

LEASE SUSPENSION AND TERMINATION AGREEMENT

This Lease Suspension and Termination Agreement [Agreement] is hereby entered into by and between the City of San Diego [City], a municipal corporation, and the San Diego Coaster Company, a California corporation [Lessee] [collectively referred to herein as the "Parties"], to be effective on the Suspension Date (as hereafter defined).

RECITALS

A. City and Lessee entered into that certain *City of San Diego Percentage Lease by and between City and San Diego Seaside Company, Inc., a California corporation*, on file with the Office of the San Diego City Clerk as Document No. RR-274204, as amended or consented to by the following documents: (1) that certain letter amendment dated September 13, 1990, on file with the Office of the San Diego City Clerk as Document No. RR-274204-1; (2) that certain *Operating Memorandum to Percentage Lease* dated February 25, 1991, on file with the Office of the San Diego City Clerk as Document No. 769766; and (3) that certain City of San Diego Consent to Stock Purchase and Sale Agreement dated November 7, 2014, [collectively, the "Lease"], by which Lessee leased from City certain real property [Premises], as more fully set forth in Exhibit A attached hereto.

B. City and Symphony Asset Pool XVI, LLC, a Delaware limited liability company ("Symphony"), have entered into that certain *Amended and Restated City of San Diego Percentage Lease*, for Belmont Park which incorporates the Premises in Section 11 thereof (the "New Lease") upon the Suspension Date (as hereafter defined).

C. City and Lessee desire to suspend and hold in abeyance (but not terminate) the Lease and the Lessee's tenancy thereunder immediately effective upon the date of the later to occur of either (1) the authorization by the San Diego City Council of the New Lease; (2) on the

date the New Lease (including, without limitation, the provisions of paragraph 11.2 and its subparagraphs) becomes fully enforceable, effective and binding on the City and Symphony; and (3) the last date evidenced by the signatures of the Parties hereto and approval by the City Attorney following the authorization by the San Diego City Council of this Agreement [Suspension Date].

D. Upon the occurrence of one or more of the events described in Section 2 hereof, City and Lessee desire to terminate the Lease and the Lessee's tenancy thereunder.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and of the mutual benefits and obligations of the Parties set forth in this Agreement, the Parties agree as follows:

1. Suspension of Lease. The Lease shall be suspended and held in abeyance (but not terminated) as of the Suspension Date, subject to the following terms and conditions:

A. Release. On the Suspension Date and for so long as the New Lease is in effect (including Section 11.2 thereof), City and Lessee are released from their respective rights and obligations under the terms and conditions of the Lease, except as to any monetary obligations, claims and remedies accrued thereunder and rights and obligations that shall normally survive the suspension of the Lease, including, but not limited to, indemnity.

B. Surrender. On the Suspension Date and for so long as the New Lease is in effect (including Section 11.2 thereof), Lessee shall vacate the Premises and suspend all rights of Lessee in and to the Premises, however acquired, together with all of its right and interest, and title, if any, in and to all improvements, equipment affixed to the Premises, and all fixtures (except any and all trade fixtures) contained in the Premises, and all of the rights of Lessee in and

to the Lease, except any rights that survive the suspension of the Lease according to its terms.

C. Lessee's Release of Claims. Except as otherwise provided in this Agreement and for so long as the New Lease is in effect (including Section 11.2 thereof), Lessee, for itself and its successors and assigns forever releases City from any claim, demand, or cause of action against City, its successors and assigns, arising after the Suspension Date out of the Lease or its use and occupancy of the Premises or the suspension of the Lease and surrender of the Premises.

D. Acceptance of Suspension and Surrender. City, for itself and its successors and assigns, accepts the suspension of the Lease and the surrender of the Premises by Lessee and acknowledges that the Premises are in good condition and repair.

E. Effect of Suspension. City and Lessee agree that the Lease is suspended and held in abeyance (but not terminated) as of the Suspension Date.

F. After the Final Judgment (as defined in the New Lease) or in the event the New Lease is enjoined by a court of competent jurisdiction prior to the Final Judgment, and for so long as Symphony is unable to lease and operate the Premises under the New Lease: (1) Lessee shall lease and operate the Premises under the Lease, and (2) the parties agree that such lease shall be deemed to be reinstated and revived as further set forth in Section 11.2.16 of the New Lease for so long as Symphony is unable to lease and operate the Premises under the New Lease. At anytime Symphony is able to lease and operate the Premises under the New Lease (each time, the "Re-Surrender Date), once again: (a) Lessee shall vacate the Premises and suspend all rights of Lessee in and to the Premises, and (b) the Lease shall be suspended and held in abeyance (but not terminated).

2. Termination of Lease.

A. Date of Termination. The Lease shall terminate on the earliest of the following to occur [Termination Date]: (1) the effective date of a termination of the New Lease by the CITY under Section 6.2 thereof as a result of a default by Symphony under Section 6.1 thereof; or (2) the expiration of the term of the Lease including all extension rights therein, if any (provided, however, any rights of first refusal of Lessee, if any, in the Lease shall survive in accordance with the terms of the Lease).

B. Release. On the Termination Date, City and Lessee are released from their respective rights and obligations under the terms and conditions of the Lease, except as to any monetary obligations, claims and remedies accrued thereunder and rights and obligations that shall normally survive the termination of the Lease, including, but not limited to, indemnity.

C. Surrender. On the Termination Date, Lessee shall vacate the Premises and surrender to City all rights of Lessee in and to the Premises, however acquired, together with all of its right and interest, and title, if any, in and to all improvements, equipment affixed to the Premises, and all fixtures (except any and all trade fixtures) contained in the Premises, and all of the right of Lessee in and to the Lease, except any rights that survive the termination of the Lease according to its terms.

D. Lessee's Release of Claims. Except as otherwise provided in this Agreement, Lessee, for itself and its successors and assigns forever releases City from any claim, demand, or cause of action against City, its successors and assigns, arising after the Termination Date out of the Lease or its use and occupancy of the Premises or the termination of the Lease and surrender of the Premises.

E. Acceptance of Termination. City, for itself and its successors and assigns, accepts the termination of the Lease and the surrender of the Premises by Lessee and (1) in the event Lessee never leases and occupies the Premises after the Suspension Date, City acknowledges that Lessee shall have no liability with respect to the Premises or condition thereof; and (2) on any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date, Lessee shall surrender the Premises each time in accordance with the terms and conditions of Section 2.03 of the Lease and, thereupon City acknowledges that Lessee shall have no liability with respect to the Premises or condition thereof.

F. Effect of Termination. City and Lessee agree that the Lease, and all of the obligations thereunder, is to be canceled and the term brought to an end as of the Termination Date with the same force and effect as if the term of the Lease were fixed to expire on the Termination Date by the provisions of the Lease.

3. Lessee's Warranties. Lessee warrants to City that:

A. It is the legal and equitable owner of Lessee's interest in the Lease with full power and authority to terminate it.

B. The Lease is not and has not been assigned or transferred and is not and has not been hypothecated, pledged, mortgaged, or in any way encumbered.

C. All subleases, concessions, and other agreements for use and occupancy of the Premises, insurance policies, and maintenance and service contracts which, prior to this Agreement, have been legally terminated or assigned to, and assumed by, Symphony as Lessee under the New Lease and all charges paid in full (or assumed by Symphony), and that no cause of action against City exists as of the date of this Agreement nor will exist subsequent to this

Agreement in any party to a sublease, concession, agreement for use or occupancy, or insurance policy, or maintenance or service contract, based on inducing the breach of contract with respect to it.

D. All rent due on the Lease will be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

E. All charges for utility service (gas, water, electricity, etc.) will be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

F. There are no outstanding contracts for the supply of labor or materials as of the date of this Agreement or that will not be assumed by Symphony, and no work has been done or is being done and no have materials been delivered to the Premises for which full payment has not been made (or assumed by Symphony) or for which a mechanic's lien or stop notice could be asserted or foreclosed under the laws of California.

G. Lessee has not done or permitted anything that would result in the Premises or City's title to the Premises being in any manner encumbered or charged.

H. All taxes, charges, assessments, levies or impositions required by the Lease to be paid by Lessee have been paid in full (or assumed by Symphony) as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date. Notwithstanding the foregoing, those taxes, charges, assessments, levies or impositions approved by City to be prorated, shall be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

I. The Premises are now and will be in a decent, safe and sanitary condition on the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

4. Indemnification. Lessee agrees to defend and indemnify City and its elected officials, officers, employees, representatives and agents [City Indemnified Parties] from all loss or damage sustained by City Indemnified Parties, and all expenses, costs, and attorney's fees of City Indemnified Parties in any action or defense undertaken by City Indemnified Parties to protect themselves from such loss or damages, resulting from any breach by Lessee of the representations and warranties made in this Agreement; from Lessee's suspension and termination of the Lease; or from any claim against the City Indemnified Parties for which Lessee is responsible.

5. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, successors and assigns.

6. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the matters covered in this Agreement. There have been no other statements, promises, or representations made by the Parties that are intended to alter, modify, or complement this Agreement. Any further amendments to the Lease, Termination Date or the Suspension Date shall require the prior written authorization of the Parties.

7. Titles. The section titles in this Agreement are used for the convenience of the Parties and are not to be taken as part of the instrument or used to interpret this Agreement.

8. Governing Law. This Agreement is governed and construed in accordance with California law.

9. Jurisdiction and Venue. The venue for any suit concerning this Agreement, the interpretation or application of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

*****SIGNATURES ON THE FOLLOWING PAGE*****

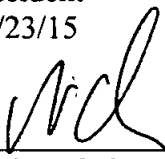
IN WITNESS WHEREOF, this Lease Suspension and Termination Agreement is
executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to
Resolution No. R- 309580, authorizing such execution, and by the San Diego Coaster
Company acting by and through its legally authorized representative(s).

THE CITY OF SAN DIEGO

By: 
Name: Cybele L. Thompson
Title: Director, Real Estate Assets
Date: 4/28/15

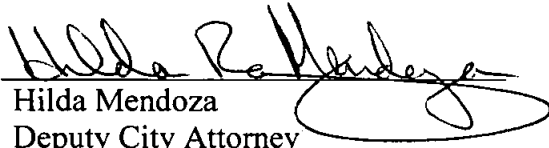
SAN DIEGO COASTER COMPANY

By: 
Name: Dario De Luca
Title: President
Date: 03/23/15

By: 
Name: Robert Colucci
Title: Chief Executive Officer
Date: 03/23/15

Approved as to form this
22nd day of April, 2015.

JAN I. GOLDSMITH, City Attorney

BY: 
Hilda Mendoza
Deputy City Attorney

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LEGAL DESCRIPTION

All that portion of Pueblo Lot 1803 of Pueblo Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, now known as Miscellaneous Map No. 36, and the unnumbered Tract of Mission Beach according to Map thereof No. 1809, filed in the Office of the County Recorder of San Diego County, more particularly described as follows:

Beginning at City Survey Monument "BELMONT" at the intersection of Ventura Place and Ocean Front Walk as shown on said Map of Mission Beach; thence South 17°33'57" East 59.92 feet; thence North 86°57'43" East 377.62 feet; thence South 03°02'17" East 6.00 feet; thence South 83°06'55" East 48.54 feet; thence South 03°02'17" East 15.35 feet to the TRUE POINT OF BEGINNING; thence South 75°50'22" West 2.48 feet; thence South 84°54'14" West 8.27 feet; thence South 60°55'41" West 16.35 feet; thence South 44°59'16" West 16.67 feet; thence South 26°39'19" West 16.17 feet; thence South 07°38'23" West 16.24 feet; thence South 00°08'13" East 7.96 feet; thence South 11°55'16" East 16.51 feet; thence South 19°16'16" East 39.37 feet; thence South 65°32'18" West 7.24 feet; thence South 28°07'54" West 16.54 feet; thence South 11°33'28" West 16.04 feet; thence South 42°31'53" West 22.28 feet; thence North 49°19'28" West 3.43 feet; thence South 42°14'42" West 41.48 feet; thence South 46°32'33" East 3.49 feet; thence South 42°04'28" West 37.12 feet; thence South 01°31'54" West 52.83 feet to a point in a non-tangent 20.00 foot radius curve concave Westerly, a radial line to said point bears North 10°02'02" East; thence Southerly along said curve through a central angle of 135°11'04" an arc distance of 47.19 feet; thence along a non-tangent line South 02°56'09" East 148.09 feet; thence South 44°27'04" East 8.93 feet; thence South 37°14'33" East 24.47 feet; thence South 65°19'34" East 24.49 feet; thence North 85°00'57" East 24.31 feet; thence North 61°42'41" East 16.27 feet; thence North 35°12'19" East 24.54 feet; thence North 05°35'18" East 32.32 feet; thence North 02°52'15" West 119.94 feet to the beginning of a tangent 120.00 foot radius curve concave Southeasterly; thence Northeasterly along said curve through a central angle of 30°21'47" an arc distance of 63.59 feet; thence tangent to said curve North 27°02'27" East 94.78 feet; thence North 27°06'20" East 15.98 feet; thence North 19°41'45" East 17.70 feet to the beginning of a tangent 54.00 foot radius curve concave Southwesterly; thence Northerly and Westerly along said curve through a central angle of 111°05'58" an arc distance 104.71 feet; thence tangent to said curve South 88°35'47" West 5.46 feet to the TRUE POINT OF BEGINNING.

RESOLUTION NUMBER R- 309580

DATE OF FINAL PASSAGE APR 22 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR, OR HIS
DESIGNEE, TO EXECUTE THE LEASE SUSPENSION
AND TERMINATION AGREEMENT FOR THE
PROPERTY COMMONLY KNOWN AS THE MISSION
BEACH ROLLER COASTER.

WHEREAS, the City of San Diego ("City") and the San Diego Coaster Company, a California corporation ("Lessee"), entered into that certain City of San Diego Percentage Lease by and between City and San Diego Seaside Company, Inc., a California corporation, on file with the Office of the San Diego City Clerk as Document No. RR-274204, as amended or consented to by the following documents: (1) that certain letter amendment dated September 13, 1990, on file with the Office of the San Diego City Clerk as Document No. RR-274204-1; (2) that certain Operating Memorandum to Percentage Lease dated February 25, 1991, on file with the Office of the San Diego City Clerk as Document No. 769766; and (3) that certain City of San Diego Consent to Stock Purchase and Sale Agreement dated November 7, 2014, (collectively, the "Coaster Lease"), by which Lessee leased from City certain real property commonly known as the Mission Beach Roller Coaster ("Premises"); and

WHEREAS, the City Council desires to authorize that certain Amended and Restated City of San Diego Percentage Lease between the City and Symphony Asset Pool XVI, LLC, a Delaware limited liability company ("Symphony"), for the lease of the property commonly known as Belmont Park which incorporates the Premises in Section 11 thereof (the "Amended Lease"), as more fully set forth in the Amended Lease; and

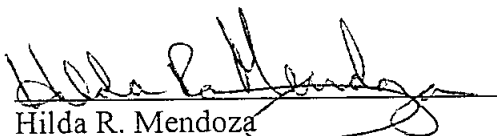
WHEREAS, City and Lessee desire to suspend and hold in abeyance, and terminate and cancel the Coaster Lease and the Lessee's tenancy thereunder effective in accordance with the terms and conditions as more fully set forth in the Lease Suspension and Termination Agreement; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Lease Suspension and Termination Agreement, as more fully set forth in Document No. RR- 309580 on file with the City Clerk.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force only upon the final passage of Resolution R- 309579, approving the Amended and Restated City of San Diego Percentage Lease between the City and Symphony Asset Pool XVI, LLC, a Delaware limited liability company, on file as Document No. RR- 309579, but in no event earlier than the date of final passage of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Hilda R. Mendoza
Deputy City Attorney

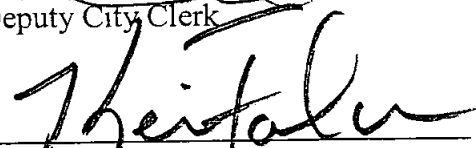
HRM:meb
01/06/2015
03/19/15 Cor. Copy
Or.Dept: Real Estate Assets Dept.
Doc. No. 930049_2

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 06 2015

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4/21/15
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 06 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☐	☒	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☒	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage APR 22 2015

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Mary Hernandez*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309580

Passed by the Council of The City of San Diego on April 6, 2015, by the following vote:

YEAS: ZAPF, GLORIA, COLE, KERSEY, CATE, SHERMAN, EMERALD
NAYS: LIGHTNER, ALVAREZ.
NOT PRESENT: NONE.
RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

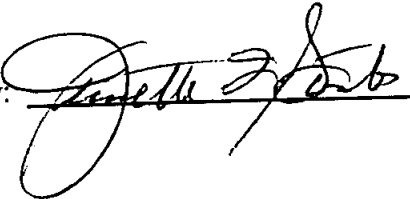
By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-309580, approved on April 6, 2015. The date of final passage
is April 22, 2015.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

COPY



**AMENDED AND RESTATED
CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION, LESSOR**

AND

**SYMPHONY ASSET POOL XVI, LLC,
A DELAWARE LIMITED LIABILITY COMPANY, LESSEE**

DOCUMENT NO. 0309579

FILED APR 06 2015
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**AMENDED AND RESTATED
CITY OF SAN DIEGO
PERCENTAGE LEASE**
[BELMONT PARK; APN 760-217-0700]

THIS AMENDED AND RESTATED CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and SYMPHONY ASSET POOL XVI LLC, a Delaware limited liability company ("LESSEE" or "SYMPHONY"), to be effective as of April 22, 2015 (the "Effective Date"), when signed by the parties, authorized by resolution of the San Diego City Council and approved by the San Diego City Attorney (pursuant to San Diego City Charter section 40), and only if the Lease Suspension and Termination Agreement, discussed below in Section 11.1, is signed by the parties, authorized by resolution of the San Diego City Council and approved by the San Diego City Attorney (pursuant to San Diego City Charter section 40).

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

RECITALS

- A. CITY owns that certain real property consisting of approximately 7.241 acres of land, including 2.178 square feet of unimproved pedestrian traffic access to and from the adjacent public beach with the following improvements: (1) 22,583 square feet Plunge building with the historic Plunge Swimming Pool; and (2) ; (2) approximately 111,556 square feet of commercial space to house specialty retail shops, restaurants, game rooms, miscellaneous attraction, and water features (Assessor's Parcel Number 760-217-0700), commonly known as "Belmont Park," located at 3106-3146 Mission Boulevard, San Diego, California, 92109, and more particularly described in **Exhibit A: Description of Premises**, attached hereto (the "Premises").
- B. CITY and Belmont Park Associates entered into a Percentage Lease dated March 14, 1987, filed as Document No. 266064 in the Office of the CITY Clerk, for the development and operation of Belmont Park; an Operating Memorandum to the Percentage Lease dated December 23, 1987; a Second Operating Memorandum to Percentage Lease dated December 11, 1990; a Third Operating Memorandum to Percentage Lease dated February 25, 1991; a Fourth Operating Memorandum to Percentage Lease dated August 12, 1991, and a Fifth Operating Memorandum to Percentage Lease dated June 26, 2000, filed as Document No. RR-293393 in the Office of the City Clerk (collectively the "Original Lease").
- C. The Original Lease was assigned from Belmont Park Associates to PARS Belmont Park in a Lessor Consent, Estoppel and Non-Disturbance Agreement dated December 1, 1995, which interest was subsequently assigned to Wave the Planet, LLC, by that Assignment of Ground Lease dated June 22, 2000, with written consent and approval of CITY pursuant to the Consent to Assignment of Ground Lease dated June 23, 2000, which interest was subsequently assigned to Wave House San Diego LLC by that Settlement and Mutual Release Agreement dated May 13, 2002, with written consent and approval of CITY

pursuant to the Consent to Assignment of Ground Lease dated May 20, 2002, which interest was subsequently assigned to Wave House Belmont Park, LLC ("Wave House"), by that Acceptance and Assignment of Ground Lease dated August 22, 2004, with written consent and approval of CITY pursuant to the Consent to Assignment of Lease Agreement dated October 8, 2004.

- D. A dispute arose between Wave House and CITY regarding rental charges and Plunge maintenance responsibilities under the Original Lease, which were resolved by way of a settlement.
- E. East West Bank (the "Bank"), was a lender to Wave House and related entities and individuals holding the first priority security interests pursuant to a deed of trust in Wave House's interest in the Original Lease ("Deed of Trust") and other security instruments and agreements (collectively the "Bank Loan Agreements"). SYMPHONY purchased the Bank Loan Agreements from Bank and as a result thereof stepped into the position of Bank in connection with the Bank Loan Agreements. SYMPHONY acquired Wave House's interest in the Original Lease as part of the agreement with Wave House that allowed for the foreclosure of SYMPHONY's security interest. SYMPHONY duly noticed and conducted a trustee's sale pursuant to the Deed of Trust whereby it was the successful bidder on or about November 16, 2012 (Trustee Sale) and thereafter was the LESSEE under the Original Lease.
- F. The Original Lease expires June 30, 2038.
- G. LESSEE has requested this Lease in part to support LESSEE's investment of Eighteen Million Dollars (\$18,000,000) in capital improvements and upgrades to the Premises. LESSEE will make certain structural repairs, upgrades and improvements to the Plunge Swimming Pool and Plunge Swimming Pool building estimated to cost approximately Five Million Nine Hundred Thousand Dollars (\$5,900,000) and is subject to verification in accordance with Section 4.11, below. The "Plunge Refurbishment" (defined below) will be in addition to LESSEE's investment of \$18,000,000 in capital improvements and upgrades to the Premises as described above.
- H. It is expected that future capital improvements, and upgrades to the Premises by LESSEE will increase the value of the leasehold, and the safety of the Plunge Swimming Pool building, to the benefit of the CITY and the general public, and also will likely reposition Belmont Park to produce increased rents to CITY through increased patronage of the businesses within Belmont Park.
- I. Capital improvements and upgrades to the Premises will be reflected in development or construction plans conforming to all applicable laws, rules, regulations and directives of competent governmental authorities, and will be subject to CITY's prior approval in each instance (both as the landlord under this Lease and if required in its capacity as a governmental entity).
- J. This Lease is intended to provide appropriate consideration to CITY for LESSEE's use and possession of the Premises and to ensure the ongoing routine maintenance of the Premises

and to secure LESSEE's commitment to improve Belmont Park's economic viability.

SECTION 1: COUNCIL AUTHORIZATION; LEASING; USE OF PREMISES

- 1.1 City Council Action Required. LESSEE acknowledges and agrees that this Lease is expressly conditioned on the San Diego City Council's (the "City Council's") prior authorization ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's failure to grant the Council Authorization.
 - 1.1.1 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF THE CITY COUNCIL'S FAILURE TO GRANT THE COUNCIL AUTHORIZATION.
- 1.2 Leasing. Subject to having obtained the Council Authorization, CITY hereby leases the Premises to LESSEE under the terms and conditions of this Lease, and LESSEE hereby leases the Premises from CITY under the terms and conditions of this Lease.
- 1.3 Suspension of Original Lease
 - 1.3.1 Suspension of Original Lease. Upon the Effective Date of this Lease, the Original Lease shall be suspended and held in abeyance, but not terminated (except as otherwise set forth in this Section 1.3). Notwithstanding the foregoing, while this Lease is in effect, the parties shall look only to this Lease to control their relationship and for all other rights, benefits, duties and obligations related to the Premises and not to the Original Lease, except with respect to: (a) any rents and fees that may have accrued thereunder under SYMPHONY'S ownership; (b) all rights and priorities of SYMPHONY as against any and all lien holders or encumbrances shall be consistent with and relate back to the rights and priorities of SYMPHONY based on its acquisition of the Original Lease at the Trustee Sale; and (c) each existing sublease of any portion of the Premises made prior to the Effective Date of this Lease shall remain valid and in force, provided each such sublease is subject and subordinate to this Lease, as may be amended from time to time.
 - 1.3.2 Termination of Original Lease. The Original Lease shall terminate and this Lease shall supersede the Original Lease and any and all other prior agreements between the parties, and their predecessors in interest, related to all or any portion of the Premises, except as expressly set forth herein, on the earliest of the following to occur: (1) the effective date of a termination of this Lease by the CITY under Section 6.2 hereof as a result of a default by LESSEE under Section 6.1 hereof; or (2) the expiration of the term of the Original Lease including all extension rights

therein, if any (provided, however, LESSEE's right of first refusal in the Original Lease shall survive in accordance with the terms of the Original Lease).

