

Attachment B

Lease Agreement

LEASE AGREEMENT**Balboa Pier Concession**
RUBY'S DINER, INC.

THIS LEASE is made and entered into as of the 1st day of July, 2000 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a municipal corporation ("City") and RUBY'S DINER, INC., a California corporation ("Tenant").

RECITALS

A. City is the owner of the Balboa Pier ("Pier"), described in Exhibit B, and a structure located at the end of the Pier that is currently being used by Tenant as a Restaurant ("Premises") and is described in Exhibit A. Tenant is occupying the Premises pursuant to a Lease dated March 8, 1982 that is recorded in the Official Records of Orange County, California ("Old Lease").

B. Tenant and City desire to enter into a new Lease of the Premises for the purpose of allowing Tenant to continue to operate of a full-service, small scale eating and drinking establishment with limited take-out service (collectively referred to as the "Restaurant") as those terms are defined in the Newport Beach Municipal Code. City will grant Tenant an exclusive right to conduct limited food and beverage sales on the Pier ancillary to the Restaurant ("Accessory Area").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, City and Tenant hereby agree as follows:

1. DEFINITIONS

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

(a) Alteration - any addition or change to, or modification of, the Premises made by Tenant including, without limitation, fixtures.

(b) Authorized Representative - any officer, agent, employee, or independent contractor retained or employed by either Party, acting within authority given by that Party.

(c) City - the City of Newport Beach, and any Successor to City's interest in the Pier.

(d) Consumer Price Index or CPI - the Consumer Price Index for All Urban Consumers, Los Angeles - Anaheim - Riverside (1982-84 = 100) as published and compiled by the Department of Labor or, in the event the Department of Labor no longer publishes the CPI, the index most similar to the CPI.

(e) Damage - an injury to or death of any Person, or the damage destruction, or loss of property caused by another Person's acts or omissions.

(f) Damages - monetary compensation or indemnity that can be recovered in the courts by any Person who has suffered Damage.

(g) Expiration - the lapse of the time specified as the Term of this Lease, including any extension of the Term resulting from the exercise of an option to extend.

(h) Good Condition - the good physical condition of the Premises and each portion of the Premises, including, without limitation, signs, windows, show windows,

and appurtenances. "In good condition" means neat and broom-clean, and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

(i) Hold Harmless - to defend and indemnify from all liability, losses, penalties, Damage, costs, attorney fees, expenses, causes of action, claims, or judgments arising out of or related to any Damage to any Person or property.

(j) 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 or the Premises.

(k) Maintenance or Maintain - repairs, replacement, maintenance, repainting, and cleaning.

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

(m) Premises - those portions of the Pier designated on **Exhibit A** as the Restaurant and Accessory Area.

(n) Provision - any term, covenant, condition, or clause in this Lease that defines, establishes, or limits the performance required or permitted by either Party.

(o) Rent - Base Rent, Percentage Rent, taxes, and other similar charges payable by Tenant under the Provisions of this Lease.

(p) Rent Commencement Date - the Rent Commencement Date (and the Effective Date) shall be July 1, 2000.

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

(r) Tenant - RUBY's DINER, INC., a California corporation, and any Successor.

(s) Termination - the termination of this Lease, for any reason, prior to Expiration. .

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

(a)	ABC	§5.7
(b)	Gross Sales	§4.4
(c)	Lease Year	§4.2 (e)
(d)	Percentage Rent	§4.2 (a)
(e)	Base Rent	§4.1 (a)
(f)	Pier	Recital A
(g)	Restaurant and Accessory Area	Recital B
(h)	Term	§3.1

2. LEASE OF PREMISES

2.1 Agreement to Lease. City leases the Premises to Tenant and Tenant leases the Premises from City for the Term and on the conditions in this Lease.

2.2 Exclusivity. Tenant shall operate a Restaurant on the Premises. Tenant shall have the exclusive right to serve and sell food and beverages on the Pier.

3. TERM

3.1 Term of Lease. The Term of this Lease shall be fifteen (15) years from the Effective Date unless sooner terminated as provided in Section 14.

3.2 Option to Extend. Provided Tenant is not then in material default, Tenant may extend the term of this Lease for two additional successive terms of five (5) years (the "Option Term" or Option Terms) the first commencing on Expiration of the initial Term and the second commencing on Expiration of the first Option Term. Tenant may exercise the

option by giving City written notice of its intention to do so at least three (3) months prior to Expiration of the initial Term or the first Option Term.

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

4. RENT

4.1 Base Rent.

(a) Base Rent. From and after the Rent Commencement Date, Tenant shall pay Base Rent to City in the sum of Thirty Thousand and no/100 Dollars (\$30,000.00) per year during the Term. Base Rent shall be paid in equal monthly installments of Two-Thousand Five Hundred and no/100 Dollars (\$2,500.00). Base Rent for each full month shall be due on the first day of that 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.

(b) Periodic Adjustment. On the eighth (8th), twelfth (12th) and, assuming Tenant's exercise of the options to extend the Term, the sixteenth (16th), and twentieth (20th) anniversaries of the Rent Commencement Date, the Base Rent shall be increased by the lesser of the cumulative percentage increase in the CPI or three percent (3%) per year. The cumulative percentage increase in the CPI shall be determined based on the increases during the period from the Rent Commencement Date or the date of the previous adjustment (whichever is appropriate) to the last date prior to the anniversary on which the CPI was published (typically the CPI for any given month is published approximately sixty (60) days after the end of that month).

4.2 Percentage Rent.

(a) Percentage Rent. In addition to Base Rent, Tenant shall pay Percentage Rent. The "Percentage Rent" shall be calculated by multiplying the Gross Sales Percentage Rate, as specified in Subsection 4.2(b), by the total Gross Sales (as defined in Subsection 4.4) attributable to the Premises during each Lease Year. Base Rent payments made during any Lease Year shall be credited against the Percentage Rent due that Lease Year.

(b) Percentage Rate. Percentage Rent will be based on the following annual Percentage Rate:

<u>Gross Sales Increment</u>	<u>Percentage Rate</u>
Up to \$1,000,000	6.0%
\$1,000,000 and Over	6.5%

Percentage Rent shall be determined by multiplying each Gross Sales increment by the applicable Percentage Rates. For example, Percentage Rent on annual Gross Sales of \$1,100,000 would be approximately \$66,500 which equals six percent (6%) on the first \$1,000,000 of Gross Sales plus six and a half percent (6.5%) of the Gross Sales Increment between \$1,000,000 and \$1,100,000.

