNEYS' FEES**

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

**37. NONDISCRIMINATION**

Concessionaire, for itself and its successors, agrees that in the performance under this Agreement, Concessionaire shall not discriminate against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Government Code Section 11135.

**38. NO THIRD PARTY BENEFICIARIES**

City and Concessionaire do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.



**39. LAWS**

It shall be the obligation of Concessionaire to comply with all laws, statutes, rules, and regulations including, but not limited to, State of California labor laws, rules and regulations and the parties agree that City shall not be liable for any violation by Concessionaire (or Concessionaire's agent, sublessee or any party affiliated with Concessionaire) thereof.

**40. NO DAMAGES**

Concessionaire acknowledges that City would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Concessionaire covenants and agrees on behalf of itself and its successors and assigns, not to sue City for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Concessionaire arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Concessionaire's sole and exclusive judicial remedies.

**41. GOVERNMENT CLAIMS ACT**

Concessionaire and City agree that in addition to any claims filing or notice requirements in this Agreement, Concessionaire shall file any claim that Concessionaire may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*), or any successor statute.

**42. COUNTERPARTS**

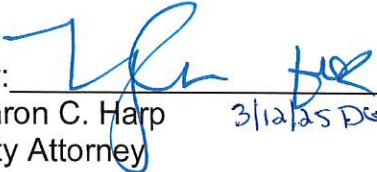
This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY**

Date: 3/13/25

By:   
Aaron C. Harp  
City Attorney

**CITY OF NEWPORT BEACH ("City"),**  
a California municipal corporation and  
charter city

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CONCESSIONAIRE: KIT at the Library,  
Inc.,** a California stock corporation

Date: \_\_\_\_\_

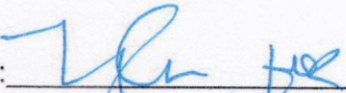
By: \_\_\_\_\_  
Eunice Hwang  
Managing Member

- Attachments:
- Exhibit "A" – Premises
  - Exhibit "B" – Proposed Menu
  - Exhibit "C" – Loading Zone and Restroom Depiction
  - Exhibit "D" – Concessionaire Equipment List
  - Exhibit "E" – Marketing Plan
  - Exhibit "F" – Special Land Use Restrictions
  - Exhibit "G" – Concessionaire Improvements
  - Exhibit "H" – Insurance
  - Exhibit "I" – Memorandum of Concession Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY**

Date: 3/13/25

By:   
Aaron C. Harp 3/12/25 DCH  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

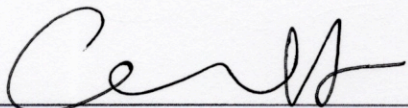
**CITY OF NEWPORT BEACH ("City"),**  
a California municipal corporation and  
charter city

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**CONCESSIONAIRE: KIT at the Library,  
Inc.,** a California stock corporation

Date: 3/13/25

By:   
Eunice Hwang  
Managing Member

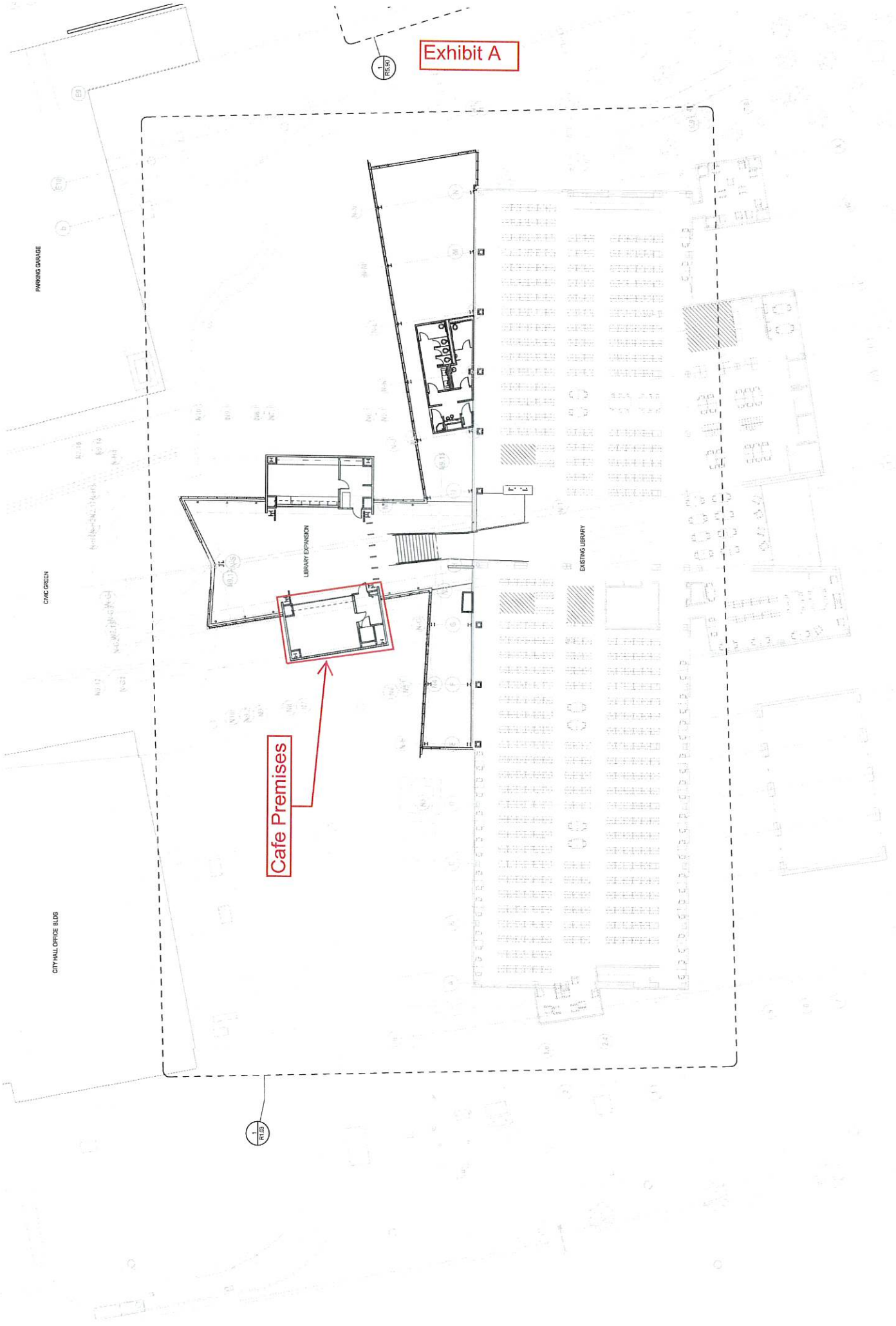
- Attachments:
- Exhibit "A" – Premises
  - Exhibit "B" – Proposed Menus
  - Exhibit "C" – Loading Zone and Restroom Depiction
  - Exhibit "D" – Concessionaire Equipment List
  - Exhibit "E" – Marketing Plan
  - Exhibit "F" – Special Land Use Restrictions
  - Exhibit "G" – Concessionaire Improvements
  - Exhibit "H" – Insurance
  - Exhibit "I" – Memorandum of Concession Agreement

**EXHIBIT "A"**

**PREMISES**

Exhibit A

Cafe Premises



**EXHIBIT "B"**  
**PROPOSED MENUS**

## Exhibit B-1

### ESPRESSO

LATTE	5.5
CORTADO	4.5
CAPPUCCINO	5
MACCHIATO	4.5
ESPRESSO	4
AMERICANO	4
VANILLA LATTE	6
CARAMEL LATTE	6
DARK CHOCOLATE MOCHA	6
CREME BRULEE LATTE	6.5

### COFFEE

COFFEE	3/4
COLD BREW	5

### SIGNATURE DRINKS

STRAWBERRY ALARM CLOCK <i>ESPRESSO + STRAWBERRY OAT MILK</i>	7
THANK YOU BERRY MATCHA <i>MATCHA + STRAWBERRY OAT MILK</i>	7
HORCHATA MATCHA <i>OAT MILK CINNAMON MATCHA WITH VANILLA</i>	7
PURPLE DREAM <i>UBE COCONUT OAT MILK TOPPED WITH SALTED COCONUT CREAM</i>	7.5
LAVENDER SKIES <i>ESPRESSO + BLUEBERRY LAVENDER MILK</i>	6
LAVENDER FIELDS <i>MATCHA + BLUEBERRY LAVENDER MILK</i>	6

### TEA

LONDON FOG	5.5
MATCHA TEA LATTE	5.5
CHAI TEA LATTE	5.5
KOMBUCHA	6
LOOSE LEAF TEA	4
MATCHA GREEN ICED TEA	5
PASSION JASMINE ICED TEA	4

### ORGANIC TEAS

ENGLISH BREAKFAST
EARL GREY
WUYI OOLONG
ASHWAGANDA PU-ERH
JASMINE GREEN
MATCHA
WHITE PEONY
ROSEHIPS HIBISCUS
GINGER LEMON
HERBAL MINT
CHAMOMILE

### MILK ALTERNATIVES

OAT MILK	1
ALMOND MILK	1



## Exhibit B-2

### AVOCADO TOASTS

CAPRESE AVOCADO TOAST.....	14
ARUGULA, MOZZARELLA CHEESE, CHERRY TOMATOES, BASIL, LEMON ZEST, BALSAMIC	
SMOKED AVOCADO TOAST .....	15
BACON, CHERRY TOMATO, SMOKED PAPRIKA, LEMON ZEST & CHIVES	
SPRING AVOCADO TOAST.....	14
ARUGULA, CUCUMBER, TOMATO, PICKLED ONION, GOAT CHEESE, LEMON GARLIC VINAIGRETTE	
HOT' N SWEET AVOCADO TOAST.....	11
LEMON PEPPER, CHILI FLAKES, DRIZZLE OF HOT AND SWEET HONEY	
LOX AVOCADO TOAST.....	18
ARUGULA, CHILI FLAKES, CUCUMBER, LEMON VINAIGRETTE, PICKLED ONION, SMOKED SALMON, EVERYTHING BUT THE BAGEL SEASONING, CAPER, CHIVES AND SIDE OF SLICED LEMON	

### SAVORY

BREAKFAST BURRITO.....	16
SCRAMBLED EGG, CILANTRO RICE, HASH BROWN, CHEDDAR JACK, GRILLED ONION, CHOOSE FROM BACON OR CHORIZO OR SOYRIZO (+1) OR NO MEAT	
GRILLED CAPRESE PANINI.....	12
HEIRLOOM TOMATOES, MOZZARELLA, BASIL, GARLIC AIOLI, BALSAMIC DRIZZLE	
TURKEY PESTO SANDWICH.....	14
TURKEY, PROVOLONE, GOUDA, SUN-DRIED TOMATOES, SPROUTS, MUSTARD AIOLI	
B.L.T. SANDWICH.....	14
BACON, LETTUCE, HEIRLOOM TAOMATOES, AVOCADO, GARLIC AIOLI	
KIMCHI BACON GRILLED CHEESE.....	14
BACON, KIMCHI JAM, MOZZERELLA, GARLIC BUTTER SPREAD	
THE EGG SANDO.....	10
JAPANESE EGG SALAD, KEWPIE MAYO, SOFT BOILED EGG, MUSTARD AIOLI	
VEGGIE DELIGHT.....	11
AVOCADO, HEIRLOOM TOMATOES, CUCUMBERS, RED ONION, LETTUCE, SPROUTS, RED WINE VINAIGRETTE	
CLASSIC COBB SALAD.....	14
CHICKEN, BACON, LETTUCE, AVOCADO, HARD BOILED EGG, RED ONION, BLUE CHEESE CRUMBLE RED WINE VINAIGRETTE	
TWO EGGS ARUGULA SALAD.....	13
ARUGULA, CHERRY TOMATOES, AVOCADO, TWO SOFT BOILED EGGS, LEMON GARLIC VINAIGRETTE BALSAMIC DRIZZLE & CHIVES	

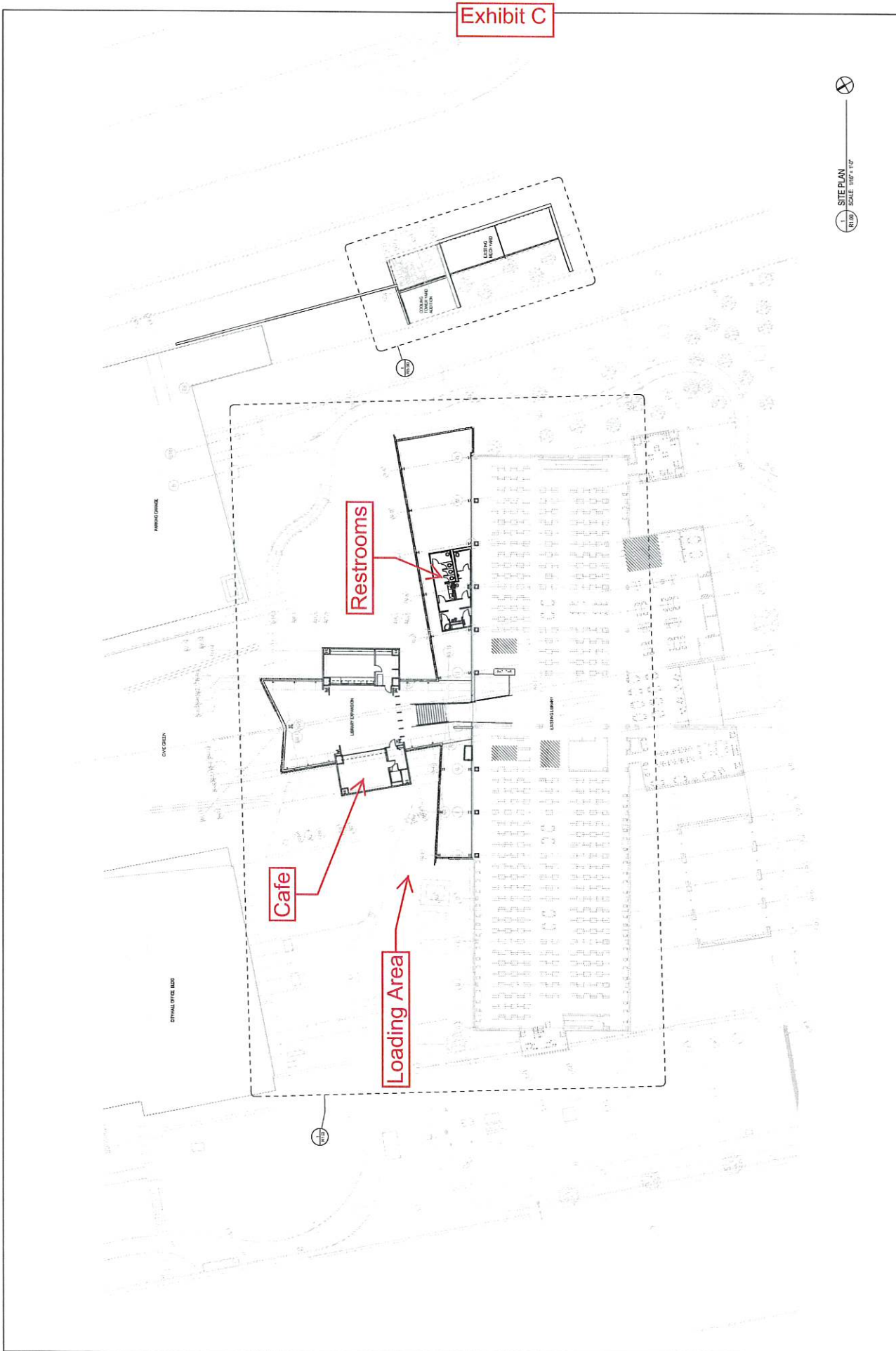
### SWEET

BRULEÉ TOAST .....	7
BRIOCHE TOAST BRULEÉD AND DUSTED WITH CHOICE OF CINNAMON / MATCHA / SOUR CHERRY	



**EXHIBIT "C"**  
**LOADING ZONE AND RESTROOM DEPICTION**

Exhibit C

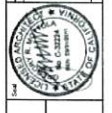


1 SITE PLAN  
SCALE: 1/8" = 1'-0"

R1.00  
SHEET NUMBER

DATE: December 16, 2010  
DRAWN BY: BCJ  
CHECKED BY: AS  
PROJECT NUMBER: 1100

1100 Newport Beach Civic Center & Park  
CONTRACT NO. 1100  
SHEET NO. 1100-01



**Newport Beach Civic Center & Park**  
1100 Avenida Newport Beach CA 92660  
CONTRACT NO. 1100  
SHEET NO. 1100-01

**Bohlin Cywinski Jackson**  
4800 California Street  
Suite 200  
Berkeley, CA 94710  
415-849-2100

**Architect/Contractor**  
City of Newport Beach  
3008 Newport Boulevard  
Newport Beach, CA 92663  
949-544-3333

**Structural Engineer**  
Rock Systems  
7777 Rockwell Drive #4  
Palo Alto, CA 94304  
650-321-3333

**Interior Architect**  
M. Siller Associates  
1315 S. Bascom  
Suite 500  
San Jose, CA 95128  
415-597-9442

**Landscaping Architect**  
PWP Landscape Architecture  
600 Mission Street  
2nd Floor  
San Francisco, CA 94105  
415-446-8446

**EXHIBIT "D"**  
**CONCESSIONAIRE EQUIPMENT LIST**



**EXHIBIT "E"**  
**MARKETING PLAN**

## Exhibit E

### KIT COFFEE MARKETING STRATEGY

To effectively market Kit Coffee at the Library, we will focus on building a strong local presence both online and offline. On Instagram, we will showcase our signature drinks, cozy ambiance, and community events through high-quality photos, engaging stories, and user-generated content, encouraging followers to tag us and share their experiences. Additionally, we will distribute eye-catching fliers in permitted areas inside the library, nearby neighborhoods, local businesses, offering a special promotion like a discount or free drink with the purchase of a coffee, to drive foot traffic. Collaborating with the library and local events will further boost brand visibility and attract customers to the shop as well.