1.4 Allowed Uses. Subject to all applicable laws, rules, regulations, directives and approvals in each instance of CITY (as the landlord under this Lease and in its capacity as a governmental entity) and other competent governmental authorities, LESSEE may use the Premises only for the following purposes (the "Allowed Uses"):

- (a) Operation, maintenance and improvement of a park/visitor-oriented commercial and recreational center, including full-service and fast-food restaurants, coffee shops and catering facilities, including without limitation alcoholic beverage service, amusement rides, fairly-run games of skill and other such experiences (e.g., carnival rides, games and attractions) and other amusements such as miniature golf, laser tag and climbing walls;
- (b) Operation and maintenance of water-theme features;
- (c) Operation and maintenance of fitness facilities and the Plunge Swimming Pool;
- (d) Operation and maintenance of retail shops, such as shops for the sale of clothing, souvenirs, gifts, novelties, sundries and specialty items;
- (e) Bicycle and aquatic equipment rentals;
- (f) Beverage and snack vending machines;
- (g) Automated teller machines;
- (h) Operation and maintenance of parking facilities for use by LESSEE's invitees, guests, licensees, sublessees and the general public;
- (i) Subject to CITY's annual prior written consent, on a lease-year to lease-year basis, operation and maintenance of up to nine (9) valet parking stalls and a valet pick-up/drop-off area (all locations and operations as approved in writing by CITY annually) in the north parking lot on the Premises; and
- (j) All uses approved by CITY in writing prior to the Effective Date and allowed as of the Effective Date under all applicable laws, rules, regulations and directives of competent governmental authorities.

1.5 Only Allowed Uses. LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY's prior written consent in each instance. CITY may approve additional Allowed Uses from time to time in CITY's sole discretion. Each and all Allowed Uses shall be conducted in compliance with all applicable laws, rules, regulations and directives of competent governmental authorities.

- 1.6 Dedicated Public Park. LESSEE acknowledges that the Premises are part of a dedicated public park.
- 1.7 Public Use. The general public shall have access to the Premises for the uses allowed under this Lease during LESSEE's hours of operation. The general public shall not be wholly or permanently excluded from any portion of the Premises. LESSEE may apply reasonable restrictions for the general public's use of the Premises so such use does not unreasonably conflict with LESSEE's use of the Premises as allowed by this Lease. LESSEE shall not unreasonably interfere with or deny public access and use of the Premises or any part thereof if the same is deemed by applicable laws, rules, regulations or directives of competent governmental authorities to be public areas and designated or dedicated for public use.
- 1.8 Signs. LESSEE shall install and maintain CITY-approved signs identifying the Premises as CITY-owned and available for public use consistent with the terms of this Lease. If so directed, LESSEE shall install the signs at locations reasonably directed by CITY. Other than signage previously approved by CITY and currently installed on the Premises, LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent in each instance. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after written notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
- 1.9 Business Objective. LESSEE shall diligently conduct its business on the Premises using commercially reasonable best efforts to maximize revenue.
- 1.10 No CITY Representations. CITY makes no representation or warranty regarding either the lawfulness of any of the Allowed Uses, including without limitation whether any or all of the Allowed Uses are permitted under applicable land-use laws or as to the suitability of the Premises for any or all of the Allowed Uses or any particular use.
- 1.11 Competent Management. LESSEE shall provide competent management, in a fiscally responsible manner, of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules, regulations and directives of competent governmental authorities. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
- 1.12 Repair and Maintenance. LESSEE, at its sole cost and expense, shall repair and maintain the Premises and all improvements, fixtures, structures, and installations and Artwork existing as of the Effective Date and installed, added or placed on the Premises during the Term (described in Section 9.4 Artwork and Ownership of Improvements, below) thereon in a clean, decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. Notwithstanding the foregoing, LESSEE's repair obligations set forth in this Section 1.12 shall not include any obligation to make capital improvements

to the Premises, and LESSEE's only obligations with respect to making any capital improvements to the Premises are specifically provided in Sections 1.15, 3.1, 3.3.1 and 11.2.14 hereof and subject to the terms and conditions contained in each such applicable section. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures, installations or Artworks on the Premises. Notwithstanding the foregoing, LESSEE shall not be responsible for the repair or replacement of utility facilities within the Premises that are required to be maintained by CITY in its governmental capacity.

- 1.13 Parking. LESSEE shall provide and maintain on the Premises public parking facilities as approved by CITY, with no less than three hundred twenty- one (321) parking spaces, unless precluded by condemnation or other actions instituted or imposed by a competent governmental authority, including without limitation CITY in its capacity as a governmental entity. Subject to the City Council's approval and all applicable laws, rules, regulations and directives of competent governmental authorities, LESSEE may charge a fee or require validation for parking on the east parking lot on the Premises, and the revenue derived from such parking shall be subject to Section 4.9 Percentage Rent, below.
- 1.14 Plunge Swimming Pool. LESSEE shall be responsible for the operation, maintenance and management of the indoor swimming pool on the Premises (the "Plunge Swimming Pool"). Operation of the Plunge Swimming Pool shall provide, without limitation, all of the following:
 - 1.14.1 The Plunge Swimming Pool shall be made available to the general public on a regular schedule, with hours of operation subject to CITY's prior written approval. The initial schedule of operations shall be as set forth in **Exhibit B: Plunge Swimming Pool Days and Hours of Operation**, attached hereto.
 - 1.14.2 Admission and use fees shall be subject to CITY's prior written approval.
 - 1.14.3 Subject to CITY's prior written approval, general public access to and use of the Plunge Swimming Pool may be reasonably limited from time to time for specific activities such as children's learn-to-swim programs, lessons and swimming team programs. All such programs and lessons shall be available to the general public.
- 1.15 Plunge Swimming Pool and Plunge Swimming Pool Building Refurbishment and Upgrades by LESSEE. Plunge Swimming Pool is currently closed for repairs and upgrades. Upon receiving all applicable permits and approvals to commence the Plunge refurbishment and upgrades; but in no event later than eighteen (18) months after the Effective Date unless delay is caused by factors beyond LESSEE'S control, LESSEE shall, at its sole cost and expense, complete (a) the Allowed Plunge Refurbishment, as described in the attached **Exhibit C**, and (b) all repairs referenced as "Long Term Approach" in the "Mission Bay Plunge Building Structural and Mechanical (Heating and Ventilation) System Evaluation Report" dated August 8, 2011, prepared by Harris and

Associates, attached hereto as **Exhibit D** (the "Plunge Report") (the items described in clauses (a) and (b) shall be collectively referred to as the "Plunge Refurbishment"), estimated to cost Five Million Nine Hundred Thousand Dollars (\$5,900,000). The cost of the Plunge Refurbishment shall be in addition to the "\$18M Improvement Obligation" (defined below). The Plunge Refurbishment shall be deemed to be completed upon the date in which the certificate of occupancy is issued permitting use of the Plunge Swimming Pool by the general public (the "Plunge Refurbishment Completion"). The Plunge Swimming Pool shall reopen to the general public upon the Plunge Refurbishment Completion, but in no event later than on the first day of the nineteenth (19th) month from the Effective Date ("Plunge Occupancy Date"), unless delay is caused by factors beyond LESSEE'S control after the Effective Date. Concurrently with the Plunge Refurbishment Completion, LESSEE shall establish and implement a regular Plunge Swimming Pool building maintenance program as referenced in the Plunge Report, or as otherwise approved by CITY in writing. A copy of the most current City-approved Plunge Swimming Pool building maintenance program shall be filed with the City Real Estate Assets Department.

- 1.16 Plunge Swimming Pool and Plunge Swimming Pool Building Inspections. LESSEE shall cause the Plunge Swimming Pool building and Plunge Swimming Pool to be inspected not less than every five years during the Term, beginning on the fifth (5th) "Lease Year" (defined below). Inspections shall be conducted by a licensed California civil or structural engineer selected by LESSEE and approved by CITY. As required by Section 1.12, Repair and Maintenance, above, LESSEE shall cause to be done such repair and maintenance work identified in the judgment of the inspector as being reasonably required, at LESSEE's sole cost and expense; however LESSEE shall not be responsible for performing any capital improvement work identified by such inspections. In the event LESSEE disagrees with the inspector that certain repairs are necessary, LESSEE may submit the matter for a second opinion to another licensed California civil or structural engineer selected by LESSEE and approved by CITY, at LESSEE'S sole cost and expense, and such second opinion shall control whether or not such repairs are required to be made by LESSEE. Any repair and maintenance work shall not be subject to rent credit to LESSEE. LESSEE shall submit copies of the inspection reports to the CITY not later than ten (10) calendar days of LESSEE's receipt of same.
- 1.17 Community Meeting Room. LESSEE shall be responsible for the management and maintenance of a community meeting room on the Premises as reasonably approved by CITY. The community meeting room shall be made available for public use under the following guidelines:
 - 1.17.1 The community meeting room shall be available to the general public.
 - 1.17.2 For a meeting of 15 persons or less, provided at least ten (10) days prior notice, LESSEE shall make available to public service use, a community meeting room the location of which is at LESSEE's sole discretion within the PREMISES to accommodate a public meeting. For a meeting of 16 persons or more, subject to availability and provided at least ninety (90) days prior notice,

LESSEE shall make available to public service use, the location of which is at LESSEE's sole discretion, a community meeting room within the PREMISES to accommodate a public meeting.

- 1.17.3 LESSEE may charge the party(ies) using the community meeting room fees for support services provided for meetings held in the room (e.g., set-up, break-down and cleaning services). Such fees shall only cover LESSEE's direct and indirect costs incurred or allocated for such services, without a profit component. If parties using the community meeting room request additional services or amenities, such as food and beverage catering, LESSEE may charge its normal fees for such services, including a profit component.
- 1.18 Operation of the Premises. LESSEE shall conduct its business and operate the Premises continuously throughout the Term, except during any period of reasonable and necessary closures including without limitation usual and customary closures for periodic refurbishment of the Premises' facilities. LESSEE shall diligently conduct its business and furnish services to the public in a creditable manner in conformity with all applicable laws, rules, regulations and directives of competent governmental authorities. LESSEE shall not operate or allow the operation of any food-handling services on the Premises that do not qualify for the conditions and requirements of the "A Card" issued by the County of San Diego Department of Environmental Health to operators of food-handling establishments, or such other rating/approval system adopted to replace the system as it exists on the Effective Date.
- 1.19 Local Coastal Program. If a local coastal program ("Local Coastal Program") is adopted for the Mission Bay/Mission Beach community, and if the Local Coastal Program provides for the collection of a traffic impact mitigation fee from commercial lessees in the Mission Bay/Mission Beach community to fund all or a portion of the cost of a beach shuttle or other substantially similar public-access improvements, LESSEE shall contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program, provided the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably, equitably, and fairly apportioned among all of the commercial lessees in Mission Bay/Mission Beach Community. **This provision shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-93-75/EL.**
- 1.20 Coastal Commission Memorandum of Understanding. CITY and the California Coastal Commission entered into a Memorandum of Understanding ("MOU") dated March 5, 1987. A condition of the approval of Coastal Development Permit No. 6-86-396 (which allowed for the redevelopment of the Premises) requires that an annual payment of Seventy Thousand Dollars (\$70,000) ("Minimum Cash Payment") be made into a special fund to be applied to: (a) ameliorate existing traffic problems; and (b) further enhance a much broader community landscaping project that will be defined by the community at a

later date. CITY established the required special fund as required by the Development Permit. Notwithstanding anything to the contrary in this Lease, in no event shall LESSEE's actual payment of rent under this Lease be less than Seventy Thousand Dollars (\$70,000) per year to ensure compliance with the Development Permit. **This provision shall not be altered or amended without the prior written approval of the California Coastal Commission or an amendment to California Coastal Permit No. 6-86-396.**

- 1.21 Use & Occupancy Permit. If requested by LESSEE, CITY shall grant to LESSEE non-exclusive licenses ("Use & Occupancy Permits") for up to two (2) years or less, at LESSEE's option, each for uses of City-owned property outside of the Premises that are compatible and accessory to the Allowed Uses (the "Accessory Uses"), provided such Accessory Uses are reasonably acceptable to CITY and are not, in CITY's sole determination, inconsistent or incompatible with the public's use of such City-owned property. LESSEE, at LESSEE's sole cost and expense, shall obtain all applicable permits and approvals for each Accessory Use from competent governmental authorities. Unless otherwise mutually agreed to by the parties, each Use & Occupancy Permit shall be substantially in the form attached hereto as **Exhibit E: Form of Use & Occupancy Permit**. Upon LESSEE's request and in CITY's discretion in each instance, LESSEE may be granted successive Use & Occupancy Permits for the Accessory Uses for up to two (2) years or less, at LESSEE's option, each throughout the Term, subject to being modified to contain then-current standard CITY terms and conditions for such use and occupancy permits. Accessory Uses shall initially generally include the following, subject in each instance to CITY's approval of the actual use and the specific area within which the Accessory Use will be conducted.

- 1.21.1 Beach Concession. Subject to the foregoing, CITY shall grant to LESSEE a Use & Occupancy Permit for (2) years to operate a beach accessory rental and food/non-alcoholic beverage concession ("Beach Concession") serving the general public on the public beach adjacent to the western boundary of the Premises excluding the seawall and boardwalk ("Beach Concession Area"); the specific boundaries of which must be approved by CITY, in its sole discretion, and shall be specifically defined in the Use & Occupancy Permit. The Concession may be operated from two (2) hours after sunrise to 10:00 P.M. local time from October 1 through March 31 and to 11:00 P.M. local time from April 1 through September 30. The Beach Concession allowed uses shall include:

- 1.21.1.1 Place and rent beach chairs, umbrellas and cabanas in the Beach Concession Area in a manner that does not interfere with accessways of emergency vehicles, in the CITY's sole discretion;
- 1.21.1.2 Rent surfboards and body boards and sell beach necessities (e.g., sunscreen, hats, towels, etc.) from the Beach Concession Area;
- 1.21.1.3 Place temporary potted palm trees and shrubbery on the Beach

Concession Area, at a number and size approved in advance by San Diego Fire-Rescue Lifeguard Services to not interfere with access-ways of emergency vehicles or obstruct the view of lifeguards in the performance of their duties;

1.21.1.4 Conduct the Concession with order service from a temporary central beach kiosk of a design to be mutually agreed upon by CITY and LESSEE; and;

1.21.1.5 Serve food and non-alcoholic beverages (using only non-glass containers) in the Beach Concession Area directly to patrons who are using LESSEE's rental cabanas, umbrellas or beach chairs. LESSEE shall not operate or allow the operation of any food-handling services on the Beach Concession Area that do not qualify for the conditions and requirements of the "A Card" issued by the County of San Diego Department of Environmental Health to operators of food-handling establishments, or such other rating/approval system adopted to modify or replace the system as it exists on the Effective Date;

1.21.2 Charter/Shuttle Bus Area. Subject to the foregoing, CITY shall grant to LESSEE a Use & Occupancy Permit to operate and maintain a free, non-exclusive charter/shuttle bus drop-off/loading area available to the general public in the parking lot adjacent to the south boundary of the Premises (the area to be approved by CITY and specifically defined in the Use & Occupancy Permit).

1.21.3 Accessory Use Rent. LESSEE shall pay to CITY rent for each Accessory Use in addition to any other amount payable under this Lease. Rent for each Accessory Use shall be calculated and payable in the same manner as the "Percentage Rent" (defined in Section 4.12 Percentage Rent, below) and subject to any adjustments to Percentage Rent under this Lease.

1.22 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide containers on the Premises and Beach Concession Area to receive trash and refuse generated on the Premises and Beach Concession Area. LESSEE shall not locate refuse containers outside the Premises. LESSEE shall ensure that such containers are covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. LESSEE shall ensure that the contents of the containers are disposed of as required under applicable law.

1.23 Superior Interests. This Lease is subject to all priority liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Premises and existing on the Effective Date, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third

parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

- 1.24 Governmental Approvals. By entering into this Lease, neither CITY nor the City Council is obligating itself to LESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the Premises or improvements thereon. Discretionary action includes without limitation development plans, re-zonings, variances, environmental clearances and all other required governmental approvals.

1.24.1 LESSEE to Obtain Approvals. LESSEE, at LESSEE's sole cost and expense, shall obtain all required permits and approvals from competent governmental authorities.

1.24.2 No Determinations. LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any maintenance regarding any improvements on the Premises, or any aspect thereof. Furthermore, CITY does not represent, warrant or guarantee any future approval of any improvements on the Premises or any aspect thereof by CITY in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.

- 1.25 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of CITY, or his or her designee ("Mayor"), unless otherwise expressly provided, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.

- 1.26 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the Term peaceably and quietly have, hold and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any resulting burden, expense or loss incurred.

- 1.27 Tenant Estoppel Certificate. Within ten (10) business days after CITY's written request, LESSEE shall execute and deliver to CITY a tenant estoppel certificate regarding this Lease and in a form reasonably determined by CITY, indicating in the certificate any exceptions to the statements in the certificate that may exist at that time.

- 1.28 Reservation of Rights. The following reservation of rights and any and each exercise thereof shall be without compensation of any kind to LESSEE. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY

BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF CITY'S EXERCISING ITS RIGHTS RESERVED UNDER THIS SECTION.

- 1.28.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- 1.28.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- 1.28.3 Repairs. CITY may at all reasonable times upon reasonable prior notice to LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.28.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not unreasonably interfere with LESSEE's use of the Premises.
- 1.28.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

SECTION 2: TERM

- 2.1 Initial Term. The initial term of this Lease ("Initial Term") shall commence on the Effective Date and expire on June 30, 2038 (approximately, a twenty-three (23) year Initial Term). The "Term" is defined as the aggregate of the Initial Term, Initial Revised Term (defined below) and Additional Revised Term (defined below).
- 2.2 Extended Term. The term of this Lease may be extended as provided in SECTION 3: CAPITAL IMPROVEMENTS AND UPGRADES; REVISED TERM, below.
- 2.3 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term.
- 2.4 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, terminable upon CITY's delivery to LESSEE of a "Thirty Day Notice to Quit," and all other terms and conditions of this Lease shall continue in full force and effect. If LESSEE holds over after the expiration or earlier termination of this Lease, CITY may then demand and receive from LESSEE rent, on a *per diem* basis, up to one hundred twenty-five percent (125%) of the then fair market rent for the Premises with the Allowed Uses, such fair market rent to be determined by an appraisal prepared by a qualified appraiser chosen by CITY in its sole discretion, which rent shall be effective as of the first day of the holdover period, retroactively applied after the appraisal is made.

2.5 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate and surrender the Premises to CITY free and clear of all liens and encumbrances resulting from LESSEE's possession, use or occupancy of the Premises and in a condition reasonably satisfactory to CITY.

2.5.1 If LESSEE fails to so surrender the Premises to CITY free and clear of all such liens and encumbrances, and in such condition, LESSEE shall be solely responsible for and shall pay for (and shall reimburse CITY for any and all costs incurred by CITY for) the removal of such liens and encumbrances and putting the Premises in a condition reasonably satisfactory to CITY. This provision shall survive the expiration or termination of this Lease.

2.5.2 At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

SECTION 3: CAPITAL IMPROVEMENTS AND UPGRADES; REVISED TERM

3.1 Capital Improvements and Upgrades. CITY hereby acknowledges that, prior to the Effective Date, LESSEE has expended at least Eighteen Million Dollars (\$18,000,000) to make capital improvements and upgrades to the Premises (the "\$18M Improvement Obligation"). The \$18M Improvement Obligation is described in **Exhibit F: \$18M Improvement Obligation**, attached hereto. LESSEE has delivered to CITY evidence of its expenditures for each capital improvement and upgrades to be applied to the \$18M Improvement Obligation in form and content reasonably acceptable to CITY.

3.1.1 Approvals. To the extent required for capital improvements and upgrades to the Premises, LESSEE shall prepare or cause to be prepared development or construction plans conforming to all applicable laws, rules, regulations and directives of competent governmental authorities, and each such capital improvement and upgrades shall be subject to CITY's prior written approval in each instance (as the landlord under this lease in addition to its capacity as a governmental entity).

3.1.2 No Guaranty of Approvals. LESSEE acknowledges that except for agreeing to a term extension as described below, CITY (either in its capacity as landlord under this Lease or in its governmental capacity) has not made, nor now makes, any determinations regarding the sufficiency, legality or any other aspect of any potential future capital improvement and upgrades made or to be made by LESSEE to satisfy the \$18M Improvement Obligation. Furthermore, CITY does

not represent, warrant or guarantee CITY's future approval of any such improvements, nor shall anything in this Lease be interpreted as representing, warranting, or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's disapproval, in its capacity as a governmental entity (or in the case of CITY's reasonable disapproval in its capacity as the lessor under this lease) of any such future capital improvement and upgrades.

3.1.2.1 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF CITY'S DISAPPROVAL, IN ITS CAPACITY AS A GOVERNMENTAL ENTITY (OR IN THE CASE OF CITY'S REASONABLE DISAPPROVAL IN ITS CAPACITY AS THE LESSOR UNDER THIS LEASE), OF ANY SUCH FUTURE CAPITAL IMPROVEMENT OR UPGRADE.

3.2 Initial Term Revision - \$18M Improvement Obligation. Except in the case of a forfeiture, as set forth below in Section 3.4, at any time prior to the end of the fifth (5th) Lease Year, if LESSEE is not then in breach or default of any of its obligations under this Lease, and if LESSEE has fully satisfied the Plunge Refurbishment and the \$18M Improvement Obligation and if LESSEE pays to CITY a lump-sum payment of Five Hundred Thousand Dollars (\$500,000), then upon LESSEE's written request, the then remainder of the term of this Lease shall be forty (40) years, commencing on the first day of the month following the date of LESSEE's written request (the "Initial Revised Term"). By way of example only, if LESSEE were to validly exercise this option so that the Initial Revised Term commenced on January 1, 2018, then the Initial Revised Term would expire on December 31, 2057.

3.3 Additional Term Revision - \$5M Improvement Obligation.

3.3.1 \$5M Improvement Obligation. If LESSEE is not then in the breach or default of any of its obligations under this Lease, at least One Hundred Eighty (180) days prior to the last day of the thirtieth (30th) Lease Year of the Initial Revised Term, LESSEE may submit to CITY a written proposal for the review and approval of an additional \$5,000,000 in capital improvements on the Premises for: (a) additional food-serving facilities, retail shops, rides, attractions, games which result in an increase of LESSEE'S Gross Revenue, as defined below; (b) improvements, enhancement and/or renovation of existing attractions, landscaping, parking area, food facility, retail shops, but only to the extent that such improvements add new features to an existing element and are not solely for repair and maintenance purposes; and (c) improvements that increase the safety and security of the Premises, patrons and employees ("5M Improvement Obligation"). The written proposal shall include details on such proposed improvements, estimated project costs, a project timeline and schedule, a date for

commencement of construction, date for completion of construction, and a guaranteed minimum dollar amount that will be allocated for each improvement. CITY shall approve the \$5M Improvement Obligation if in the CITY's reasonable discretion such improvements are consistent with the above description of the \$5M Improvement Obligation (which shall not be unreasonably withheld, conditioned or delayed).

3.3.2 Additional Term Revision. Except in the case of forfeiture, as set forth below in Section 3.5, at any time prior to the end of the fortieth (40th) Lease Year of the Initial Revised Term, if LESSEE is not then in breach or default of any of its obligations under this Lease, and if CITY approved the \$5M Improvement Obligation, and if LESSEE has fully satisfied the \$5M Improvement Obligation, then upon LESSEE'S written request, the then remainder of the term of this Lease shall be extended for an additional ten (10) years ("Additional Revised Term") from the last day of the Initial Revised Term.

3.4 Forfeiture of Initial Revised Term. If LESSEE fails to fully satisfy the Plunge Refurbishment or the \$18M Improvement Obligation by the end of the third (3rd) Lease Year, the foregoing provision to extend the term of this Lease shall terminate as of the first day of the fourth (4th) Lease Year of the Initial Term and shall be of no further force or effect. Notwithstanding the foregoing and any other provision in this Lease to the contrary, the CITY hereby acknowledges that, prior to the Effective Date, LESSEE has fully paid, performed and satisfied the \$18M Improvement Obligation, all to the full and complete satisfaction and approval of the CITY, and the corresponding condition for the Initial Revised Term (as set forth in Section 3.2 above) is hereby satisfied. Accordingly, LESSEE shall not be required to pay, perform or otherwise satisfy any portion of the \$18M Improvement Obligation following the Effective Date pursuant to this Section 3.4, Section 3.1, Section 3.2 or otherwise.

3.5 Forfeiture of Additional Revised Term. If LESSEE fails to submit a written proposal for the \$5M Improvement Obligation or fails to obtain CITY approval of the \$5M Improvement Obligation by the end of the thirtieth (30th) Lease Year of the Initial Revised Term, and if LESSEE fails to satisfy the \$5M Improvement Obligation by the end of the fortieth (40th) Lease Year of the Initial Revised Term, the foregoing provision to extend the term of this Lease for the Additional Revised Term of 10 years shall terminate as of the first day of the forty first (41st) Lease Year of the Initial Revised Term and shall be of no further force or effect.

SECTION 4: RENT

4.1 Rent. LESSEE shall pay to CITY rent on a Lease-Year basis in an amount equal to the greater of the "Minimum Annual Rent" (defined below) and the total "Percentage Rent" (defined below and payable monthly) paid during each Lease Year. If the total Percentage Rent payable during a Lease Year is less than the Minimum Annual Rent for

that Lease Year, LESSEE shall make a lump-sum payment of the difference to CITY when the Percentage Rent for the last month of the Lease Year is payable.