(c) Method of Payment. Percentage Rent shall be due and payable twenty-five (25) days after the end of each month. The Base Rent, when paid for a month, shall be a credit against the Percentage Rent due for that month.

(d) Annual Rent Adjustment. Within sixty (60) days after the end of each Lease Year, City shall determine the amount of Rent due based on the Gross Sales of Tenant during the Lease Year and the sums paid to City as Base Rent and Percentage Rent. If Tenant has paid to City more Rent than is required, City shall refund the excess Rent to Tenant within 20 days after the determination. If Tenant has paid City less Rent, Tenant

shall pay the difference to City within 20 days after receipt of notice that additional Rent is due.

(e) Lease Year. For the purposes of Rent and Rent payments, the Lease Year shall begin on January 1 and end on December 31 of each year.

4.3 Payment Location. Rent shall be payable at the office of the City's Revenue Division at 3300 Newport Boulevard, Newport Beach, California, or at such other place or places as City may from time to time designate by written notice delivered to Tenant.

4.4 Gross Sales.

(a) The term "Gross Sales" means:

(1) The entire amount of the actual sales price, whether wholesale or retail, and whether wholly or partly for cash, on credit or in exchange for any other product, commodity, service, commercial paper or forbearance, of all sales of merchandise and all charges made by or on behalf of Tenant from or upon the Premises;

(2) Orders taken in or from the Premises, even if the orders are filled elsewhere, and sales by any subtenant in or from the Premises;

(3) Gross receipts of all coin-operated devices that are placed on the Premises by Tenant 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).

(b) Exclusions from Gross Sales. Gross Sales shall not include, or if included there 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.

(2) The transfer or exchange of merchandise between the stores or businesses of Tenant, if any, where such transfers or exchanges of merchandise are made solely for the convenient operation of a business owned and operated by Tenant and not for the

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purpose of consummating a prior sale made in, to or from the Premises or for the purpose of depriving City of the benefit of a sale that otherwise would be made in, at or from the Premises.

(3) The amount of returns to shippers or manufacturers.

(4) The amount of any cash or credit refund made upon any sale where the merchandise sold or some portion is returned by the purchaser. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Tenant shall receive payment (whether in full or partial) from its customers.

(5) Sales of trade fixtures or personal property to be replaced by Tenant that are not considered stock in trade.

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

(7) Gift certificates, or similar vouchers, until such time as they shall have been converted into a sale by redemption.

(8) Meals provided for officers or employees without charge.

(9) Meals, goods or products provided for promotional or publicity purposes without charge.

(10) Cash refunds made to customers in the ordinary course of business.

(11) 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.

(12) Discounted sales to employees of Tenant, not to exceed two percent (2%) of Gross Sales.

(13) Uncollectible credit accounts and other bad debts, not to exceed two percent (2%) of Gross Sales.

(14) Amounts paid to charge card or credit card issuers.

(c) Statements of Gross Sales. Tenant shall furnish to City statements of Tenant's Gross Sales within twenty-five (25) days after the end of each month, and annual statements of Gross Sales within thirty (30) days after the end of each Lease Year. Each statement shall be signed and certified to be correct by an Authorized Representative of Tenant.

(d) Sales and Charges. All sales and charges shall be recorded by means of cash registers that display the amount of the transaction certifying the amount recorded. The register shall be equipped with devices that log in daily sales totals, and record on tapes the transaction numbers and sales details. At the end of each day the tape will record the total sales for that day.

(e) Production of Statement, Records and Audit. Tenant agrees to make available for inspection by City at the Premises or at Tenant's corporate headquarters in Orange County, California, a complete and accurate set of books and records of all sales of merchandise and revenue derived from the conduct of business or activity in, at or from the Premises from which Gross Sales can be determined. Tenant shall also make available, upon City request, all supporting records, exclusive of federal, state and local tax returns. Tenant 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. Tenant shall retain and preserve for at least one (1) year 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 Lease to inspect and audit Tenant's books and records and to make transcripts to verify the Rent due City. The audit may be conducted at any reasonable time during normal business hours. Tenant shall cooperate with City in making the inspection and conducting the audit. City shall also be entitled, once during each Lease Year and once within one hundred eighty (180) days after Expiration or Termination of this Lease, to an independent audit of Tenant's books of account, records, cash receipts, and other pertinent

data to determine Tenant's Gross Sales. The audit shall be conducted at City's sole cost and expense by a certified public accountant designated by City. 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 Tenant's regular business operations. If the audit concludes that there is a deficiency in the payment of any Rent, the deficiency shall become due and payable within 20 days and if there is an overpayment, City shall refund the amount of the overpayment within 20 days. City shall bear its costs of the audit unless the audit shows that Tenant understated Gross Sales by more than five percent (5%), in which case Tenant shall pay all City's reasonable costs of the audit. City shall keep any information gained from such statements, inspections or audits confidential to the maximum extent permitted by law. City shall not disclose financial information received in confidence and pursuant to this Lease except to carry out the purposes of this Lease 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, or pursuant to order of a court or administrative tribunal.

(f) Tenant's Gross Sales Audit. In the event of any audit by City in accordance with this Lease, Tenant may contest the results of City's audit by performing a confirming audit within thirty (30) days of receipt of City's audit results and supporting evidence, using an independent public accountant reasonably acceptable to City. If Tenant's audit discloses that City's audit was incorrect by more than five percent (5%), then City shall pay the cost of Tenant's contesting audit.

(g) Acceptance. The acceptance by City of any money paid to City by Tenant as Percentage Rent for the Premises, as shown by any statement furnished by Tenant, 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.

4.5 Interest on Unpaid Rent. Rent and other sums due City under this Lease shall bear interest at the rate of ten percent (10%) per annum on the unpaid balance from the date due until paid.

4.6 Pier/Premises Rent Credit.

(a) Pier Repair Project. City shall pay \$25,000 to Tenant upon execution of this Agreement to compensate Tenant for anticipated reductions in Gross Sales caused by the City's current pier repair project. Except those provisions of this Lease related to Rent Abatement, Tenant agrees that this payment is the sole and only consideration to which Tenant is entitled with respect to the current repair of the Pier being done by City through December 31, 2000.

(b) Building Improvement Rent Credit. City shall provide Tenant with a Building Improvement Rent Credit (Rent Credit) not to exceed a total of \$30,000. Tenant may deduct the Rent Credit from Tenant's rental payment during the 2000 and 2001 calendar years following Tenant's completion of the Building Improvements identified in Exhibit C. Tenant may, with the consent of City Manager, which shall not be unreasonably withheld, extend a portion of this Rent Credit into the next fiscal year following completion of the Building Improvement(s).