**EXHIBIT "F"**  
**SPECIAL LAND USE RESTRICTIONS**



This Document was electronically recorded by  
Fidelity National Major Accounts

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE INSURANCE CO.

WHEN RECORDED MAIL TO:

City of Newport Beach  
Attn: City Clerk  
3300 Newport Beach Blvd.  
P.O. Box 1768  
Newport Beach, CA 92658-8915

RECEIVED

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder

2011 JAN -3 AM 10:00



NO FEE

2010000634193 04:30pm 11/24/10

OFFICE OF THE CITY CLERK  
CITY OF NEWPORT BEACH  
06 496 A12 6  
0.00 0.00 0.00 0.00 15.00 0.00 0.00 0.00

725132038-05

AGREEMENT OF MUTUAL UNDERSTANDING REGARDING DECLARATION OF SPECIAL LAND USE  
RESTRICTIONS, RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE RECORDED ON  
MAY 8, 1992 AS INSTRUMENT NO. 92-304757

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(ADDITIONAL RECORDING FEE APPLIES)



Recording Requested By  
Fidelity National Title

**RECORDED AT REQUEST OF,  
AND WHEN RECORDED MAIL TO:**

City of Newport Beach  
Attn: City Clerk  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92658-8915

**WITH A CONFORMED COPY TO:**

The Irvine Company LLC  
Attn: Legal Department  
550 Newport Center Drive  
Newport Beach, CA 92660

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This document is exempt from  
filing fees per Govt. Code §  
6103, recording fees per Govt.  
Code § 27383 and is exempt  
from Document Transfer Tax  
per Rev. & Taxation Code §  
11922

*Agreement of*

**Mutual Understanding Regarding Declaration of Special Land Use Restrictions,  
Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May  
8, 1992 as Instrument No. 92-304757**

**WHEREAS**, The Irvine Company LLC, A Delaware Limited Liability Company ("Declarant") granted to City of Newport Beach, a California Municipal Corporation ("Grantee") via a Declaration/Exchange Agreement/Transfer Agreement (collectively, "Declaration") recorded May 8, 1992 as Orange County Document No. 92-304757 those certain properties identified as: (1) the southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County; and (2) the northwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County (collectively, "Parcel 2, Parcel Map No. 90-361" or "Property").

**WHEREAS**, Grantee desires to construct a new Civic Center project on or adjacent to the Property pursuant to Newport Beach Charter Section 425.

**WHEREAS**, Declarant and Grantee both desire to confirm that the Declaration allows the development of the Civic Center project.

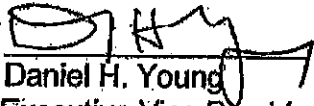
**NOW THEREFORE**, Declarant and Grantee agree as follows:

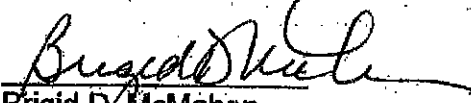
Pursuant to the terms, restrictions, or conditions contained in the Declaration, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food service and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in the Declaration that no portion of the Property is used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Newport Center development or is otherwise improved, developed, used, operated, or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion. Therefore, the Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements, including leasing the Property to the Newport Beach Public Facilities Corporation in connection with the refinancing of the Library and the financing of the Project. The loan-to-value ratio set forth in Section 2.8 of the Declaration is hereby waived in connection with such financing. The Grantee shall not materially expand or alter the use or square footage of the Food Service Facility unless expressly approved by the Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

IN WITNESS WHEREOF, this instrument is duly executed this 29<sup>th</sup> day of October 2010.

**DECLARANT:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

By:   
Daniel H. Young  
Its: Executive Vice President

By:   
Brigid D. McMahon  
Its: Assistant Secretary

**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

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

Signed in Counterpart

**WHEREAS,** The Declaration places certain limitations on the Property and requires Grantee to obtain Declarant's consent for certain improvements.

**WHEREAS,** Declarant and Grantee both desire to confirm that the Declaration allows the development of the Civic Center project.

**NOW THEREFORE, Declarant and Grantee agree as follows:**

Pursuant to the terms, restrictions, or conditions contained in the Declaration, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food service and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in the Declaration that no portion of the Property is used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Newport Center development or is otherwise improved, developed, used, operated, or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion. Therefore, the Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements, including leasing the Property to the Newport Beach Public Facilities Corporation in connection with the refinancing of the Library and the financing of the Project. The loan-to-value ratio set forth in Section 2.8 of the Declaration is hereby waived in connection with such financing. The Grantee shall not materially expand or alter the use or square footage of the Food Service Facility unless expressly approved by the Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

IN WITNESS WHEREOF, this instrument is duly executed this 22 day of November, 2010.

**DECLARANT:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

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

Its: Executive Vice President

**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

By: 

Its: Mayor

Signed in Counterpart

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

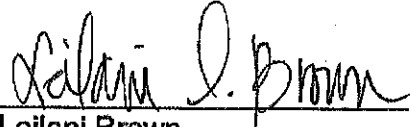
Its: Assistant Secretary

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY



David R. Hunt  
City Attorney  
City of Newport Beach

ATTEST:



Leilani Brown  
City Clerk  
City of Newport Beach

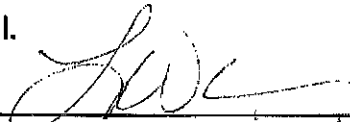


STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :

On November 22, 2010, before me, LILLIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared KEITH D. CURRY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :



On \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned Notary Public in and for said County and State, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :

COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

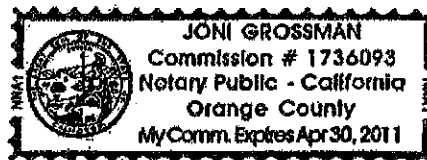
WITNESS my hand and official seal.

*Joni Grossman*

Notary Public

STATE OF CALIFORNIA :

COUNTY OF ORANGE :



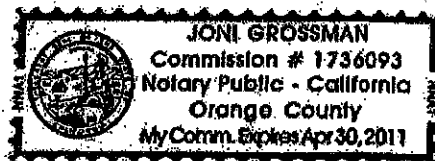
On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

*Joni Grossman*

Notary Public



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Newport Beach, CA 92658-8915

66 406 A17 6  
0.00 0.00 0.00 0.00 15.00 0.00 0.00 0.00

WITH A CONFORMED COPY TO:

The Irvine Company LLC  
Attn: Legal Department  
550 Newport Center Drive  
Newport Beach, CA 92660

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**Amendment of Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded on May 8, 1992 as Instrument No. 92-304757**

THIS FIRST AMENDMENT TO DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT AT FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE ("Amendment") is made as of November 1, 2010 and shall be effective as of November 1, 2010 ("Amendment Effective Date") by and between The Irvine Company LLC, A Delaware Limited Liability Company ("Declarant") and the City of Newport Beach, a California Municipal Corporation ("Grantee").

RECITALS

WHEREAS, Declarant and Grantee entered into a Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase ("Existing Declaration") recorded May 8, 1992 as Orange County Document No. 92-304757 with respect to those certain properties identified as: (1) the southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County; and (2) the northwesterly

**WHEREAS,** Exhibit 2 to the Existing Declaration places certain limitations on the development of the Property.

**WHEREAS,** Declarant and Grantee both desire to amend Exhibit 2 to the Existing Declaration to allow the development of the Civic Center project.

**NOW THEREFORE,** Declarant and Grantee hereby amend the Existing Declaration as follows:

1. **Amendment to Exhibit B.** Exhibit B to the Existing Declaration is hereby amended as follows:

Maximum Gross Floor Area: 74,000 square feet

2. **Continuing Effect.** As amended hereby, the Declaration shall continue in full force and effect following the Amendment Effective Date. If there is any inconsistency between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall supercede and control.

IN WITNESS WHEREOF, this instrument is duly executed this 29<sup>th</sup> day of October, 2010.

**DECLARANT:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

By: 

Daniel H. Young

Its: Executive Vice President

By: 

Brigid D. McMahon

Its: Assistant Secretary

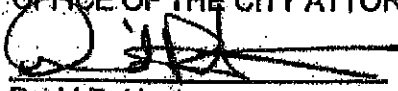
**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

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

Its: Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

  
David R. Hunt  
City Attorney  
City of Newport Beach

ATTEST:

\_\_\_\_\_  
Leilani Brown  
City Clerk

Signed in Counterpart



one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County (collectively, "Parcel 2, Parcel Map No. 90-361" or "Property").

**WHEREAS**, Grantee desires to construct a new Civic Center project on or adjacent to the Property pursuant to Newport Beach Charter Section 425.

**WHEREAS**, Exhibit 2 to the Existing Declaration places certain limitations on the development of the Property.

**WHEREAS**, Declarant and Grantee both desire to amend Exhibit 2 to the Existing Declaration to allow the development of the Civic Center project.

**NOW THEREFORE, Declarant and Grantee hereby amend the Existing Declaration as follows:**

1. **Amendment to Exhibit B.** Exhibit B to the Existing Declaration is hereby amended as follows:

Maximum Gross Floor Area: 74,000 square feet

2. **Continuing Effect.** As amended hereby, the Declaration shall continue in full force and effect following the Amendment Effective Date. If there is any inconsistency between the provisions of this Amendment and the provisions of the Declaration, the provisions of this Amendment shall supercede and control.

IN WITNESS WHEREOF, this instrument is duly executed this 22 day of November, 2010.

**DECLARANT:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

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

Its: Executive Vice President

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

Its: Assistant Secretary

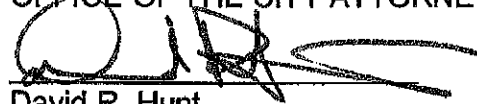
**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

By: [Signature]

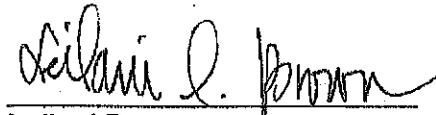
Its: Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY



David R. Hunt  
City Attorney  
City of Newport Beach

ATTEST:



Leilani Brown  
City Clerk  
City of Newport Beach



STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :

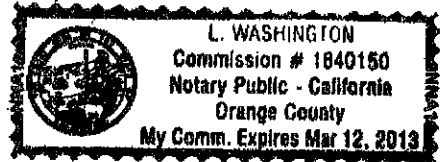
On November 22, 2010, before me, LILLIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared KEITH D. CURRY who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :



On \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned Notary Public in and for said County and State, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :

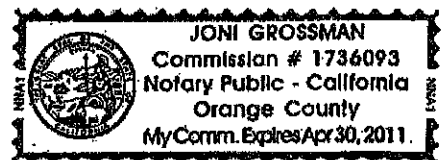
On November 1, 2010 , before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public

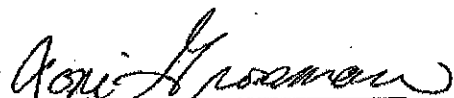


STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :

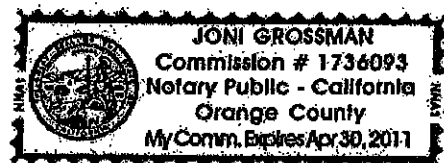
On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



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THE CITY CLERK  
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AGREEMENT OF MUTUAL UNDERSTANDING REGARDING AMENDED AND RESTATED GRANT DEED (PARCEL  
3, PARCEL MAP 90-361-NEWPORT VILLAGE) RECORDED ON JUNE 2, 2008 AS INSTRUMENT NO. 2008000262433

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
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Fidelity National Title

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AND WHEN RECORDED MAIL TO:**

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Newport Beach, CA 92658-8915

**WITH A CONFORMED COPY TO:**

The Irvine Company LLC  
Attn: Legal Department  
550 Newport Center Drive  
Newport Beach, CA 92660

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6103, recording fees per Govt.  
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per Rev. & Taxation Code §  
11922

*Agreement of*

**Mutual Understanding Regarding Amended and Restated Grant Deed (Parcel 3,  
Parcel Map 90-361-Newport Village) recorded on June 2, 2008 as Instrument No.  
2008000262433**

**WHEREAS**, The Irvine Company LLC, A Delaware Limited Liability Company ("Grantor") previously granted to the City of Newport Beach, a California Municipal Corporation ("Grantee") via a Grant Deed recorded November 28, 2007 as Orange County Document No. 2007000704013 ("Grant Deed") that certain property identified as Parcel 3 of Parcel Map 90-361, in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 270, Pages 15 to 18, inclusive, of Parcels, in the Office of the County Recorded of said County ("Property").

**WHEREAS**, Grantee desires to construct a new Civic Center project on the Property pursuant to Newport Beach Charter Section 425.

**WHEREAS**, The Grant Deed places certain limitations on the Property and requires Grantee to obtain Grantor's consent for certain improvements.

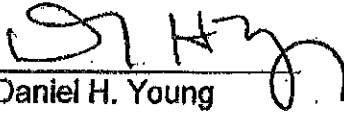
**NOW THEREFORE, Grantor and Grantee agree as follows:**

Pursuant to the terms, restrictions, and conditions contained in the Grant Deed, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food service and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in Grant Deed Section i(a) that the Property may be used by the Grantee only for open space and public facilities uses. Therefore, Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements.

IN WITNESS WHEREOF, this instrument is duly executed this 29<sup>th</sup> day of October, 2010.

**GRANTOR:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

By:   
Daniel H. Young  
Its: Executive Vice President

By:   
Brigid D. McMahon  
Its: Assistant Secretary

**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

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

**APPROVED AS TO FORM:**

  
David R. Hunt  
City Attorney

**ATTEST:**

\_\_\_\_\_  
Leilani Brown  
City Clerk  
City of Newport Beach

Signed in Counterpart

**WHEREAS**, Grantor and Grantee both desire to confirm that the Grant Deed allows the development of the Civic Center project.

**NOW THEREFORE**, Grantor and Grantee agree as follows:

Pursuant to the terms, restrictions, and conditions contained in the Grant Deed, the Grantee is authorized to develop the Property with a City Hall Office Building, Community Room, City Council Chambers, Parking Structure, Library addition and related improvements, including an approximately 600 square foot Food Service Facility which will provide deli food service and limited catering for employees, library visitors, special event visitors and receptions ("Project"), which is consistent with the use restriction in Grant Deed Section i(a) that the Property may be used by the Grantee only for open space and public facilities uses. Therefore, Grantee is authorized to take any and all actions necessary to develop, alter, and maintain the Project, including, but not limited to, entering into leases and financing agreements.

IN WITNESS WHEREOF, this instrument is duly executed this 27 day of November 2010.