- 4.1.1 Temporary Dispossession. If LESSEE is temporarily dispossessed, either partially or completely, through action or claim of a title superior to CITY's, then the Minimum Annual Rent (defined below) due under this Lease shall be partially or fully abated, as applicable, during such period of dispossession.
- 4.2 Rent Statements. Within thirty (30) days after the end of each month during the Term, LESSEE shall deliver to CITY a statement of LESSEE's "Gross Revenue" (defined below) for the month, together with a statement of that month's Percentage Rent payable, each prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type.
- 4.3 Gross Revenue. "Gross Revenue" shall mean all revenue derived from the Allowed Uses and Accessory Uses, whether earned directly or through sublessees or licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) common area maintenance ("CAM") charges collected from sublessees or licensees; and (d) gratuities. LESSEE shall clearly indicate the amount of all such excluded items on its books and records.
- 4.4 Minimum Annual Rent. The minimum annual rent ("Minimum Annual Rent") for the first (1st) Lease Year shall be Nine Hundred Thousand Dollars (\$900,000).
- 4.5 Minimum Annual Rent Adjustments. The Minimum Annual Rent shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:

<u>Minimum Annual Rent</u>		<u>Minimum Annual Rent</u>	
Year 1	\$900,000	Year 13	\$1,240,660
Year 2	\$922,500	Year 14	\$1,271,676
Year 3	\$945,563	Year 15	\$1,303,468
Year 4	\$969,202	Year 16	\$1,336,055
Year 5	\$993,432	Year 17	\$1,369,456
Year 6	\$1,018,267	Year 18	\$1,403,693
Year 7	\$1,043,724	Year 19	\$1,438,785
Year 8	\$1,069,817	Year 20	\$1,474,755
Year 9	\$1,096,563	Year 21	\$1,511,624
Year 10	\$1,123,977	Year 22	\$1,549,414
Year 11	\$1,152,076	Year 23	\$1,588,150

Year 12 \$1,180,878

Year 24 \$1,210,400

4.6 Minimum Annual Rent – Initial Revised Term. The Minimum Annual Rent for the first (1st) Lease Year of the Initial Revised Term shall be One Million One Hundred Thousand Dollars (\$1,100,000).

4.7 Minimum Annual Rent Adjustments – Initial Revised Term. The Minimum Annual Rent during the Initial Revised Term shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent adjustment schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:

Minimum Annual Rent

Year 1	\$1,100,000
Year 2	\$1,127,500
Year 3	\$1,155,688
Year 4	\$1,184,580
Year 5	\$1,214,194
Year 6	\$1,244,549
Year 7	\$1,275,663
Year 8	\$1,307,554
Year 9	\$1,340,243
Year 10	\$1,373,749
Year 11	\$1,408,093
Year 12	\$1,443,295
Year 13	\$1,479,378
Year 14	\$1,516,362
Year 15	\$1,554,271
Year 16	\$1,593,128
Year 17	\$1,632,956
Year 18	\$1,673,780
Year 19	\$1,715,625
Year 20	\$1,758,515

Minimum Annual Rent

Year 21	\$1,802,478
Year 22	\$1,847,540
Year 23	\$1,893,729
Year 24	\$1,941,072
Year 25	\$1,989,599
Year 26	\$2,039,339
Year 27	\$2,090,322
Year 28	\$2,142,580
Year 29	\$2,196,145
Year 30	\$2,251,048
Year 31	\$2,307,324
Year 32	\$2,365,007
Year 33	\$2,424,133
Year 34	\$2,484,736
Year 35	\$2,546,854
Year 36	\$2,610,526
Year 37	\$2,675,789
Year 38	\$2,742,684
Year 39	\$2,811,251
Year 40	\$2,881,532

4.8 Minimum Annual Rent – Additional Revised Term. The Minimum Annual Rent for the first (1st) Lease Year of the Additional Revised Term shall be Two Million Nine Hundred Fifty Three Thousand Five Hundred Seventy Dollars (\$2,953,570).

4.9 Minimum Annual Rent Adjustments – Additional Revised Term. The Minimum Annual Rent during the Additional Revised Term shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent adjustment schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:

Year 41	\$2,953,570
Year 42	\$3,027,409

Year 43	\$3,103,095
Year 44	\$3,180,672
Year 45	\$3,260,189
Year 46	\$3,341,694
Year 47	\$3,425,236
Year 48	\$3,510,867
Year 49	\$3,598,639
Year 50	\$3,688,604

4.10 Rent Credit – Original Lease. “Public Improvements” shall mean previously constructed improvements in accordance with the Original Lease and as described in **Exhibit G: Public Improvements**, attached hereto. As consideration for the Public Improvements, CITY shall grant to LESSEE a rent credit (“Existing Rent Credit”) in the approximate amount of Two Million Three Hundred Sixty Eight Thousand Four Hundred Seventy Four Dollars (\$2,368,474). The Existing Rent Credit is based on LESSEE’S rent payments under the Original Lease and, subject to verification by CITY audit as stated in Section 4.21 CITY’s Right to Inspect and Audit, below, the Existing Rent Credit shall be adjusted if the audit reveals an underpayment or overpayment of rent for the audit period. In the event the Existing Rent Credit is adjusted, CITY will notify the LESSEE in writing within sixty (60) days of completion of the audit. The Existing Rent Credit shall be applied only to rent payable in excess of Seventy Thousand Dollars (\$70,000) in each Lease Year. The Existing Rent Credit shall be applied in an amount up to fifty percent (50%) of rent and applied on a monthly basis until the Existing Rent Credit is fully applied. No fees, interest charges or adjustments based on financing shall be applied to any of the Existing Rent Credit calculations. CITY shall not be liable for any unused Existing Rent Credit upon the expiration or earlier termination of this Lease. LESSEE shall not alter or remove any Public Improvement without CITY’s prior written approval in each instance.

4.11 Rent Credit-Plunge Refurbishment. Upon the Plunge Refurbishment Completion, as defined in Section 1.15 above, and approval of all Plunge Refurbishment invoices by CITY (which approval shall not be unreasonably withheld, conditioned or delayed), LESSEE shall receive an additional rent credit equal to the actual cost of the Plunge Refurbishment, except for any fees, fines or similar penalties, not to exceed Five Million Two Hundred Thousand Dollars (\$5,200,000) “Plunge Refurbishment Rent Credit”. In no event shall the Plunge Refurbishment Rent Credit exceed the actual cost of the Plunge Refurbishment. LESSEE shall be obligated, at LESSEE’S expense, to pay for any costs over and above the Plunge Refurbishment Rent Credit to complete the Plunge Refurbishment. The Plunge Refurbishment Rent Credit shall be added to the balance of the Existing Rent Credit and, subject to verification by CITY audit as stated in Section 4.21 CITY’s Right to Inspect and Audit, below, the Plunge Refurbishment Rent Credit shall be adjusted if the audit reveals an underpayment or overpayment of rent for the audit period. In the event the Plunge Refurbishment Rent Credit is adjusted, CITY will notify the LESSEE in writing within sixty (60) days of completion of the audit. The Plunge Refurbishment Rent Credit and Existing Rent Credit shall be applied only to rent payable in excess of Seventy Thousand Dollars (\$70,000) in each Lease Year. The

Plunge Refurbishment Rent Credit shall be applied in an amount up to fifty percent (50%) of rent and applied on a monthly basis until the Plunge Refurbishment Rent Credit is fully applied. No fees, interest charges or adjustments based on financing shall be applied to any of the Plunge Refurbishment Rent Credit calculations. CITY shall not be liable for any unused Plunge Refurbishment Rent Credit upon the expiration or earlier termination of this Lease. LESSEE shall not alter or remove any Public Improvement without CITY's prior written approval in each instance.

- 4.12 Percentage Rent. "Percentage Rent" shall mean rent in an amount equal to the following percentages of Gross Revenue derived from the following business activities:

<u>Percentage of Gross Revenue</u>	<u>Business Activity</u>
Four Percent (4%)	Specialty shops. The percentage rate for this activity shall increase to five percent (5%) as of the first day of the fifth (5 th) Lease Year of the Initial Term.
Three Percent (3%)	Operations involving the serving of meals or dispensing of food or non-alcoholic beverages, including without limitation coffee shops, restaurants and cocktail lounges.
Three Percent (3%)	Mandatory service charges on catering or food service, where the customer has no discretion to not pay the service charge ("Mandatory Service Charges"), including, without limitation, Mandatory Service Charges collected as a result of operations pursuant to a Use and Occupancy Permit issued to LESSEE in accordance with Section 1.22 above. Mandatory Service Charges do not include any voluntary gratuities paid to servers.
Six Percent (6%)	Sale of alcoholic beverages.
Five Percent (5%)	Operation of game rooms, laser tag and miniature golf.
Five Percent (5%)	Health-club and pool operations.
Fifty Percent (50%)	Wireless telecommunication facilities installed or operated on or from the Premises in accordance with Section 4.9.2 Wireless Telecommunication Facilities, below.

Five Percent (5%)

Valet Parking.

Ten Percent (10%)

All other business activities resulting from the Allowed Uses.

- 4.13 Rides. Percentage Rent shall also include fifty percent (50%) of net amusement-ride sublease income of LESSEE as sublessor. "Net amusement-ride sublease income" shall mean LESSEE's Gross Revenue from amusement-ride subleases less LESSEE's operating expenses reasonably applicable to the subject sublease.
- 4.14 Wireless Telecommunications Facilities. Wireless telecommunication facilities are not legally permitted use on the Premises pursuant to San Diego Municipal Code section 63.50. However, if federal law requires the installation or operation of one or more wireless telecommunication facilities on the Premises, then the installation and operation of each such wireless telecommunications facility shall be deemed an "Allowed Use" as defined by and for the purpose of this Lease only, and LESSEE shall pay the applicable Percentage Rent to CITY as required by this Lease.
- 4.15 Additional Allowed Uses. Prior to CITY's approval of an additional use as an Allowed Use, CITY and LESSEE shall determine by mutual written agreement the Percentage Rent calculation applicable to such use.
- 4.16 Percentage Rent Adjustments. Upon at least one hundred eighty (180) days prior notice to LESSEE, CITY may, at its option, adjust the Percentage Rent upward, and upward only, to be effective as of the first day of the eleventh (11th) and twenty-first (21st) Lease Years, the thirty-first (31st) Lease Year and the forty-first (41) Lease Year, if there is an Extended Term.
- 4.16.1 The new Percentage Rent shall be determined by mutual consent or through appraisal as hereinafter set forth. If such adjustment has not been determined by mutual consent by ninety (90) days prior to the start of the applicable Lease Year, then the Percentage Rent adjustment shall be made by appraisal.
- 4.16.2 If the new Percentage Rent is to be determined by appraisal, an appraisal shall be made of the then current fair market rent for the Premises, as evidenced by then recent leases for similar premises similarly improved and operated with uses substantially similar to the Allowed Uses, and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. In establishing the percentage rates for categories set forth in this Lease, the appraiser shall consider CITY'S interest in the property as a fee simple absolute estate, and as vacant and available on the open market for the Allowed Uses at the commencement of the rental period under review.
- 4.16.3 CITY and LESSEE shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of

the parties from a list of City of San Diego-approved appraisers ("Appraiser List") and within ten (10) days after LESSEE's receipt of such list. If the parties do not mutually select an appraiser within said 10-day period, then CITY and LESSEE shall each select a qualified appraiser from the Appraiser List who in turn shall select a third qualified appraiser from the Appraiser List to perform the appraisal.

4.16.3.1 If a qualified appraiser is not on the Appraiser List, then a qualified appraiser shall be selected by mutual agreement of the parties, subject to all applicable laws, rules, regulations, directives and approvals of competent governmental authorities in each instance, including without limitation CITY in its capacity as a governmental entity.

4.16.3.2 "Qualified appraiser" shall mean a licensed "MAI" (or substantially equivalently qualified) appraiser reasonably experienced in appraising leases substantially similar to this Lease.

4.16.4 If the appraisers selected by CITY and LESSEE do not select a third appraiser within ten (10) days after they are selected, then the third appraiser may be appointed by either party's application to the Superior Court of California – San Diego County (Downtown Branch). If the Superior Court declines to make the appointment, or if the parties otherwise agree, the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Each party shall pay the cost of its own selected appraiser, and CITY and LESSEE shall equally share the cost of the third appraiser, however appointed.

4.16.5 The appraisal shall be ordered for completion within sixty (60) days. The fair-market percentage rates set forth in the appraisal that are higher than the then current percentage rates for the Percentage Rent shall become the percentage rates used to determine the Percentage Rent under this Lease as of the applicable effective date for the rental period under review, regardless of when the appraisal is actually completed. If the adjustment is retroactively applied, LESSEE shall pay all resulting Percentage Rent deficiencies within ninety (90) days after CITY's notice to LESSEE of the amount of such deficiencies. The percentage rates determined by the appraisal shall be binding on the parties.

4.17 Unauthorized Use Charge. LESSEE shall pay to CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or be a credit against any other rent obligation of LESSEE's under this Lease. The unauthorized use charge shall otherwise be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of

such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

- 4.18 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 4.19 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is pre-approved in writing by CITY.

- 4.20 Financial Statements. Within ninety (90) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's

business and all other business activities conducted on the Premises and all financial transactions resulting from LESSEE's use of the Premises.

4.20.1 If LESSEE submits any statements or information clearly marked "confidential" or "proprietary," CITY shall protect and treat the same with confidentiality to the extent permitted by law and in conformity with the California Public Records Act ("CPRA"). CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the CPRA. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

4.20.1.1 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

4.21 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term plus five (5) years. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's possession, use and/or occupancy of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business in connection with its possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial

transactions in connection with LESSEE's possession, use and/or occupancy of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with LESSEE's possession, use and/or occupancy of the Premises. CITY's right to audit LESSEE's books and records shall terminate for each Lease Year on the date five (5) years after the end of that Lease Year.

4.21.1 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%), calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

4.21.2 Rent Deficiency and Overpayment. Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit

4.22 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. Subject to CITY's prior written consent in each instance, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of developing, improving, repairing, refurbishing and/or maintaining the Premises or to finance such capital expenditures previously advanced by LESSEE. CITY's consent may be based in part on its determination that a loan does not exceed eighty percent (80%) of the appraised value of the leasehold estate and that LESSEE's net operating income to be derived from the leasehold is adequate to service the debt and LESSEE's expenses, including without limitation the payment of rent under this Lease. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all of CITY's encumbrances on that fee interest, now and in the future. If any such approved deed of trust or other security instrument is foreclosed upon or transferred in lieu of foreclosure, CITY shall accept the mortgagee or beneficiary thereof as its new lessee under this Lease with all the rights and obligations granted and imposed in this Lease.
- 5.2 Assignment and Subletting.
- 5.2.1 LESSEE may assign this Lease (without being released from LESSEE's obligations under this Lease) to any entity in which LESSEE holds controlling interest ("LESSEE Affiliate") without CITY's prior written consent; however, LESSEE shall notify CITY of any and each such assignment and provide CITY with such financial and ownership information related to the LESSEE Affiliate as CITY may request. If LESSEE is to be released from its obligations under this Lease in connection with an assignment to a LESSEE Affiliate, the assignment shall require CITY's prior written consent in each instance.
- 5.2.2 LESSEE shall not assign this Lease or any interest in this Lease to any person or entity that is not a LESSEE Affiliate without CITY's prior written consent in each instance.
- 5.2.3 LESSEE shall not sublet the Premises or any part of the Premises without CITY's prior written consent in each instance which shall not be unreasonably withheld.
- 5.2.4 LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents,

guests, invitees and subtenants, to use or occupy the Premises or any part of the Premises without CITY's prior written consent in each instance.

- 5.2.5 Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law without CITY's prior written consent in each instance.
- 5.2.6 As used in this Lease, "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE.
- 5.3 Consent Conditions. CITY may require, as a condition to consenting to any assignment or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to include then current CITY lease provisions however such revisions shall not modify any existing material right of LESSEE, and that the assignment or other grant of rights be subject and subordinate to each and every provision of this Lease.
- 5.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees and subtenants shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease and the precise nature of all interests of each such person. Each and every person/entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.
- 5.5 Additional Consideration to CITY. If LESSEE assigns this Lease, subleases a majority of the Premises, then in addition to any other amounts payable by LESSEE under this Lease, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; and (b) for majority subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease.
- 5.5.1 Basis of 2% Calculation. The amount upon which such two percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments.
- 5.5.2 Transaction Statement. Prior to CITY's consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee or sublessee as to the amount due CITY, which shall be attested to in writing by and binding upon LESSEE and such assignee. The consideration payable to CITY for each assignment or majority subleasing shall be paid concurrently with the closing of the proposed transaction and shall be in addition to any rent or other payment required under this Lease. The additional consideration due CITY pursuant to this section shall be payable to CITY when received by LESSEE.

5.5.3 When Not Applicable. The applicable two-percent (2%) payments required by this section shall not apply to:

- (a) an assignment of this Lease to a LESSEE Affiliate;
- (b) the subleasing of a majority of the Premises to a LESSEE Affiliate;
- (c) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the holder of a controlling interest in LESSEE; or
- (d) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 6: DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to correct the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, either terminate this Lease upon three (3) days prior notice delivered to LESSEE (or any person claiming rights through LESSEE), or deliver to LESSEE (or any person claiming rights through LESSEE) a thirty (30)-day written "Notice of Intent to Terminate" this Lease. If CITY delivers such a "Notice of Intent to Terminate" and LESSEE (or the persons claiming rights through LESSEE) does not cure the default within the thirty-day period, CITY

may, upon three (3) days prior notice delivered to LESSEE (or any person claiming rights through LESSEE) terminate this Lease and all rights of LESSEE (and/or each person claiming rights through LESSEE) to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by LESSEE under this Lease.

6.3 Default if Leasehold is Encumbered. If, upon LESSEE's default, there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default when the same is sent to LESSEE, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may cure the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary; and

- (b) CITY may cure the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to cure the default or to pay the costs of correction performed by or at the direction of CITY.
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgages as a condition of early payoff of the related obligations by CITY. City may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary.

- 6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 7: EMINENT DOMAIN

- 7.1 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 7.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 7.1.2 Partial Taking. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are reasonably suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 7.1.3 LESSEE's Award. Subject to the rights of mortgagees, LESSEE shall receive the fair market value of its leasehold interest under this Lease for the remaining Term and the value of its loss of goodwill, if any, awarded by the taking authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 7.1.4 Transfer. CITY may transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If such transfer occurs, LESSEE shall retain all its rights under this Lease including without limitation the rights provided at 7.1.3 above.
- 7.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or willful misconduct of CITY or its elected

officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

8.2 Insurance. LESSEE shall obtain and maintain throughout the Term, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease.

Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of at least Ten Million Dollars (\$10,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this Lease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

8.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising

out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.

- 8.2.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- 8.2.3 Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 8.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 8.2.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 8.2.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Initial Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

- 8.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 8.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 8.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

SECTION 9: IMPROVEMENTS; ALTERATIONS

- 9.1 Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval. Notwithstanding the foregoing, no approval shall be required for alterations or repairs which do not alter the appearance of buildings. Except for the Plunge Swimming Pool building, no approval is necessary for any interior improvements which do not alter any approved exterior elevations or affect the structural integrity of the subject portion of the Premises. Nothing in this provision shall relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 9.2 Construction Bond. If LESSEE develops improvements on the Premises, CITY may at any time require LESSEE to deposit with CITY a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the work commenced by LESSEE will be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted work will be removed and the Premises restored to a condition satisfactory

to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

- 9.3 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

9.4 Artwork and Ownership of Improvements.

- 9.4.1 For the purposes of this Lease, "Artwork" shall mean "artworks" as that term is defined by San Diego Municipal Code section 26.0702 or applicable succeeding or superseding sections of the San Diego Municipal Code on the date of the Artwork's installation on the Premises and that have been planned and executed with the specific intention of being sited or staged in the physical public domain. Prior to the installation of any and all Artwork on the Premises, LESSEE shall secure and provide to CITY an acknowledgment from the artist of the Artwork in the form of **Exhibit H: Form of Acknowledgement of Artist**, attached hereto. This provision does not apply to any Artwork removed prior to the Effective Date.

- 9.4.2 CITY owns the Plunge Swimming Pool and the building that houses it. During the Term, all other improvements, fixtures, structures, installations and Artworks on the Premises shall be owned by LESSEE. LESSEE shall not remove or alter any improvements, fixtures (other than trade fixtures), structures, installations or Artworks in place as of the Effective Date and installed, added or placed on the Premises during the Term without CITY's prior written consent (unless otherwise permitted by this Lease) in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures, installations and Artworks on the Premises (excepting those Artworks designated by written agreement of the parties as being exempt from this Lease section) shall be deemed a part of the Premises and owned by CITY, at no cost to CITY, and LESSEE shall honor such ownership and execute and deliver any and all necessary and appropriate documents, materials and other items reasonably needed to evidence such transfer of ownership to CITY. LESSEE shall deliver all such improvements, fixtures, structures, installations and Artworks to CITY free and clear of liens and other encumbrances resulting from LESSEE's possession, use or occupancy of the Premises and at LESSEE's sole cost and expense.

- 9.4.3 Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at least 180 days prior to Lease expiration, elect to have part or all

of such improvements, fixtures, structures, installations and Artworks removed by LESSEE upon the termination or expiration of this Lease. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense.

- 9.5 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property, excepting Artworks, upon the expiration of the Term, or as soon as practicable after termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- 9.6 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements, fixtures, structures or installations or personal property as required, whether by CITY or by LESSEE. Such rent shall be calculated on a *per diem* basis using the rent in effect at that time. If LESSEE fails to remove improvements, fixtures, structures or installations or personal property as required within 180 days after the expiration or earlier termination of this Lease, CITY may then demand and receive from LESSEE rent, on a *per diem* basis, up to one hundred twenty-five percent (125%) of the then fair market rent for the Premises' highest and best use, as determined by an appraisal prepared by a qualified appraiser chosen by CITY in its sole discretion, which rent shall be effective as of the first day of the 181st day after the expiration or earlier termination of this Lease, retroactively applied after the appraisal is made.
- 9.7 CITY's Right to Acquire Personal Property. If LESSEE wants to sell or otherwise dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
- 9.8 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not clean, decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a clean, decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.

- 9.9 Entry and Inspection. Upon reasonable prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 9.9.1 Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a clean, decent, safe, healthy and sanitary condition, CITY shall have the right but not the obligation, after ten (10) days prior written notice to LESSEE; to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, and all at LESSEE's sole cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
- 9.9.2 CITY may require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy and sanitary. The bond shall be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond.
- 9.10 Utilities. LESSEE shall order, obtain and pay for all utilities and all utility installation and service charges in connection with its use of the Premises. All newly-installed utilities shall be subject to CITY's prior approval and installed underground.
- 9.11 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.
- 9.12 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 9.13 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated

substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 9.13.1 Release. For purposes of this Lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 9.13.2 Hazardous Substance. For purposes of this Lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 9.13.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- 9.13.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 9.13.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of

environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

9.13.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

9.13.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced within the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs

and expenses therefor.

SECTION 10: GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, delivered by a nationally recognized courier service, or by the United States Postal Service ("USPS"), postage prepaid. If Notice is given by USPS, it shall be deemed given as of the date four (4) USPS business days after the postmark date, unless the postmark is illegible or a return receipt is requested, in which event it shall be effective when received. Notices shall be addressed as follows:

If to LESSEE:

SYMPHONY ASSET POOL XVI, LLC
Attention: Asset Manager
5505 Cancha Del Golf
Rancho Santa Fe, California 92067

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Any party entitled or required to receive notices may designate by notice to the other party a different address to which notices shall be sent.

- 10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, use, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at LESSEE's sole cost and expense. Upon CITY's request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspections, if any). Notwithstanding the foregoing, the CITY hereby acknowledges and agrees that LESSEE's agreement to comply (and actual compliance) with a Final Judgment (as hereafter defined) as required pursuant to this Section 10.2 is subject to the following: (i) it shall not effect a waiver or be construed to waive LESSEE's Preserved Claims (as hereafter defined), and such Preserved Claims shall remain in effect, and (ii) it shall not be used by the CITY as a defense against, or otherwise diminish, the Preserved Claims.
- 10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the CPRA. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice

specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

10.3.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

10.3.1.1 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

10.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this Lease so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501 through 22.3517, as amended from time to time), and upon CITY's request LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

10.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301 through 22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to

maintain equal benefits shall be a material breach of this Lease.

- 10.6 Disabled Access Compliance. LESSEE shall, at its sole cost and expense and as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135 through 11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules, regulations and directives of competent governmental authorities protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

- 10.6.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 10.6.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 10.6.3 LESSEE shall include language in each future commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 10.6.4 LESSEE shall, as required by law, post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 10.6.5 Where required by law, LESSEE shall cause improvements, fixtures, structures and installations on the Premises to comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises that deny access to disabled persons. All such improvements and alterations shall be at LESSEE's sole cost and expense.
- 10.6.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

- 10.7 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- 10.7.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

- 10.7.2 Establish a drug-free awareness program to inform employees about all of the following:
- 10.7.2.1 The dangers of drug abuse in the workplace;
 - 10.7.2.2 LESSEE's policy of maintaining a drug-free workplace;
 - 10.7.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 10.7.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each contract related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 10.8 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- 10.9 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from qualified local residents and firms and to hire same as opportunities occur.
- 10.10 Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all applicable laws, rules, regulations and directives of competent governmental authorities (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management in connection with its possession, use and occupancy of the Premises. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.
- 10.10.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
 - 10.10.2 Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and

employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by CITY, in its governmental capacity, under its Stormwater Management Program.