4.7 Revenue from the Pier and/or Premises' Use in Film, Television, and/or Advertising. One-half of all monetary revenue received by Tenant as compensation or other payment for the use of the Premises or Pier in a film, television production, advertising production, or other media vehicle shall be distributed to City. Tenant shall have the right, without compensation to the City, to use the premises for filming or recording promotional or advertising material for Tenant or Tenant's business. The distribution of revenue pursuant to this Subsection shall occur not less than 60 days after Tenant receives this compensation or other payment.

5. BUSINESS PURPOSES AND USE OF PREMISES

5.1 Business Purposes. The Premises are to be used by Tenant for the operation of a combination sit-down, casual food-service restaurant, together with a take-out food service window. Tenant shall also have the exclusive right to operate a mobile food and/or coffee cart on the Pier, pursuant to written approval by the City Manager which may be withdrawn by the City Manager at his or her sole discretion upon thirty days written notice to Tenant.

5.2 Operation of Premises. Tenant shall operate and manage the Premises in a manner comparable to other high quality businesses providing similar food and services. Tenant shall not use or permit the use of the Premises in any manner that (i) creates a nuisance or (ii) violates any Law. Tenant shall not offer entertainment or broadcast music or entertainment through exterior speakers or other form of transmission. Tenant may use a customer paging system.

5.3 Outdoor Dining. Tenant shall be permitted to expand restaurant service to include outdoor dining on the Pier, subject to prior written approval of the City Manager and in accordance with City zoning codes, which shall not be unreasonably withheld. City shall make its best efforts to provide a safe environment free of hazards relating to fishing and/or casting prior to approving any outdoor dining on the Pier

5.4 Continuous Operation. Weather permitting, Tenant shall keep the Premises in operation and open to the public for business each calendar day of the year in accordance with the schedule in this Subsection. Tenant may close the Restaurant on Thanksgiving Day and Christmas Day and during periods of remodeling, reconstruction, inventory and emergencies (including substantially inclement weather) or to comply with laws. Unless otherwise approved in writing by the City Manager, which shall not be unreasonably withheld, the restaurant shall follow this schedule of operations

(a) Weekdays (Monday through Friday) from September 1 through May 31:

Tenant shall serve lunch and dinner daily, with minimum hours of operation 11:30 a.m. through 9:00 p.m.

(b) Weekdays (Monday through Friday) from June 1 through August 31:

Tenant shall serve breakfast, lunch, and dinner daily, with minimum hours of operation 7:00 a.m. to 9:00 p.m.

(c) Any weekend day (Saturday and Sunday):

Tenant shall serve breakfast, lunch, and dinner, with minimum hours of operation 7:00 a.m. to 9:00 p.m. Tenant may choose to serve only lunch and dinner during days when Tenant determines that climactic conditions make Restaurant's operations unprofitable.

(d) At Tenant's option, the Tenant may serve breakfast on weekdays (Monday through Friday) from September 1 through May 31. If breakfast is served on weekdays during these months, the Restaurant will open at 7: 00 a.m.

5.5 Advertising Display. Tenant may, at its own expense, place signs in or upon the Premises, or the base of the Pier, subject to the prior written consent of the City Manager as to the size, type, design and method of installation. All signage placed by Tenant on, in or about the Premises shall remain the property of Tenant and shall be removed by Tenant upon termination or Expiration of this Lease at Tenant's expense; and any damage caused by removal shall be repaired at Tenant's expense. The permanent signage in place as of the Execution Date of this lease shall be deemed approved by the City and the City Manager.

5.6 Independent Contractor. City shall have no interest in the business of Tenant.

5.7 Alcoholic Beverages. If Tenant at any time holds a beer and wine license for the Premises from the California Department of Alcoholic Beverage Control ("ABC"), Tenant may engage in the types of sales permitted under that license. Tenant shall not sell any alcoholic beverages other than beer and wine. Tenant shall comply with all of the

rules and regulations of ABC and all of the terms and conditions of any license granted by ABC.

5.8 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 the City Manager, which will not be unreasonably withheld, conditioned.

5.9 Delivery Access. Except as provided in this Subsection, neither Tenant nor Tenant's suppliers may operate vehicles on the Pier without the prior written consent of City. City consents to Tenant's use of a ¾ ton van or comparable vehicle, or such other vehicle as may be mutually acceptable to City and Tenant, on the Pier for delivery purposes, so long as not more than one (1) vehicle operated by Tenant is on the Pier at any time and the vehicle is not parked on the Pier any longer than necessary for completion of the task at hand.

5.10 Parking and Parking Permits for Employees. City shall have the right to control parking by Tenant's employees by commercially reasonable means, and Tenant shall cause its employees to comply with the procedures and regulations established by City from time-to-time to control parking. City shall provide a total of four (4) parking permits annually to Tenant for use of the Balboa Pier parking lot by employees and shall keep the Pier reasonably accessible for Tenant's delivery vehicle. The permits issued by the City shall be designed to permit use by different employees from day to day.

5.11 Validated Parking. City is in the process of planning improvements and modifications to the configuration and operating protocol of the Balboa Pier Parking Lot including an increase in the amount of short-term parking and a validation program. City shall offer Tenant the right to participate in any validation program or short term parking program to Tenant on terms and conditions that are as favorable as any offered to other property owners in the Balboa Villlage area with the exception of the Grand Opening event or other one-time special event held at the Balboa Theater. Tenant shall have the right to request modifications to this Lease relative to participation in any validation or short term

parking program in light of Tenant's payment to the tidelands fund, the high cost of parking in relation to Tenant's typical ticket price, and the distance between the Premises and the Balboa Pier Parking Lot.

5.12. No Smoking. No smoking shall be permitted on the Premises.

6. TAXES, LICENSES AND OTHER OBLIGATIONS

6.1 Payment of Taxes. Tenant shall pay directly to the appropriate taxing authorities all taxes applicable to this Lease, fixtures and Tenant's personal property on the Premises, that are levied or assessed against Tenant 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. Tenant shall, upon request, promptly furnish to the City satisfactory evidence of payment. Tenant shall not be required to pay any real property taxes or assessments. Tenant acknowledges that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant shall pay, before delinquency all taxes, assessments, license fees and other charges (Taxes) that are, during the Term, levied or assessed against Tenant's leasehold interest in the Premises or any personal property installed on the Premises.

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

6.3 Challenge to Taxes. Tenant 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 Lease, the Premises, Tenant's personal property, or Tenant's occupation and use of the Premises, including the right to apply for reduction. If Tenant seeks a reduction or contests such taxes, Tenant's failure to pay the taxes shall not constitute a default as long as Tenant complies with the provisions of this Section. City shall not be required to join in any

proceeding or contest brought by Tenant 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 Tenant, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest. Tenant, 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. Tenant shall Hold Harmless the City and its officers and employees from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest by Tenant pursuant to this Section.