**GRANTOR:**

THE IRVINE COMPANY LLC,  
A Delaware Limited Liability Company

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

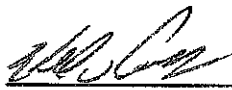
Its: Executive Vice President

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

Its: Assistant Secretary

**GRANTEE:**

CITY OF NEWPORT BEACH  
A California Municipal Corporation

By: 

Its: Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY



David R. Hunt  
City Attorney  
City of Newport Beach

Signed in Counterpart

ATTEST:



*Leilani L. Brown*

Leilani Brown  
City Clerk  
City of Newport Beach



STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :

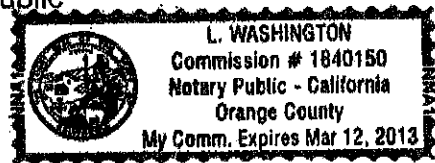
On November 22, 2010, before me, LILLIAN WASHINGTON, the undersigned Notary Public in and for said County and State, personally appeared Keith D. Curry who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :  
:  
COUNTY OF ORANGE :



On \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned Notary Public in and for said County and State, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA :

COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Daniel H. Young who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Joni Grossman*

Notary Public



STATE OF CALIFORNIA :

COUNTY OF ORANGE :

On November 1, 2010, before me, Joni Grossman, the undersigned Notary Public in and for said County and State, personally appeared Brigid D. McMahon who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

*Joni Grossman*

Notary Public



92-304757

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550 Newport Center Drive  
Newport Beach, CA 92660

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01 3-	15-
31 Add.	\$
Pgs 3-	93-
Loan No	\$
01	
Other	\$
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D.T.T.	\$
PCOR	\$
SMF	\$
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DECLARATION OF SPECIAL LAND USE RESTRICTIONS, RIGHT  
OF FIRST REFUSAL, MORTGAGE LIEN AND OPTION TO REPURCHASE

**TABLE OF CONTENTS**

**DECLARATION OF SPECIAL LAND USE RESTRICTIONS,  
RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND  
OPTION TO REPURCHASE**

<b>ARTICLE 1. GENERAL PROVISIONS.</b>	<b>1</b>
1.1 Grantee's Representations and Warranties.	1
1.2 Statement of Declarant's General Purposes.	2
1.3 Definitions.	2
(a) "Benefitted Property"	2
(b) "Center"	2
(c) "Declarant"	2
(d) "Effective Date"	2
(e) "Final Map"	2
(f) "Grantee"	2
(g) The "Gross Floor Area"	3
<b>ARTICLE 2. SPECIFIC RESTRICTIONS.</b>	<b>3</b>
2.1 Specific Facilities.	3
(a) Improvement and Continued Use.	3
(b) Construction.	3
(c) Commencement and Completion.	3
(d) Grading.	4
(e) Utilities, Streets and Public Improvements.	4
(f) Landscaping.	4
(g) Alterations and Additions.	4
2.2 Declarant's Approvals.	4
(a) Approvals Required.	4
(b) Time for Approvals.	4
(c) As Built Plans.	5
2.3 Grantee's Cost.	5
2.4 Fulfillment of Map Conditions.	5
2.5 Compliance With Law.	5
(a) Grantee to Comply.	5
(b) Approvals of Applications.	5
2.6 Bonds.	6
2.7 Transfers.	6
(a) Transfers Prohibited.	6
(b) Permitted Transfers.	6
2.8 Subordination or Consent to Transfer for Public Financing.	6
(a) Copy of Loan Documents.	7
(b) Title Report.	7
(c) Disbursement Instructions.	7
(d) Request for Notice of Default.	7
2.9 Costs of Regional Development.	7
2.10 MacArthur Boulevard Dedication and Maintenance.	7
<b>ARTICLE 3. GENERAL RESTRICTIONS.</b>	<b>8</b>
3.1 Unapproved Development or Use.	8
3.2 General Maintenance.	8
3.3 Restoration.	8
3.4 Drainage.	8
3.5 Signs.	8
3.6 Prohibited Operations and Uses.	8
3.7 No Subdivision.	9
3.8 Zoning.	9
3.9 Indemnity.	10
<b>ARTICLE 4. DECLARANT'S RIGHT OF FIRST REFUSAL.</b>	<b>10</b>
<b>ARTICLE 5. REMEDIES.</b>	<b>11</b>
5.1 Default and General Remedies.	11
(a) Damages.	11
(b) Equity.	11
5.2 Inspection.	11
5.3 Option to Repurchase the Land.	11
(a) Grant of Option.	11
(b) Exercise of Repurchase Option.	12
(c) Expiration and Quitclaim.	12

2017-4-27

	(d) Repurchase Price. . . . .	12
	(e) Repurchase Escrow Terms. . . . .	13
	(f) Irrevocability. . . . .	13
	(g) Warranties, Plans and Specifications. . . . .	13
	5.4 Arbitration Procedure. . . . .	14
	5.5 Waiver. . . . .	14
	5.6 Costs of Enforcement. . . . .	15
	5.7 Rights of Lenders. . . . .	15
	5.8 Advances. . . . .	15
ARTICLE 6.	GENERAL PROVISIONS. . . . .	15
	6.1 Unavoidable Delay. . . . .	15
	6.2 Continuous Operations. . . . .	16
	6.3 Covenants to Run With the Land; Term. . . . .	16
	(a) Covenants to Run With the Land. . . . .	16
	(b) Term. . . . .	16
	6.4 Assignment by Declarant. . . . .	16
	6.5 Amendments. . . . .	16
	6.6 Release. . . . .	16
	(a) Release by Declarant. . . . .	16
	(b) Not Applicable to Declarant. . . . .	16
	6.7 Notice. . . . .	17
	6.8 Governing Law. . . . .	17
	6.9 Severability. . . . .	17
	6.10 Captions. . . . .	17
	6.11 Entire Agreement. . . . .	17
	6.12 Gender and Number. . . . .	17
	6.13 Time of the Essence. . . . .	17

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**TABLE OF EXHIBITS**

**Property Description..... 1**  
**Specific Facilities..... 2**  
**Subordination Agreement..... 3**

703-1-51

**DECLARATION OF SPECIAL LAND USE RESTRICTIONS,  
RIGHT OF FIRST REFUSAL, MORTGAGE LIEN AND  
OPTION TO REPURCHASE**

THIS DECLARATION ("Declaration") is made as of March 11, 1992, by and between THE IRVINE COMPANY, a Michigan corporation ("Declarant"), and the CITY OF NEWPORT BEACH, a California municipal corporation ("Grantee"), with reference to the following facts:

A. Grantee and Declarant have entered into an Exchange Agreement and Escrow Instructions (the "Exchange Agreement") by which Grantee is acquiring from Declarant the following described real property (the "Exchange Land") situated in the City of Newport Beach, County of Orange, State of California:

The southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of said County.

B. Grantee and Declarant have also entered into a Transfer Agreement and Escrow Instructions by which Grantee is acquiring from Declarant real property adjacent to and contiguous with the Exchange Land which real property is situated in the City of Newport Beach, County of Orange, State of California ("Transfer Land") and is described as follows:

The northeasterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of said County.

C. In connection with such acquisition, Grantee has represented to Declarant that it has acquired the Exchange Land and the Transfer Land as a single parcel described as all of Parcel 2 as shown on side Parcel Map No. 90-361 (the "Land") to improve and use the Land in accordance with the covenants, conditions, rights, restrictions and limitations as particularly set forth herein (collectively referred to as the "Restrictions"), and Declarant is granting the Land to Grantee on the basis of Grantee's continuing compliance with such Restrictions.

NOW, THEREFORE, in consideration of the foregoing (including the conveyance of the Land by Declarant to Grantee), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1. GENERAL PROVISIONS.**

1.1 Grantee's Representations and Warranties. GRANTEE REPRESENTS AND WARRANTS TO DECLARANT THAT GRANTEE IS ACQUIRING THE LAND TO IMPROVE THE SAME IN COMPLIANCE WITH THE RESTRICTIONS SET FORTH HEREIN AND FOR THE PARTICULAR USES AND PURPOSES AUTHORIZED HEREBY. GRANTEE ACKNOWLEDGES, AMONG OTHER THINGS, THAT: (a) GRANTEE IS EXPERIENCED AND KNOWLEDGEABLE IN THE CONSTRUCTION AND OPERATION OF PUBLIC FACILITIES, AND DECLARANT AND GRANTEE DESIRE TO PROVIDE A PUBLIC LIBRARY TO SERVE NEWPORT BEACH; (b) DECLARANT HAS CONVEYED AND GRANTEE HAS ACCEPTED FEE TITLE TO THE LAND FOR USE BY GRANTEE IN ACCORDANCE WITH THE PARTICULAR USES PROVIDED FOR IN THIS DECLARATION; (c) DECLARANT AND GRANTEE DO NOT EXPECT OR INTEND THE LAND TO BE USED AT ANY TIME FOR ANY PURPOSE NOT OTHERWISE PERMITTED HEREIN; (d) THE LIKELIHOOD THAT ANY BREACH WILL OCCUR AND THAT DECLARANT WILL EXERCISE ANY OF ITS RIGHTS AVAILABLE TO REMEDY ANY BREACH OR NONCONFORMITY WITH THE RESTRICTIONS CONTAINED HEREIN IS EXTREMELY REMOTE (e) WITHOUT THE RESTRICTIONS CONTAINED HEREIN, THE PURPOSES AND EXPECTATIONS OF DECLARANT IN THE DEVELOPMENT OF NEWPORT CENTER AND USE OF THE LAND COULD BE DEFEATED; (f) BUT FOR CONVEYANCE OF THE LAND, GRANTEE WOULD BE REQUIRED TO PAY SUBSTANTIAL SUMS TO ACQUIRE LAND FOR ITS USES; (g) DECLARANT AND GRANTEE HAVE ESTABLISHED THE FAIR MARKET VALUE OF THE LAND FOR PURPOSES OF THE OPTION TO REPURCHASE BASED UPON PRESENT ESTIMATES AND HAVE APPLIED ADJUSTMENT FACTORS TO TAKE INTO ACCOUNT SUBSEQUENT CHANGES IN VALUES; (h) DECLARANT AND GRANTEE ACKNOWLEDGE THAT MARKET FORCES COULD MAKE THE PRICE FOR REPURCHASE GREATER OR LESSER THAN THE VALUE ESTABLISHED FOR PURPOSES OF THE OPTION TO REPURCHASE AND HEREBY ASSUME THAT RISK.



BUT FOR SUCH REPRESENTATIONS BY GRANTEE, AND GRANTEE'S UNIQUE SKILLS, EXPERTISE AND SUITABILITY IN CONSTRUCTION AND OPERATION OF THE SPECIFIC FACILITIES DESCRIBED BELOW, DECLARANT WOULD NOT HAVE CONVEYED THE LAND TO GRANTEE, BUT WOULD HAVE RETAINED THE BENEFITS OF OWNERSHIP, INCLUDING FUTURE APPRECIATION OF THE LAND. ON THE BASIS OF SUCH REPRESENTATIONS AND WARRANTIES, DECLARANT HAS CONVEYED THE LAND TO GRANTEE.

1.2 Statement of Declarant's General Purpose. Declarant is the owner of a large and unique landholding, part of which has been developed as a master planned business, recreational, hotel, residential and retail Center, described below, in the City of Newport Beach (the "City"). Among the distinguishing characteristics of this masterplanned Center are the clear delineation of use areas throughout the Center, together with the strict exercise of architectural and occupancy controls over individual construction projects, so as to ensure the harmonious growth and development of the Center and the maximization of the value of Declarant's developed and undeveloped landholdings as well as the Land itself.

In addition to those general concerns, it is vitally important to Declarant that the intensity of development shall be limited on those parcels of property (including the Land) that Declarant from time to time elects to convey to third parties. Should the development limitations imposed by Declarant be exceeded, the roadways and the infrastructure improvements servicing the Center and its environs could be overutilized, resulting in undesirable traffic congestion and imbalances within the Center. Such conditions could in turn adversely affect the ability of Declarant to develop, own, operate, lease or sell its landownings, including without limitation the "Benefitted Property" as defined below.

It is to promote these purposes that this Declaration is made, and it is the intention of the parties that it will be in furtherance of said purposes that the Restrictions, and all other declarations supplemental hereto, will be understood and construed.

1.3 Definitions. As used herein, the following terms shall have the meanings given to them below:

(a) "Benefitted Property" shall mean the real property to which the benefit of the provisions of this Declaration inures, and as of the execution of this Declaration shall mean the real property described on EXHIBIT 1 attached hereto. Declarant shall have the right by a duly recorded amendment hereto executed solely by Declarant to substitute for or add to the Benefitted Property any real property owned by Declarant in the County of Orange, California. The Benefitted Property shall be the dominant tenement and the Land shall be the servient tenement for purposes of this Declaration.

(b) "Center" shall mean the office, hotel, recreational, retail and residential and other use area commonly known as Newport Center (including the shopping center known as Fashion Island) and generally lying within the area enclosed by Pacific Coast Highway, MacArthur Boulevard, San Joaquin Hills Road and Jamboree Road.

(c) "Declarant" shall mean The Irvine Company as identified above and its successors, assigns or designees who shall assume the obligation and to whom The Irvine Company shall specifically assign in writing the right to enforce these Restrictions, subject to the provisions of the Section entitled "Assignment by Declarant."

(d) "Effective Date" of this Declaration shall be the date this Declaration is recorded in the Official Records of Orange County, California.

(e) "Final Map" shall mean the final map covering the Land described as Parcel Map No. 90-361 as shown on a map recorded in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County, California.

(f) "Grantee" shall mean the Grantee identified above and each and every successor, assignee, owner, lessee, licensee or other occupant of the Land, the Specific Facilities, as defined below, or any portion thereof or interest therein, and each of them, during their ownership or occupancy thereof.

However, such term shall not include any person having an interest in all or any portion of the Land or Specific Facilities merely as security for the performance of an obligation. Without limiting the generality of the foregoing, if Grantee leases all or any of its interest in the Land or the Specific Facilities, both the lessor and lessee under such lease shall be responsible as principals (and not sureties) for compliance with all the terms and provisions of this Declaration.

(g) The "Gross Floor Area" shall mean the aggregate number of square feet of floor space on all floor levels of any building, including mezzanines, measured from the interior face of all exterior walls. No deductions or exclusions shall be made by reason of columns, stairs, elevators, escalators, or other interior construction or equipment.

## ARTICLE 2. SPECIFIC RESTRICTIONS.

### 2.1 Specific Facilities.

(a) Improvement and Continued Use. Grantee represents and agrees that Grantee shall cause the Land to be improved only with the specific facilities described on EXHIBIT 2 attached hereto (the "Specific Facilities") and the other improvements described on EXHIBIT 2 attached hereto (the "Other Improvements") and in full accordance with all of the terms of this Declaration, and that Grantee shall cause the Land, the Specific Facilities and the Other Improvements to be used solely for a public library with related parking and no other use, notwithstanding that other uses may be permitted under applicable zoning ordinances, and in full accordance with all of the terms of this Declaration. Use as a public library may include all uses and activities commonly associated with public libraries now and in the future including any form of information storage and retrieval such as video tapes, books, optical and magnetic disks or other technologies for information storage and retrieval. Grantee may charge fees, rentals and late charges for loan or use of information media provided that fees, rentals and charges do not exceed the cost of operation of the public library facility. No portion of the Land, or any improvements thereon, or any portion thereof, shall be used for retail, commercial, quasi-retail or quasi-commercial facilities that materially compete with the retail and commercial facilities in the Center or otherwise improved, developed, used, operated or maintained with any facilities or for any purpose whatsoever except as set forth above unless expressly approved by Declarant, which approval may be granted or withheld by Declarant in its sole discretion.

(b) Construction. Grantee shall improve the Land with the construction and installation of the Specific Facilities and the Other Improvements pursuant to the plans and specifications approved by Declarant pursuant to the Exchange Agreement and the Transfer Agreement. If Grantee desires to make any substantial alterations, modifications, additions or changes to the exterior elements of any plans and specifications previously approved by Declarant, then Grantee shall submit three copies of any Change Order to Declarant for its approval prior to obtaining approval of such Change Order by the governmental entity having jurisdiction and prior to incorporating such Change Order in the work. Declarant shall approve or disapprove such Change Order in accordance with the standards and procedures set forth in Section 2.2. Construction and installation shall be commenced and completed within the time periods set forth in the Section below entitled "Commencement and Completion."