- 10.11 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ethnicity, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 10.12 Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of LESSEE's obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- 10.13 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 10.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 10.17 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements

between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

- 10.18 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.19 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Allowed Uses. LESSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses or any particular use, and that LESSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Lease. LESSEE accepts the Premises in its current condition. LESSEE acknowledges and agrees that unless set forth in this Lease, CITY neither had nor has any obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on or after the Effective Date. LESSEE shall not hold CITY responsible for any defects in the Premises, excepting defects resulting from established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. LESSEE accepts and assumes all risk of harm to all persons and property, including without limitation LESSEE's employees, agents, guests, invitees and subtenants, from any defects in the Premises, and shall be solely responsible therefor.
- 10.20 Prevailing Wage. By signing this Lease, LESSEE certifies that it is aware of the wage provisions described herein and shall comply with such provisions before commencing any and all work on the Premises.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

- 10.20.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and

preconstruction phases of construction including, but not limited to, inspection and land surveying work

10.20.1.1 Copies of such prevailing rate of per diem wages are on file at the CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

10.20.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

10.20.2 Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

10.20.3 Payroll Records. LESSEE, its contractors and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based

Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.

- 10.20.3.1 In addition to submitting weekly certified payroll records to the City, for contracts entered into on or after April 1, 2015, LESSEE and its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- 10.20.4 Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 10.20.5 Working Hours. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 10.20.6 Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 10.20.7 Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."
- 10.20.8 Labor Compliance Program. CITY has its own Labor Compliance Program as authorized in August 2011 by the DIR. CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by CITY or other governmental entity, or it has been established after an investigation by CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

10.20.9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the CITY, LESSEE is certifying that it has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of subcontractor registration to the CITY upon request.

10.20.9.1 A LESSEE's inadvertent error in listing a contractor or subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107

10.21 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

10.22 Invalidation of Lease.

10.22.1 Notwithstanding anything to the contrary in this Lease, in the event provisions of this Lease regarding future development and/or current and future uses and/or the Term, are determined to be invalid in whole or in part by a final judgment of a court of competent jurisdiction and any appeal thereof (the "Final Judgment):

- a. the parties shall not waive, and shall otherwise preserve, their respective rights, remedies, defenses and claims with respect to such whole or partial invalidation of this Lease and the benefits to be derived hereunder (the "Preserved Claims"). In connection with the foregoing: (i) the CITY shall not be relieved from liability with respect to any unused Existing Rent Credit and/or Plunge Refurbishment Rent Credit as provided in Sections 4.10 and 4.11 hereof, and the CITY hereby further agrees to apply these identical rent credits to the rent owing under the Original Lease during any period that the

LESSEE leases and operates the Premises under the revived and reinstated Original Lease as provided in clauses (c) and (d) below; and (ii) the provisions of Section 9.4.2 and Section 11.2.13 (generally providing that, upon expiration or termination of this Lease, all improvements, fixtures, structures, installations, Artwork on the Premises shall be deemed part of the Premises and be owned by the City) shall not be operative nor have any effect, and such items shall remain the property of LESSEE pending resolution of the Preserved Claims. Additionally, the parties further agree that any and all statutes of limitation, statutes of repose, contractually required time requirements and all other time related defenses or requirements, if any, applicable to the Preserved Claims shall be tolled until the end of the Contingency Period (as hereafter defined);

- b. At any time before or after such Final Judgment, but in no event more than two years after such Final Judgment ("Contingency Period"), the following corrective measures may be pursued (the "Corrective Measures"): (i) CITY, through the City Council, may take actions to submit a ballot measure to the voters of the City of the San Diego to approve, authorize, or ratify the terms of this Lease (if legally able to do so), draft new law, and/or amend, modify, or revise existing law; (ii) CITY may cooperate with a State legislative action; and (iii) if the basis for the Final Judgment can be cured by the parties without change, modification or revision to the Lease, the parties shall work together in good faith to attempt such cure. Provided the CITY elects to pursue the Corrective Measures and diligently pursues any or all of them to completion, the parties shall not pursue their respective Preserved Claims during the Contingency Period. LESSEE shall, in good faith, reasonably cooperate with such Corrective Measures at its sole cost and expense;
- c. After the Final Judgment or in the event this Lease is enjoined by a court of competent jurisdiction prior to the Final Judgment, and for so long as LESSEE is unable to lease and operate the Premises under this Lease: (i) LESSEE shall lease and operate the Premises (excluding the Coaster Lease Premises) under the Original Lease; (ii) San Diego Coaster Company shall lease and operate the Coaster Lease Premises under the Coaster Lease; and (iii) the parties agree that such leases shall be deemed to be reinstated and revived as further set forth in Sections 1.3 and 11.2.16 of this Lease for so long as LESSEE is unable to lease and operate the Premises under this Lease; and
- d. In the event the CITY chooses not to pursue any Corrective Measures, the Corrective Measures are unsuccessful, or the Contingency Period has expired, the parties agree to attempt to negotiate a resolution of any Preserved Claims in good faith. If the parties fail to agree on a resolution of any Preserved Claims, the parties agree to first submit any Preserved Claims to mediation before a mediator agreed to by both parties under the Commercial Mediation Procedures of the American Arbitration Association before resorting to litigation. LESSEE and CITY shall each pay one-half of the cost of such

mediation.

10.22.2 This Section 10.22 shall survive expiration or termination of this Lease.

SECTION 11: MISSION BEACH ROLLER COASTER

11.1 Mission Beach Roller Coaster. On or about November 7, 2014, LESSEE acquired all the outstanding stock of the San Diego Coaster Company, the "Lessee" under that certain CITY OF SAN DIEGO PERCENTAGE LEASE by and between CITY and SAN DIEGO SEASIDE COMPANY, INC., a California corporation, and filed in the Office of the San Diego City Clerk as Document No. RR-274204 on August 7, 1989 (the "Coaster Lease"). It is the intent of the parties that the Coaster Lease be suspended and held in abeyance, but not terminated as further set forth in Section 11.2.16, and instead provide for the leasing of the Coaster Lease Premises (as hereafter defined) in this Lease in accordance with the provisions of Section 11.2 below, all effective upon the later to occur of either: (1) the authorization by San Diego City Council of this Lease; (2) on the date this Lease (including, without limitation, the provisions of paragraph 11.2 and its subparagraphs) becomes fully enforceable, effective and binding on the CITY and Lessee; and (3) the last date evidenced by the signatures of the Parties to the Lease Suspension and Termination Agreement for the Coaster Lease by and between CITY and the San Diego Coaster Company, in the form of Exhibit J, attached hereto and approval by the City Attorney, all following the authorization by the San Diego City Council of the Lease Suspension and Termination Agreement (the "Coaster Conditions"). Accordingly, the terms and conditions set forth in Section 11.2, below, shall take effect without further City Council approval immediately upon the satisfaction of the Coaster Conditions.

11.2 Coaster Lease Provisions. The following terms and conditions shall take effect immediately upon the satisfaction of the Coaster Conditions:

11.2.1 Premises. Recital A, above, shall be deleted in its entirety and replaced with the following:

"A. CITY owns that certain real property consisting of two separate sections as follows:

1. Approximately 7.241 acres of land, including 2,178 square feet of unimproved pedestrian traffic access to and from the adjacent public beach, with the following improvements: (1) 22,583 square feet of the Plunge building, including the historic Plunge Swimming Pool; and (2) approximately 111,556 square feet of commercial space to house specialty retail shops, restaurants, game rooms, miscellaneous attraction, and water features (Assessor's Parcel Number 760-217-0700); and
2. An historic roller coaster consisting of approximately 49,000 sq. ft. of an historic roller coaster structure ("Roller Coaster Ride"), an approximately

600 sq.ft. Coaster Museum Building, Giant Dipper sign, ticket booth and flag poles (collectively the "Roller Coaster Structures") on approximately 1.06 acres of land (Assessor's Parcel Number 760-102-3600), and other improvements and structures associated with the operation of the Coaster Lease leasehold and more particularly described in the Coaster Lease ("Coaster Lease Premises").

Both separate sections are together commonly known as "Belmont Park," located at 3106-3146 Mission Boulevard, San Diego, California, 92109, and more particularly described in **Exhibit 1: Description of Premises**, attached hereto (the "Premises")."

- 11.2.2 Allowed Uses. The operation, maintenance and improvement of the Coaster Lease Premises, and all uses on the Coaster Lease Premises previously approved by CITY in writing pursuant to the Coaster Lease ("Prior Coaster Uses"), shall be Allowed Uses under this Lease.
- 11.2.3 Rates and Charges. All charges for merchandise, services and facilities on the Coaster Lease Premises shall be subject to CITY's prior written approval.
- 11.2.4 Accounting. LESSEE shall keep and maintain accounting books and records for the Prior Coaster Uses that will readily allow for a separate audit of such financial information regarding income derived from and expenses charged to the Prior Coaster Uses.
- 11.2.5 Percentage Rent. Percentage Rent payable under this Lease for the Roller Coaster Ride shall be Ten Percent (10%) of Gross Revenue derived from the Roller Coaster Ride and 5 % of Gross Revenue of other Prior Coaster Uses in each Lease Year. Percentage rent shall be subject to percentage rent adjustments pursuant to Section 4.16 of this lease. In addition, Section 4.13, above, shall be deleted in its entirety and replaced with the following:
- 4.13 Rides. Percentage Rent shall also include 5% of Gross Revenue for all rides other than the Roller Coaster Ride
- 11.2.6 Minimum Annual Rent. Section 4.4, above, shall be deleted in its entirety and replaced with the following:
- "Minimum Annual Rent. The minimum annual rent ("Minimum Annual Rent") for the first (1st) Lease Year shall be One Million Twenty Four Thousand Dollars (\$1,024,000), and shall be prorated from the date the City receives notification of acquisition of the San Diego Coaster Company through the last day of the Lease Year."
- 11.2.7 Minimum Annual Rent. Section 4.5, above, shall be deleted in its entirety and replaced with the following:

"Minimum Annual Rent Adjustments. The Minimum Annual Rent shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:"

<u>Minimum Annual Rent</u>		<u>Minimum Annual Rent</u>	
Year 1	\$1,024,000	Year 13	\$1,377,166
Year 2	\$1,049,600	Year 14	\$1,411,595
Year 3	\$1,075,840	Year 15	\$1,446,885
Year 4	\$1,102,736	Year 16	\$1,483,057
Year 5	\$1,130,304	Year 17	\$1,520,134
Year 6	\$1,158,562	Year 18	\$1,558,137
Year 7	\$1,187,526	Year 19	\$1,597,091
Year 8	\$1,217,214	Year 20	\$1,637,018
Year 9	\$1,247,645	Year 21	\$1,677,943
Year 10	\$1,278,836	Year 22	\$1,719,892
Year 11	\$1,310,807	Year 23	\$1,762,889
Year 12	\$1,343,577	Year 24	\$1,806,961

- 11.2.8 Minimum Annual Rent – Initial Revised Term. Section 4.6, above, shall be deleted in its entirety and replaced with the following:

"Minimum Annual Rent – Initial Revised Term The Minimum Annual Rent for the first (1st) Lease Year of the Initial Revised Term shall be One Million Three Hundred Thousand Dollars (\$1,300,000)."

- 11.2.9 Minimum Annual Rent Adjustments – Initial Revised Term. Section 4.7, above, shall be deleted in its entirety and replaced with the following:

"Minimum Annual Rent Adjustments – Initial Revised Term. The Minimum Annual Rent during the Initial Revised Term shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent adjustment schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:"

<u>Minimum Annual Rent</u>		<u>Minimum Annual Rent</u>	
Year 1	\$1,300,000	Year 21	\$2,130,201
Year 2	\$1,332,500	Year 22	\$2,183,456
Year 3	\$1,365,813	Year 23	\$2,238,043
Year 4	\$1,399,958	Year 24	\$2,293,944
Year 5	\$1,434,957	Year 25	\$2,351,344
Year 6	\$1,470,831	Year 26	\$2,410,127
Year 7	\$1,507,601	Year 27	\$2,470,381
Year 8	\$1,545,291	Year 28	\$2,532,140

Year 9	\$1,583,924	Year 29	\$2,595,444
Year 10	\$1,623,522	Year 30	\$2,660,330
Year 11	\$1,644,110	Year 31	\$2,726,838
Year 12	\$1,705,713	Year 32	\$2,795,009
Year 13	\$1,748,355	Year 33	\$2,864,884
Year 14	\$1,792,064	Year 34	\$2,936,506
Year 15	\$1,836,866	Year 35	\$3,009,919
Year 16	\$1,882,788	Year 36	\$3,085,167
Year 17	\$1,929,857	Year 37	\$3,162,296
Year 18	\$1,978,104	Year 38	\$3,241,353
Year 19	\$2,027,566	Year 39	\$3,322,387
Year 20	\$2,078,245	Year 40	\$3,405,447

- 11.2.10 Minimum Annual Rent – Additional Revised Term. Section 4.8, above, shall be deleted in its entirety and replaced with the following:

“Minimum Annual Rent – Additional Revised Term. The Minimum Annual Rent for the first (1st) Lease Year of the Additional Revised Term shall be Three Million Four Hundred Ninety Thousand Five Hundred Eighty Three Dollars (\$3,490,583).”

- 11.2.11 Minimum Annual Rent Adjustments – Additional Revised Term. Section 4.9, above, shall be deleted in its entirety and replaced with the following:

“Minimum Annual Rent Adjustments – Additional Revised Term. The Minimum Annual Rent during the Additional Revised Term shall be adjusted upward by two and one-half percent (2.5%) on each anniversary of the Effective Date. The following Minimum Annual Rent adjustment schedule is provided as an illustration only; any miscalculation below shall be disregarded and the correct amount paid:”

Year 41	\$3,490,583
Year 42	\$3,577,848
Year 43	\$3,667,294
Year 44	\$3,758,976
Year 45	\$3,852,951
Year 46	\$3,949,271
Year 47	\$4,084,006
Year 48	\$4,149,206
Year 49	\$4,252,936
Year 50	\$4,359,260

- 11.2.12 Improvements/Alterations. Section 9.1, above, shall be deleted in its entirety and replaced with the following:

“Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises and the Premises may not be altered, by LESSEE without CITY’s prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY’s prior written approval. Notwithstanding the foregoing, no approval shall be required for alterations or repairs which do not alter the appearance of buildings. Except for the Plunge Swimming Pool building and the Roller Coaster Structures, no approval is necessary for any interior improvements which do not alter any approved exterior elevations or affect the structural integrity of the subject portion of the Premises. Nothing in this provision shall relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.”

- 11.2.13 Ownership of Improvements. Section 9.4.2, above, shall be deleted in its entirety and replaced with the following:

“CITY owns the Plunge Swimming Pool and the building that houses it, and the Roller Coaster Structures. During the Term, all other improvements, fixtures, structures, installations and Artworks on the Premises shall be owned by LESSEE. LESSEE shall not remove or alter any improvements, fixtures (other than trade fixtures, furniture, personal property, and rail coaster cars and related parts, supplies and equipment not affixed to the Premises), structures, installations or Artworks in place as of the Effective Date and installed, added or placed on the Premises during the Term without CITY’s prior written consent (unless otherwise permitted by this Lease) in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures, installations and Artworks on the Premises (excepting those Artworks designated by written agreement of the parties as being exempt from this Lease section) shall be deemed a part of the Premises and owned by CITY, at no cost to CITY, and LESSEE shall honor such ownership and execute and deliver any and all necessary and appropriate documents, materials and other items reasonably needed to evidence such transfer of ownership to CITY. LESSEE shall deliver all such improvements, fixtures, structures, installations and Artworks to CITY free and clear of liens and other encumbrances resulting from LESSEE’s possession, use or occupancy of the Premises and at LESSEE’s sole cost and expense.”

- 11.2.14 \$2.5 M Improvement Obligation. Within the first five (5) years of the Initial Revised Term of this Lease, LESSEE shall expend at least Two Million Five Hundred Thousand Dollars (\$2,500,000) on improvements, repairs and refurbishment on the Coaster Lease Premises (the \$2.5M Coaster Improvement Obligation). The \$2.5M Coaster Improvement Obligation is described in **Exhibit I: \$2.5M Coaster Improvement Obligation**. Any and all such expenditures shall be in addition to the \$18M Improvement Obligation.

11.2.15 \$18M Improvement Obligation Exclusion. No expenditure for capital improvements, repairs and refurbishment on the Coaster Lease Premises shall be applied to the \$18M Improvement Obligation. Any and all such expenditures shall be in addition to the \$18M Improvement Obligation.

11.2.16 Coaster Lease Suspension and Termination.

11.2.16.1 Suspension of Coaster Lease. In the event the provisions of Section 11.2 become effective, the Coaster Lease shall be suspended and held in abeyance, but not terminated (except as otherwise provided in Section 11.2.16.2). Notwithstanding the foregoing, while this Lease (including Section 11.2) is in effect, the parties shall look only to this Lease to control their relationship and for all other rights, benefits, duties and obligations related to the Coaster Lease Premises and not to the Coaster Lease.

11.2.16.2 Termination of Coaster Lease. The Coaster Lease shall be terminated in accordance with the terms and conditions of the Lease Suspension and Termination Agreement.

11.2.17 Rail Coaster Improvements. Notwithstanding anything to the contrary in this Lease, the City and Lessee hereby acknowledge and agree that upon the binding effect of this Section 11.2 and the suspension of the Coaster Lease, the Rail Coaster Improvements (as hereafter defined) shall continue to be owned by Lessee during the Term of this Lease. For purposes of this Lease, the term "Rail Coaster Improvements" shall mean and refer to all improvements, trade fixtures, and structures existing on the Coaster Lease Premises as of the Effective Date of Section 11.2, except for the Roller Coaster Structures.

SIGNATURES ON THE FOLLOWING PAGE

SECTION 12: CONTRACT AUTHORITY

- 12.1 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 03/23/15

SYMPHONY ASSET POOL XVI LLC, a
Delaware limited liability company

By: Pacifica Enterprises, Inc.,
a California corporation (Manager)

BY: [Signature]

Name: Dario De Luca

Title: President

BY: [Signature]

Name: Robert Colucci

Title: Chief Executive Officer

Date: 4/28/15

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: [Signature]
Name: Cybele Thompson
Title: Director, Real Estate Assets

Exhibit A: Description of Premises
Exhibit B: Plunge Swimming Pool Days and Hours of Operation
Exhibit C: Plunge Refurbishment
Exhibit D: Plunge Report
Exhibit E: Form of Use & Occupancy Permit
Exhibit F: \$18M Improvement Obligation
Exhibit G: Public Improvements
Exhibit H: Form of Acknowledgment of Artist
Exhibit I: \$2.5M Coaster Improvement Obligation
Exhibit J: Lease Suspension and Termination Agreement
Exhibit L: Description of Premises

Approved as to form:

JAN I. GOLDSMITH, City Attorney

By: [Signature]

Name: Hilda R. Mendoza

Title: Deputy City Attorney

Date: April 22, 2015

Exhibit A: Description of Premises

LEGAL DESCRIPTION BELMONT PARK

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 38, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO SURVEY MONUMENT "BELMONT" AT THE INTERSECTION OF VENTURA PLACE AND OCEAN FRONT WALK AS SHOWN ON SAID MAP OF MISSION BEACH, SAID MONUMENT HAVING THE NAD83 COORDINATES OF NORTH 1862178.44 AND EAST 6253378.64; THENCE SOUTH 16°37'33" EAST 59.92 FEET; THENCE NORTH 87°54'07" EAST 95.24 FEET, TO THE TRUE POINT OF BEGINNING; THENCE NORTH 87°54'07" EAST 282.37 FEET TO A POINT WHICH BEARS SOUTH 58°19'53" WEST 117.98 FEET FROM FOUND CITY ENGINEERS DISK, HAVING THE NAD83 COORDINATES OF NORTH 1862196.79 AND EAST 6253873.55; THENCE SOUTH 2°05'26" EAST 6.00 FEET; THENCE SOUTH 82°10'35" EAST 48.54 FEET; THENCE SOUTH 2°06'02" EAST 15.35 FEET; THENCE SOUTH 76°46'12" WEST 2.48 FEET; THENCE SOUTH 85°50'44" WEST 8.27 FEET; THENCE SOUTH 61°52'00" WEST 16.35 FEET; THENCE SOUTH 45°55'46" WEST 16.67 FEET; THENCE SOUTH 27°35'45" WEST 16.17 FEET; THENCE SOUTH 8°34'44" WEST 16.24 FEET; THENCE SOUTH 0°48'23" WEST 7.96 FEET; THENCE SOUTH 10°58'52" EAST 16.51 FEET; THENCE SOUTH 18°19'55" EAST 39.37 FEET; THENCE SOUTH 66°29'00" WEST 7.24 FEET; THENCE SOUTH 29°04'14" WEST 16.54 FEET; THENCE SOUTH 12°29'57" WEST 16.04 FEET; THENCE SOUTH 43°28'16" WEST 22.28 FEET; THENCE NORTH 48°23'47" WEST 3.43 FEET; THENCE SOUTH 43°11'04" WEST 41.48 FEET; THENCE SOUTH 45°36'13" EAST 3.49 FEET; THENCE SOUTH 43°00'50" WEST 37.12 FEET; THENCE SOUTH 2°28'19" WEST 52.83 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 20.00 FEET, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°58'26" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.19 FEET, THROUGH A CENTRAL ANGLE OF 135°11'04"; THENCE SOUTH 1°59'46" EAST 148.09 FEET; THENCE SOUTH 43°30'22" EAST 8.93 FEET; THENCE SOUTH 36°18'07" EAST 24.47 FEET; THENCE SOUTH 64°23'15" EAST 24.49 FEET; THENCE NORTH 85°57'19" EAST 24.31 FEET; THENCE NORTH 62°39'09" EAST 16.27 FEET; THENCE NORTH 36°08'36" EAST 24.54 FEET; THENCE NORTH 6°31'45" EAST 32.32 FEET; THENCE NORTH 1°55'51" WEST 119.94 FEET; THENCE NORTH 2°22'56" WEST 63.36 FEET TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 120.00 FEET, CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87°37'04" WEST:

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 63.59 FEET, THROUGH A CENTRAL ANGLE OF 30°21'47"; THENCE NORTH 27°58'51" EAST 94.78 FEET; THENCE NORTH 28°02'49" EAST 15.98 FEET; THENCE NORTH 20°38'12" EAST 17.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 54.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 69°21'52" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.70 FEET, THROUGH A CENTRAL ANGLE OF 10°17'47"; THENCE NORTH 81°24'11" EAST 7.51 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF MISSION BOULEVARD; THENCE SOUTH 8°36'03" EAST 71.87 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1,980.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 81°23'57" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 224.62 FEET, THROUGH A CENTRAL ANGLE OF 6°30'00"; THENCE SOUTH 2°06'03" EAST 363.91 FEET; THENCE SOUTH 87°50'57" WEST 511.38 FEET; THENCE NORTH 2°01'38" WEST 532.19 FEET; THENCE NORTH 87°58'21" EAST 75.73 FEET; THENCE NORTH 2°02'55" WEST 92.48 FEET; THENCE NORTH 87°56'16" EAST 19.62 FEET; THENCE NORTH 2°03'45" WEST 129.99 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION, LYING BELOW THE MEAN TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THEREFROM ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE AND THE SAME AS RESERVED BY THE STATE OF CALIFORNIA BY CHAPTER 119 STATUTES OF 1943, RECORDED SEPTEMBER 3, 1988 AS FILE NO. 86-385271 OF OFFICIAL RECORDS.

DESCRIBED PARCEL CONTAINS 7.19 ACRES MORE OR LESS AND AS SHOWN ON ATTACHED EXHIBIT 'A-1' AND BY THIS REFERENCE MADE A PART HEREOF.