7. UTILITIES AND REFUSE COLLECTION.

(a) Basic Utilities. Tenant shall make all arrangements for and pay for all utilities furnished to or used on the Premises, including, without limitation, gas, electricity, water, telephone service, cable TV and janitorial service. Tenant shall be entitled to water service under the same terms and conditions as any other occupant of the Pier and shall pay the same fees, rate or rates as any other customer of the City. Any repair to utility lines within the Premises is the sole responsibility of Tenant. Tenant shall be responsible for the servicing and maintenance of the sewage holding tank.

(b) Refuse Collection. Tenant shall keep the Premises free and clean of rubbish and litter and shall deposit accumulated rubbish and litter in containers designated by City. Trash containers shall be kept in an approved enclosed area. Tenant shall pay City, in addition to any Rent or other charges, a monthly fee of Two Hundred Dollars (\$200) in consideration of which City shall provide refuse collection service seven (7) days per week. Tenant shall comply with the provisions of the Newport Beach Municipal Code relative to the deposit of material to be collected by City. On the third anniversary of the Rent Commencement Date and every three years thereafter during the Term or any Option

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Term, the monthly refuse fee shall be adjusted. The adjustment in the monthly refuse fee shall reflect (i) the percentage increase in the quantity of refuse collected during the preceding twelve (12) month period (for which information regarding the quantity of refuse collected from the Premises is available) when compared to the quantity of refuse collected during the first twelve (12) months of this Lease ("Base Year"); and (ii) the percentage increase in the landfill fees City is required to pay to dispose of the refuse. Any single increase in the monthly refuse fee shall not exceed twenty percent (20%) of the then current monthly fee. At no time during the term of this Agreement shall the monthly fee exceed \$400 per month. City shall provide an adequate amount of containers for Tenant's business operations.

8. ALTERATIONS TO THE PREMISES.

(a) Alterations Requiring Building Permits. Any alteration that requires a building permit from City shall require the written consent of the City Manager which shall not be unreasonably withheld.

(b) Alterations Costing More than \$50,000. Tenant shall not make any Alterations (other than non-structural Alterations costing less than Fifty Thousand Dollars [\$50,000.00]) to the Premises without the prior written consent of the City Manager which shall not be unreasonably withheld. In granting or withholding consent to proposed Alterations by Tenant, the City Manager shall consider the impact of the proposed Alterations on public views and the impact of the proposed Alterations on space available for public use of the Pier for fishing and other activities. The City Manager may require, as a condition of approval, that Tenant agree to amendments to this Lease, including amendments increasing the amount of Rent payable under this Lease if the proposed Alterations would materially increase the floor area of the structures on the Premises. The City Manager may also require Tenant to provide, at Tenant's expense, appropriate engineering and feasibility studies regarding the

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structural integrity of the Pier and the Premises. City consents to Alterations that are in substantial conformity with preliminary plans approved by City and attached as Exhibit C.

(c) Quality of Work Performed. All work shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to City and shall comply with all applicable governmental permits and Laws in force at the time permits are issued.

(d) Payment of Costs. Tenant shall pay all costs related to the construction of any Alterations by Tenant or its agents. Tenant shall keep the Premises free and clear of all mechanics' liens resulting from construction performed at the direction of Tenant.

(e) Indemnification. Tenant shall Hold Harmless City and its officers and employees with respect to any Damage or Damages related to any work performed on the Premises by Tenant. City shall promptly provide Tenant with a copy of any claim filed by any third party with respect to work performed by Tenant.

(f) Disposition of Alterations at Expiration or Lease Termination. Any Alterations made to the Premises shall remain on, and be surrendered with, the Premises on Expiration or Termination of this Lease (excluding Tenant's fixtures, equipment, furniture, movable decorations and the like). However, City may elect not less than thirty (30) days prior to Expiration or Termination of this Lease, to require Tenant to remove any Alterations that Tenant has made to the Premises, except those Alterations existing as of the date of this Lease or approved by City. If City requires removal of Alterations, Tenant shall, at its cost, remove the Alterations and restore the Premises to its condition prior to installation of such Alterations, ordinary wear and tear excepted, before the last day of the Term, or within thirty (30) days after notice is given, whichever is later. Prior to Expiration or within fifteen (15) days after Termination of this Lease, Tenant may remove any movable partitions, machinery, equipment, furniture, and trade fixtures previously installed by Tenant, provided that Tenant repairs any damage to the Premises caused by removal.

9. MAINTENANCE OF PREMISES

9.1 Maintenance and Repair by Tenant and City. Tenant agrees that it will keep the Premises in Good Condition. Tenant's Maintenance responsibilities include washing bird droppings and dirt off the Premises, including roof, windows and exterior walls as needed, but not less than once every ninety (90) days. Graffiti shall be removed or painted over by Tenant as soon as reasonably practicable. City may perform Maintenance or repairs in the event Tenant fails to commence required Maintenance or repairs within three (3) business days after receipt of notice to do so. The cost of any Maintenance or repairs by the City pursuant to this Subsection shall be payable as additional Rent. All furnishings, equipment, facilities, improvements, alterations, attachments and appurtenances not provided by City, but required for the Restaurant, including all kitchen equipment and interior furnishings, shall be maintained in Good Condition and repair by Tenant at its cost. Tenant also agrees to keep the southerly eighty (80) feet of the Balboa Pier, including all benches, free from rubbish, debris and garbage related to the operation of the Restaurant. The City may perform required cleaning and charge the costs to Tenant if the Tenant fails to perform within five (5) days after notice to do so and continue to Maintain the area as required by this Lease.

9.2 Maintenance and Repair of Pier. City agrees, at its expense, to Maintain the Pier in good repair. City shall repair, Maintain and replace Pier pilings and the under-structure of the Pier as necessary to ensure structural integrity. City shall have the right to resurface the Pier or conduct any other emergency maintenance and/or emergency repair at any time during the initial Term or any Option Term. City shall use its best efforts to schedule any Maintenance, repair or construction on or of the Pier or Premises during the period from November 1 through the end of February (Maintenance Period) when Tenant's Gross Sales are historically lower than the average monthly Gross Sales. City shall also use its best efforts to ensure that construction, repair or Maintenance of or on the Pier or

Premises does not prevent public access to the Premises and that all such activity is conducted in a manner that minimizes the extent and duration of any impact on Tenant's customers.