(c) Commencement and Completion. Subject to extensions of time for unavoidable delays as provided under the provision entitled "Unavoidable Delay," (i) within the time period specified on EXHIBIT 2 as the "Commencement Date," measured from and after the Effective Date of this Declaration, Grantee shall have commenced construction of the Specific Facilities on the Land, and (ii) within the time specified on EXHIBIT 2 as the "Completion Date," measured from and after the Effective Date of this Declaration, Grantee shall have completed construction of the Specific Facilities on the Land in a manner consistent with plans and specifications approved in writing by Declarant pursuant to the Agreement. As used herein, the term "commenced construction" shall mean the completion of substantial grading of the Land and the pouring of all or a substantial portion of all of the footings and foundations for the entire Specific Facilities (which need not necessarily include the ground floor slabs). Grantee shall be deemed to have "completed construction" of the Specific Facilities only at such time as Grantee shall have obtained from the appropriate

governmental entity or agency a valid Certificate of Use and Occupancy for the Specific Facilities. Grantee shall commence and complete construction of the Other Improvements prior to or contemporaneously with such Specific Facilities.

(d) Grading. Prior to the commencement of any grading or similar work on the Land, Grantee shall submit to Declarant for its approval two sets of plans and specifications for grading, terracing and filling of the Land and for construction of other similar improvements in, on or about the Land.

(e) Utilities, Streets and Public Improvements.

(i) Grantee shall cause all necessary facilities for water, drainage, sewage, telephone, electricity, cable television, and other utility services for the Land to be constructed and installed thereon and thereto in the manner and within the time required by the Exchange Agreement.

(ii) In addition to any such facilities constituting a part of the Specific Facilities or the Other Improvements, Grantee shall construct and install or pay for construction and installation of all streets, street lights, driveways, curb cuts, entry ways, sidewalks and the like, perimeter walls and fences, irrigation and drainage systems, landscaping, monument, directional or other signs and all like improvements on the Land or between the Land and adjoining sidewalks or the curbs of adjoining streets, as required by the Exchange Agreement.

(f) Landscaping. In addition to the landscaping constituting a part of the Other Improvements, if any, Grantee shall landscape the Land as necessary to create a first class attractive condition, and in a manner consistent with the existing landscaping in the Center. Grantee shall submit to Declarant for its approval two sets of plans and specifications for the landscaping on the Land.

(g) Alterations and Additions. Grantee shall not make any substantial additions, alterations or other modifications ("alterations") of or to the exterior of the Specific Facilities or any additions, alterations or other modifications to the visible portions of the Other Improvements or other improvements from time to time located on the Land, without the prior written approval of Declarant. Declarant shall approve or disapprove of such alterations in accordance with the standards and procedures set forth in Section 2.2. All such alterations shall be subject to the provisions of Article 2 hereof. If Grantee desires to add additional structures to the Land other than those specified in EXHIBIT 2, then Declarant may impose additional restrictions, covenants and obligations as a condition to its approval. As used in this Section, the "exterior" of the Specific Facilities shall mean all roofs, outside walls and facades, structural foundation, entrance doors, windows, outside walkways, ramps and other accessways, and parking facilities.

2.2 Declarant's Approvals.

(a) Approvals Required. Except with respect to plans and specifications approved prior to the recordation of this Declaration, no construction, installation or alteration of the Specific Facilities, the Other Improvements, or any other landscaping, grading or other improvements in, about or on the Land shall be commenced unless the concept, plans and specifications for the exterior elements of such improvements have first received the written approval of Declarant exercising its sole and absolute discretion. The improvements constructed shall comply with the plans and specifications approved by Declarant pursuant to the Agreement or this Declaration. Grantee agrees that the Specific Facilities, the Other Improvements and all other landscaping and improvements on the Land shall be designed, constructed and installed to provide for a library with complementary landscaping and surrounding improvements which, in the sole discretion of Declarant, are in harmony with the plan and design of the Center.

(b) Time for Approvals. Declarant shall approve or disapprove any plans and specifications delivered to Declarant pursuant to this Article as soon as possible but no longer than thirty (30) working days after receipt of two copies thereof accompanied by such drawings, site plans, elevations, artists' conceptions, samples of materials, models, mock-ups, and color samples as from time to time required by Declarant to review such plans and specifications. If

approved by Declarant, such approval shall be endorsed on such plans and specifications and one set of such documents bearing Declarant's approval shall be returned to Grantee within such thirty (30) working day period. If Declarant does not approve such plans and specifications, Declarant shall notify Grantee of its reasons for not approving such plans and specifications and Grantee shall, within forty five (45) working days after receiving notice of Declarant's disapproval, submit new plans and specifications for Declarant's approval. Failure of Declarant to approve or disapprove any plans and specifications within said thirty (30) working day period and Declarant's continued failure to approve or disapprove for five (5) working days after Grantee's written notice to Declarant that Declarant has failed to approve or disapprove as required herein shall be deemed approval thereof. The approval by Declarant of any plans and specifications pursuant to this Section shall only represent Declarant's satisfaction with the plans and specifications as to their general aesthetic elements. Such approval shall not be deemed to constitute any representation or warranty by Declarant as to the adequacy or sufficiency of such plans and specifications for architectural or engineering design or the feasibility or integrity of any grading, landscaping, improvement or construction contemplated thereby for any use or purpose. By approving such plans and specifications, Declarant assumes no liability or responsibility therefor or for any defect in any grading, landscaping, improvements or construction made pursuant thereto.

(c) As Built Plans. Upon completion of the grading, landscaping and construction of improvements, Grantee shall submit to Declarant two "as built" sepias and a Certificate of Compliance executed by Grantee's state licensed consultant (engineer, architect and/or landscape architect). The Certificate of Compliance shall warrant that the completed grading, landscaping and construction conforms to the plans and specifications therefor approved by Declarant.

2.3 Grantee's Cost. The Specific Facilities, the Other Improvements, and all other landscaping, grading and other improvements made or constructed in, about or on the Land as contemplated herein shall be constructed, installed and completed at the sole cost and expense of Grantee and without any cost, liability or expense to Declarant.

2.4 Fulfillment of Map Conditions. Certain map conditions dated November 21, 1991 (copies of which have been provided to Grantee) have been imposed in connection with the approval and recordation of the Final Map. Except as otherwise agreed in writing by Declarant and Grantee, Grantee shall comply with and/or fulfill all of those duties and obligations imposed by such map conditions on the "Applicant" and/or "Subdivider" attributable to Grantee's use or development of the Land, all at Grantee's sole cost and expense.

2.5 Compliance With Law.

(a) Grantee to Comply. The Specific Facilities, the Other Improvements and all other landscaping, grading and other improvements made or constructed in, about or on the Land, and the use thereof, shall comply at all times with all public laws, ordinances and regulations applicable thereto. Without limiting the generality of the foregoing, Grantee shall obtain, at its sole expense, all of its internal and external governmental approvals and permits and approvals of other governmental authorities with jurisdiction which may from time to time be required with respect to the performance contemplated under this Declaration, including, as applicable and without limitation, appropriate zoning, building permits, permits from the California Coastal Commission, operating and business licenses and permits and the like. In obtaining such approvals and permits, Grantee shall prepare, at its sole expense, as necessary and without limitation, all environmental impact reports, engineering studies and the like as necessary.

(b) Approvals of Applications. All requests or applications, together with all supporting documentation, for governmental approvals or permits which require discretionary action by discretionary bodies of Grantee or on the part of another governmental agency, shall be submitted to and coordinated and approved by Declarant prior to placing such approval on the agenda of Grantee's discretionary body or filing with any other governmental agency. Declarant shall have a period of forty five (45) days after receipt to disapprove any requests or applications so submitted by Grantee, and in the event of disapproval shall specify the reasons therefor. Failure to disapprove within such forty five (45)

day period and Declarant's continued failure to approve or disapprove for fifteen (15) days after Grantee's written notice that Declarant has failed to approve or disapprove as required hereunder shall be deemed approval thereof. Grantee shall cause copies of all written communications between Grantee and other governmental agencies processing such requests or applications to be delivered to Declarant within five (5) business days after such communication has been delivered to the addressee.

**2.6 Bonds.** Before the commencement of any of the work required under this Article 2, Grantee shall furnish to Declarant true copies of any and all labor and material bonds and faithful performance bonds, if any, required of Grantee by any governmental agency concerning such work.

**2.7 Transfers.**

(a) **Transfers Prohibited.** For a period of not less than twenty-five (25) years after the Effective Date, Grantee shall not sell, lease, convey, exchange, encumber or otherwise transfer the Land or any portion thereof or facilities thereon, whether by agreement for sale or in any other manner (herein collectively referred to as a "transfer") without first giving Declarant at least sixty (60) days' prior written notice of all terms and conditions of such proposed transfer and the right to either (i) acting reasonably, approve or disapprove such transfer, (ii) exercise its option to repurchase set forth in Section 5.3 below, or (iii) exercise its right of first refusal set forth in Article 4 below. Declarant in its sole discretion may within such sixty (60) day period exercise any such right. Declarant's failure to so act within such sixty (60) day period shall be deemed to constitute approval of the transfer on the terms and conditions proposed by Grantee. Any time after the twenty fifth (25th) anniversary of the Effective Date, Grantee may transfer the Land without Declarant's approval under this Section and without regard to Declarant's option to repurchase set forth in Section 5.3 below or Declarant's right of first refusal set forth in Article 4 below. Grantee hereby acknowledges that it would be reasonable and appropriate for Declarant to disapprove a transfer and exercise its option to repurchase and/or right of first refusal if the proposed transferee is not adequately experienced, knowledgeable and financially capable to own and operate a public library.

(b) **Permitted Transfers.** Notwithstanding the foregoing, (i) Grantee may transfer the Land to any other governmental or quasi-governmental entity or agency which has as its primary purpose maintenance and operation of public libraries provided such entity shall be subject to all of the provisions of this Declaration or (ii) provided Grantee complies with the provisions of Section 2.8 below, Declarant shall consent to a transfer or encumbrance on the Land made in connection with an interim or permanent loan or loans or other form of private or public financing (including without limitation bonds, lease revenue obligations or certificates of participation) ("public obligations") made in good faith and for value by an institutional lender or by a public obligation, the proceeds of which are used only for the costs and expenses of such public obligations and construction of the Specific Facilities and Other Improvements or refinancing of a construction financing in an amount not to exceed the amount outstanding under the construction financing (collectively, "Permitted Transfers").

**2.8 Subordination or Consent to Transfer for Public Financing.** Subject to the following provisions and the provisions of Section 5.7 hereof, Declarant will either consent to a transfer described in Section 2.7(b) above, without exercise of Declarant's right of first refusal contained in Article 4 and the option to repurchase contained in Section 5.3 (collectively, the "Enforcement Rights") or Declarant will subordinate its Enforcement Rights to any encumbrance referred to in Section 2.7(b) immediately above, (which Section 2.7(b) shall continue in effect even after Section 2.7 no longer has any application to this Declaration, for purposes only of describing the transfers and encumbrances to which Declarant will continue to consent or subordinate pursuant to this Declaration) provided that the principal amount of such a loan or public obligation does not, in combination with other loans and/or public obligations secured by or affecting the Land and/or the improvements constructed thereon do not exceed at any time ninety percent (90%) of the fair market value of the Land and any improvements thereon, valued taking into account the restrictions contained in this Declaration, and such loans and/or public obligations are at commercially reasonable interest rates and otherwise contain

commercially reasonable terms and conditions. Grantee will provide Declarant with appraisal information from a reputable M.A.I. appraiser, from the Office of the Assessor of Orange County or from an institutional lender reasonably satisfactory to Declarant to verify that the total loan-to-value rate does not exceed ninety percent (90%). No foreclosure, trustee's sale or deed in lieu of foreclosure with respect to any such permitted encumbrance or exercise of any remedy to enforce a public obligation shall be deemed an "assignment" for purposes of Section 2.7, above. Within ten (10) working days after receipt of the following items, provided the foregoing requirements have been satisfied and provided there is no default under any provision of this Declaration or under any other obligation between Declarant and Grantee relating to the Land, Declarant shall execute, acknowledge and deliver to Grantee a subordination instrument in substantially the form attached hereto as EXHIBIT 3 or a consent to transfer pursuant to issuance of a public obligation:

(a) Copy of Loan Documents. A true and complete copy of all instruments executed by Grantee evidencing or securing the issuance of a public obligation or loan; any lease, mortgage, deed of trust or other interest or right created to enforce payment of any public obligation which affects the Land must not secure or relate to any obligation or indebtedness not related to improvement of the Land, and neither the note, the mortgage, deed of trust, lease nor any other document or instrument pertaining to a loan or public obligation pertaining to the Land shall contain any provision making it a default thereunder if the obligor or any other party defaults in any obligation not related to the acquisition or improvement of the Land;

(b) Title Report. A preliminary title report dated not earlier than fifteen (15) days prior to submittal showing no title exceptions other than those in existence at the time Declarant transferred the Land to Grantee, other utility easements reasonably necessary to serve the Land, and other matters approved by Declarant;

(c) Disbursement Instructions. A copy of the executed financing instruments, loan agreement or other agreement pertaining to the disbursement of funds, which must provide in a manner satisfactory to Declarant that the funds disbursed thereunder will be used only to purchase or improve and benefit the Land, or to refinance original financing made for such purpose (in an amount not to exceed the amount outstanding under the acquisition/construction loan refinanced); and

(d) Request for Notice of Default. Unless public obligations are issued which do not involve a standard mortgage lien to secure performance of a note, a copy of a Request for Notice of Default pursuant to Section 2942b of the California Civil Code prepared for execution and acknowledgment by Declarant which, when recorded at Grantee's expense, will entitle Declarant to the notices prescribed by said Section 2942b. If public obligations are issued, then the documentation for such financing shall require delivery of a notice of any default to Declarant prior to exercise of any remedies available upon such default.

2.9 Costs of Regional Development. Grantee understands that development of the Specific Facilities on the Land will be accomplished in conjunction with development of other real property in the Center by Declarant or other private parties. Grantee hereby agrees to pay its share of infrastructure improvements made on, adjacent and off the situs of the Land. The infrastructure improvements shall include the improvements required to complete the items set forth in EXHIBIT I of the Exchange Agreement.

2.10 MacArthur Boulevard Dedication and Maintenance. Declarant and City agree that a land area along MacArthur Boulevard shall be designated on the Final Map to be used exclusively for future expansion of MacArthur Boulevard. Prior to construction of road and other improvements for such expansion, Grantee shall not use the area designated for any purpose other than installation and maintenance of landscaping. Grantee agrees to install landscaping within such area prior to completion of construction of the Specific Facilities pursuant to plans and specifications approved by Declarant in accordance with the standards and procedures set forth in Section 2.2 and to maintain such area in a first class condition, order and repair at all times prior to commencement of construction for expansion of MacArthur Boulevard.

**ARTICLE 3. GENERAL RESTRICTIONS.**

**3.1 Unapproved Development or Use.** Unless expressly approved by Declarant, which approval may be withheld by Declarant in its sole discretion, Grantee shall not permit the construction, maintenance, operation or use of any structure or improvements on the Land not in full compliance with all requirements of the law, this Declaration and any other covenants, conditions and restrictions from time to time covering the Land.

**3.2 General Maintenance.** Prior to the completion of the Specific Facilities, Grantee shall maintain the Land in a clean, sanitary, orderly and attractive condition, free of weeds, debris and pests. Upon completion of the Specific Facilities as contemplated herein, Grantee shall at all times maintain the Specific Facilities, the Other Improvements and all other improvements from time to time located on the Land, including without limitation the landscaped areas, in first-class condition, order and repair. Grantee shall remove any graffiti on the Improvements, Other Improvements and all other improvements on the Land within three (3) business days after delivery of notice by Declarant.

**3.3 Restoration.** If any building or improvement on the Land, or any part thereof, or any landscaping installed upon the Land, shall be damaged or destroyed by fire or other casualty, Grantee shall at its cost and expense either (i) repair or restore the same according to the original plans thereof or to such modified plans as shall be previously approved in writing by Declarant as provided above, or (ii) demolish such damaged or destroyed improvements and leave the Land (or applicable portion thereof) in a clean and safe condition. Such repair, restoration or demolition shall be commenced within one hundred twenty (120) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year after such work is commenced. The time periods specified in this subparagraph entitled "Restoration" shall be extended as provided in the Section of this Declaration entitled "Unavoidable Delay."

**3.4 Drainage.** Grantee shall not drain or discharge water from the Land (including but not limited to rain water and water from landscape sprinkler systems located on the Land) on to adjacent land except as follows: Grantee shall at all times cause the Land to be graded and drained so as to cause the discharge of all water from the Land onto the public street adjoining the Land or into an established drainage facility, if any, on or adjacent to the Land which has been designed to accommodate the water at the rate discharged.