LORNE L. DaPRON, P.L.S. 7824 07/14/14
DATE

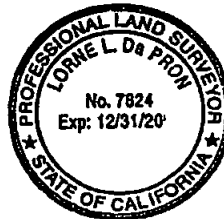


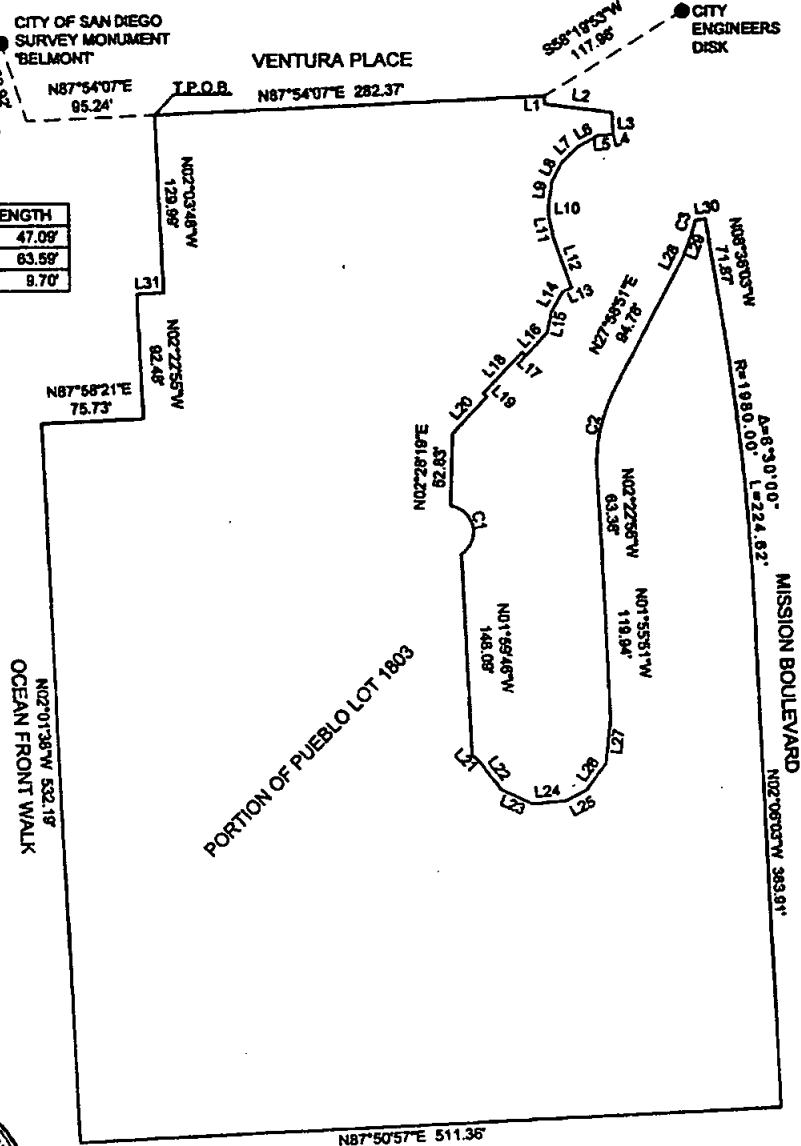
EXHIBIT 'A-1'
BELMONT PARK



SCALE 1"=100'

LINE	DELTA	RADIUS	LENGTH
C1	135°11'04"	20.00'	47.09'
C2	30°21'47"	120.00'	63.59'
C3	10°17'47"	54.00'	9.70'

LINE	BEARING	DISTANCE
L1	S02°05'26"E	6.00'
L2	S82°10'35"E	48.54'
L3	S02°08'02"E	15.35'
L4	S78°48'12"W	2.48'
L5	S85°50'44"W	8.27'
L6	S81°52'00"W	18.35'
L7	S45°55'48"W	18.87'
L8	S27°35'45"W	18.17'
L9	S08°34'44"W	18.24'
L10	S00°48'23"W	7.98'
L11	S10°58'52"E	18.51'
L12	S18°18'55"E	39.37'
L13	S68°29'00"W	7.24'
L14	S28°04'14"W	18.54'
L15	S12°29'57"W	18.04'
L16	S43°28'16"W	22.28'
L17	N48°23'47"W	3.43'
L18	S43°11'04"W	41.48'
L19	S45°38'13"E	3.49'
L20	S43°00'50"W	37.12'
L21	S43°30'22"E	8.93'
L22	S36°18'07"E	24.47'
L23	S84°23'15"E	24.49'
L24	N85°57'18"E	24.31'
L25	N62°39'09"E	18.27'
L26	N36°08'36"E	24.54'
L27	N08°31'45"E	32.32'
L28	N28°02'49"E	15.98'
L29	N20°38'12"E	17.70'
L30	N81°24'11"E	7.51'
L31	N87°56'16"E	19.62'



**LEGAL DESCRIPTION
SOUTH PEDESTRIAN ACCESS**

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 38, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Exhibit B: Plunge Swimming Pool Days and Hours of Operation

- I. The Plunge swimming pool shall be open to public use three hundred sixty five (365) days per year (except for New Year's Day, Thanksgiving Day, Christmas Day and regularly scheduled maintenance closure).
- II. The following minimum hours shall be observed by LESSEE:

Monday through Friday	6:00 AM to 10:00 PM
Saturday and Sunday	7:00 AM to 9:00 PM
- III. LESSEE and CITY shall review any changes to established hours of operation and mutually agree upon revised hours of operation, if necessary. All programs will be open to the public, and fees will be in accordance with the Lease.

Exhibit C: Plunge Refurbishment

1. Repair and rehabilitate all structural steel (in addition to the Plunge Report, set forth as Exhibit E to the Lease)
Commencement - under construction as of Effective Date.
Completion - February 2016
Total Cost - \$1,100,000
2. Repair and resurface Plunge pool, coping and decking
Commencement - under construction as of Effective Date.
Completion - February 2016
Total Cost - \$600,000
3. Replace roof with new retractable skylight roof system
Commencement - November 2014
Completion - February 2016
Total Cost - \$1,200,000
4. Reconstruct mural wall with the new full height glass wall
Commencement - March 2015
Completion - February 2016
Total Cost - \$400,000
5. Replace window glazing and mullions
Commencement - November 2014
Completion - February 2016
Total Cost - \$250,000
6. Remove architectural stucco and foam parapet cornice and window trim molding
Commencement - November 2014
Completion - February 2016
Total Cost - \$50,000
7. Install new mechanical ventilation system
Commencement - November 2014
Completion - February 2016
Total Cost - \$400,000
8. Install new water filtering system
Commencement - under construction as of Effective Date.
Completion - February 2016
Total Cost - \$300,000
9. Site work and utilities
Commencement - under construction as of Effective Date.
Completion - February 2016
Total Cost - \$100,000

10. FF&E, soft costs & fees

Commencement - under construction as of Effective Date.

Completion - February 2016

Total Cost - \$450,000

11. Additional prevailing wage and bonding costs

Commencement - under construction as of Effective Date.

Completion - February 2016

Total Cost - \$1,057,300

Grand Total Cost of Plunge Repairs: \$5,907,300

Exhibit D: Plunge Report

[TO FOLLOW BEHIND THIS PAGE]



Mission Beach Plunge Building Structural and Mechanical (Heating and Ventilation) Systems Evaluation Report



Harris & Associates

Table of Contents

Executive Summary

Vicinity Map

Appendix

- **Structural Evaluation Report**
- **Mechanical Ventilation Systems Report**
- **Structure Corrosion Condition Report**



Harris & Associates.



Harris & Associates

Shaping the Future, One Project at a Time...

August 8, 2011

Julian Espinoza, PE
Associate Engineer
Engineering & Capital Project Development
City of San Diego
1010 Second Avenue, Suite 110
San Diego, CA 92101

Subject: Mission Beach Plunge Building Structural and Mechanical (Heating and Ventilating) Systems Evaluation Report

Dear Mr. Espinoza:

Please find enclosed in the attached appendices the Harris & Associates team structural, corrosion and mechanical ventilation assessment Final reports for the Mission Beach Plunge Building. These reports are based upon our teams field visits, data collection, laboratory corrosion testing and engineering calculations between the period of June 13, 2011 to June 29, 2011, and subsequent City Staff review on July 11, 2011.

The purpose of this assignment was to assess the current structural condition of the Plunge Building and identify specific repairs if required and their approximate costs.

Our findings are summarized as follows:

The primary structural system of the plunge shows signs of minor to moderate corrosion in general. The overall primary structural system shows no immediate signs of distress or immediate failure.

STRUCTURAL

In 1987, the building was seismically retrofitted to bring the building up to current seismic standards at the time. Steel moment resisting seismic frames were incorporated into each wall of the building. The project was plan checked and permitted as required by the California Uniform Building Code. Although code advances have been introduced since the 1994 Northridge quake, there is no requirement to implement these improvements under the California Building Code. During the investigation, the team noted a discrepancy between the as-built records and actual field conditions. The original drawings show the steel bottom cord truss directly welded to the new steel moment frame. Field observations found a "u" shaped plate welded to the bottom of the cord and frame to make up a 8-inch plus or minus gap. The estimated cost to modify the system is approximately \$48,000.

CORROSIVITY

The roof clerestory (non primary structure) was found to be in significant disrepair due to extensive corrosion occurring in its structural elements. In addition, the window mullion support clips were found to be rusted/deteriorated beyond repair. It was also found that there was a truss member and a gusset plat in the main building framing that were found to have approximately 30% loss of wall thickness.

MECHANICAL VENTILATION

The Harris team was provided access to the building and roof areas for a survey of the existing mechanical ventilation and heating system. The mechanical ventilation equipment was found to be adequately sized to provide proper air quality comfortable room temperatures and proper water vapor removal. However during our visit it was noted that the system was not operating. It is recommended that an air distribution duct system should be added to the supply air fans in the pool room.

Due to the lack of continuous maintenance, the non-primary structural elements such as the clerestory structure requires immediate remediation or repair prior to public occupancy. These remediation and repairs are described in the short term and intermediate term repair approach below.

There are three approaches to the repair recommendation: Short Term Approach, Intermediate Term Approach and Long Term Approach. The short term approach will temporarily mitigate the potential falling debris hazard to allow for temporary occupancy of the facility for up to 6 months. In the intermediate approach it is recommended to remove or repair the clerestory (non- primary structure) as well as to further investigate the moment frame discrepancy between the record drawings and site visit. This approach should allow the occupancy for up to 2 years or more depending on maintenance and the rate of corrosion of the steel elements. A long term approach includes incorporation of the intermediate approach steps. In addition sand blasting and painting all exposed primary members and the addition of new support columns is recommended in order to provide a long term structure retrofit.

A) Short Term Approach-(\$198,000.00)

- Install a solid wood platform at the top of the existing roof trusses at the clerestory to shield potential objects from entering the pool.
- Remove all tie rods and install temporary plywood shear walls at each truss to transfer lateral and vertical load directly from the clerestory roof framing to the primary truss framing below.

B) Intermediate Term Approach-(\$516,600.00)

- Remove or replace the clerestory structure.
- Replace window mullion support clips.
- The moment frames in the south wall appears to have a 8-inch gap between the truss bottom chord and top of the moment beam. We recommend that the north and south wall moment frame to truss connections be investigated further.

C) Long Term Approach-(\$1,200,600.00)

- The primary structure should be sand blasted and painted as described in the V&A report. Provide new columns (24 columns) to ensure long term structural integrity.



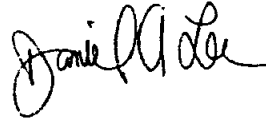
City of San Diego
Julian Espinoza, PE
August 5, 2011
Page 3 of 3

If you have any questions, or need additional information, please do not hesitate to contact us at (619) 236-1778 (ext 2504) for Javier and (ext 2512) for Daniel.

Sincerely,
Harris & Associates



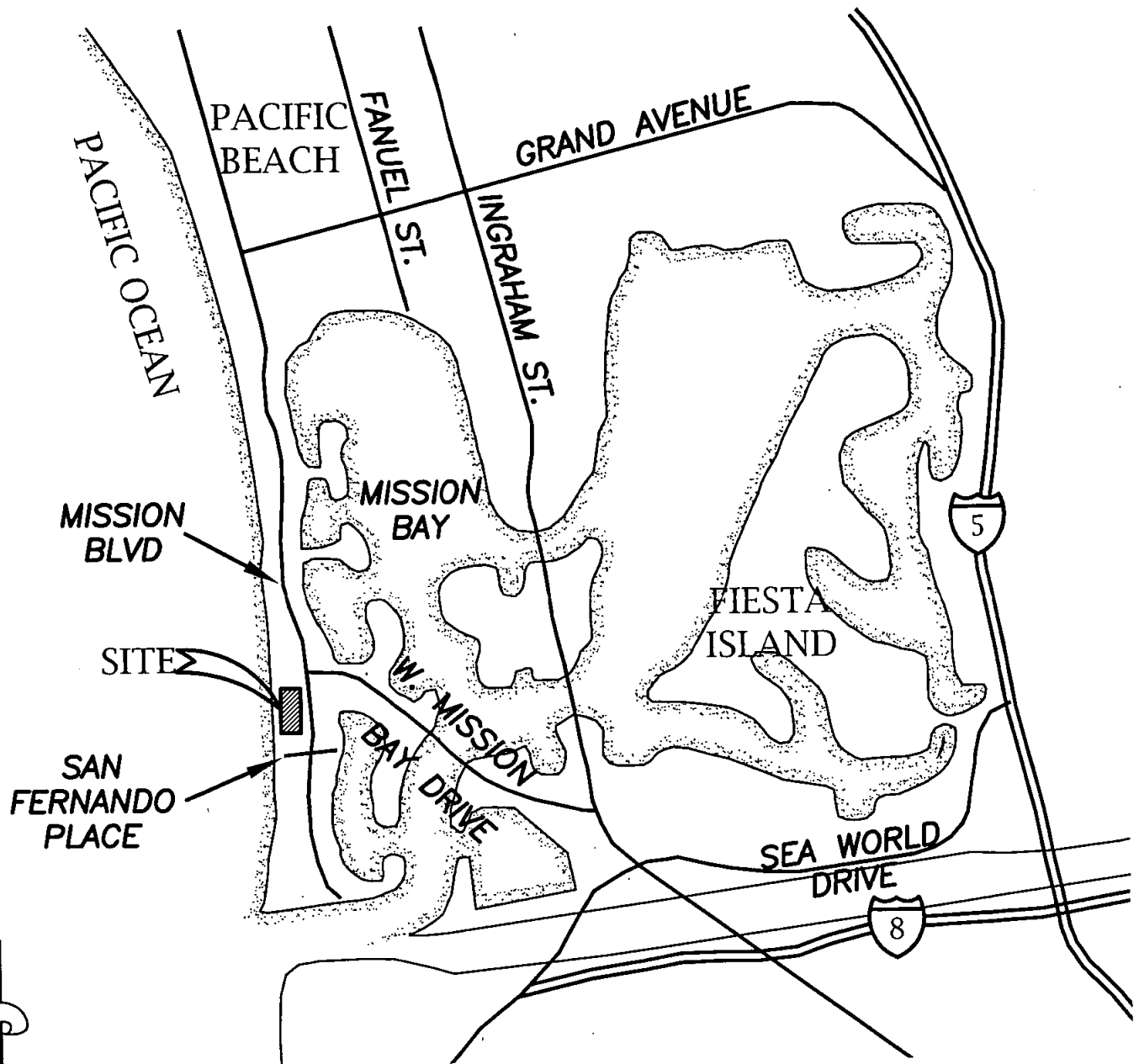
E. Javier Saunders, PE
Vice President



Daniel A. Lee, PE
Manager of Civil Design



VICINITY MAP



N.T.S.

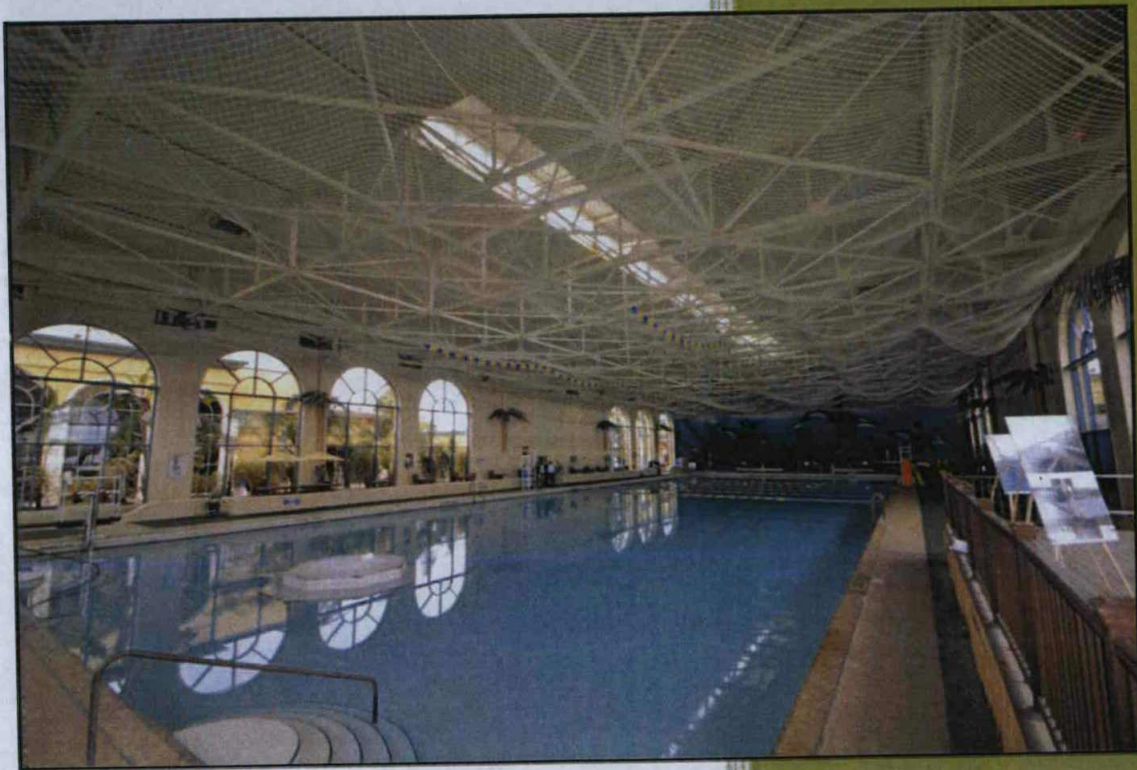


HARRIS & ASSOCIATES
43-100 Cook Street, Suite 103
Palm Desert, CA 92211
(760) 340-6111 • (760) 340-6433

**CITY OF
SAN DIEGO**

THE PLUNGE
MISSION BOULEVARD
VICINITY MAP

Mission Beach Plunge Building Structural Evaluation Report



Simon Wong Engineering

9968 Hibert Street, 2nd Floor
San Diego, CA 92131
858-566-3113



SIMON WONG ENGINEERING

August 8, 2011

Daniel A. Lee, P.E.
Manager of Civil Design
Harris & Associates
750 B Street, Ste. 1800
San Diego, CA 92101

Re: Mission Beach Plunge Building
SWE Job #400-05

Dear Mr. Lee:

Enclosed is the structural evaluation report which summarizes the structural findings and recommendations of the Mission Beach Plunge Building for the City of San Diego.

Should you have any questions, please do not hesitate to call.

Sincerely,

SIMON WONG ENGINEERING

Eric Ng, S.E.
Executive Vice President

Enclosures

c: Guy Kelsey, P.E.



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1. EXECUTIVE SUMMARY

The Mission Beach Plunge Building structure has sustained corrosion since its major renovation in 1987. However, the primary structure, consists of roof trusses and support columns, shows no apparent sign of distress for any imminent collapse. Although truss support columns have sustained substantial rust, the remaining metal section is shown to have the capacity to support the truss loads. The non-structural component of the roof clerestory had sustained a level of corrosion that the short perimeter columns, beams, and tie-rods have become a falling hazard with delaminated rust flakes. These elements are a hazard for the users below and mitigation is needed prior to any occupancy. Repair approaches and estimated costs are indicated below.

The renovation in 1987 included the installation of four steel seismic moment resisting frames with two in each orthogonal directions creating a generally accepted seismic resisting system. The design of the moment frames met the 1982 Uniform Building Code (UBC) and was permitted by the City of San Diego. There is no legal requirement to retrofit a previously permitted structure. However, some discrepancies between record drawings and site visit observation indicate that some structural modifications will have to be performed to improve the connections from the trusses to the moment frames.

Three approaches for repair are recommended: Short, Intermediate, and Long Term. The Short Term Approach is to mitigate only the falling debris hazard by installing a wood platform to close the clerestory opening, provide a canvas blanket under the clerestory area, and brace the clerestory frames on a temporary basis. This will allow the temporary occupancy of the building for up to six months. For occupancy of up to two years with a controlled rate of corrosion of the primary structure, an Intermediate Approach can be employed which will include the demolition of the clerestory, window clips and tube steel replacement, and moment frame upgrades. Finally, a Long Term Approach including the modifications of the Intermediate Approach plus the clean and re-coat of all rusted exposed members and addition of steel columns will result in a rehabilitated structure that can last much longer with proper maintenance.

The estimated costs of the three approaches are:

- a. Short Term: \$198,000.00
- b. Intermediate Term: \$516,600.00
- c. Long Term: \$1,200,600.00

2. PROJECT BACKGROUND

The Mission Beach Plunge in Belmont Park opened in 1925, and was the largest salt-water pool in the world, holding 400,000 gallons. Originally named the "Natatorium," the 60 feet x 125 feet swimming pool was converted to fresh water in 1940, and has remained that way since. The pool is enclosed by a 22,000 square foot building with large arched windows around its perimeter, and Spanish Renaissance architecture similar to buildings at San Diego's Balboa Park. The building has plan dimensions of about 101 feet x 216 feet with an approximate height of 40 feet. Located at the center of the roof is an 11 feet x 140 feet clerestory structure with a 6 foot height above the roof deck allowing sunlight into the space below.

The original building structure consisted of built-up steel columns supporting a steel truss roof system composed of steel angles. The 10 foot deep roof trusses are spaced at about 20 feet on center, spanning about 101 feet. There is vertical x-bracing composed of steel angles running perpendicular to the trusses, spaced approximately 20 feet on center along the length of the building. The roof diaphragm has horizontal x-bracing composed of steel angles in every other truss bay. Also, the bottom chords of the trusses are braced by horizontal x-bracings across continuously. The exterior walls were framed with steel studs and covered with a stucco finish.

The building underwent a major renovation in 1987 which included seismic upgrades, along with a number of new steel beams and columns. The renovation added new x-bracings between trusses, new seismic frames in both directions, a brand new roof, and cleaned and coated all corroded steel members.

A seismic evaluation of the Plunge building was done by Dodd & Associates Consulting Engineers, with a report dated May 16, 2011 stating the following:

- a. The design of the 1987 retrofit welded Steel Moment Frames are dangerous.
- b. All exposed steel truss elements including window frames, trusses, and clerestory framing have experienced a significant amount of corrosion and should not be considered to support the original designed capacity. The original steel columns supporting the steel roof trusses have shown tremendous corrosion and the primary structure, including trusses, is in immediate danger of a significant structural failure.
- c. Steel pieces and including diagonal threaded rods are at risk of falling posing a life safety threat to people below.

The City of San Diego's Developmental Services Department (DSD) engineers had conducted an investigation which indicated that the building is not in immediate danger of collapse.

Simon Wong Engineering was hired to perform an evaluation of the Plunge building in response to the Dodd's report.

3. SCOPE OF WORK

- 3.1 Site visits and structural observation of the following:
 - Columns (where drywall was removed)
 - Trusses (visible from lift around perimeter of pool and from above through windows at clerestory)
 - Moment Frames (where drywall was removed)
 - Clerestory Framing
 - Window Mullion Framing
- 3.2 Review corrosion engineers report.
- 3.3 Structural analysis of steel column with reduced section properties due to corrosion report findings.
- 3.4 Provide study report and opinion.
- 3.5 Provide engineer's estimate of repair cost.

4 SITE VISITS AND OBSERVATION

A total of four (4) site visits were conducted without any destructive testing investigation. Date of the site visits were: June 17, June 21, June 22, and June 23, 2011. Photographs of the site visits are attached in Appendix A.

4.1 Description of Existing Building:

The existing building was retrofitted in 1987. The original steel truss system was repaired where corrosion had occurred and additional horizontal x-bracing was installed. The new x-bracing used similar steel angles to the original and were installed to fill remaining blank truss bays, so that the x-bracing is now continuous throughout the roof. The lateral system of the building which resists wind and seismic loads was upgraded with new three (3) bay steel moment frames each side of the building in both directions for a total of sixteen (16) new columns and twelve (12) new beam spans. The new moment frames have new foundations per the record drawings consisting of 4 feet x 4 feet square grade beams about 80 feet long. The beam to column moment connections are assumed to have been designed per the 1982 Uniform Building Code (UBC). Along east and west side walls the new moment frame columns run the full height of the structure and are connected to the top chord of existing trusses, while along north and south side walls the columns stop at the bottom chord of the existing trusses where they are connected. The new moment frame beams are located below the bottom chord of the existing trusses on all sides of the structure. Per the record drawings a new roof was installed constructed of light gauge steel planks that span approximately 20 feet between the existing trusses.

4.2 Results and Findings From Observation:

- a. Roof main trusses – Existing roof trusses (total of 12) span the width of the building (about 101 feet wide) experienced some rusting with occasional pitting to the horizontal flanges (Photo 1 dated 6/23/11) and some loss of steel to the edges (Photos 2 and 3 dated 6/21/11) of the truss members (top and bottom chords and diagonal members). Roof trusses or its horizontal bracing members appears to be structurally sound and shall continue to perform as primary load carrying members. We recommend that (for maintenance purpose) all metal surface be cleaned to bare metal and re-coat with a good quality epoxy coating. There is no immediate action required at this point.
- b. Columns – Existing structural columns are supporting roof trusses directly through riveted connections (Photo 4 dated 6/23/11). Columns appear to have lost most of its original protective coating with some surface rusting (Photos 5 and 6 dated 6/22/11) with the exception of one column which had lost about 25% of its steel flange thicknesses due to corrosion. Preliminary structural calculation indicates that the most corroded column would still be able to

perform satisfactorily in supporting roof dead and live loads. We recommend that (for maintenance purpose) all columns shall be sand blasted and recoated with a new protective coating. There is no immediate action required at this point.