(a) Tenant's Option to Terminate. Tenant may terminate this Lease by giving City thirty (30) days written notice if City fails to repair or Maintain and replace Pier pilings within a reasonable time after notice from Tenant and Tenant is unable to generate a fair and reasonable profit from the Restaurant due to the condition of the Pier or Premises.

(b) City's Ability to Close Pier. City shall not be liable for any loss or Damage suffered by Tenant and caused by the malfunction of any service, equipment or facility provided by City. City may close the Pier if the City Manager or City Council City determines that any condition exists which poses a significant threat to public health and safety. In such event, Tenant shall vacate the Premises and the provisions of this Lease regarding abatement of Rent (Subsection 12.2) and Tenant's right to terminate in the event of prolonged closure (Subsection 12.1) shall apply.

(c) Entry by City. City and its Authorized Representatives may enter upon and inspect the Premises at any reasonable time for Maintenance or other purposes. Upon consultation with and assistance by City, Tenant shall install a Knox Box within three (3) months of the Effective Date of this Lease. In case of emergency, City or its Authorized Representatives may enter the Premises by the master key if Tenant is not present to open and permit an entry. During entry City and its Authorized Representatives shall exercise reasonable care relative to the Premises and to Tenant's property. 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 Tenant from the Premises or any portion thereof.

(d) Additional Covenants of City Regarding Operation of the Pier and Maintenance Obligations. In addition to other provisions of this Lease:

(1) Written Notice, Interference with Business Operations, and Additional Improvements. City shall, at the earliest time reasonably possible given the circumstances

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that may then exist, provide Tenant with prior written notice of its intent to: (i) perform any Maintenance, repair or remodeling of the Pier which may reasonably be expected to adversely affect, by interference with access, visibility, availability of utilities or otherwise, Tenant's business operations at the Premises or any portion; or (ii) except in the case of an emergency, enter upon the Premises for any of the purposes set forth in this Lease. City agrees not to construct any additional improvements on the Pier that relate to any commercial enterprise which might conflict or compete with Tenant's business operations on the Premises.

(2) Due Diligence by City Regarding Repairs. Whenever City elects or is obligated to repair or restore the Premises or any portion of the Pier, City shall proceed, at City's cost and with due diligence to repair or rebuild the same, including any additions or improvements made by City or by Tenant with City's consent, in accordance with the same plan and design as existed immediately before such damage or destruction occurred and in accordance with all applicable Laws. City will use its best efforts to maintain sufficient access to the Premises during all repair periods. The materials used in said repair or reconstruction shall be as nearly like the original materials as may then be reasonably procured.

10. INDEMNITY AND EXCULPATION; INSURANCE

10.1 Exculpation of City. Except as otherwise expressly provided in this Lease, City shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause other than the negligent, intentional or willful acts of City or its Authorized Representatives. Except as otherwise expressly provided in this Lease, Tenant waives all claims against City for Damages arising for any reason other than the negligent, intentional or willful acts of City or its Authorized Representatives. City shall not be liable to Tenant for any Damage to the Premises, Tenant's property, Tenant's goodwill, or Tenant's business

income, caused in whole or in part by acts of nature including, without limitation, waves, wind and ocean currents.

10.2 Hold-Harmless Clause. Tenant agrees to Hold Harmless the City, its officers and employees from any and all claims, liability, loss, Damage, or expenses resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any claim, liability, loss, or Damage arising by reason of:

(a) The death or injury of any Person caused or allegedly caused by the condition of the Premises or an act or omission of Tenant or an agent, contractor, employee, servant, sublessee or concessionaire of Tenant;

(b) Any work performed on the Premises or materials furnished to the Premises at the request of Tenant or any agent or employee of Tenant, with the exception of Maintenance performed by City; and

(c) Tenant's failure to perform any provision of this Lease or to comply with any requirement of Law or any requirement imposed on the Premises by any duly authorized governmental agency or political subdivision.

Tenant's obligations pursuant to this Subsection shall not extend to any claim, loss, liability, Damage, costs or fees that are proximately caused by the sole negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the City or its officers or employees.

10.3 Insurance Limits.

(a) Bodily Injury and Property Damage Insurance Thresholds. Tenant shall, at its own cost and expense, secure and maintain during the entire Term, and any Option Term of this Lease a broad form comprehensive coverage policy of public liability insurance issued by an insurance company reasonably acceptable to City. The policy shall name City, and its officers, employees and agents as additional insureds and protect, against loss or liability caused by or connected with Tenant's occupation and use of the Premises under this Lease in amounts not less than: combined single limit bodily injury and property

damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence.

(b) City's Ability to Increase Amount of Public Liability and Property Damage Insurance. Not more frequently than once every three (3) years, Tenant shall increase the insurance coverage as reasonably required by City if, in the opinion of the City or its employees or agents, the amount of public liability and property damage insurance coverage at that time is not reasonably adequate to fully protect the City. ,

10.4 Fire Insurance on Building and Other Improvements. Tenant at its cost shall maintain on the Buildings and other improvements that are or become a part of the Premises a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least full replacement value, in a form acceptable to the City's Risk Manager. The insurance policy shall be issued in the names of City and Tenant, as their interests appear. The insurance policy shall provide that any proceeds shall be made payable to City and Tenant jointly.

10.5 Determination of Replacement Value. The "full replacement value" of the Buildings and other improvements to be insured under Subsection 10.4 shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Not more frequently than once each year, either Party shall have the right to notify the other Party that it elects to have the replacement value re-determined by an insurance company. The re-determination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company. Each Party shall be promptly notified of the re-determination by the company. The insurance policy shall be adjusted according to the re-determination.

10.6 Loss of Rent Insurance. Tenant at its cost shall maintain loss of rent insurance insuring that the Base 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.

10.7 Workers' Compensation. Tenant shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Divisions 4 and 5 of the California Labor Code.

10.8 Waiver of Subrogation. The parties release each other, and their respective Authorized Representatives, from any claims for Damage to any Person or to the Premises and to the fixtures, personal property, and Alterations of either in or on the Premises that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any Damage or required to be carried under this Lease. Tenant shall cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the City in connection with any Damage covered by any policy of property insurance. Neither party shall be liable to the other for any Damage caused by fire or any of the risks insured against under any insurance policy required by this Lease. If any insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by the insurance company issuing policies without a waiver of subrogation, the Party undertaking to obtain the insurance shall notify the other Party of this fact. The other Party shall have a period of twenty (20) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other Party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium. The Party is relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved if the insurance cannot be obtained with a waiver of subrogation or the other Party refuses to pay the additional premium,

10.9 Other Insurance Matters. All the insurance required under this Lease shall:

- (a) Be issued by insurance companies authorized to do business in the State of California, acceptable to City;
- (b) Be issued as a primary policy;
- (c) Be noncontributing with any insurance that may be carried by City; and
- (d) Contain an endorsement requiring thirty (30) days written notice from the insurance company to both Parties before cancellation or material change in the coverage, scope or amount of the policy.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with City, and on renewal of the policy not less than thirty (30) days before expiration of the term of the policy. Either Party may effect for its own account any insurance not required under this Lease.