**3.5 Signs.** Grantee shall not place or use any signs, banners, balloons, displays of other advertising media in, on, about or above the Land or on or in any improvements constructed or placed thereon unless it has first obtained the prior written consent of Declarant as to the number, size, location, height, illumination, color and design of such signs or other media. Declarant shall not unreasonably withhold such approval so long as such signs or other media (a) comply with (i) Declarant's sign program for the Land, the property surrounding the Land and the Benefitted Property, if any, and (ii) the statutes, ordinances or regulations of any governmental entity or agency having jurisdiction thereover including Grantee itself and (b) are in harmony and conformity with the existing or proposed improvements on or in the vicinity of the Land and with Declarant's general aesthetic and architectural plans and criteria for the Land, the Center and the general area in which the Land is located. Except as provided in this Section, no sign, banner, balloon, display or other advertising media which is visible from adjacent land or any public or private street shall be maintained in, on about or above the Land or on or in any improvements constructed or placed thereon.

**3.6 Prohibited Operations and Uses.** No trailer, camper, bus, automobile, motorcycle, boat or other vehicle or equipment ("vehicle") shall be permitted to remain upon the Land overnight after 11:15 p.m. or before 5:00 a.m. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Land or improvements thereon which is obnoxious to or out of harmony with the residential and/or commercial neighborhood in the vicinity of the Land. Included among the uses or operations which are prohibited and are deemed to conflict with the reasonable standards of appearance and maintenance required hereby, are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all inclusive:

- (a) Any public or private nuisance;
- (b) Any vibration, noise, sound or disturbance that is objectionable due to intermittence, heat, frequency, shrillness or loudness;
- (c) Any direct lighting which is not shielded and confined within site boundaries;
- (d) Any emission of odors, noxious, caustic or corrosive matter, whether toxic or nontoxic;
- (e) Any litter, dust, dirt or ash in excessive quantities;
- (f) Any use of a structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding except for such structures maintained on the Land during a period permitted for construction or reconstruction of improvements;
- (g) Any service, maintenance, repair or washing of any vehicle on the Land at any time except for emergency service necessary to move a vehicle to a maintenance facility off of the Land;
- (h) Any raising, breeding or keeping of animals, livestock or poultry of any kind;
- (i) Fuel storage of any type;
- (j) Any accumulation of rubbish, trash or garbage. All refuse containers, air conditioning devices, utility areas, storage areas and machinery and equipment shall be prohibited upon the Land unless screened from view from all adjoining lots and public and private streets; and
- (k) Any exterior radio antenna, television antenna, "C.B." antenna, "satellite dish," microwave transmitting or receiving antenna or other antenna, transmitting or receiving device of any type unless it is screened from view from all adjoining lots and public and private streets.

Any screen required under this Section shall consist of permanent landscaping and/or improvements in harmony with other landscaping and improvements in the Center and approved in writing by Declarant. The provisions of this Section entitled "Prohibited Operations and Uses" shall not in any way supersede the other Restrictions.

**3.7 No Subdivision.** Grantee shall not effect any change or amendment to the Final Map covering the Land or record any further parcel or final map of the Land or any portion thereof or facilities thereon pursuant to the California Subdivision Map Act or any similar law and/or local ordinances adopted pursuant thereto, or file any tentative maps or applications with respect thereto with any governmental agency, nor shall Grantee file or record a condominium plan covering the Land or any portion thereof or any improvements thereon or any applications with respect thereto nor shall Grantee convey a portion consisting of less than all of the Land, unless expressly approved by Declarant which approval may be withheld by Declarant in its sole discretion.

**3.8 Zoning.** Grantee shall not use or develop or attempt to use or develop the Land or any portion thereof for any purpose other than those purposes expressly allowed under the zoning ordinance or ordinances of the governmental entity having zoning jurisdiction over the Land. Additionally, Grantee shall not at any time change or attempt any change in zoning, or obtain or apply for a conditional use permit, zoning variance or exception or other similar approval with respect to the use or development of the Land or any portion thereof not expressly allowed under such existing zoning ordinance, unless expressly approved by Declarant, which approval may be withheld in its sole discretion. Notwithstanding the foregoing, Declarant shall not unreasonably withhold its consent to Grantee's application for such conditional use permit as may be required for development of the Land with the Specific Facilities. Grantee shall obtain Declarant's consent prior to placing such application on the agenda of Grantee's discretionary body or submitting any such application or related documents to any other governmental agency and thereafter will submit copies of all such documents to Declarant for its review and information.



3.9 **Indemnity.** Declarant and Declarant's past and present employees, officers, directors, shareholders, agents and representatives and its and their respective successors and assigns (collectively, the "Indemnitees") shall not be liable for any loss, damage, injury or claim of any kind or character to any person or property arising from or caused by (a) the improvement, development, maintenance, use, lease or other conveyance of the Land or improvements thereon or any portion thereof or interest therein, including, without limitation, any loss, damage, injury or claim arising from or caused by or alleged to arise from or be caused by (i) any use of the Land or any part thereof, (ii) any defect in the design, construction of, or material in any structure or other improvement upon the Land, (iii) any defect in or contamination of soils or in the preparation of soils or in the design and accomplishment of grading, (including the existence of any contaminants or hazardous materials in or on the soil), (iv) any act or omission of Grantee or any of its agents, employees, licensees, invitees, or contractors, (v) any accident or casualty on the Land, (vi) any representations by Grantee or any of its agents or employees, (vii) any violation or alleged violation by Grantee, its employees or agents of any law now or hereafter enacted, (viii) any slope failure or subsurface geologic or groundwater condition, (ix) any work of design, construction, engineering or other work with respect to the Land, (x) any other cause whatsoever in connection with Grantee's use of the Land or Grantee's performances under this Declaration, or any other agreement with Declarant relating to the Land, or (b) the negligence or willful misconduct of Grantee or its employees or agents in the development, construction, grading or other work performed off the Land by Grantee pursuant to this Declaration, or (c) the breach by Grantee of any of its obligations under this Declaration. Furthermore, as a material part of the consideration of this Declaration, Grantee hereby waives on its behalf all claims and demands against Declarant for any such loss, damage, or injury of Grantee, and agrees to indemnify, defend and hold harmless Declarant and its property, and the other Indemnitees from all loss, liability, damage, costs and expenses (including attorneys' fees) arising from or related to any such loss, damage, injury or claim, whether incurred or made by Grantee or any other person(s). The foregoing waiver and indemnity shall apply to a claim or action brought by a private party or by a governmental agency or entity under any statute or common law now or hereinafter in effect and is intended to apply with respect to loss, damage, injury or claim arising before or after the lease, sale or other conveyance of any portion or all of the Land or any improvements thereon. With respect to design, construction methods, materials, locations and other matters for which Declarant has given or will give its approval, recommendation or other direction, the foregoing waiver, indemnity and agreement shall apply irrespective of Declarant's approval, recommendation or other direction. Notwithstanding anything to the contrary above, nothing contained in this Section shall operate to relieve Declarant or the other Indemnitees from any loss, damage, injury or claim ultimately established by a court of competent jurisdiction to have been caused by the sole negligence or willful misconduct of Declarant or the other Indemnitees. Grantee's covenants in this Section arising from or related to acts or occurrences during the time of Grantee's ownership shall survive the lease or other conveyance of all or any part of the Land or improvements thereon and shall be binding on said Grantee (as well as its successors to the Land) until such time as action against the Indemnitees is absolutely barred by an applicable statute of limitations.

**ARTICLE 4. DECLARANT'S RIGHT OF FIRST REFUSAL.** Except with regard to "Permitted Transfers" described in the Section above entitled "Transfers", if, at any time prior to the twenty fifth (25th) anniversary of the Effective Date, Grantee shall determine to transfer all or any part of the Land or the improvements thereon or any interest therein ("Interest"), Grantee shall notify Declarant of the price and the terms on which Grantee will be willing to transfer. If Declarant, within sixty (60) days after receipt of Grantee's notice, indicates in writing its agreement to purchase said Interest for the price and on the terms stated in Grantee's notice, then Grantee shall transfer and convey the Interest to Declarant for the price and on the terms stated in such notice. If Declarant does not indicate its agreement within such sixty (60) day period, then Grantee thereafter shall have the right to transfer and convey the Interest to a third party, but only for a price not less than the price offered to Declarant and on terms not more favorable than those stated in the notice. If Grantee does not so transfer and convey the Interest within one hundred eighty (180) days after Grantee's notice, then any further transactions (including a transaction on the same price and terms previously submitted to

Declarant) shall be deemed a new determination by Grantee to transfer and convey said interest, and the provisions of this Article shall again be applicable.

#### ARTICLE 5. REMEDIES.

5.1 Default and General Remedies. In the event of any breach, violation or failure to perform or satisfy any of the Restrictions which has not been cured within the applicable cure period as set forth below, Declarant at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. Unless a cure period is otherwise specifically designated, a cure period shall commence when written notice is given to Grantee of a violation hereunder and shall end ten (10) days thereafter in the case of a monetary default and thirty (30) days thereafter in the case of a nonmonetary default; provided, however, that if a nonmonetary default is not reasonably susceptible to cure promptly within the thirty (30) day period, then Grantee shall have a reasonable time to cure the same so long as Grantee has commenced such cure promptly within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. To the maximum extent allowable by law, all remedies provided herein or by law or equity shall be cumulative and not exclusive; provided, however, that except as provided in the following sentence in the event Declarant elects to exercise any remedy provided for in Section 5.3 hereof based upon a particular violation of the Restrictions, such remedy shall be Declarant's sole and exclusive remedy for such violation of the Restrictions. Notwithstanding the foregoing, Declarant's remedies for a violation or breach of Section 3.10 (Indemnity) shall be cumulative with and in addition to its remedies for other violations or breaches under this Declaration.

(a) Damages. Declarant may bring a suit for damages for any compensable breach of or noncompliance with any of the Restrictions, or declaratory relief to determine the enforceability of any of the Restrictions.

(b) Equity. It is recognized that a particular or ongoing violation by Grantee of one or more of the foregoing Restrictions may cause Declarant to suffer material injury or damage not compensable in money damages (including, but not limited to, irreparable effects on the type and quality of development on and use of the Benefitted Property or portions thereof and/or frustration of Declarant's purpose for conveyance of the Land to Grantee), and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not Declarant exercises any other remedy set forth herein.

5.2 Inspection. Declarant or its authorized representatives may from time to time, at any reasonable hour, enter upon and inspect the Land, site or any portion thereof or improvements thereon to ascertain compliance with the Restrictions, but without obligation to do so or liability therefor.

5.3 Option to Repurchase the Land. Upon any proposed, attempted or actual "transfer" in violation of the provisions of Section 2.7 above and, in addition to the foregoing remedies described in Section 5.1, upon any violation of the Restrictions itemized in Sections 2.1(a) ("Improvement and Continued Use") or 2.1(c) ("Commencement and Completion"), Declarant, in its sole option and discretion, shall be entitled to repurchase the Land as provided below. (Declarant shall not be entitled to repurchase the Land unless a proposed, attempted or actual transfer in violation of Section 2.7 has been initiated, a violation of the restrictions in violation of 2.1(a) has occurred or construction has not been commenced or completed as required by Section 2.1(c).)

(a) Grant of Option. Grantee hereby grants to Declarant an exclusive option to purchase the Land subject only to:

(i) Current taxes not yet delinquent;

(ii) Matters affecting title existing at the Effective Date of this Declaration, excluding any mortgage, deed of trust or similar instrument to which Declarant has subordinated the Enforcement Rights pursuant to Section 2.8 above;

(iii) Matters affecting title which are created, made, assumed, consented to or requested by Declarant, its successors or assigns, excluding any mortgage, deed of trust, any matter related to issuance of any public obligation or similar instrument to which Declarant has consented without exercise of the Enforcement Rights or to which Declarant has subordinated the Enforcement Rights pursuant to Section 2.6 above;

(iv) Matters shown as printed exceptions in the standard form California Land Title Association owner's policy of title insurance.

(v) Noninterfering easements for utilities used in connection with the improvements constructed on the Land.

(b) Exercise of Repurchase Option. Declarant may exercise its option to repurchase the Land by giving written notice to Grantee of Declarant's election to repurchase within (i) sixty (60) days after receipt of Grantee's notice of proposed "transfer" as provided in Section 2.7 (Transfers) above, (ii) within ninety (90) days after Declarant receives actual notice of any transfer or attempted transfer in violation of any provision in Section 2.7, (iii) within ninety (90) days commencing thirty (30) days after delivery of notice to Grantee of violation of the Restrictions itemized in Section 2.1(a) if such violation has continued unabated, or (iv) within one hundred eighty (180) days of the respective commencement or completion dates (as such dates may be extended pursuant to the terms of this Declaration) in the event of Grantee's violation of Section 2.1(c) above. For purposes of this Section 5.3, Declarant's actual notice shall mean notice to the person to whom notice may be addressed under Section 6.7 of this Declaration, and no other persons. No failure of Declarant to exercise its option upon Grantee's failure to commence construction as provided above shall constitute a waiver of its right to exercise the option upon Grantee's failure to complete construction by the appropriate date, as described above. No failure of Declarant to exercise its option in the event of any proposed, attempted or actual "transfer" (whether approved by Declarant or not) in violation of Section 2.7 above shall constitute a waiver of Declarant's rights to exercise the option upon any such transfer subject to Section 2.7 which might be proposed, attempted or consummated at a later time. No failure of Declarant to deliver a notice of violation of the Restrictions contained in Section 2.1(a) shall constitute a waiver of Declarant's rights to deliver such notice at any time and exercise the option. Rescission of any notice of violation of the Restrictions itemized in Section 2.1(a) prior to the option becoming exercisable, or if such violation is cured, after the option becoming exercisable shall not constitute waiver of Declarant's right to later notify Grantee of a new violation and exercise the option. Any rescission of notice of exercise of this option shall not constitute waiver of Declarant's right to exercise the option again if a later event causes the option to become exercisable.

(c) Expiration and Quitclaim. Unless exercised by Declarant, this option shall expire upon the twenty fifth (25th) anniversary of the Effective Date. After expiration and upon written request therefor by Grantee, Declarant shall execute and deliver to Grantee a quitclaim deed satisfactory to Declarant relinquishing all of its rights under the option to repurchase portion of this Declaration.

(d) Repurchase Price. Declarant's purchase price for the Land upon its exercise of the option provided above, shall be the greater of:

(1) An amount including the following:

[A] The price attributable to the Land equal to the lesser of (A) \$4,400,000 increased or decreased by CPI adjustments which shall be limited to an annualized increase or decrease of five percent (5%) per annum or (B) the appraised fair market value of the Land with the use restricted to the use for which Declarant notifies Grantee at the time of exercise of the option that it intends to use the Land. Declarant shall notify Grantee that it intends to use the Land either for commercial office or retail use at the time of delivery of the notice of exercise or any time thereafter (Failure of Declarant to specify a use in conjunction with delivery of a notice of exercise of the option shall not invalidate or otherwise affect exercise of the option.). The CPI adjustment shall be the percentage increase or decrease in the CPI measured from the month which is two months prior to the Effective Date to the month which is two months before the date of delivery of the notice of exercise.

The CPI shall be the Consumer Price Index for All Urban Consumers Los Angeles-Anaheim-Riverside Metropolitan Area (all items) compiled by the United States Department of Labor, Bureau of Labor Statistics, based upon 1982-84 as 100; provided, however, that if the CPI is modified or changed, then the CPI shall be a converted or substituted index as determined by Declarant. Plus

[B] The fair market value of the Useable Improvements, if any, on the Land at the time the Option is exercised. The "Useable Improvements" shall be limited to those interior areas of buildings which can be used or converted for use as interior commercial or retail rentable space in accordance with the use which Declarant intends to put the Useable Improvements as designated by Declarant. Fair market value of such Useable Improvements shall be determined using an income method of appraisal based upon comparable rents determined on a useable square foot basis for the square footage of the Useable Improvements offset by the cost of any improvements required to convert the use of the building to the use which Declarant notifies Grantee that it intends to put the Usable Improvements. Less

[C] All costs, expenses, interest, fees, advances and other sums required to be paid by Grantee to Declarant hereunder, to the extent not reimbursed to Declarant by Grantee, shall reduce the amount of any repurchase price to be paid by Declarant under the terms of the repurchase option contained in this Declaration. Or

(ii) The unamortized principal amount, plus interest of, and expenses (including without limitation costs to redeem and discharge including any call premium provided that aggregate call premiums shall be limited to five percent (5%) of principal) incurred in connection with, any issue of public obligations where the proceeds have been used only for costs and expenses related to construction of the Specific Facilities on the Land provided that the original principal amount of such public obligations does not exceed \$6,000,000.00 and provided that the amount payable to Grantee under this subparagraph (ii) shall be reduced and offset by any and all funds held for the benefit of any holders of public obligations other than funds held to pay the costs of issuance, if any.