- c. Column to roof truss connection - Column gusset plates extend out to connect to truss gusset plates through rivet connection (Photos 7 and 8 dated 6/21/11) were observed. Rivets and gusset plates both appear to be in good condition with some rusting to the surface only. Overall, truss top chord and bottom chord connections to columns appear to be adequate. There is no immediate action required at this point.
- d. Column to footing connections - At least four (4) exposed connections can be observed and they all appear to be adequate with some rusting to columns and bolts (Photos 9 and 10 dated 6/21/11). Footing can barely be seen and appears to be sound. There is no immediate action required at this point.
- e. Horizontal bracings at bottom chord of roof trusses - Minor corrosion (Photos 11 and 12 dated 6/21/11) was found in horizontal braces except a couple of braces near the center of building had experienced more excessive corrosion due to the lack of adequate coating. Otherwise, no substantial loss of steel of braces was found. There is no immediate action required at this point.
- f. Roof decking - Most roof decking (Photo 13 dated 6/21/11) is not exposed for observation (due to the steel ceiling pan and hidden steel joists below decking). Only the decking at the clerestory (Photo 14 dated 6/21/11) can be observed. Metal decking at clerestory roof is severely deteriorated. However, we do not see decking failing or falling, only paint and minor rusted small pieces of metal peeling due to delamination. We recommend the decking at clerestory be replaced in near future.
- g. Window mullion connection and horizontal tube steel in perimeter walls – The horizontal steel tubing that supports the window mullions have experienced considerable corrosion (Photos 15 and 16 dated 6/21/11) especially to the top surface of the member which had sustained numerous pitting underneath the surface paint. However, considerable amount of steel material still remains in the horizontal steel members so the load carrying capacity of the member does not appear to have been affected. However, over 90% of the steel clips that connect the window mullions to the structural tube steel member had corroded significantly. We recommend that all the horizontal steel members (for future maintenance) be cleaned to bare metals and re-coat with a new protective coating. All the connection clips between the steel tube and the window mullions need to be replaced as soon as possible so the windows are properly supported.

- h. Clerestory structure – Most of the corrosion and metal deterioration (Photos 17 and 18 dated 6/21/11) are found in this 11 feet x 140 feet structure which is located at the center of and above the existing roof truss framing. Due to the humid environment and lack of proper maintenance, the clerestory support columns, beams, tie rods and window frames had corroded beyond repair. Some of the corrosion even affected parts of the roof truss framing below.
- 1) In the short term, we recommend that all the rusted tie rods to be replaced with new tie rods or steel cables connections (or a plywood shear wall system, see recommendations). Loose paint and deteriorated metals shall be removed and cleaned to avoid falling into pool below. A temporary wood platform built between existing trusses shall be installed to prevent further falling of loose objects. In addition, a solid canvas encompassing the entire footprint of the clerestory shall be installed below to catch any falling debris.
 - 2) In the intermediate term, we recommend that the entire clerestory be removed and/or replaced.

5. SUMMARY OF FINDINGS

The existing building can be divided into two (2) components: the primary structure and non-primary structural items. The primary structure is composed of major trusses and columns which act as the primary support for the building. The non-primary structural items include nonstructural items such as windows, mullions, and the clerestory frame.

5.1 Primary Structure

Primary Load Carrying structural members – The primary structural framing members, in general, have experienced various degrees of corrosion as described in detail in the following paragraphs with recommendations. Primary structural framing members include roof trusses and truss connections, columns and column base connections, foundation, roof metal joists and decking. We do not see any apparent concern of the primary structural framing in providing proper support for the building's dead and live loads. However, maintenance efforts will be needed to help prevent further corrosion. We do not see any apparent sign of distress or immediate collapse of the primary structural system.

The existing built-up column with the most severe corrosion lost approximately 1/8-inch of the original 3/8-inch flange thickness per the corrosion engineer's report. An analysis on this column with the reduced section properties shows that it still has adequate capacity with a demand to capacity ratio of 0.64 (see Appendices for calculation).

5.2 Moment Frame Beam to Column Connection

In terms of design, there have been improvements in steel moment frame beam to column connections following the 1994 Northridge earthquake. Since this building was retrofitted in 1987, these improvements were not incorporated. Existing hospitals with multi-story steel moment frames are typically the kind of buildings where these improvements have been incorporated, after the Northridge earthquake, due to the risk of a lower story column failure causing the cascading collapse of stories above. One of the improvements for the connection that can easily be accomplished is the removal and repair of the lower beam flange backing plate which is used during the welding of the beam to column flange connection. This backing plate has been known to lead to stress concentrations and the possible fracture of the column flange. As a long-term improvement we recommend that all lower connection backing plates be removed and repaired. This repair should not be very expensive but will improve the connections performance substantially.

Although the design and drawings of the moment frames appeared to have been designed per the 1982 Uniform building Code (UBC), the site visits discovered some connection discrepancies between the drawings and the actual construction.

The moment frames in the north wall (we suspect that the south wall may have a similar condition) were observed to be lacking a continuous connection to the existing trusses as shown in the record drawings. The original detail indicated the moment frame beam to be continuously welded to the bottom chord of the existing truss. Per the conditions observed in the field there is an approximately 8-inch gap between the moment frame beam and the bottom chord of the truss. The current connection provided is (1) "u" shaped plate welded to the bottom of the truss and top of moment frame beam. We recommend a continuous transfer along the entire length of the moment frame beams.

5.3 Non-Primary Structural Items

Roof Clerestory – The 11 feet x 140 feet clerestory structure, an opening and frames supported by the primary structural trusses, needs immediate attention in order for the facility to re-open in the near future. For the short term (within 1 month), all tie rods need to be replaced with temporary bracing such as cables or plywood shear walls. All loose paint and deteriorated material needs to be removed. A new protective wood platform (scaffolding) at the top of existing roof trusses need to be installed to prevent further fallen objects from the clerestory falling to the pool below. A protective canvas layer shall also be installed under the clerestory and above the existing protective net to act as an additional safety barrier for any falling objects. In the intermediate term (within 6 months to a year), the clerestory must be replaced or removed due to the severe damages caused by extensive corrosion.

Window mullion support clips – Over 90% of window mullion support clips are either totally rusted or deteriorated beyond repair. All support clips shall be replaced as soon as possible.

6. CONCLUSIONS AND RECOMMENDATIONS

We do not see an imminent concern that the primary structural framing shall fail immediately even though a certain level of corrosion was found in the primary members. However, due to lack of proper maintenance, the non-primary structural elements such as the clerestory structure needs immediate attention for repair before the building can be re-opened to the public. This is due to the fact that loose paint or deteriorated rust material from the clerestory may fall into the pool below.

There are three approaches to the repair recommendation: Short Term Approach, Intermediate Term Approach, and Long Term Approach. The clerestory condition must be mitigated prior to any occupation of the facility. A short term approach will temporarily mitigate the potential falling debris hazard to allow for temporary occupancy of the facility of up to 6 months. An intermediate approach to demolish the clerestory as well as other mitigation repairs will allow the occupancy of up to at least 2 years or more depending on rate of corrosion of the steel elements. A long term approach will be to incorporate all intermediate approach steps plus clean all rust and recoat all exposed primary members and add new support columns as a long term retrofit of the structure.

A) Short Term Approach:

- Install a solid wood platform at the top of existing roof trusses at the clerestory to shield any fallen objects from the pool below (see Detail 1 in Appendix).
- Remove all tie rods and install a temporary plywood shear wall at each truss to transfer lateral and vertical load directly from clerestory roof framing to primary truss framing below (see Detail 1 in Appendix).
- Install a canvas structure (20 feet wide x 160 feet long) between the existing net and roof truss as a safety barrier.

B) Intermediate Term Approach – With or without the repairs of the short term approach, we recommend that the following repair be implemented within a time frame of 6 to 12 months.

- the entire clerestory structure be demolished and replaced with a new framing system
- The window mullion support clips had deteriorated beyond repair. We recommend that all mullion clips be removed and replaced to avoid any damage to the window system due to the lack of lateral support. All horizontal tube steel support needs to be sand-blasted and recoated.
- The lateral moment frame system installed in 1987 can be improved with minimal repair cost to enhance its performance. We recommend that all backing plates for full penetration welding be removed and grind smooth, then re-weld area with a proper weld in field (see Detail 2 in Appendix). The moment frames in the south wall appears to have an 8-inch gap between the truss bottom chord and top for moment beam, hence lacking proper shear transfer mechanism. We recommend that the north and south wall moment

frames be investigated further to determine if proper shear transfer mechanism is in place. Otherwise, proper shear transfer needs to be installed to ensure that lateral loads can be transferred from the roof diaphragm to the moment frames below.

- C) Long Term Approach - With the extensive corrosion of the secondary framing as mentioned in the intermediate term approach repaired, we recommend that the primary structure to be cleaned and recoated within a 2 years period. All exposed roof trusses, steel bracings, columns need to be sand blasted to bare metals and recoat with a good quality rust inhibitor coating. Further, a regular building maintenance program will have to be implemented. New columns are recommended to be placed in front of existing columns (total of 24) to further enhance the load carrying capacity.

APPENDIX A
SITE VISIT PHOTOS

SITE VISIT PHOTOS

A. Roof Main Trusses





B. Columns



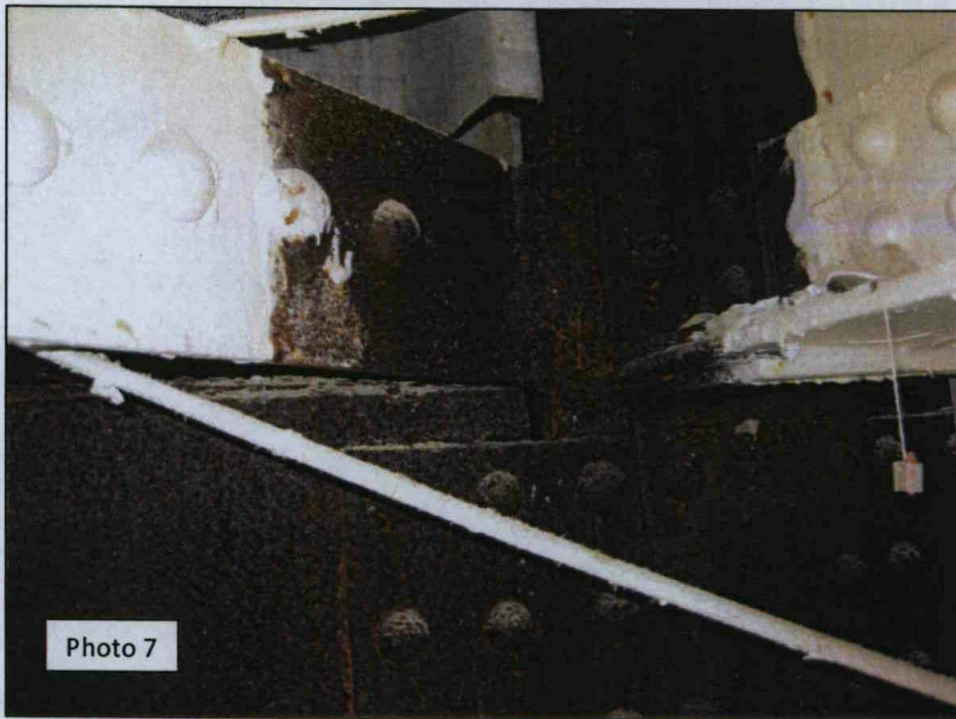


Photo 5



Photo 6

C. Column to Roof Truss Connection



D. Column to Footing Connections



E. Horizontal Bracings at Bottom Chord of Roof Trusses



Photo 11



Photo 12

F. Roof Decking



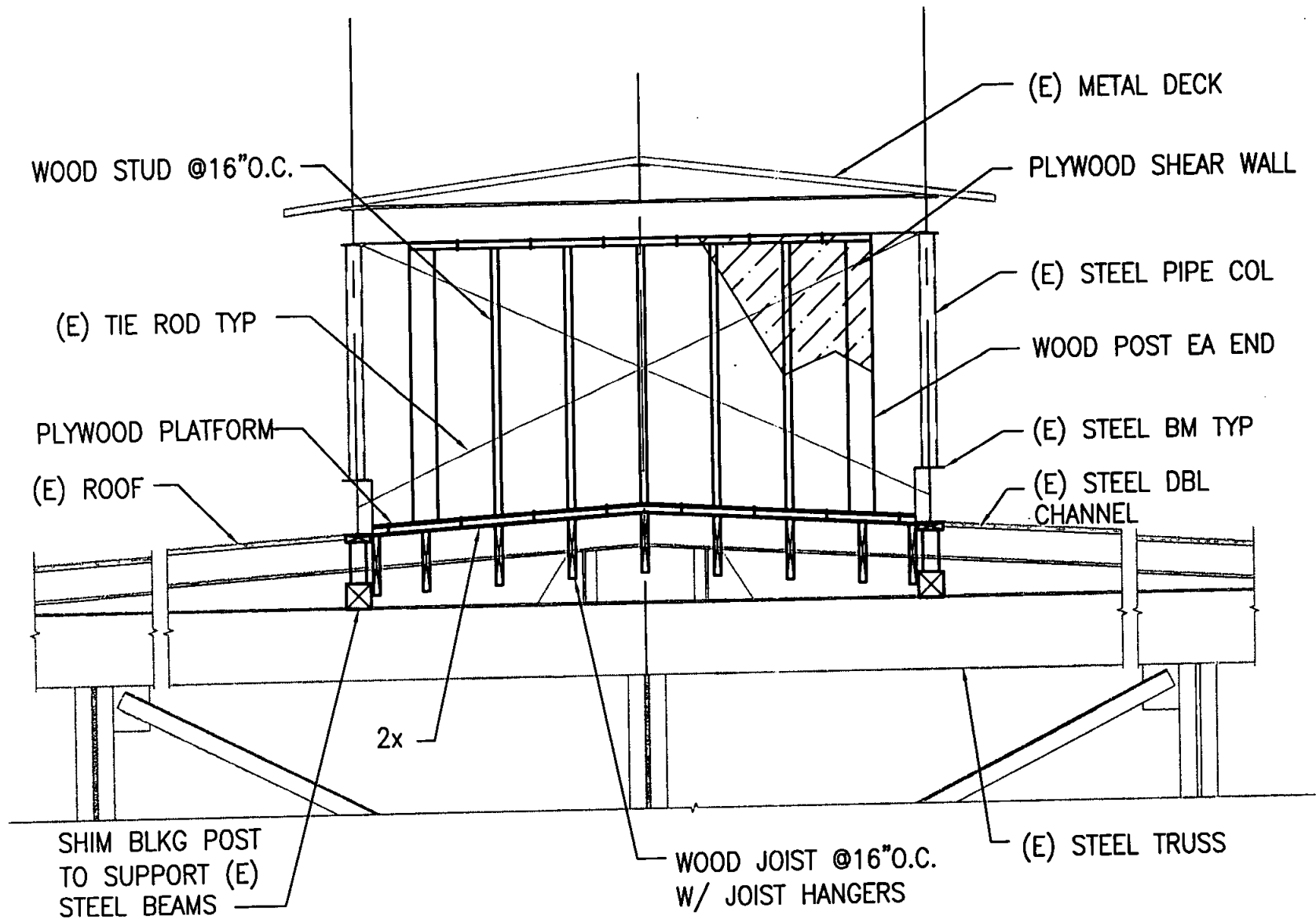
G. Window Mullion Connection and Horizontal Tube Steel



H. Clerestory Structure

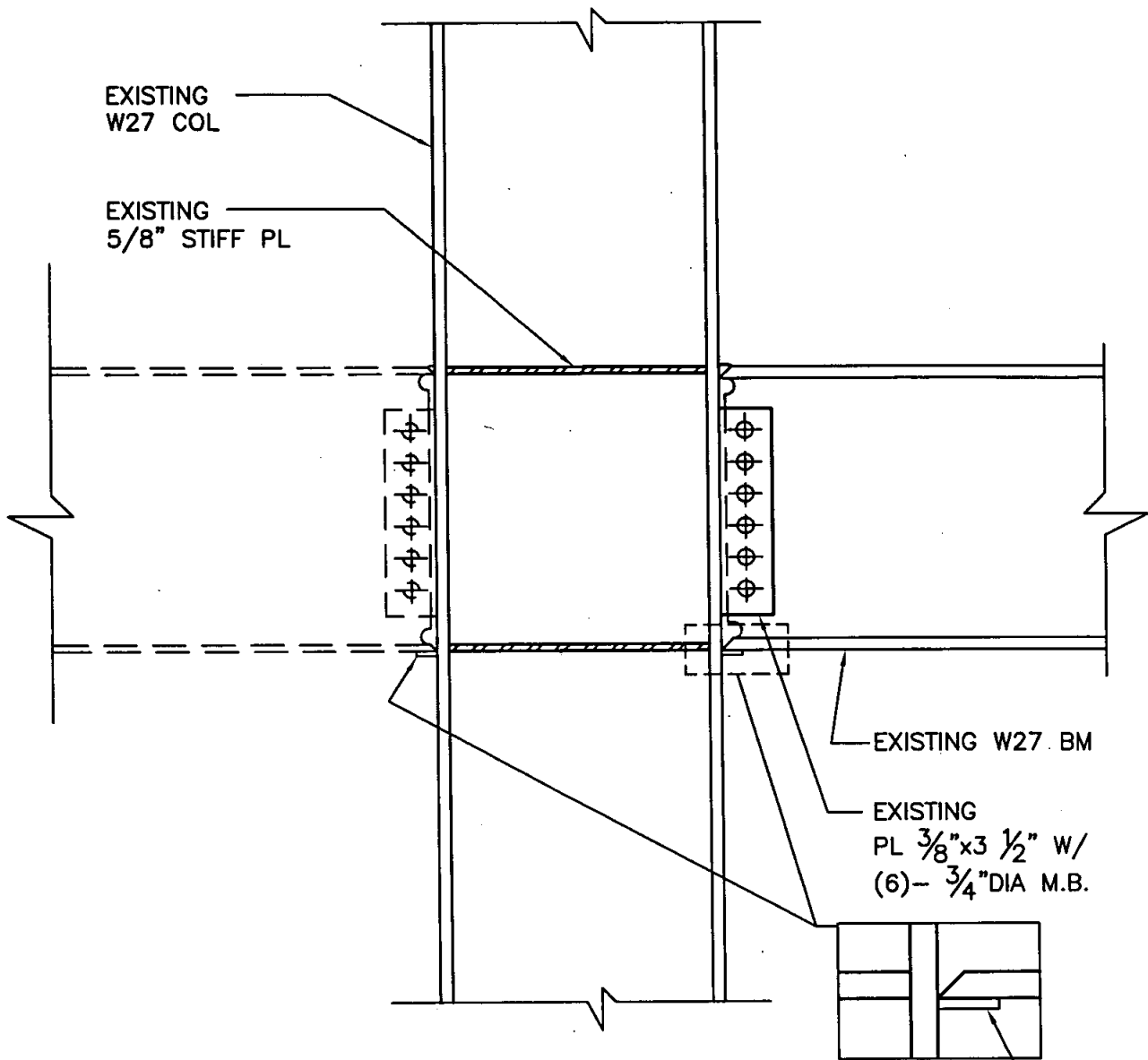


APPENDIX B
PLANS AND DETAIL



DETAIL

1



REMOVE EXISTING BACKING
PLATE, BACKGOUGE TO
SOUND WELD METAL, AND
BACKWELD W/ $\frac{5}{16}$ " FILLET
WELD, TYP

MOMENT FRAME REPAIR DETAIL

2

APPENDIX C
COST ESTIMATE

Initial Estimated Structural Construction Costs

A) Short Term Approach

- Wood platform - \$25/SF, \$35,000.00
- Clean and Repair tie rods - \$40,000.00
- Install Canvas structure - \$35,000.00
- Mobilization cost - \$20,000.00
- Engineering supervision - \$35,000.00

Short Term Approach Total Cost: \$165,000.00 + 20% contingency = \$198,000.00

B) Intermediate Term Approach

1) Roof Clerestory replacement

- Demolition of entire clerestory - \$100,000.00
- Reconstruction of clerestory - \$210,000.00 (\$150/SF)
- Engineering Fee - \$50,000.00

Total Cost: \$360,000.00 + 20% contingency = \$432,000.00

2) Window mullion clips replacement

- \$250.00 each x 50 = \$12,500.00

Total Cost: \$12,500.00 + 20% contingency = \$15,000.00

3) Moment Frame Beam to Column Connection Repair (east and west side of building only)

- Drywall removal and replacement
- Removal of bottom flange backing plate, back gauge and fill with fillet weld
- \$1,500.00 each side beam to column connection
- 6 beams x 2 connections x \$1,500.00 = \$18,000.00

Total Cost: \$18,000.00 + 20% contingency = \$21,600.00

4) Moment Frame Beam to Truss Transfer Connection Repair (north and south side of building only)

- Drywall removal and replacement
- Addition of new steel transfer connections
- \$10,000.00 each moment frame
- 4 x new transfer connection x \$10,000.00 = \$40,000.00

Total Cost: \$40,000.00 + 20% contingency = \$48,000.00

Intermediate Term Approach Total Cost: \$516,600.00

C) Long Term Approach

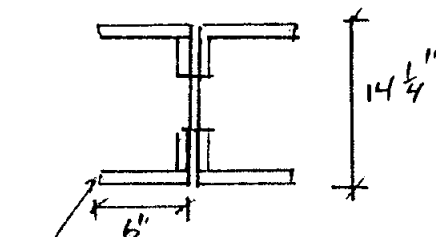
- Intermediate Term cost = \$516,600.00
- Sandblast all roof framing, braces, window TS and columns to bare metal - \$200,000.00
- Re-coat all metal surfaces with rust inhibit coating- \$250,000.00
- Additional Columns (total of 24) - \$120,000.00

Long Term Approach Total Cost: \$570,000.00 + 20% contingency + \$516,600.00 =
\$1,200,600.00

APPENDIX D
STRUCTURAL CALCULATIONS

Project: THE PLUNGE	 SIMON WONG ENGINEERING	Page: 1
		Proj. #: 400-05
Designed: GK	9968 Hilbert Street, 2nd Floor San Diego, CA 92131 (858) 566-3113 FAX (858) 566-6844	Date: 6/11
Checked:		Revised:

EXST COL CHECK



COL HEIGHT = 30'-0"
 $F_y = 36 \text{ ksi}$ (ASSUMED)

COLUMN FLANGES WERE ORIGINALLY $\frac{3}{8}$ " THICK. PER CORROSION REPORT WE WILL USE $\frac{1}{4}$ " THICK FLANGES FOR THE COLUMN ANALYSIS

DETERMINE SECTION PROPERTIES (USING ENERCALC)
 (SEE ATTACHED
 PG. 4)

$$\begin{aligned}
 A &= 14.85 \text{ in}^2 \\
 I_{xx} &= 473.38 \text{ in}^4 \\
 r_x &= 5.74 \text{ in} \\
 I_{yy} &= 79.3 \text{ in}^4 \\
 r_y &= 2.352 \text{ in}
 \end{aligned}$$

DETERMINE ALLOWABLE COL. LOAD

$$\begin{aligned}
 \text{ASSUME } K &= 1 \\
 l &= 30' \times 12' = 360"
 \end{aligned}$$

$$r_{min} = 2.352 \text{ in}$$

Project: THE PLUNGE	 SIMON WONG ENGINEERING	Page: 2
		Proj.#: 400-05
Designed: GK		Date: 6/11
Checked:	9968 Hibert Street, 2nd Floor San Diego, CA 92131	(858) 566-3113 FAX (858) 566-6844
		Revised:

COLUMN CHECK AISC 13

LOCAL BUCKLING TABLE B4.1 16.1-17

4. UNIFORM COMPRESSION IN FLANGES
OF BUILT-UP I-SHAPED SECTIONS

$$b/t = \frac{6''}{0.25''} = 24$$

$$\lambda_r = 0.64 \sqrt{K_c E / F_y}$$

$$K_c = \frac{4}{\sqrt{h/t_w}} \quad h = 14.25''$$

$$= 0.649 \quad t_w = 0.375''$$

$$\lambda_r = 0.64 \sqrt{\frac{0.65 \times 29,000}{36}} = 14.64$$

$b/t > \lambda_r \therefore$ slender-element section

BUILT-UP MEMBER E6 16.1-37

$$\left(\frac{KL}{r}\right)_m = \sqrt{\left(\frac{KL}{r}\right)_o^2 + \left(\frac{a}{r_i}\right)^2}$$

$$\left(\frac{KL}{r}\right)_{min} = \frac{1 \times 30 \times 12}{2.952} = 123.1$$