10.10 Insurance Proceeds. If Tenant elects not to terminate this Lease, City shall promptly pay to Tenant all insurance proceeds, if any, payable to City for repair or replacement of Tenant's fixtures, equipment, display cases and other personal property that Tenant is obligated to maintain, repair or replace under this Lease in the event of any Damage to the Premises or property caused by fire or any other casualty. If, during the last year of the Term or any extension thereof, twenty percent (20%) or more of the Premises or the Pier is damaged or destroyed, or any damage which City or Tenant elects or is obligated under this Lease to repair will take more than ninety (90) days to complete, Tenant shall have the right to terminate this Lease as of the date of such damage or destruction by written notice to City, given within thirty (30) days after such damage or destruction and City may retain any and all proceeds of insurance paid to City.

11. DAMAGE OR DESTRUCTION OF PIER/PREMISES

11.1 Destruction of Premises. If the Premises are totally or partially destroyed, rendering the Premises or any portion thereof totally or partially inaccessible or unusable,

Tenant shall restore the Premises to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, improvements and Alterations as are installed by Tenant, which shall be replaced by Tenant at its expense). Tenant shall not be responsible for restoring any portion of the Pier, including, but not limited to, the portion of the Pier on which the Premises are located or the Accessory Area. Tenant can elect to terminate this Lease 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 Tenant reasonably estimates that repairs of the Premises will take more than six (6) months. Upon such termination, insurance proceeds applicable to reconstruction of the Building(s) (excluding Tenant's personal property therein) shall be paid to City and Tenant shall have no further liability or obligations under this Lease.

11.2 Replacement of Tenant's Property. In the event of the damage or destruction of improvements located on the Premises not giving rise to Tenant's option to termination of this Lease, Tenant shall, at its own expense, replace and repair all Tenant's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as reasonably possible to permit the prompt continuation of Tenant's business at the Premises.

11.3 Destruction of Pier. In the event that all or a portion of the Pier or access to the Pier is damaged, deteriorates or destroyed by fire or any other casualty 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:

(a) Terminate this Lease by giving to Tenant written notice (which notice shall be given, if at all, within thirty (30) days following the date of the casualty), in which case this Lease shall be terminated thirty (30) days following the date of the casualty; or

(b) Give Tenant written notice of City's intention to repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 12. Tenant may terminate this Lease by giving City written notice at any time prior to the commencement of repairs if City agrees to repair Pier pursuant to this Section and fails to commence repairs within one hundred twenty (120) days after giving Tenant written notice of its intention to repair. In such event, this Lease shall terminate as of the date of notice from Tenant to City, and City shall have no liability under this Lease.

12. ABATEMENT OF RENT

12.1 General Rule. In the event of Damage or destruction of the Premises or Damage to the Pier that impacts the Premises and this Lease is not terminated, Tenant shall continue to utilize the Premises for the operation of its business to the extent it may be practicable and commercially reasonable. Base Rent and Percentage Rent shall abate in proportion to the area of the Premises that is rendered unusable. The abatement of Rent shall commence on the date that use of the Premises is impacted and continue until the completion of those repairs necessary to restore full use of the Premises and Tenant's re-opening of the Premises. Tenant's obligation to pay Taxes pursuant to this Lease 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 Tenant or its employees, officers or agents. Tenant's right to abatement of Rent is contingent on payment of insurance proceeds to City equal to the amount of Base Rent pursuant to coverage required by Subsection 10.6. Following the expiration of such coverage, Tenant's right to rent abatement shall continue until Tenant reopens business operations at the Premises.

12.2 Abatement/Maintenance. Tenant shall not be entitled to any abatement of Rent for Maintenance that occurs during the Maintenance Period. Tenant shall be entitled to a Rent abatement whenever the City performs regularly scheduled Pier Maintenance

that adversely impacts access to or operation of the Premises outside of the Maintenance Period. The Rent abatement shall be in proportion to the reduction in usable area of the Premises or access to the Premises whichever is greater. The Rent abatement shall be applicable for each day or portion of a day that Maintenance is performed outside of the Maintenance Period.

13. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING AND ENCUMBERING

13.1 Prohibition of Assignment. The Parties acknowledge that City is entering into this Lease in reliance upon the experience and abilities of Tenant and its principals. Consequently, Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease substantially all or any part of the Premises, or allow any other person or entity (except Tenant's Authorized Representatives) to occupy or use all or any part of the Premises without the prior written consent of City, which shall not be unreasonably withheld. City's consent to any assignment, subletting or other transfer is subject to Tenant providing City with evidence reasonably satisfactory to City that the proposed transferee has financial strength and restaurant or food service experience comparable to Tenant and the use of the Premises by the proposed transferee is consistent with the terms of this Lease. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, reorganization of Tenant, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Tenant (other than a transfer by will, devise, bequest, intestate succession, a transfer to or between the family members of Doug Cavanaugh or Ralph Kosmides, or a transfer to or between one or more trusts for the benefit of Doug Cavanaugh, Ralph Kosmides and/or their family members), shall be deemed a voluntary assignment; provided, however, that the sale or transfer of a controlling percentage of the capital stock of Tenant pursuant to a public offering(s) of equity or debt instruments issued by Tenant, 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 Tenant'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 Tenant traded on a national exchange or over-the-counter markets.

13.2 Exceptions. Notwithstanding the foregoing paragraphs or anything to the contrary contained herein, City's consent shall not be required for an assignment or subletting to an Affiliate, Subsidiary, Franchisee or Successor of Tenant (for purposes hereof, an "Affiliate", a "Subsidiary", a "Franchisee" and a "Successor" of Tenant are defined as follows:

(a) an "Affiliate" is any corporation or other entity which directly or indirectly controls or is controlled or is under common control with Tenant (for this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities or by contract or otherwise);

(b) a "Subsidiary" shall mean any corporation or other entity not less than twenty-five percent (25%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Tenant and which is at least as creditworthy as Tenant; and

(c) a "Successor" shall mean a corporation or other entity in which or with which Tenant is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations or a corporation or other entity acquiring a substantial portion of the property and assets of Tenant.