(e) Repurchase Escrow Terms. Within five (5) days after Declarant's exercise of the option as provided above or as soon thereafter as possible, an escrow shall be created at First American Title Insurance Company or another escrow company selected by Declarant to consummate the purchase as specified herein, which escrow shall have a time limit of thirty (30) days extended by any period necessary to arbitrate any determination of fair market value as provided in Section 5.4 below. Said escrow shall be subject only to approval by Declarant of a then current preliminary title report. Any exceptions shown thereon created on or after the Effective Date hereof, and disapproved by written notice to Grantee through escrow, shall be removed by Grantee at its sole expense at or prior to closing of escrow. In the event that the Land or any portion thereof is encumbered by a mortgage or deed of trust, Declarant may unilaterally instruct the escrow agent to satisfy the indebtedness secured thereby out of the proceeds payable to Grantee through the foregoing escrow. Any additional amount necessary to satisfy such indebtedness shall be paid by Grantee. Grantee and Declarant shall each pay one-half of the escrow fees. Grantee shall pay for documentary tax stamps, for recording the deed, and for a California Land Title Association standard form owner's coverage policy of title insurance in the amount of the purchase price showing title to the Land vested in Declarant or its assigns free and clear of all liens, encumbrances or other title exceptions other than those set forth in this Declaration. Any other costs or expense shall be allocated between the parties in the manner customary in Orange County, California.

(f) Irrevocability. The option created hereby shall be irrevocable by Grantee, and shall be binding upon the representatives, successors and assigns of Grantee.

(g) Warranties, Plans and Specifications. In the event Declarant reacquires all or any portion of the Land, the Specific Facilities or the Other Improvements under this Section 5.3, Grantee shall assign and transfer to Declarant for no additional consideration, all warranties, plans and specifications relating to the Usable Improvements and any other improvements transferred by Grantee to Declarant hereunder.

5.4 Arbitration Procedure. If Declarant and Grantee are not able to agree to the fair market value of the Land or the Usable Improvements within thirty (30) days after the date Declarant gives Grantee notice of exercise of the option, then the following arbitration procedure shall apply:

[A] Declarant shall within an additional thirty (30) days, at Declarant's cost, deliver to Grantee a written appraisal of the applicable highest fair market value with which Declarant agrees, prepared by an independent qualified appraiser ("Declarant's Appraisal"). The term "independent qualified appraiser" as used in this Section shall mean a professional independent appraiser who is a Member of the American Institute of Real Estate Appraisers (R.M. or M.A.I.), the Society of Real Estate Appraisers (S.R.A., S.R.P.A., or S.R.E.A.), the American Society of Appraisers (member or senior member A.S.A.), or another recognized association of appraisers, or a similar association of real estate appraisers that has adopted rules and regulations governing the professional conduct and ethics of its members requiring independent appraisals without bias to any party or to any result, or has such other education and experience so as to be considered qualified by both parties.

[B] If Grantee does not agree with Declarant's Appraisal, Grantee shall notify Declarant in writing of such disagreement in writing within ten (10) days after receipt of Declarant's Appraisal. Within thirty (30) days of such notice, Grantee shall at its cost deliver to Declarant a written appraisal of the applicable highest market value with which Grantee agrees, prepared by an independent qualified appraiser ("Grantee's Appraisal"). If Grantee fails to deliver Grantee's Appraisal within the time provided, or if Grantee's Appraisal of fair market value is lower than or equal to that contained in Declarant's Appraisal, then Declarant's Appraisal shall constitute the final and binding determination of the applicable fair market value.

[C] If Grantee's Appraisal is delivered to Declarant within the time provided and is higher, than Declarant's Appraisal, and if Declarant and Grantee cannot then agree as to the applicable highest fair market value within ten (10) days after delivery of Grantee's Appraisal to Declarant, then Declarant and Grantee shall within ten (10) days thereafter mutually agree on a third independent qualified appraiser acceptable to them to make an independent determination of the applicable highest fair market value (the "Final Appraisal"). Such Final Appraisal shall be delivered to Declarant and Grantee within thirty (30) days of the selection of the third appraiser. If Declarant and Grantee do not agree on a third independent qualified appraiser acceptable to them as specified above, then such third appraiser shall be appointed in accordance with the provisions of California Code of Civil Procedure Section 1281.6, or any successor statute, and in such event the independent determination of the highest fair market value made by the third appraiser so appointed shall be the "Final Appraisal." If the third appraiser must be appointed pursuant to the provisions of the California Code of Civil Procedure Section 1281.6, or any successor statute, Declarant shall file a petition to appoint the third appraiser with the Superior Court of Orange County, California ("Court"), and shall set the hearing on the petition on the earliest date permitted by the Court's calendar and by the applicable notice period required by law. Declarant and Grantee shall share equally the cost of the Final Appraisal. If the Final Appraisal states a fair market value between that of Declarant's Appraisal and Grantee's Appraisal, the Final Appraisal shall be the final and binding determination of the applicable market value. If the fair market value established in the Final Appraisal is higher than (1) the fair market value established in Grantee's Appraisal or is lower than (2) the fair market value established in Declarant's Appraisal, or equal to either, then the final determination of the applicable fair market value shall be (1) or (2) depending upon which one is equal or closer to the fair market value established in the Final Appraisal.

[D] The procedure set forth above for determining the applicable market value shall be the exclusive procedure therefor and shall be final, binding and nonappealable unless expressly waived by both parties in writing. It is the responsibility of Grantee to ensure that this procedure for determining highest fair market value is instituted in sufficient time to satisfy any commitments, agreements or needs of Grantee.

5.5 Waiver. No Waiver by Declarant of a breach of any of the Restrictions by Grantee and no delay or failure to enforce any of the

Restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of the Restrictions. No waiver of any breach or default of Grantee hereunder shall be implied from any omission by Declarant to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Declarant to or of any act by Grantee requiring Declarant's consent or approval shall not be deemed to waive or render unnecessary Declarant's consent or approval to or of any subsequent similar acts by Grantee.

**5.6 Costs of Enforcement.** In the event any legal or equitable action or proceeding shall be instituted between Declarant and Grantee to enforce any provision of this Declaration, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

**5.7 Rights of Lenders.** No breach or violation of the Restrictions shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of the Land or any portion thereof; provided, however, that this Declaration and all provisions hereof shall be binding upon and effective against any subsequent owner or other occupant of the Land or portion thereof whose title is acquired by foreclosure, trustee's sale or deed in lieu of foreclosure but (a) such subsequent owner shall have a reasonable time after acquiring title in which to cure any violations or correct and change any facts giving rise to Declarant's rights under this Declaration occurring prior to such transfer of title and which are reasonably capable of being cured or changed provided, that such subsequent owner diligently acts to effect such cure or change (and in the event of such diligent and timely cure, such subsequent owner shall have no further liability in connection with such prior violation or the continued existence of such violation until such cure is completed), and (b) Sections 5.1(a) (Damages) and 5.3 (Option to Repurchase the Land) shall not be applicable as to such subsequent owner with regard to any noncurable default occurring prior to the time such subsequent owner acquired title. Notwithstanding the foregoing, any such subsequent owner shall be required to use the Land in accordance with the restrictions set forth in Section 2.1(a) and diligently complete construction of any Specific Facilities and Other Improvements which are incomplete on the date such subsequent owner acquires title, all subject to the requirements contained in this Declaration, except the time periods referred to in Section 2.1(c) shall be reasonably extended. For purposes of this Section, the construction or installation of any improvement in violation of the requirements of this Declaration shall be deemed "curable" so long as reconstruction, repair or replacement in a manner consistent with the requirements of this Declaration is physically and legally possible (without respect to cost).

**5.8 Advances.** Declarant shall be entitled to advance any sums Declarant in its sole discretion deems necessary to protect and preserve the security for its rights and interest under this Declaration (including but not limited to sums for completion of construction of the Specific Facilities or any offsite improvements, any property taxes or assessments, insurance premiums, or amounts secured or represented by encumbrances or liens or other charges on any portion of the Land which appear to be prior to Declarant's rights and interest under this Declaration), all of which advances together with interest at the maximum contract rate then permitted by law shall be paid to Declarant upon demand.

#### ARTICLE 6. GENERAL PROVISIONS.

**6.1 Unavoidable Delay.** Any prevention, delay or stoppage in the work of building the Specific Facilities, the Other Improvements and any other related improvements or other work as provided for in this Declaration caused by acts of God, war, inability to obtain labor or materials or reasonable substitutes therefor, or other similar matters or causes beyond the reasonable control of Grantee shall extend the time within which this Declaration requires certain acts to be performed for a period or periods equal to any period of such prevention, delay or stoppage, but not to exceed in the aggregate one year; provided, however, that nothing in this Section shall excuse the prompt payment of any and all amounts due from Grantee to Declarant as required herein or the performance of any act rendered difficult because of the financial condition of

Grantee or because of any inability of Grantee to obtain funding from any source. Without limiting the generality of the foregoing, in no event shall Grantee's inability to obtain construction or permanent financing for development of the Land, or a portion thereof, constitute an unavoidable delay pursuant to this Section. Furthermore, in no event shall any extension of any period of time be deemed to have occurred unless Grantee shall have given written notice to Declarant within fifteen (15) days following any such delay, setting forth the facts giving rise to such extension; and provided further that the period of time for exercise of Declarant's rights shall be commensurately extended.

**6.2 Continuous Operations.** Grantee shall proceed continuously and diligently in accordance with the terms and conditions of this Declaration. In the event Grantee does not proceed continuously and diligently, such failure to so proceed may, at the option of Declarant, be considered an event of default herein, except as such failure is excused by reason of any unavoidable delay as set forth in the Section hereof entitled "Unavoidable Delay."

**6.3 Covenants to Run With the Land: Term.**

(a) **Covenants to Run With the Land.** The Land shall be held, improved, developed, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the Restrictions set forth in this Declaration. The Restrictions are for the benefit of the Benefitted Property and are intended and shall be construed as covenants and conditions running with and binding the Land and equitable servitudes upon the Land and every part thereof. Furthermore, all and each of the Restrictions shall be binding upon and burden all persons having or acquiring any right, title or interest in the Land, or any part thereof, and their successors and assigns, and shall inure to the benefit of the Benefitted Property and the owners of the Benefitted Property, their successors and assigns, and shall be enforceable by Declarant and its successors and assigns, all upon the terms, provisions and conditions set forth herein.

(b) **Term.** All of the terms and provisions set forth in this Declaration shall continue in full force and effect in perpetuity, except that Declarant's "Enforcement Rights" (as described in Section 2.8 above) shall terminate twenty-five (25) years from the Effective Date hereof. (The provisions of this Declaration which shall survive in perpetuity shall include, without limitation Article 1, Sections 2.1 through 2.6, inclusive, 2.9, 2.10, Article 3, Sections 5.1, 5.2, 5.5 through 5.8, inclusive, and this Article 6.)

**6.4 Assignment by Declarant.** Declarant may assign any of its rights and powers under this Declaration to any fee owner of any portion of the Benefitted Property, so long as such person or entity in writing agrees to assume the duties of Declarant pertaining to the particular rights and powers assigned. Upon the recordation of such writing accepting such assignment and assuming such duties, such person or entity shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Without limiting the generality of the foregoing, Declarant may make such assignment as to the entire Land or to any portion thereof. Unless specifically assigned in writing as stated in this paragraph, Declarant alone shall have the right to enforce the Restrictions and the other provisions of this Declaration or to recover damages or other amounts for violation of the Restrictions or breach of Grantee's duties hereunder.

**6.5 Amendments.** Except as provided in this Declaration concerning (a) substitution of other real property as the Benefitted Property, (b) release of any portion or all of the Land from this Declaration, (c) reacquisition of the Land by Declarant and (d) assignment by Declarant of its rights under this Declaration, this Declaration may be terminated, extended or amended only by a writing executed by Declarant and Grantee and recorded against the Land.

**6.6 Release.**

(a) **Release by Declarant.** Declarant may release any portion of the Land from this Declaration at any time and for any reason without the approval of Grantee.

(b) **Not Applicable to Declarant.** Notwithstanding anything herein contained to the contrary, if Declarant reacquires title to the Land or any portion thereof at any time after the date hereof and record(s) a notice of

termination of these Restrictions in the Office of the County Recorder of Orange County, California, these Restrictions shall cease and terminate and be of no further force or effect as to Declarant and such property, effective as of the date of such recordation.

6.7 Notice. All notices, consents, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when personally served or forty eight (48) hours after being sent by United States registered mail, return receipt requested, postage prepared, to the other party at the following respective addresses:

DECLARANT: THE IRVINE COMPANY  
c/o IRVINE LAND MANAGEMENT COMPANY  
Post Office Box 1  
Newport Beach, California 92658-8904  
Attention: President/ILMC

GRANTEE: City of Newport Beach  
3300 Newport Boulevard  
Post Office Box 1768  
Newport Beach, CA 92659-1768

or at such other address as Declarant or Grantee may designate to the other in writing in accordance with the provision of this Section.

6.8 Governing Law. This Declaration shall be governed by and construed under the laws of the State of California.

6.9 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against any public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against any public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the full extent permitted by law.

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

6.11 Entire Agreement. This Declaration, including Exhibits attached hereto which are incorporated herein by this reference, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The forgoing sentence shall in no way affect the validity of the Agreement pursuant to which Grantee acquired the Land or any instruments executed in connection therewith.

6.12 Gender and Number. In this Declaration (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

6.13 Time of the Essence. Time is of the essence of each provision of this Declaration in which time is an element.



IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date written below.

"DECLARANT"

THE IRVINE COMPANY,  
a Michigan corporation

By: T. Patch Smith  
Its: Vice President

By: [Signature]  
Its: Assistant Secretary

"GRANTEE"

CITY OF NEWPORT BEACH,  
a California municipal corporation

By: [Signature]  
Its: Mayor

ATTEST:

By: Wanda E. Reggio  
Its: City Clerk



APPROVAL RECOMMENDED

By: [Signature]  
Its: City Manager

APPROVED AS TO FORM:

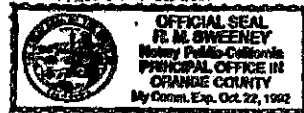
By: [Signature]  
Its: City Attorney

STATE OF CALIFORNIA )  
                                  ) ss  
COUNTY OF Orange )

On this 20th day of March in the year 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared T. Patrick Smith and Peter R. Fougere, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Assistant Secretary respectively, on behalf of THE IRVINE COMPANY and acknowledged to me that said corporation executed it.

WITNESS my hand and official seal.

R. M. Sweeney  
Notary Public in and for said State



100774007

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF ORANGE )

On March 19, 1992, before me, the undersigned, a Notary Public in and for the State, personally appeared Phil Sansone, known to me to be the Mayor, Robert L. Flynn, known to me to be the City Manager, and Fanda E. Raggio, known to me to be the City Clerk, on behalf of the CITY OF NEWPORT BEACH, which executed the within instrument pursuant to governing law and a resolution of its board of directors and acknowledge to me that the CITY OF NEWPORT BEACH executed it.

WITNESS my hand and official seal.