$a \approx 6''$ - distance between connectors

r_i = minimum radius of gyration
of individual component

• for $L6 \times 3\frac{1}{2} \times \frac{3}{8} = 0.763$

• for $\frac{3}{8}'' PL = \sqrt{\frac{I}{A}} = \sqrt{\frac{14.25 \times 0.375^3}{12}}$

$$= 0.108$$

Project: <u>THE PLUNGE</u>	 SIMON WONG ENGINEERING	Page: <u>3</u>
		Proj #: <u>400-05</u>
Designed: <u>GK</u>	9968 Hibert Street, 2nd Floor San Diego, CA 92131 (858) 566-3113 FAX (858) 566-6844	Date: <u>6/11</u>
Checked:		Revised:

COLUMN CHECK CONT

$$\left(\frac{a}{r_i}\right) = \left(\frac{b}{0.108}\right) = 55.6$$

$$\frac{KL}{r_m} = \sqrt{153.1^2 + 55.6^2} = 162.9$$

MEMBERS WITH SLENDerness EFFECTS E7 16.1-39

$$P_n = F_c A_g$$

$$\frac{KL}{r} > 4.71 \sqrt{\frac{E}{Q F_y}}$$

$$Q = Q_s Q_c \quad \text{unstiffened } Q_c = 1.0$$

$$b) \text{ i.i. } \frac{b}{t} = 24 < 1.17 \sqrt{\frac{E K_c}{F_y}} = 26.8$$

$$24 > 0.64 \sqrt{\frac{E K_c}{F_y}} = 14.6$$

$$Q_s = 1.415 - 0.65 \left(\frac{b}{t} \right) \sqrt{\frac{36}{29000 \times 0.65}} = 0.73$$

$$Q = 0.73$$

$$\frac{KL}{r} = 162.9 > 4.71 \sqrt{\frac{29000}{0.73 \times 36}} = 156.5$$

$$F_{cr} = 0.877 F_e$$

$$F_e = \frac{\pi^2 E}{(162.9)^2} = 10.8 < 0.44 Q_s F_y^{0.73}$$

$$= 11.56$$

$$F_{cr} = 0.877 \times 10.8 = 9.47 \text{ ksi}$$

$$P_n = 9.47 \text{ ksi} \times 14.35 \text{ in}^2 = 135.92 \text{ KIPS}$$

$$\frac{P_n}{\phi_c} = \frac{135.92}{1.67} = 81.4 \text{ KIPS}$$

Project: <u>THE PLUNGE</u>	 SIMON WONG ENGINEERING 9968 Hilbert Street, 2nd Floor San Diego, CA 92131 (858) 566-3113 FAX (858) 566-6844	Page: <u>4</u>
		Proj #: <u>400-05</u>
Designed: <u>GK</u>		Date: <u>6/11</u>
Checked:		Revised:

COLUMN CHECK CONT

LOAD ON EXST COL

↑ SEE PG. 5

$$DL + LL = 31 + 20 = 51 \text{ PSF}$$

$$\text{TRIB AREA} = 20' \times 102\frac{1}{2}' = 1020 \text{ } \phi$$

$$P_{\text{ACTUAL}} = 1020 \times 51 = 52.0 \text{ KIPS}$$

$$P_{\text{ACTUAL}} = 52 \text{ K} < \frac{P_n}{\phi} = 81.4 \text{ KIPS}$$

$$\frac{52}{81.4} = 0.64$$

OK ✓

Project: <u>THE PLUNGE</u>	 SIMON WONG ENGINEERING	Page: <u>5</u>
		Proj.#: <u>400-05</u>
Designed: <u>EK</u>	9968 Hilbert Street, 2nd Floor San Diego, CA 92131 (858) 566-3113 FAX (858) 566-6844	Date: <u>6/11</u>
Checked:		Revised:

DESIGN DEAD LOADS

ROOF:

3 PLY FELT & GRAVEL	= 6 PSF
ROBERTSON ROOF	= 4.6 PSF
RIGID INSULATION	= 4.0 PSF
TRUSS	= 10.0 PSF
CLERESTORY	= 6.5 PSF
	<u>31 PSF</u>
	(CONSERVATIVE)

Title Block Line 1
 You can change this area
 using the "Settings" menu item
 and then using the "Printing &
 Title Block" selection.
 Title Block Line 6

Title :
 Dsgnr:
 Project Desc.:
 Project Notes :

Job # **20.6**

Printed: 24 JUN 2011, 1:28PM

General Section Properties

File: g:\Structural Division\Project400 - Harris Associates\05 - Mission Beach Plunge Bldg\calc\built-up column.ec6
 ENERCALC, INC. 1983-2008, Ver. 8.0.19

License Owner: **SIMON WONG ENGINEERING**

Description : Built-up Column 1/4" flanges

Final Section Properties

Total Area : 14.3438 in²

Calculated final C.G. distance from Datum :

X cg Dist. : 0.0 in

Y cg Dist. : 0.0 in

Edge Distances from CG. :

+X : 6.1875 in

-X : in

+Y : 7.1250 in

-Y : -7.1250 in

Ixx = 473.379 in⁴

Iyy = 79.3322 in⁴

Sxx : -X : 66.4392 in³

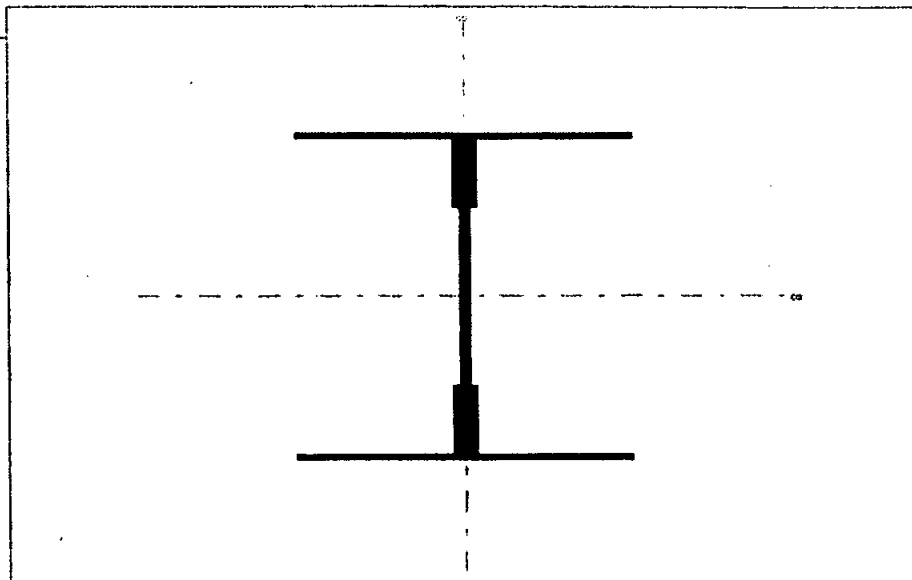
Sxx : +X : 66.4392 in³

Syy : -Y : 12.8214 in³

Syy : +Y : 12.8214 in³

rxx : 5.7448 in

ryy : 2.3518 in



General Shapes

Rect : 1	Area = 5.344 in ²	Xcg = 0.000 in	Ycg = 0.000 in	Height = 14.250 in	Width = 0.375 in	Rotation = 0 dec CCW	Ixx = 90.426 in ⁴	Iyy = 0.063 in ⁴	Sxx = 12.691 in ³	Syy = 0.334 in ³	Rxx = 4.114 in	Ryy = 0.108 in
Rect : 2	Area = 0.813 in ²	Xcg = 0.313 in	Ycg = 5.500 in	Height = 3.250 in	Width = 0.250 in	Rotation = 0 dec CCW	Ixx = 0.715 in ⁴	Iyy = 0.004 in ⁴	Sxx = 0.440 in ³	Syy = 0.034 in ³	Rxx = 0.938 in	Ryy = 0.072 in
Rect : 3	Area = 0.813 in ²	Xcg = -0.313 in	Ycg = 5.500 in	Height = 3.250 in	Width = 0.250 in	Rotation = 0 dec CCW	Ixx = 0.715 in ⁴	Iyy = 0.004 in ⁴	Sxx = 0.440 in ³	Syy = 0.034 in ³	Rxx = 0.938 in	Ryy = 0.072 in
Rect : 4	Area = 0.813 in ²	Xcg = 0.313 in	Ycg = -5.500 in	Height = 3.250 in	Width = 0.250 in	Rotation = 0 dec CCW	Ixx = 0.715 in ⁴	Iyy = 0.004 in ⁴	Sxx = 0.440 in ³	Syy = 0.034 in ³	Rxx = 0.938 in	Ryy = 0.072 in
Rect : 5	Area = 0.813 in ²	Xcg = -0.313 in	Ycg = -5.500 in	Height = 3.250 in	Width = 0.250 in	Rotation = 0 dec CCW	Ixx = 0.715 in ⁴	Iyy = 0.004 in ⁴	Sxx = 0.440 in ³	Syy = 0.034 in ³	Rxx = 0.938 in	Ryy = 0.072 in
Rect : 6	Area = 1.438 in ²	Xcg = -3.313 in	Ycg = 7.000 in	Height = 0.250 in	Width = 5.750 in	Rotation = 0 dec CCW	Ixx = 0.007 in ⁴	Iyy = 3.961 in ⁴	Sxx = 0.060 in ³	Syy = 1.378 in ³	Rxx = 0.072 in	Ryy = 1.660 in
Rect : 7	Area = 1.438 in ²	Xcg = 3.313 in	Ycg = 7.000 in	Height = 0.250 in	Width = 5.750 in	Rotation = 0 dec CCW	Ixx = 0.007 in ⁴	Iyy = 3.961 in ⁴	Sxx = 0.060 in ³	Syy = 1.378 in ³	Rxx = 0.072 in	Ryy = 1.660 in
Rect : 8	Area = 1.438 in ²	Xcg = -3.313 in	Ycg = -7.000 in	Height = 0.250 in	Width = 5.750 in	Rotation = 0 dec CCW	Ixx = 0.007 in ⁴	Iyy = 3.961 in ⁴	Sxx = 0.060 in ³	Syy = 1.378 in ³	Rxx = 0.072 in	Ryy = 1.660 in

Title Block Line 1
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using the "Settings" menu item
and then using the "Printing &
Title Block" selection.
Title Block Line 6

Title :
Dsgnr:
Project Desc.:
Project Notes :

Job # **P. 7**

Printed: 24 JUN 2011, 1:28PM

General Section Properties

File: g:\Structural Division\Project\400 - Harris Associates\05 - Mission Beach Plunge Bldg\calc\built-up column.ec6
ENERCALC, INC. 1983-2008, Ver: 6.0.19

UIC: #28KW/06002032 License Owner: SIMON WONG ENGINEERING

Description : Built-up Column 1/4" flanges

Rect : 9	Height =	0.250 in	Width =	5.750 in	Rotation =	0 deg CCW			
Area =	1.438 in^2	Xcg =	3.313 in	Ixx =	0.007 in^4	Sxx =	0.060 in^3	Rxx =	0.072 in
		Ycg =	-7.000 in	Iyy =	3.961 in^4	Syy =	1.378 in^3	Ryy =	1.660 in

**MISSION BEACH PLUNGE INDOOR SWIMMING POOL
MECHANICAL VENTILATION SYSTEMS ASSESSMENT**

**3115 OCEAN FRONT WALK
MISSION BEACH, CA 92109**

FOR



**CITY OF SAN DIEGO
ENGINEERING AND CAPITAL PROJECTS
1010 SECOND AVENUE, SUITE 1100, MS611
SAN DIEGO, CA 92101
MR. JULIAN ESPINOZA, P.E.
ASSOCIATE CIVIL ENGINEER**

PERFORMED BY



**DAHL, TAYLOR & ASSOCIATES, INC
9466 BLACK MOUNTAIN ROAD, SUITE 230
SAN DIEGO, CA 92126**

July 2011

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BACKGROUND

The Mission Beach Plunge in San Diego opened in May, 1925 as the centerpiece of Belmont Park. The 60' by 175' pool was, at the time, the largest salt-water pool in the world, holding 400,000 gallons of water. The building encapsulating The Plunge was designed after the Spanish Renaissance style buildings that were erected in San Diego's Balboa Park between 1915 and 1916, and was originally opened as the "Natatorium." The building has been maintained over the years. However, visible deterioration to the structural elements of the building due to corrosion has prompted the City of San Diego to close the swimming pool area for safety concerns. The City of San Diego has requested Harris & Associates and its sub-consultants to conduct an assessment of the structural and mechanical ventilation systems. Dahl, Taylor & Associates conducted the assessment and recommendations for the mechanical ventilation systems.

Dahl, Taylor & Associates conducted a visual inspection of the existing mechanical ventilation system which consisted of supply air fans, exhaust fans and one gas fired furnace unit for heating. Dahl, Taylor & Associates surveyed and recorded the existing equipment information and condition. Dahl, Taylor & Associates calculated the ventilation requirements for indoor pool area in accordance with the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standards.

The mechanical ventilation equipment was found to be in fair and operable condition. The supply air fan, exhaust air fan and furnace located on the roof has shown wear from normal use and exposure to weather. The mechanical ventilation system appears to be adequately sized to provide proper indoor air quality, comfortable room temperatures, and proper water vapor removal. Air volumes of each system should be measured and tested by a Test and Balancing service agency to determine actual conditions and compliance with ventilation requirements. It is recommended that an air distribution duct system should be added to the supply air fans to provide good air circulation to ensure required air exchange in the pool room. The pool water chemistry should be maintained to minimize pool odors known as "chloramines." Proper chlorine treatment and water maintenance will eliminate these pool odors.

FINDINGS

Dahl, Taylor & Associates, Harris & Associates, and Simon Wong Engineering conducted a site survey meeting on June 17th and 21st of 2011. Dahl, Taylor & Associates was provided access to the building and roof areas for a survey of the existing mechanical ventilation and heating system. None of these systems were tested or activated for evaluation. That is, no instrumentation, meters, or gauges were used to evaluate the operation or condition of the equipment. The survey was conducted by accessing and visually inspecting the various locations for the mechanical ventilation and heating systems.

Field Observations

1. The pool and deck area is approximately 216'-6" long by 101'-6" wide and is 40' high.
2. The pool area is ventilated by two supply air fans (S-1, S-2) and one gas fired heating furnace (F) with no return air and six exhaust fans (EF-1 through EF-6).
3. Each supply air fan is rated approximately for 10,900 cfm for a total of approximately 21,800 cfm. The supply air fans or ventilation fans provide unconditioned air. That is, the outside air is not heated or cooled.
4. Each exhaust fan is rated approximately for 5,000 cfm for a total of approximately 30,000 cfm.
5. The furnace heating unit is rated approximately 7,400 cfm.
6. The galvanized air ducts for the heating air inside the building are in good condition. The air ducts appear to have little to no corrosion.
7. The air filters in for the supply air fans were dirty and should be replaced. The air filter media and support materials should be resistant to moisture degradation. During the two site surveys, supply air fan S-2 was not turned on. S-2 was turned on and was operable. However, the supply fan had a discernable high pitch noise. The bearings or belt of the fan should be inspected for lubrication and wear, respectively.
8. All of the exhaust fans, supply air fans and the furnace are mounted on the roof and are in fair operating conditions. The steel painted exterior housing of the supply air fans are showing normal corrosion. The aluminum housing of the exhaust fans and galvanized housing of the furnace have shown little or no corrosion. The exhaust fans, supply air fans, and furnace should last another 5 years or longer, if properly maintained.
9. The pool area is under negative room pressure. When the exterior doors were opened, a significant air draft flowed inward. This was also evident when outward swinging doors were difficult to push open. American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) standards natatoriums to be in slightly negative pressure. An air balance survey should be conducted by a Test and Balancing service agency to determine the air flows of each equipment.
10. The six exhaust fans do not have local electrical disconnect that are required by the National Electrical Code.
11. The electric breaker distribution panel requires new panel schedules to accurately indicate the connected loads.
12. The 2007 California Mechanical Code Section 609 require duct smoke detectors for any air moving systems supplying in excess 2000 cubic feet per minute (CFM) of air to enclosed spaces within buildings. Duct smoke detectors were not found, during the visual survey of the existing exhaust fans, supply fans and the heating system. **The current installation is not in compliance with the California Mechanical code and pose a fire hazard.**

Photographs of the existing supply fans, exhaust fans, and furnace are provided in Appendix A. Manufacturer's brochures of the existing equipment are provided Appendix B.

Indoor Air Quality

American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 62.1-2007 Ventilation for Acceptable Indoor Air Quality specifies minimum ventilation rates and other measures to provide indoor air quality that is acceptable to human occupants and that minimizes adverse health effects.

Table 6-1 of the standard recommends an outdoor airflow rate (Ra) of 0.48 cfm/ft²

This airflow rate is flow the breathing zone and not for the removal of the water evaporation from the swimming pool.

The minimum ventilation rate for the swimming pool and deck is as follows:

$$\text{Area } 216.5 \text{ ft} \times 101.5 \text{ ft} = 21,974 \text{ ft}^2$$

$$V_{bz} = \text{Area} \times R_a$$

$$V_{bz} = 21,974 \text{ ft}^2 \times 0.48 \text{ cfm/ft}^2 = 10,547 \text{ cfm}$$

The available air change with all the supply air and furnace systems operating is 29,200 cfm. The supply air of all the existing supply air fans and furnace system meet the minimum ventilation rate as prescribed by the ASHRAE 62.1 standard.

Ventilation Air Balance

The total available supply air ventilation is:

S-1	10,900	cfm
S-2	10,900	cfm
F	7,400	cfm
Total	29,200	cfm

The total available exhaust is:

EF-1	5,000	cfm
EF-2	5,000	cfm
EF-3	5,000	cfm
EF-4	5,000	cfm
EF-5	5,000	cfm
EF-6	5,000	cfm
Total	30,000	cfm

Net air flow is: $29,200 \text{ cfm} - 30,000 \text{ cfm} = - 800 \text{ cfm}$

The net estimated airflow appears to be negative which would result in a negative room pressure. If all air systems are activated and perform to the rated capacities, the negative room pressure can be achieved.. The pool room should be maintained at a negative pressure approximately of 15 to 40 Pascals relative to the adjacent areas. This also indicates that the furnace unit (F) should operate continuously during normal business hours. If the thermostat is working properly, the furnace will provide heating when the room temperature falls below the temperature setpoint. It is recommended an airflow measurement and air balance on the existing system be performed to determine and verify the actual air flows.

Verifying the required air exchanges are met for good indoor air quality and water vapor removal is primary factor in ensuring safe and good indoor conditions. However, proper air circulation of the supply air and the exhaust air is also vital in meeting the air exchange requirements. The supply air fans are not ducted to the swimming pool area. The supply air fans have air grilles that are located at the top of the ceiling and south of the room. See Figure 9 in Appendix A. The supply air should be directed and distributed evenly to the pool room to facilitate the air movement in the room so the exhaust fans can "exchange" the air properly. The furnace system has an air duct system to evenly distribute the heated air. The air ducts have been painted as palm trees. See Figure 10 in Appendix A. The supply air fans should have similar air distribution ducts to ensure proper air circulation and exchange as illustrated in Figure 11 in Appendix A. A schematic sketch of the recommended supply air distribution is provided in Appendix D along with an estimated construction cost for new work.

Pool Water Evaporation

Indoor swimming pools can produce high humidity, if not properly ventilated. Ventilation of the moist air from the evaporation of the pool water is needed. ASHRAE Applications Standard Chapter 4 Places of Assembly, provide guidelines for removing evaporated water in natatoriums.

The evaporation rate of the water can be calculated knowing the indoor air temperature, outdoor air temperature, water temperature and the indoor relative humidity.

Assumptions:

- (1) Indoor Pool Room Conditions: Temperature = 80°F, Relative Humidity = 60%
- (2) Pool Water Temperature = 84°F
- (3) Outdoor Air Conditions for Summer Season: Temperature = 78.9°F, Relative Humidity = 54.5%
- (4) Outdoor Air Conditions for Winter Season: Temperature = 44.8°F, Relative Humidity = 31%

From the ASHRAE calculations (See Appendix C), a water evaporation rate is estimated at 151.9 lbs/hr that would need to be removed from the pool area.

The ventilation rate to remove this water vapor in the air is calculated at approximately 20,338 cfm during the summer season and approximately 3,008 cfm during the winter season.

The existing total ventilation system 29,200 cfm appear to be adequate to provide the for water vapor removal throughout the year.

Indoor Pool Odors

The general manager and the members of the Mission Beach Plunge indoor swimming pool have expressed concern of the apparent chlorine odor in the pool room. The odors are not typically caused by insufficient ventilation or removal of the water vapors. The odors are produced from the imbalance of pool water chemistry. Air Quality problems are usually caused by the reaction of chlorine with biological wastes, and particularly with ammonia, which is a by-product of the breakdown of perspiration, oils and urine. Chlorine reacts with these wastes, creating chloramines. Chloramines are formed when there is not enough free chlorine in the pool water. To counter this reaction, the pool must be "shocked" by adding a specified amount of chlorine. A pool water treatment company can analyze the pool water chemistry and recommend the appropriate solutions. A properly installed and maintained water treatment system can keep the pool chemistry in balance and eliminate the pool odors.

RECOMMENDATIONS

Dahl, Taylor & Associates conducted a visual inspection of the existing mechanical ventilation system which consisted of supply air fans, exhaust fans and one gas fired furnace unit for heating. Dahl, Taylor & Associates surveyed and recorded the existing equipment information and condition. The mechanical ventilation equipment was found to be in fair and operable condition. Calculations were conducted to determine air flow requirements for indoor air quality, comfort, and water vapor removal. The mechanical ventilation system appears to be adequately sized to provide proper indoor air quality, comfortable room temperatures, and proper water vapor removal. Air volumes of each system should be measured and tested by a Test and Balancing service agency to determine actual conditions and compliance with ventilation requirements. It is recommended that an air distribution duct system should be added to the supply air fans to provide good air circulation to ensure required air exchange in the pool room. The construction cost to add new insulated supply air distribution ducts to the existing supply air ventilation fans is estimated at \$54,000. The pool water chemistry should be maintained to minimize pool odors known as "chloramines." Proper chlorine treatment and water maintenance will eliminate these pool odors.