(d) A "Franchisee" shall mean a franchisee who shall operate the Premises pursuant to the business purposes set forth in Section 5.1, who shall meet all of Tenant's franchising

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program requirements, and who shall have executed Tenant's standard franchise agreement.

13.3 Continuing Effect. City's consent to any assignment, encumbrance, or sublease shall not relieve Tenant from its obligations or liabilities under this Lease nor act as a waiver of the requirement that such consent be obtained to any subsequent assignment, encumbrance or sublease.

14. DEFAULT

14.1 Default by Tenant. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- (a) The vacating or abandonment of the Premises by Tenant.
- (b) The failure by Tenant two (2) times in any six (6) month period to make any payment of Rent or any other payment required by this Lease, as and when due, when such failure shall continue for a period of ten (10) days after written notice of default from City to Tenant.
- (c) Except as specified in Subsection 14.1(b), the failure of Tenant to observe or perform any of the material covenants, conditions or provisions of this Lease to be observed or performed by Tenant where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- (d) The making by Tenant of any general arrangement or assignment for the benefit of creditors.

(e) Tenant 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 Tenant, the same is dismissed within sixty (60) days).

(f) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such appointment is not discharged within sixty (60) days.

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

14.2 Remedies.

(a) Cumulative Nature of Remedies. If any default by Tenant shall continue without cure and after notice as required by this Lease, City shall have the remedies described in this Subsection in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

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

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

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

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

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

(D) 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 Tenant.

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

(c) City's Right to Cure Tenant's Default. Upon continuance of any material default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Tenant's cost. If City pays any money or performs any act required of, but not paid or performed by, Tenant 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.

(d) Waiver of Rights. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant.

15. CONDEMNATION

15.1 Eminent Domain Proceedings. Tenant shall have the right to terminate this Lease as of the date a public agency with lawful authority to condemn obtains possession or title to ten percent (10%) or more of the floor area within the Premises, the condemnation materially affects the conduct of Tenant's business in the Premises, or the Premises will no longer be suitable for the conduct of Tenant's business. In the event of Termination pursuant to this Subsection, Base Rent shall be prorated to the date of Termination, any unearned Rent shall be refunded to Tenant and Tenant shall have no further obligations under this Lease. Tenant shall not grant a right of entry to any condemnor without the written consent of City.

15.2 Proportionate Termination of Lease. Should Tenant not elect to terminate this Lease or should any taking not be sufficient to permit termination, this Lease shall terminate as to the portion of the Premises taken upon the date which possession of said portion is taken, but this Lease shall continue in force and effect as to the remainder of the Premises. Tenant shall, in the event of a taking of any portion of the Premises, be entitled to a reduction in the Base Rent in proportion to the percentage reduction in the area of the Premises attributable to the taking.

15.3 Allocation of Award. In the event that an award is made for an entire or partial taking or for damage to the Premises or any interest therein in any action in direct or inverse condemnation or in the event of a taking under the power of eminent domain, the parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

(a) City shall be entitled to that Portion of the award received for the taking of the real property within the Premises, including all buildings and other improvements to which City is entitled on Expiration or Termination of this Lease, and for severance damages.

(b) Tenant shall be entitled to any award that may be made for the taking of or injury to Tenant's business and profits, including any amount attributable to Tenant's

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personal property, fixtures, installations, or improvements in or on the Premises, Tenant's relocation expenses, but excluding any "bonus value" attributable to this Lease.

(c) Any interest payable on the total award shall be divided between City and Tenant in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

16. SUBJECT TO STATE LANDS COMMISSION GRANT

The Premises are located on property that is the subject of a grant from the State of California to the City that is administered by the State Lands Commission. Tenant shall not take any action that would cause the City to be in violation of any provisions of that grant. If the State Lands Commission terminates this grant, this Lease terminates as a result and the Parties shall be released from all liabilities and obligations under this Lease

17. WASTE OR NUISANCE

Tenant shall not commit or permit the commission of any waste on the Premises. Tenant shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose.

18. NO CONFLICTS OF USE, HAZARDOUS MATERIALS.

The Parties acknowledge that Tenant has been in possession of the Premises pursuant to the provisions of a Lease dated March 8, 1982. City represents and warrants that, to the best of City's knowledge, (i) Tenant's continued use of the Premises does not conflict with applicable Laws, and City knows of no reason why Tenant would be unable to retain all required permits, licenses and approvals from the appropriate governmental authorities; (ii) the Pier is not in violation of any environmental laws, rules or regulations and Tenant's contemplated uses will not cause any such violation; and (iii) the Pier is free

of any and all Hazardous Materials as of the date of this Lease.. In the event that the presence of any Hazardous Material not caused by Tenant is detected on the Pier (i) prior to the Effective Date, or (ii) at any time during the Term of this Lease and any Option Term all remedial work shall be performed by City at City's expense. Tenant's obligation to open shall be delayed until the remedial work is completed if the remedial work is performed prior to Tenant opening for business. Tenant's obligation to pay Rent shall be abated in direct proportion to the extent Tenant is unable to conduct its business upon the Premises as a result of any remedial work that is performed subsequent to Tenant opening for business. Tenant shall have the right (but not the obligation) to terminate this Lease, upon thirty (30) days advance written notice to City in the event that Hazardous Materials are detected on the Pier and the presence or the remediation materially affects Tenant's ability to conduct its business in the Premises. City and Tenant shall indemnify, defend and hold harmless Tenant, the other (and their directors, officers, employees and agents - the "Indemnitees") from and against any and all liability, including all costs of defense and the cost of any required or necessary repair, disposal or remediation, arising out of the use, generation, transportation, storage, release or disposal of Hazardous Materials on or about the Pier and/or 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.

19. CITY'S DEFAULTS/TENANT'S REMEDIES.

City shall be in default if it fails to perform, or commence performance if the obligation requires more than ten (10) days to complete, any material obligation within ten (10) days after receipt of written notice by Tenant to City specifying the nature of such

default. City shall also be in default if it commences performance within ten (10) days but fails to diligently complete performance. In the event of City's default, Tenant may:

(a) Upon five (5) days notice to City cure any such default by City and City shall reimburse Tenant the amount of all costs and expenses incurred by Tenant in curing the default, together with interest and expenses at the maximum rate then allowed by law;

(b) Terminate this Lease if City's default materially interferes with Tenant's use of the Premises for their intended purpose and City fails to cure such default within ten (10) days after a second demand by Tenant in which case Tenant shall have no further or continuing obligations; or

(c) Commence an action for specific performance and recover costs and expense, including reasonable attorney fees if Tenant is the prevailing party.