*Shaina Lynn Oyler*  
Notary Public in and for said State

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REC-3-1-1977

**EXHIBIT 1**  
**To Declaration of Special Restrictions**  
**Legal Description of "Benefitted Property"**

EXHIBIT "1"

LEGAL DESCRIPTION

BENEFITED PROPERTY FOR THE  
CITY OF NEWPORT BEACH LIBRARY SITE

Parcel 1 (500 and 550 Newport Center Drive and Adjacent Land)

That portion of Block 93 of Irvine's Subdivision in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 1, Page 88 of Miscellaneous Records Maps in the Office of the County Recorder of said Orange County, described as follows:

BEGINNING at the easterly terminus of that certain course shown as having a bearing and length of "South 80°14'38" East 91.45 feet" in the northerly right-of-way line of San Nicolas Drive on a map of Tract No. 6015, filed in Book 239, Pages 28 through 41 of Miscellaneous Maps in said Office of the County Recorder; thence along said right line and along the easterly right-of-way line of Newport Center Drive East, the southerly right-of-way line of Santa Rosa Drive and the southwesterly right-of-way line of San Joaquin Hills Road, all as shown on said map of Tract No. 6015 through the following courses: North 80°14'38" West 91.45 feet to the beginning of a tangent curve concave northeasterly and having a radius of 25.00 feet; thence along said curve westerly and northwesterly 38.16 feet through a central angle of 87°26'49" to a point of reverse curvature with a curve concave westerly and having a radius of 1670.00 feet, a radial line of said curve from said point bears North 82°47'49" West; thence along said curve northerly 472.13 feet through a central angle of 16°11'54" to a point of reverse curvature with a curve concave southeasterly and having a radius of 25.00 feet, a radial line of said curve from said point bears North 81°00'17" East; thence along said curve northerly and northeasterly 38.16 feet through a central angle of 87°26'49"; thence tangent from said curve North 78°27'06" East 69.97 feet to the beginning of a tangent curve concave northwesterly and having a radius of 825.50 feet; thence along said curve northeasterly 444.81 feet through a central angle of 30°52'23"; thence tangent from said curve North 47°34'43" East 2.20 feet to the beginning of a tangent curve concave southerly and having a radius of 25.00 feet; thence along said curve northeasterly and easterly 38.96 feet through a central angle of 89°17'26" to a point of reverse curvature with a curve concave northeasterly and having a radius of 6072.50 feet, a radial line of said curve from said point bears North 46°52'09" East; thence along said curve southeasterly 329.29 feet through a central angle of 3°06'25"; thence tangent from said curve South 46°14'16" East 31.81 feet to the northerly corner of Parcel 1 as shown on a map filed in Book 13, Page 41 of Parcel Maps in said Office of the County Recorder; thence leaving said southwesterly right-of-way line of San Joaquin Hills Road and along the boundary of said Parcel 1 the following courses: South 44°06'14" West 140.00 feet; thence south 45°53'46" East 183.00 feet to the beginning of a tangent curve concave northerly and having a radius of 25.00 feet; thence along said curve southeasterly and easterly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve North 44°06'14" East 103.60 feet to the beginning of a tangent curve concave northwesterly and having a radius of 25.00 feet; thence along said curve northeasterly 13.23 feet through a central angle of 30°19'01" to a non-tangent intersection with said southwesterly right-of-way of San Joaquin Hills Road; thence leaving said boundary and along said right-of-way line South 46°14'16" East 48.72 feet to the northerly corner of Parcel 1 as shown on a map filed in Book 21, Page 18 of Parcel Maps in said Office of the county Recorder, said corner being a point in a non-tangent curve concave southeasterly and having a radius of 25.00 feet, a radial line of said curve from said point bears South 16°06'05" East; thence along the boundary of said Parcel 1 the following courses: along said curve southwesterly 13.00 feet through a central angle of 29°47'41"; thence tangent from said curve South 44°06'14" West 104.09 feet to the beginning of a tangent curve concave easterly and having a radius of 25.00 feet; thence along said curve southwesterly and southerly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve South 45°53'46" East 186.00 feet to the westerly corner of Parcel 1 as shown on a map filed in Book 54, Page 23 of Parcel Maps in said Office of County Recorder; thence leaving the boundary of Parcel 1 as shown

on said map filed in Book 21, Page 18 of Parcel Maps and along the boundary of Parcel 1 as shown on said map filed in Book 54, Page 23 of Parcel Maps South 45°53'46" East 68.09 feet to the beginning of a tangent curve concave westerly and having a radius of 40.00 feet; thence continuing along said boundary and said curve southeasterly 36.39 feet through a central angle of 52°07'23" to the northwesterly corner of Parcel 3 as shown on Parcel Map No. 84-706 filed in Book 192, Pages 1 and 2 of Parcel Maps in said Office of the County Recorder, a radial line of said curve from said corner bears North 83°46'23" West; thence along the boundary of said Parcel 3 and Parcel 2 as shown on said Parcel Map the following courses: continuing along said curve southerly 26.44 feet through a central angle of 37°52'37"; thence tangent from said curve South 44°06'14" West 289.00 feet to the northeasterly corner of Parcel 1 as shown on a map filed in Book 27, Page 43 of Parcel Maps in said Office of the County Recorder, said corner being the beginning of a curve tangent to last said course, concave northerly and having a radius of 40.00 feet; thence leaving the boundary of said Parcel 2 and along the boundary of said Parcel 1 the following courses: along said curve southwesterly and westerly 62.83 feet through a central angle of 90°00'00"; thence tangent from said curve North 45°53'46" West 14.11 feet to the beginning of a tangent curve concave southerly and having a radius of 25.00 feet; thence along said curve northwesterly and westerly 39.27 feet through a central angle of 90°00'00"; thence tangent from said curve South 44°06'14" West 99.44 feet to the beginning of a tangent curve concave southeasterly and having a radius of 25.00 feet; thence along said curve southwesterly 13.46 feet to a non-tangent intersection with the northeasterly right-of-way line of said San Nicolas Drive as described in a Grant of Easement to the City of Newport Beach recorded in Book 8987, Page 836 of Official Records in said Office of the County Recorder; thence leaving said boundary of Parcel 1 and along said right-of-way line as described in said Grant of Easement and as shown on said map of Tract No. 6015 the following courses: North 46°44'00" West 92.34 feet to the beginning of a tangent curve concave southwesterly and having a radius of 950.50 feet; thence along said curve northwesterly 555.92 feet through a central angle of 33°30'38" to the POINT OF BEGINNING.

**Parcel 2 (Fashion Island Shopping Center)**

That portion of Tract 6015, in the City of Newport Beach, County of Orange, State of California, as per map filed in Book 239, pages 28 through 41, Miscellaneous Maps, records of said County, lying within the following described boundary:

Commencing at the center line intersection of Santa Rosa Drive with Newport Center Drive East as shown on said map; thence south 78°27'06" West 48.00 feet along the Westerly prolongation of the center line of said Santa Rosa Drive to a point on a non-tangent curve concave, Westerly and having a radius of 1557.00 feet, said point being the True Point of Beginning, a radial to said point bears North 78°27'06" East, said curve being concentric with the center line of said Newport Center Drive East; thence Southerly 1314.59 feet along said curve through an angle of 48°22'31" to the beginning of a compound curve concave Northerly and having a radius of 757.00 feet; thence Westerly 1464.87 feet along said curve through an angle of 110°52'24" to the beginning of a compound curve concave Easterly and having a radius of 1757.00 feet; thence Northerly 1248.07 feet along said curve through an angle of 40°41'58" to the beginning of a compound curve concave Southerly and having a radius of 897.00 feet; thence Easterly 2438.09 feet along said curve through an angle of 155°43'57" to the beginning of a compound curve concave Westerly and having a radius of 1557.00 feet; thence Southerly 117.38 feet along said curve through an angle of 4°19'10" to the True Point of Beginning.

7-25-75

**EXHIBIT 2**  
**To Declaration of Special Restrictions**

**Requirements for Specific Facilities**

7-5-7-4-004

**REQUIREMENTS FOR SPECIFIC FACILITIES**

**Description of Specific Facilities:**

A free public library and related driveways, accessways and landscaping.

**Permitted Use:**

Public library and related parking of private passenger automobiles during the hours from 6:00 a.m. to 11:30 p.m. daily.

**Maximum No. of Buildings:** 1

**Minimum Gross Floor Area:** 10,000 square feet\*

**Maximum Gross Floor Area:** 65,000 square feet\*

**Maximum Floor Area Ratio:** 50 percent

**Commencement Date:** 12 months from Effective Date

**Completion Date:** 36 months from Effective Date

\* By setting forth any required minimum or maximum gross foot area above, Declarant does not thereby represent or warrant that Buyer shall be able to develop the Land for such density.

**REQUIREMENTS FOR OTHER IMPROVEMENTS**

Those improvements required by Exhibit I to the Exchange Agreement.

ADONIZO.DFL

Special Restrictions  
Exhibit 2  
Specific Facilities  
March 11, 1992





When Recorded Mail To:

THE IRVINE COMPANY  
550 Newport Center Drive  
Newport Beach, CA 92660

Attention: President/IIMC

Space above this line for Recorder's use A.P. No. \_\_\_\_\_

#### SUBORDINATION AGREEMENT

NOTICE; THIS SUBORDINATION AGREEMENT RESULTS IN YOUR RIGHTS AND INTERESTS AND YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

#### I. PARTIES AND DATE.

This Subordination Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, by the CITY OF NEWPORT BEACH, a California municipal corporation ("Owner"), owner of the "Land" (as defined below), and THE IRVINE COMPANY, a Michigan corporation ("TIC"), declarant under the Declaration (defined below).

#### II. ACKNOWLEDGMENTS

Owner has executed a Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase (the "Declaration") dated \_\_\_\_\_, 19\_\_\_, and recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of Orange County California as an encumbrance on the title of the real property described as:

Parcel \_\_\_ in the City of Newport Beach, County of Orange, State of California, as shown on a parcel map filed in Book \_\_\_, Pages \_\_\_ to \_\_\_ inclusive, of Parcel Maps, in the office of the County Recorder of Orange County (the "Land").

Owner has executed, or is about to execute, certain loan documents ("Loan Documents") dated \_\_\_\_\_, 19\_\_\_, with or in favor of \_\_\_\_\_ ("Lender") to obtain and evidence a loan (the "Loan") from Lender in the amount of \$\_\_\_\_\_. The Loan Documents have all been delivered to TIC and include, without limitation, a Deed of Trust (the "Deed of Trust") to be recorded concurrently with this Agreement as security for the obligations evidenced by the Loan Documents. Lender is incurring its obligations in connection with the Loan in good faith and for value pursuant to an agreement with Owner, on which TIC is relying and which is memorialized in the Loan Documents, that the proceeds of the Loan will be expended solely for financing or refinancing of construction of certain improvements on the Land, the plans and specifications for which have been, or will, prior to the commencement of construction, be approved by TIC, all in accordance with the provisions of the Loan Documents, and for no other purpose unless approved by TIC in writing in its sole discretion.

A condition precedent to Lender's agreement to make the Loan is that the Deed of Trust shall be and remain at all times a lien or charge upon the Land prior and superior to certain enforcement rights and remedies of TIC under the Declaration.

TIC and Owner agree that it is to their mutual benefit that Lender make the Loan to Owner. This Agreement is made in consideration of the mutual benefits

Special Restrictions  
Exhibit 3  
Subordination Agreement/March 11, 1982

1004757

to TIC and Owner resulting from the Loan and for other valuable consideration, the receipt and sufficiency of which is acknowledged by TIC and Owner.

**III. SUBORDINATION.**

The Deed of Trust and any renewals or extensions thereof shall be and remain at all times a lien or charge on the Land prior and superior to Declarant's right of first refusal contained in Article 4 of the Declaration and the option to repurchase contained in Section 5.3 of the Declaration, (collectively, the "Enforcement Rights"); provided, however, that (1) the Declaration (including the Enforcement Rights) shall be binding upon and effective against any subsequent owner or other occupant of the Land or any portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise as provided in Section 5.7 of the Declaration, and (2) any subsequent owner shall have the cure rights as provided in Section 5.7. Notwithstanding anything to the contrary contained in this Agreement, Lender's foreclosure or similar or related proceeding under the Deed of Trust shall not extinguish the Declaration or TIC's Enforcement Rights, all of which shall survive such proceeding and shall be binding upon any subsequent owner acquiring title from Lender as stated above.

**IV. MISCELLANEOUS**

**A. Entire Agreement.**

This Agreement shall be the whole and only agreement between TIC and Owner with regard to the subordination of TIC's Enforcement Rights and remedies under the Declaration to the lien or charge of the Deed of Trust.

**B. Attorneys' Fees.**

The prevailing party in any litigation respecting this Agreement shall be entitled to reimbursement of attorney's fees and costs, whether or not taxable, incurred in the litigation.

"TIC"

THE IRVINE COMPANY,  
a Michigan corporation

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

"OWNER"

CITY OF NEWPORT BEACH

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

Its: Mayor

ATTEST:

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

Its:

APPROVED AS TO FORM:

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

Its: City Attorney

1007-7-51

STATE OF CALIFORNIA )  
 ) .ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as \_\_\_\_\_ and \_\_\_\_\_ on behalf of THE IRVINE COMPANY, a Michigan corporation, and acknowledged to me that said corporation executed it.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) .ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Mayor, on behalf of City of Newport Beach, which executed the within instrument pursuant to governing law and a resolution of its board of directors and acknowledged to me that the City of Newport Beach executed it.

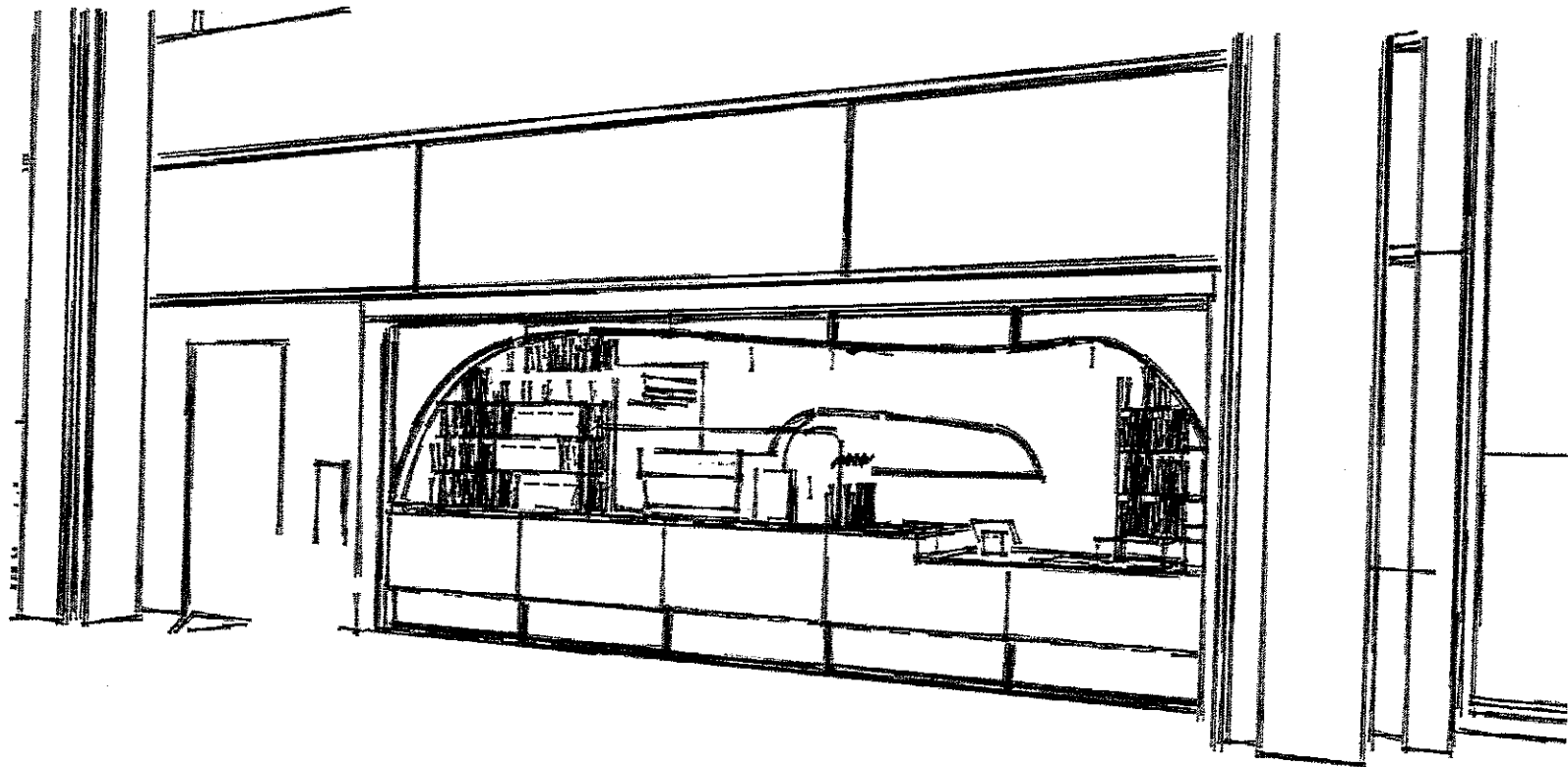
WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