20. 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
Attention: City Manager
3300 Newport Boulevard
Newport Beach, CA 92663

If to Tenant, to:

RUBY'S DINER, INC.
110 Newport Center Drive, Suite 110
Newport Beach, CA 92660
Attention: Douglas Cavanaugh
and Ralph Kosmides

21. SURRENDER OF PREMISES

At the Expiration or earlier Termination of this Lease, Tenant shall surrender to City the possession of the Premises. Tenant shall leave the surrendered Premises, required personal property and fixtures in good and broom-clean condition, reasonable wear and tear excepted. All property that Tenant is not required to surrender, but that Tenant does abandon shall, at City's election, become City's property at Expiration or Termination.

22. WAIVER

The waiver by City or Tenant of any breach of this Lease by the other shall not be deemed to be a waiver of any term, covenant, or condition or any subsequent breach. The acceptance of Rent by City shall not be deemed a waiver of any breach by Tenant other than the failure to pay the particular rent accepted.

23. PARTIAL INVALIDITY

If any term or Provision of this Lease is declared invalid or unenforceable, the remainder of this Lease shall not be affected.

24. GOVERNING LAW

This Lease shall be governed by the laws of the State of California. Neither City's execution of this Lease nor any consent or approval given by City in its capacity as landlord shall affect City's powers and duties as a governmental body. Any consent or approval Tenant is required to obtain from City pursuant to this Lease is in addition to any permits or approvals Tenant is required to obtain pursuant to law or ordinance. However, City shall attempt to coordinate its procedures for giving contractual and governmental approvals so that Tenant's requests and applications are not unreasonably denied or delayed.

25. ENTIRE AGREEMENT; MODIFICATION

This Lease contains the entire agreement between the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Lease. Each Party has relied on its own inspection of the Premises and examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in this Lease. The failure or refusal of either Party to inspect the Premises, to read this Lease 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. No provision of this Lease may be amended or varied except by an agreement in writing signed by the Parties or their respective Successors.

26. TIME OF ESSENCE

Time is of the essence with respect to the performance of every Provision of this Lease in which time of performance is a factor.

27. SUCCESSORS

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

28. BROKERS

Each party warrants to and for the benefit of the other that it has had no dealings with any real estate broker or other agent (attorneys excepted) in connection with the negotiation or making of this Lease.

29. **TABLE OF CONTENTS; HEADINGS**

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

30. **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.

31. **EXHIBITS**

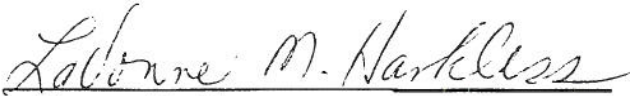
All exhibits to which reference is made in this Lease are incorporated by reference. Any reference to "this Lease" includes matters incorporated by reference.

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

CITY OF NEWPORT BEACH ("City"),
a Municipal Corporation

By: 
John E. Noyes, Mayor of Newport Beach

ATTEST:


LaVonne Harkless
City Clerk



RUBY'S RESTAURANT GROUP
A California Corporation ("Tenant")

By: 
Douglas Cavanaugh, President

APPROVED AS TO FORM:



Robert Burnham
City Attorney

Exhibit A

Depiction of Premises

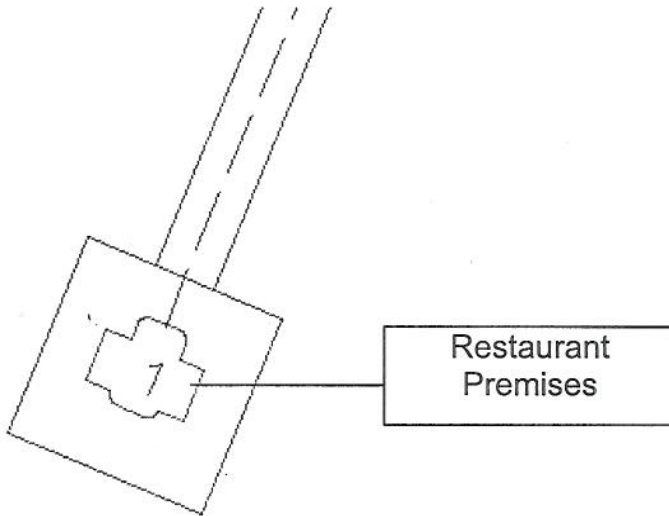


Exhibit B

Vicinity Map

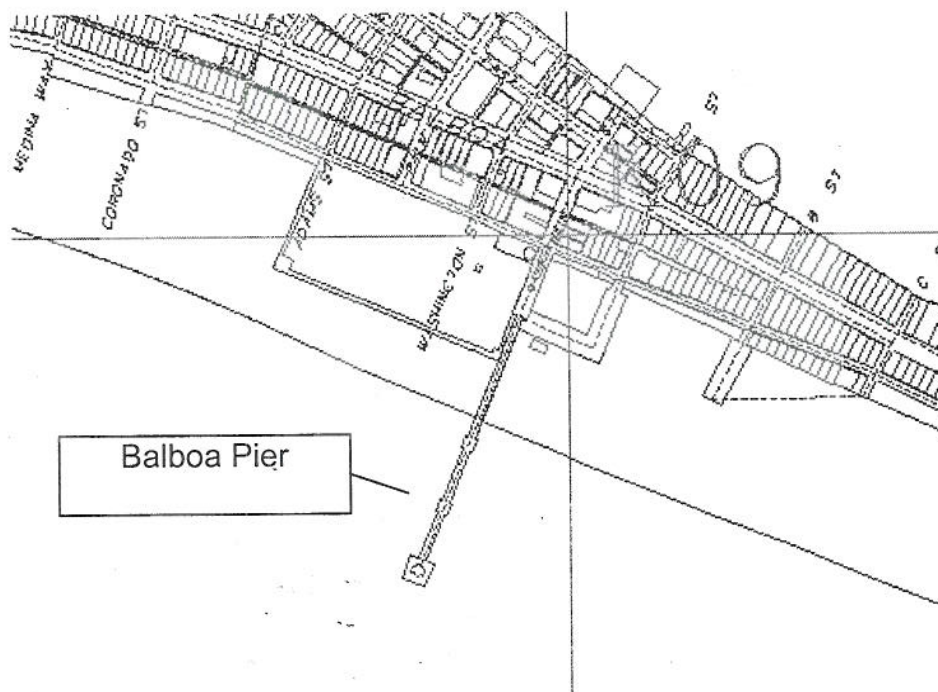


Exhibit C

Building Improvements funded via Rent Credit

(to be added)