NEWPORT BEACH

**EXHIBIT "G"**  
**CONCESSIONAIRE IMPROVEMENTS**

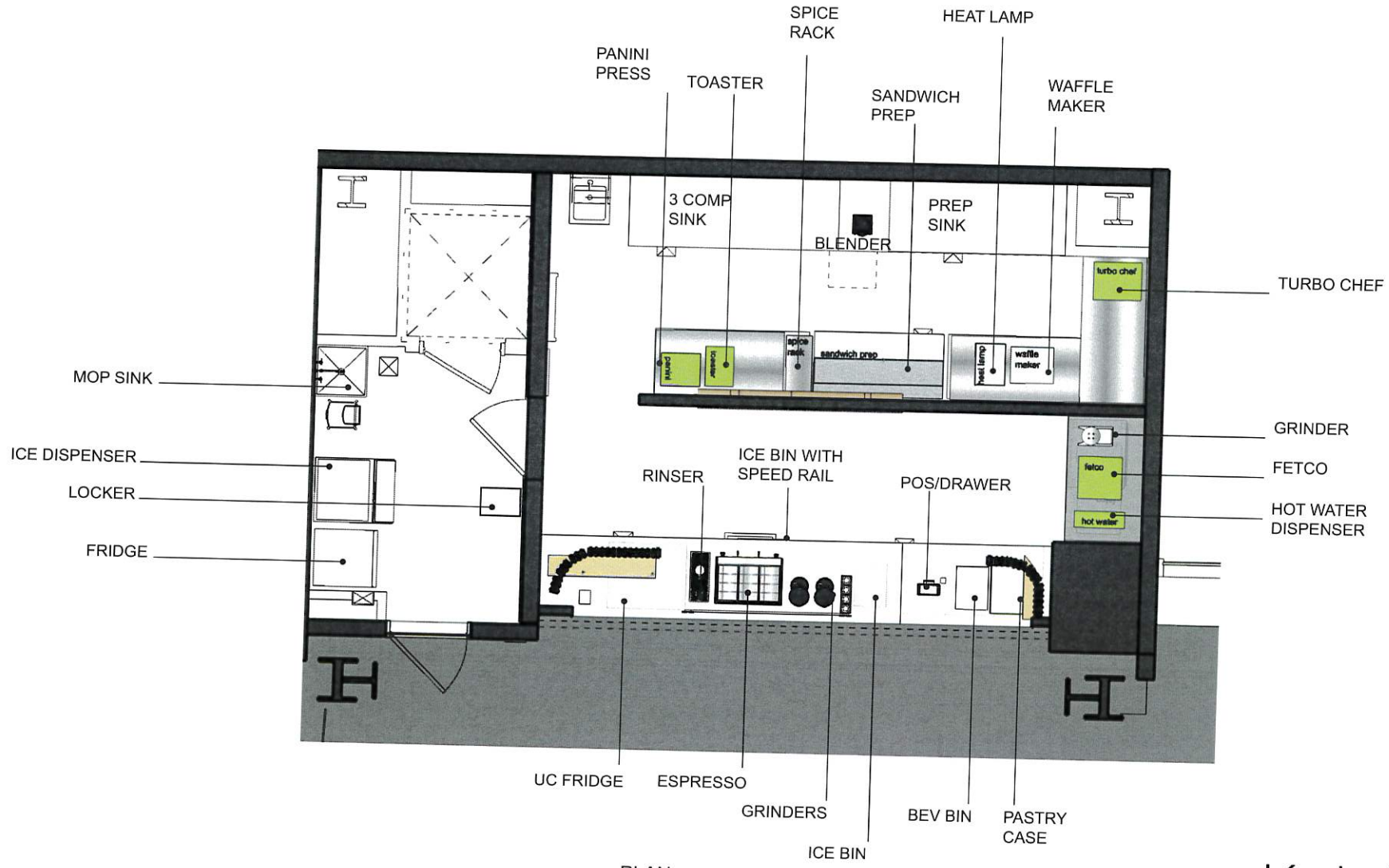
Exhibit G



KIT @ the Library - Design Development Presentation

**fit**  
**wrk**  
**shp** studio

K I T

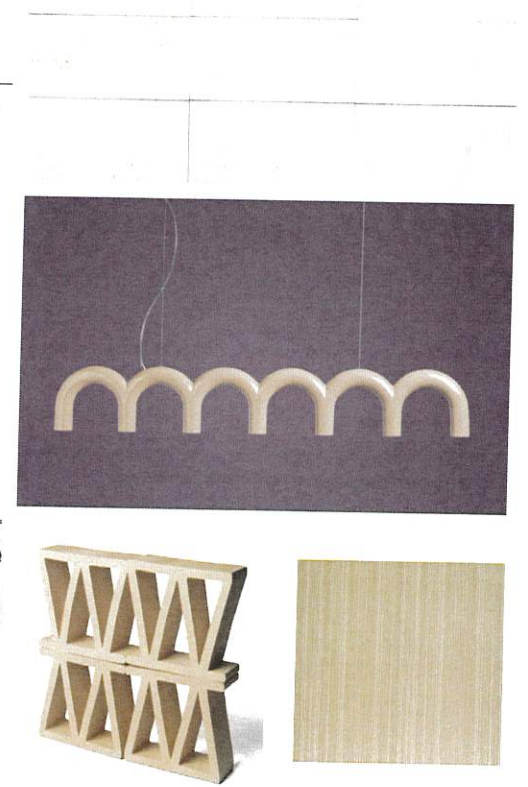


PLAN

# K I T





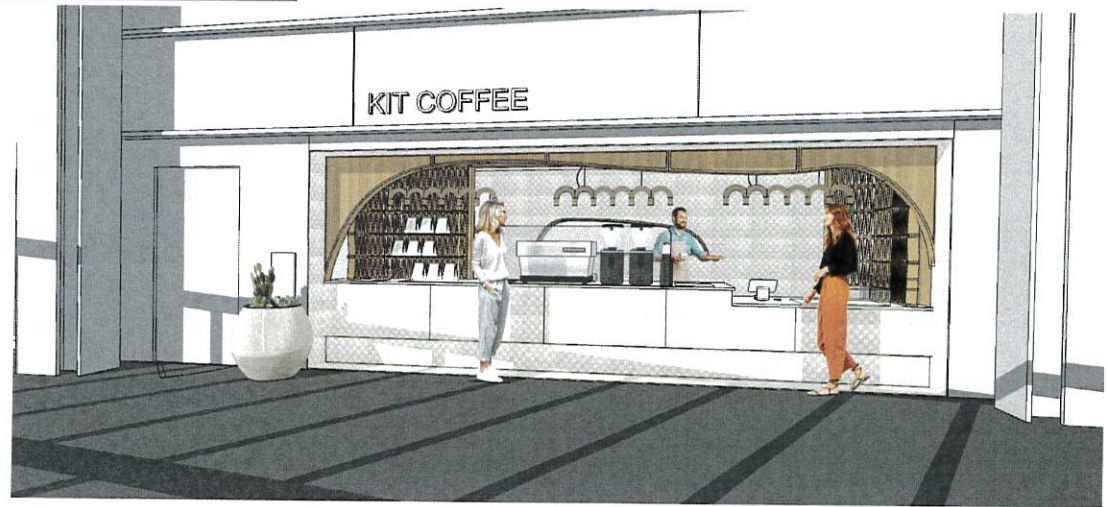


**fit  
wrk  
shp** studio

VIEWS

K I T





## EXHIBIT "H"

### INSURANCE

Provision of Insurance. Without limiting Concessionaire's indemnification of City and prior to commencement of work on Premises by Concessionaire or Concessionaire's agents, representatives, consultants, contractors and/or subcontractors, Concessionaire shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Concessionaire agrees to provide insurance in accordance with requirements set forth here. If Concessionaire uses existing coverage to comply and that coverage does not meet these requirements, Concessionaire agrees to amend, supplement or endorse the existing coverage.

Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

#### 1. Minimum Scope and Limit of Insurance.

- A. Workers' Compensation Coverage. Concessionaire shall maintain Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with a limit of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.

Concessionaire and Concessionaire's agents, representatives, consultants, contractors and/or subcontractors, shall submit to City, along with certificates of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees for all losses that relate in any way to this Agreement.

- B. General Liability Coverage. Concessionaire shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.

- C. Products Liability Coverage. Concessionaire shall maintain products liability insurance covering bodily injury and property damage for all activities of the Concessionaire arising out of or in connection with products and services sold by the Concessionaire under this Agreement, in an amount not less than two million dollars (\$2,000,000) combined single limit for each occurrence.
- D. Automobile Liability Coverage. Concessionaire shall maintain automobile insurance covering bodily injury and property damage for all activities of the Concessionaire arising out of or in connection with the services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- E. Property Insurance shall be maintained on an "All Risk" basis, including collapse, equal to the full replacement cost of the property leased with no coinsurance clause. Concessionaire shall be solely responsible for the payment of any deductible.
- F. Excess/Umbrella Liability Insurance shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all the insurance requirements stated in this Agreement, including, but not limited to the additional insured, primary & non-contributory and waiver of subrogation insurance requirements stated herein. No insurance policies or self-insurance maintained by the City, whether primary, reinsurance or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Concessionaire's primary and excess/umbrella liability policies are exhausted.
- G. Liquor Liability Coverage. Concessionaire shall maintain liquor liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. Concessionaire shall obtain a liquor liability insurance policy that covers all alcohol sold or distributed under this Agreement. The policy shall specifically include assault and battery coverage as well as coverage for Concessionaire's employees and patrons.
- H. Professional Liability (Errors & Omissions) Insurance. Concessionaire shall require that Concessionaire's consultants, contractors and/or subcontractors providing any design, engineering, surveying or architectural services for the Premises maintain professional liability insurance that covers the services to be performed, in the minimum amount of two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Concessionaire shall require that Concessionaire's consultants, contractors and/or subcontractors agree to maintain continuous coverage through a period no less than three (3) years after completion of the services performed.

- I. Builder's Risk Insurance. During construction, Concessionaire shall require that Concessionaire's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for "all risk" or special causes of loss form with limits equal to one hundred percent (100%) of the completed value of the work, with coverage to continue until final acceptance of the work by Concessionaire and City. City shall be included as an insured on such policy, and Concessionaire shall provide City with a copy of the policy.
- J. Pollution Liability Insurance. Concessionaire shall require that Concessionaire's construction contractors and subcontractors maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than two million dollars (\$2,000,000) per loss and in the aggregate per policy period dedicated to this project. The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. If all or any portion of CPL coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off- site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.
- K. Fire and Extended Coverage. Concessionaire shall maintain fire and extended coverage insurance, together with insurance against vandalism, theft and malicious mischief, on the Concessionaire Improvements, trade fixtures, signs, equipment, personal property, inventory, and all other Alterations on or upon the Premises from loss or damage to the extent of their full replacement value.
- L. Loss of Rent. Concessionaire shall maintain loss of rent insurance insuring that the Rent will be paid to City for a period up to six (6) months if the Premises are destroyed or rendered unusable or inaccessible for commercial purposes by a risk insured under a special form property coverage policy including vandalism and malicious mischief endorsements.

2. Endorsements. Insurance policies shall not be compliant if they include any limiting provision or endorsement contrary to this Agreement, including but not limited to restricting coverage to the sole liability of Concessionaire or excluding contractual liability. The following endorsements shall be provided to the City.
  - A. Additional Insured Status. The City, its City Council, boards and commissions, officers, agents, volunteers and employees, are to be covered as additional insureds for the liability and defense of suits or claims arising out of Concessionaire's activities ongoing and completed operations related to this Agreement and with respect to use or occupancy of the Premises, except professional liability.
  - B. Primary and Non-Contributory. This policy shall be considered primary insurance as respects to City, its City Council, boards and commissions, officers, agents, volunteers and employees as respects to all claims, losses, or liability arising directly or indirectly from the Concessionaire's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
  - C. Liability Insurance. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - D. Waiver of Subrogation. All insurance policies shall contain or be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, and employees. Concessionaire hereby waives its own right of recovery against City, its City Council, boards and commissions, officers, agents, volunteers, and employees and shall require similar written express waivers from Concessionaire's agents, representatives, consultants, contractors and/or subcontractors. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.
  - E. Loss Payee. Losses payable under the policy shall be paid to the City as its interests may appear.
3. Additional Agreements Between the Parties.
  - A. General Obligations. In the event City determines that (i) the Concessionaire's activities on the Premises creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Concessionaire agrees that the minimum limits of any insurance policy required to be obtained by Concessionaire or Concessionaire's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. With respect to changes in insurance requirements that are available

from Concessionaire's then-existing insurance carrier, Concessionaire shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Concessionaire's then-existing insurance carrier, Concessionaire shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice.

- B. Use of Premises. Concessionaire agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance coverage for the Premises. Concessionaire further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any insurance policy covering the Premises. Concessionaire shall, at its sole expense, comply with all reasonable requirements for maintaining the required insurance coverage on the Premises.
- C. Evidence of Insurance. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Concessionaire shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.
- D. Notice of Cancellation. All insurance policies shall contain or be endorsed to provide that the insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits until thirty (30) days written notice has been served upon the City, except ten (10) days for non-payment of premium. It is Concessionaire's obligation to ensure that provisions for such notice have been established.
- E. Self-Insured Retentions. Self-insured retentions (SIR's) must be declared to and approved by City. City may require Concessionaire to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the SIR. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or City. Self-insured retentions shall be the sole responsibility of Concessionaire, or Concessionaire's agents, representatives, consultants,

contractors and/or subcontractors who procured such insurance. City may deduct from any amounts otherwise due Concessionaire to fund the SIR. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR.

- F. Contractual Liability. The policy shall cover liability assumed under an insured contract, including the tort liability of another assumed in a business contract, with no endorsement or modification limiting the scope of coverage for liability assumed under contract.
- G. Reporting Requirements. Concessionaire shall give City prompt and timely notice of any claim made or suit arising out of or resulting from Concessionaire's or Concessionaire's agents, representatives, consultants, contractors and/or subcontractors' performance under this Agreement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, boards and commissions, officers, agents, volunteers and employees.
- H. Requirements Not Limiting. If Concessionaire, Concessionaire's agents, representatives, consultants, contractors and/or subcontractors maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Concessionaire. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- I. Claims Made Policies. If coverage is written on a claims-made basis, the retroactive date of such insurance and all subsequent insurance shall coincide or precede the effective date of Concessionaire's initial Agreement with the City and continuous coverage shall be maintained, or an extended reporting period shall be exercised for a period of at least ten (10) years from termination or expiration of this Agreement.
- J. Insurance For Subcontractors. Concessionaire shall be responsible for causing Concessionaire's agents, representatives, consultants, contractors and/or subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an additional insured, providing primary and non-contributory coverage and waiver of subrogation to the policies. Concessionaire shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Concessionaire shall ensure that City is an additional insured on insurance required from contractors, consultants and/or subcontractors.

**EXHIBIT "I"**

**MEMORANDUM OF CONCESSION AGREEMENT**

RECORDING REQUESTED AND  
WHEN RECORDED RETURN TO:

Office of the City Clerk  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

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[Exempt from Recordation Fee - Govt. Code §§. 6103 and 27383]

**MEMORANDUM OF CONCESSION AGREEMENT**

This Memorandum of Concession Agreement ("Memorandum") is dated \_\_\_\_\_ and is made between City of Newport Beach, a California municipal corporation and charter city ("City") and KIT at the Library, Inc., a California stock corporation ("Concessionaire"), concerning the Premises described in Attachment "A" attached hereto and by this reference made a part hereof.

For good and adequate consideration, City leases the Premises to Concessionaire and Concessionaire leases the Premises from City, for the term and on the provisions contained in the Concession Agreement ("Agreement") dated \_\_\_\_\_, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of City in each instance, all as more specifically set forth in said Agreement, which said Agreement is incorporated in this Memorandum by this reference.

The term is five (5) years, beginning \_\_\_\_\_, 2025, and ending \_\_\_\_\_, 2030, on the same terms and conditions contained in the Agreement.

This Memorandum is not a complete summary of the Agreement. Provisions in this Memorandum shall not be used in interpreting the Agreement's provisions. In the event of conflict between this Memorandum and the Agreement, the Agreement shall control. Execution hereof constitutes execution of the Agreement itself.

**[SIGNATURES ON NEXT PAGE]**



IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first written above.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH ("City"),  
a California municipal corporation and  
charter city**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**CONCESSIONAIRE: KIT at the Library,  
Inc., a California stock corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Eunice Hwang  
Managing Member

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(seal)

**ATTACHMENT "A"**

**PREMISES**

Exhibit A