APPENDIX A – PHOTOGRAPHS AND FIGURES



Figure 1. Furnace

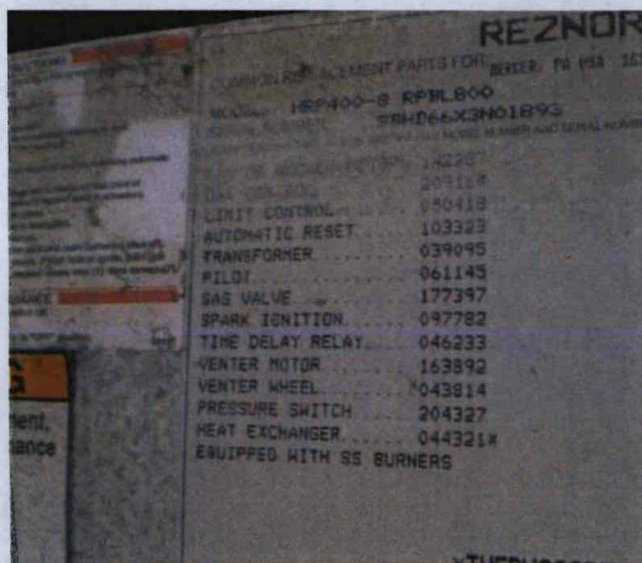


Figure 2. Furnace Nameplate

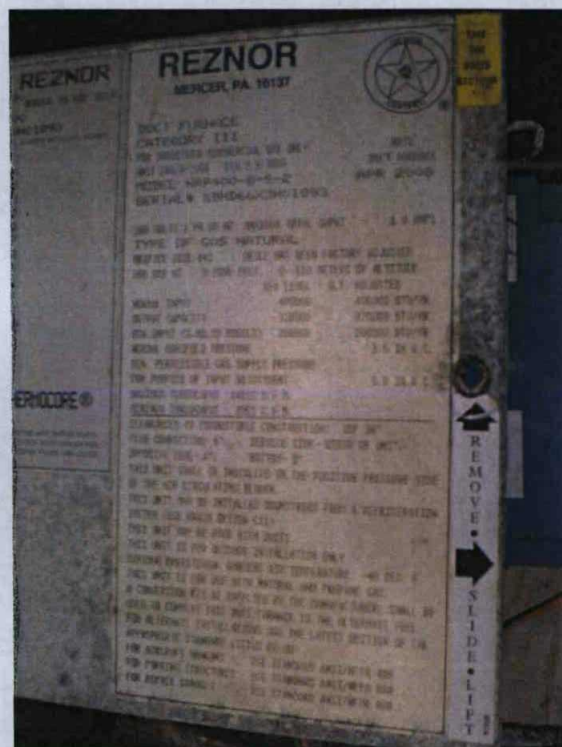


Figure 3. Furnace Nameplate



Figure 4. Supply Fan (Typical of 2)

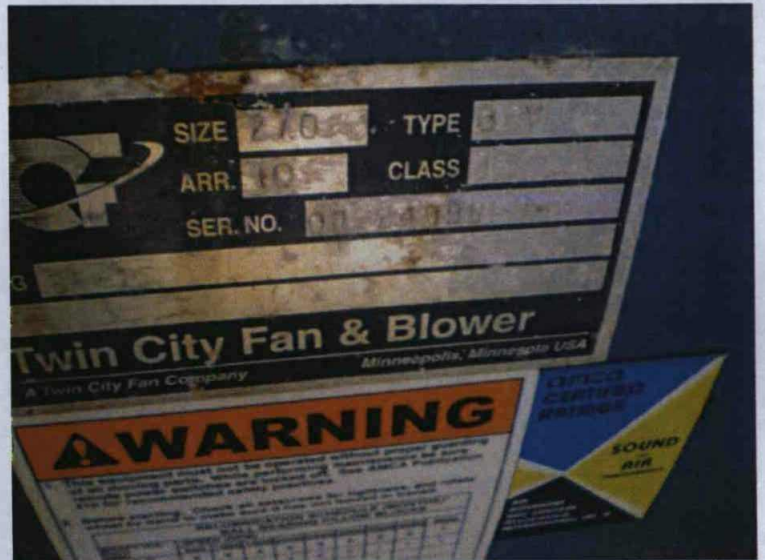
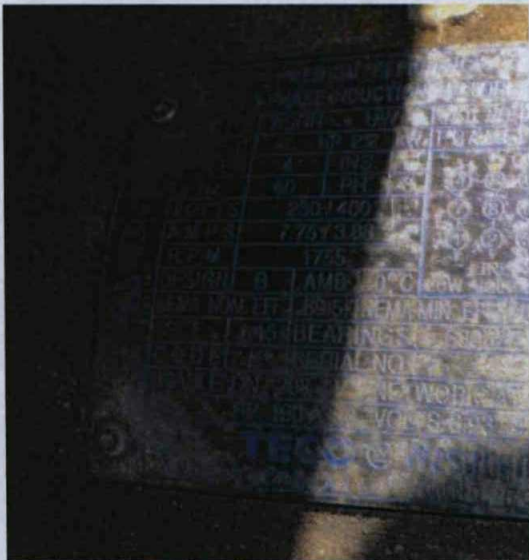


Figure 5. Supply Fan Nameplate



Figure 6. Exhaust Fan (Typical of 6)

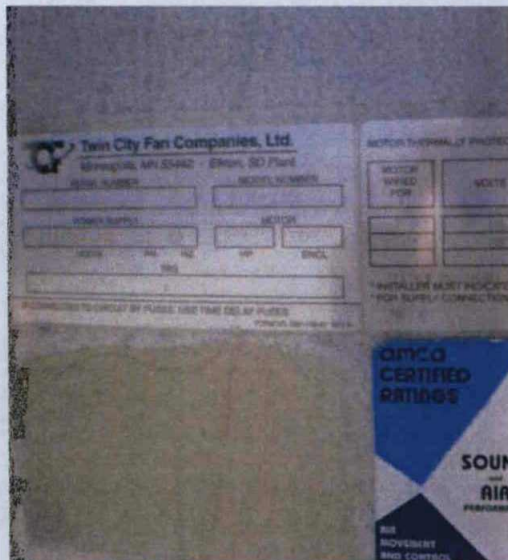


Figure 7. Exhaust Fan Nameplate

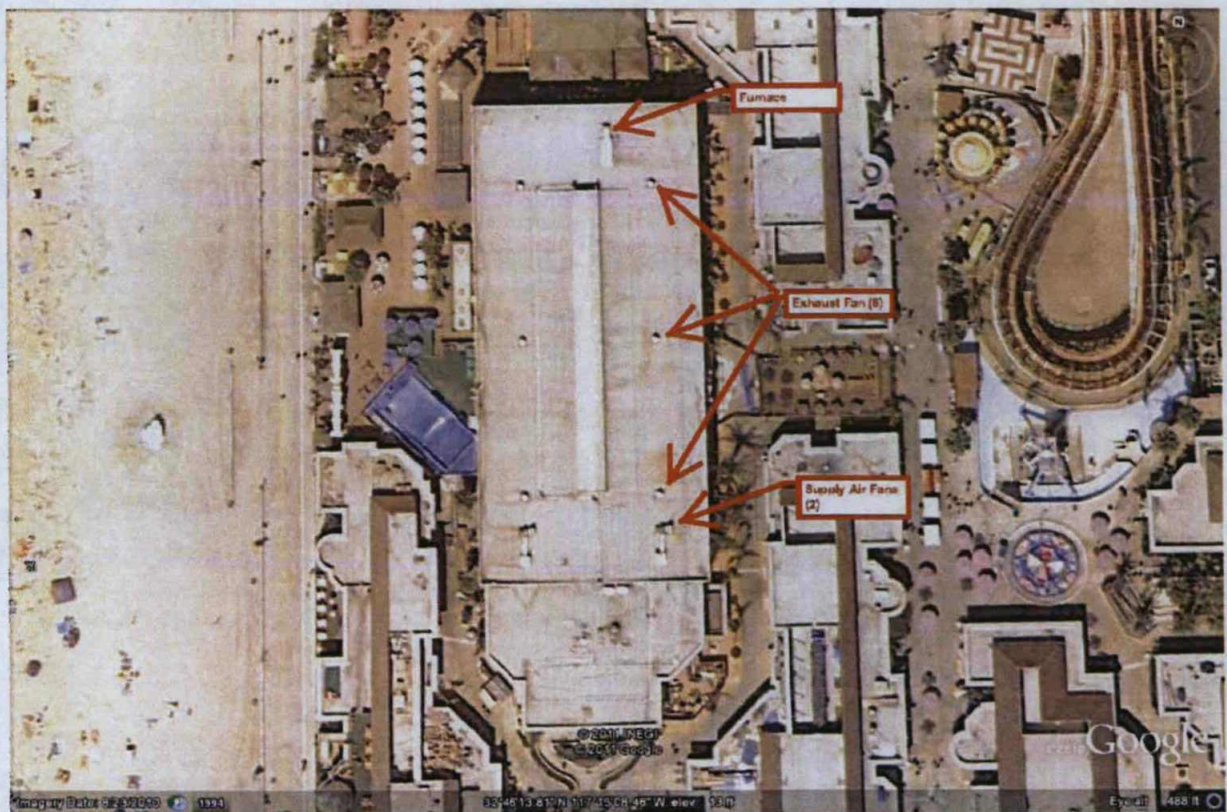


Figure 8. Aerial View of Mission Beach Plunge Building



Figure 9. Supply Air Grille



Figure 10. Furnace Air Ducts Painted as Palm Trees

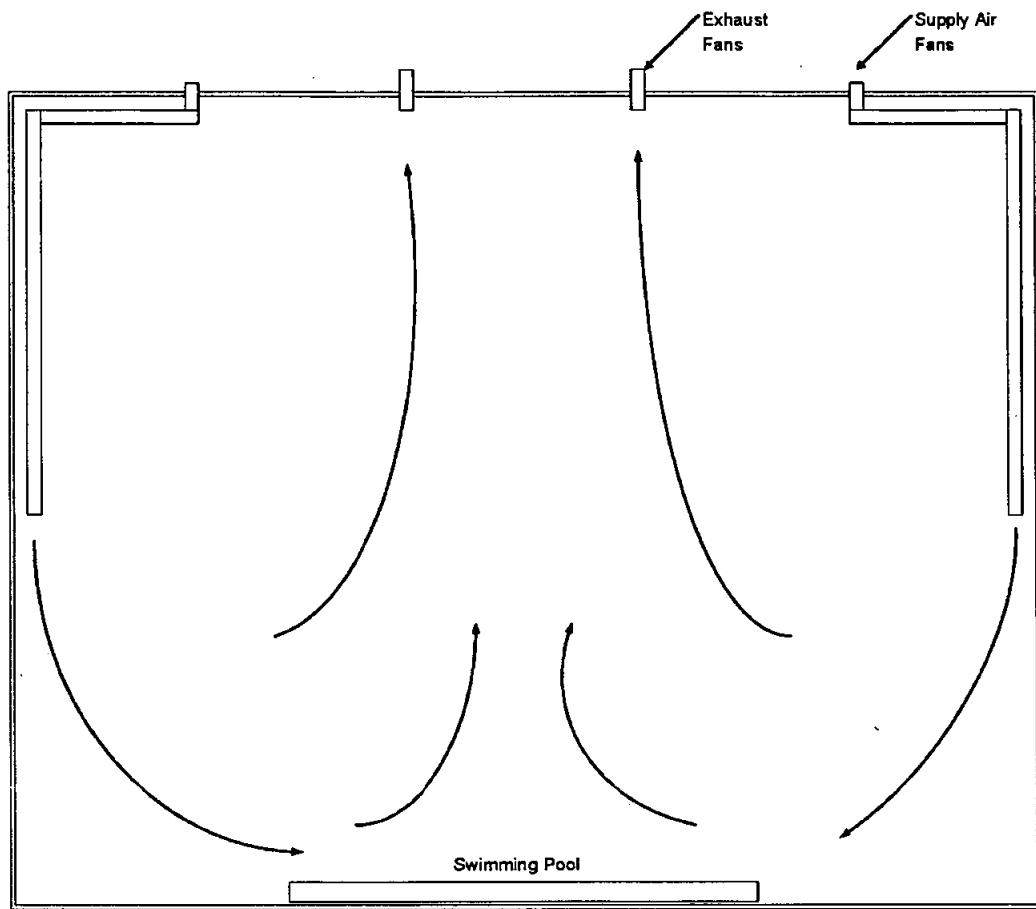


Figure 11. Air Circulation with Recommended Supply Air Ducts

APPENDIX B – EQUIPMENT BROCHURES

BCRU/BCRUR – Upblast Roof Exhausters, Belt Driven

Twin City Fan's BCRU and BCRUR belt driven, upblast roof mounted centrifugal exhausters are available in twenty sizes from size 110 to 480, including seven high-pressure models.

Capacities range from 500 to 29,000 CFM with static pressures to 3.25 inches.

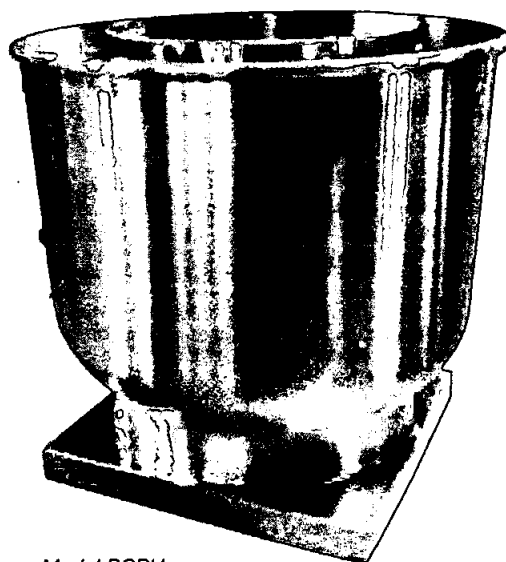
BCRU – General Exhaust

Model BCRU is designed for roof mounted exhaust of clean air in applications where it is desirable to move the exhausted air up and away from the building, and where re-entry into the building supply air is possible. Model BCRU is cULus 705 listed for electrical.

BCRUR – Kitchen Exhaust

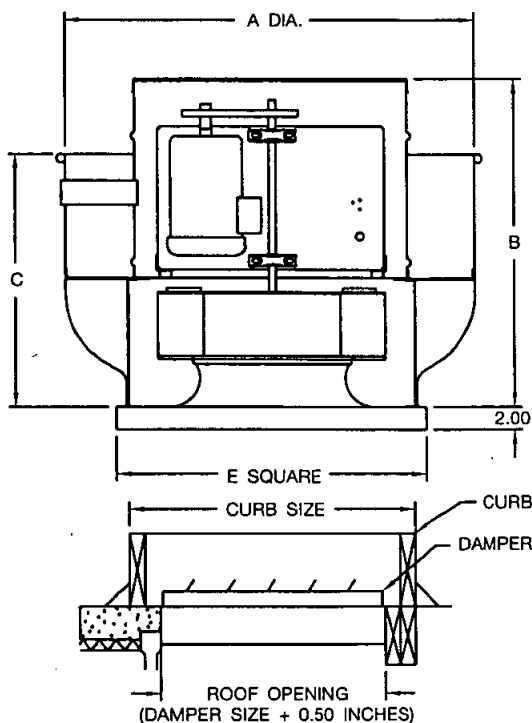
Model BCRUR is similar to the BCRU, but is specifically designed for exhausting grease-laden air from kitchens, restaurants, cooking and dishwasher hoods. Model BCRUR is cULus 762 listed for the exhaust of grease-laden air.

Both the BCRU and BCRUR are licensed to bear the AMCA certified ratings seal for sound and air performance.



Model BCRU

Exhaust Fans 1 through 6



* Damper not available on BCRUR.

Dimensional Data and Weights

MODEL		A	B	C	E	AVG. UNIT WT. (LBS.)
BCRU	BCRUR					
110B	110B	30.00	28.56	28.00	24.00	135
120B	120B	30.00	27.19	28.00	24.00	135
140B	140B	30.00	27.68	28.00	24.00	145
140BHP	140BHP	30.00	28.58	28.00	24.00	135
160B	160B	30.00	29.81	28.00	24.00	180
160BHP	160BHP	30.00	27.68	28.00	24.00	135
160BMP	160BMP	30.00	28.44	28.00	24.00	180
180B	180B	36.00	32.31	30.00	30.00	180
180BMP	180BMP	36.00	29.19	30.00	30.00	180
180BHP	180BHP	36.00	31.00	28.25	30.00	180
210B	210B	45.00	35.61	28.25	34.00	245
210BHP	210BHP	45.00	32.94	28.25	34.00	245
240B	240B	45.00	37.56	28.25	34.00	245
240BHP	240BHP	45.00	34.31	28.25	34.00	245
300B	300B	54.00	38.25	31.00	40.00	365
300BHP	300BHP	54.00	34.88	31.00	40.00	365
360B	360B	63.00	43.88	34.00	46.00	375
360BHP	360HP	63.00	39.68	34.00	46.00	375
420B	—	69.00	46.75	36.00	52.00	385
480B	—	75.00	49.13	39.00	58.00	490

Dampers and Roof Curbs

MODEL		DAMPER SIZE	STANDARD CURB SIZE	SELF FLASH CURB SIZE	ROOF OPENING
BCRU	BCRUR				
110B	110B	18 x 18	22½ x 22½	23½ x 23½	18½ x 18½
120B	120B	18 x 18	22½ x 22½	23½ x 23½	18½ x 18½
140B	140B	18 x 18	22½ x 22½	23½ x 23½	18½ x 18½
160B	160B	18 x 18	22½ x 22½	23½ x 23½	18½ x 18½
180B	180B	24 x 24	28½ x 28½	29½ x 29½	24½ x 24½
210B	210B	28 x 28	32½ x 32½	33½ x 33½	28½ x 28½
240B	240B	28 x 28	32½ x 32½	33½ x 33½	28½ x 28½
300B	300B	34 x 34	38½ x 38½	39½ x 39½	34½ x 34½
360B	360B	40 x 40	44½ x 44½	45½ x 45½	40½ x 40½
420B	—	46 x 46	50½ x 50½	51½ x 51½	46½ x 46½
480B	—	50 x 50	56½ x 56½	57½ x 57½	50½ x 50½

Notes:

1. All dimensions are in inches unless otherwise noted.
2. Dimensions are not to be used for construction.
3. Damper sizes are nominal.
4. BCRUR (Kitchen Exhaust) provided with self flashing, vented, 12" high curb.

D-4401H
D-4402H

Performance Data – Belt Driven



240B BCRU / BCRUR / BCRUSH / BCRW / BCRWR

Max. Motor Frame = 145T

HP	RPM	STATIC PRESSURE (INCHES W.G.)											
		0	0.125	0.25	0.375	0.50	0.625	0.75	0.875	1.00	1.25	1.50	1.75
		CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone
1/4	420	3969 0.15 6.7	3503 0.19 6.2	2928 0.22 6.5	1910 0.21 5.0								
	445	4206 0.18 7.2	3768 0.22 7.0	3260 0.25 7.0	2498 0.26 5.5								
1/3	470	4442 0.21 8.1	4031 0.26 7.8	3571 0.29 7.5	2931 0.31 6.9								
	485	4584 0.23 8.3	4186 0.28 8.1	3748 0.31 7.8	3163 0.34 7.9	2207 0.32 6.4							
1/2	530	5009 0.30 9.7	4648 0.35 9.6	4259 0.40 8.9	3797 0.43 9.5	2085 0.45 7.8	3176 0.40 7.3						
	560	5293 0.36 10.5	4953 0.41 10.5	4588 0.46 9.7	4182 0.50 9.9	3651 0.52 9.8	2917 0.51 8.3						
3/4	600	5671 0.44 12.0	5355 0.50 12.0	5019 0.55 11.1	4661 0.59 10.9	4223 0.63 11.3	3675 0.65 10.3	2863 0.61 9.5					
	635	6001 0.52 13.1	5704 0.58 13.1	5389 0.64 12.4	5059 0.69 11.9	4683 0.73 12.1	4214 0.76 12.5	3640 0.77 10.4	2730 0.70 10.4				
1	660	6238 0.59 13.8	5952 0.65 13.8	5651 0.71 13.3	5337 0.76 12.7	4993 0.80 12.8	4572 0.84 13.4	4070 0.86 12.5	3391 0.84 11.4				
	705	6663 0.71 15.3	6396 0.78 15.3	6118 0.85 14.9	5827 0.91 14.2	5522 0.96 14.1	5173 1.00 14.6	4753 1.04 15.2	4267 1.05 14.2	3612 1.02 13.4			
1-1/2	750	7088 0.86 16.8	6838 0.93 16.8	6578 1.00 16.6	6308 1.07 16.2	6029 1.12 15.4	5728 1.17 15.8	5376 1.22 16.3	4967 1.25 16.7	4500 1.27 15.7	2966 1.12 15.3		
	810	7655 1.08 19.1	7424 1.16 19.1	7186 1.24 19.1	6939 1.31 18.3	6684 1.38 18.0	6421 1.43 17.6	6135 1.49 17.7	5806 1.54 18.6	5430 1.58 19.0	4512 1.58 18.5		
2	850	8033 1.25 20	7814 1.34 20	7587 1.42 20	7354 1.49 19.6	7113 1.56 19.2	6867 1.63 18.9	6608 1.68 18.9	6321 1.74 19.4	5993 1.79 21	5221 1.84 20	4087 1.75 19.8	
	890	8411 1.44 22	8202 1.53 22	7987 1.61 22	7765 1.69 22	7537 1.77 21	7305 1.84 20	7065 1.90 20	6808 1.96 21	6521 2.01 21	5841 2.10 22	4996 2.10 21	3602 1.89 21

240BHP BCRU / BCRUR / BCRUSH / BCRW / BCRWR

Max. Motor Frame = 182T

HP	RPM	STATIC PRESSURE (INCHES W.G.)											
		0.50	0.625	0.75	1.00	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00
		CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone	CFM BHP Sone
1/2	600	2837 0.39 9.8	2384 0.41 8.5	1774 0.39 8.6									
	650	3330 0.47 11.6	2953 0.50 10.9	2523 0.52 9.9									
3/4	700	3789 0.56 12.6	3464 0.60 13.3	3104 0.63 12.3	2184 0.63 11.3								
	745	4181 0.65 13.2	3894 0.70 14.1	3578 0.73 14.4	2844 0.78 12.2								
1	780	4473 0.73 13.5	4213 0.78 14.4	3924 0.82 15.2	3264 0.89 13.0	2394 0.87 13.0							
	825	4838 0.83 14.1	4607 0.89 14.7	4348 0.94 15.6	3765 1.02 15.3	3078 1.06 13.9	1820 0.92 13.1						
1-1/2	880	5273 0.98 15.3	5066 1.04 15.3	4841 1.09 16.0	4329 1.19 17.0	3741 1.27 15.3	3043 1.28 15.2						
	940	5741 1.16 16.5	5549 1.22 16.2	5352 1.28 16.5	4904 1.40 17.9	4395 1.50 18.0	3819 1.56 15.9	3125 1.55 16.5					
2	990	6127 1.32 17.8	5944 1.39 17.6	5761 1.46 17.3	5359 1.58 18.2	4900 1.69 19.3	4390 1.79 18.4	3818 1.84 17.1	3090 1.79 17.3				
	1035	6473 1.48 19.2	6295 1.55 18.6	6121 1.62 18.2	5753 1.76 18.5	5333 1.88 19.6	4870 1.99 19.9	4355 2.07 18.3	3781 2.10 18.4	2985 2.00 18.4			
3	1100	6969 1.75 22	6798 1.82 21	6633 1.89 20	6300 2.04 19.8	5931 2.18 21	5519 2.30 22	5072 2.41 22	4580 2.50 20	4040 2.52 20	3328 2.43 20		
	1185	7612 2.13 25	7450 2.21 25	7293 2.29 23	6987 2.45 22	6670 2.61 22	6316 2.75 24	5931 2.88 25	5518 3.00 25	5069 3.10 23	4585 3.15 23	4021 3.12 23	3210 2.94 23

NOTES:

1. Performance certified is for Installation Type A: Free inlet, free outlet.
2. Power rating (BHP) does not include transmission losses.
3. Performance ratings do not include the effects of appurtenances (accessories).
4. The sound ratings shown are loudness values in fan sones at 5 ft. (1.5 m) in a hemispherical free field calculated per AMCA Standard 301.
5. Values shown are for Installation Type A: Free inlet hemispherical sone levels.

Twin City Fan & Blower

VENTILATING SETS

TYPE BCV (Backward Inclined)

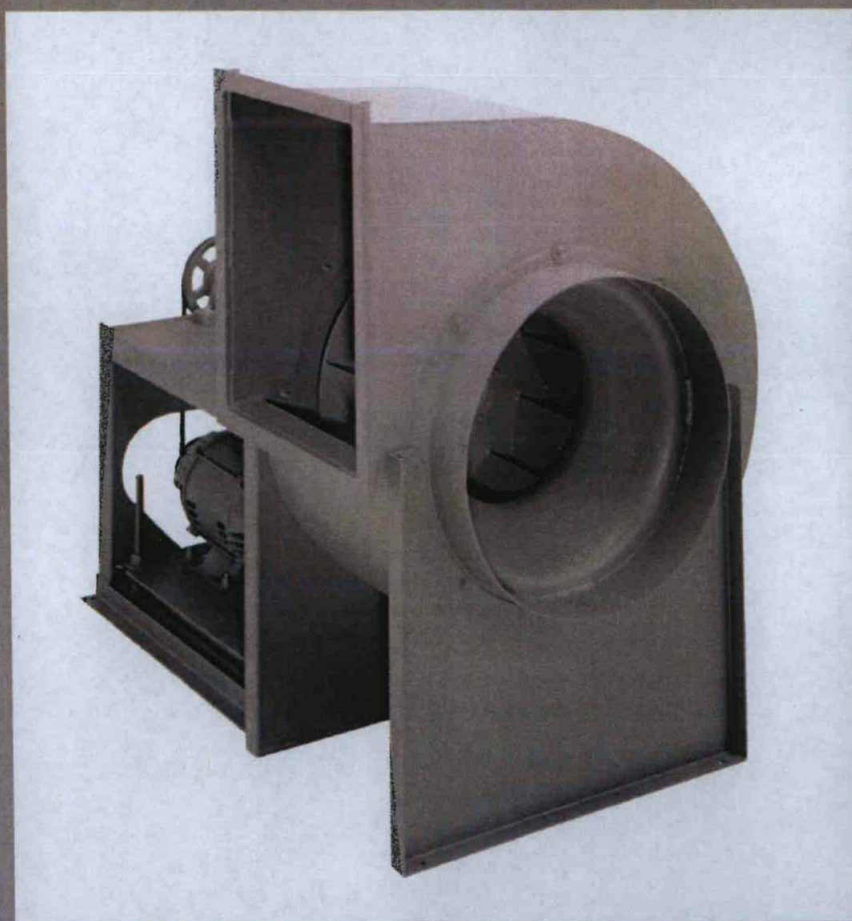
TYPE BCVU5 (UL 705 Listed)

TYPE BCVU2 (UL 762 Listed)

TYPE BCVSH (UL Smoke & Heat)

TYPE BAV (Airfoil)

TYPE FCV (Forward Curved)



Ventilating Sets

Twin City Fan's line of utility ventilating sets is one of the most comprehensive in the industry. The belt driven arrangement 10 utility sets are available in twelve sizes ranging from 12.25" to 36.5" diameter wheels. Utility sets are designed to meet AMCA requirements for Class I and Class II construction with both aluminum and steel wheels. Fan housings are coated with an epoxy powder-coat as standard.

Ventilating sets are an excellent choice for general exhaust and supply requirements of commercial and light industrial applications. They are suitable for indoor usage and outdoor usage, with the addition of a weather cover to enclose the motor and drives. Continuously welded housings are rotatable to the eight standard discharge positions. Adjustable motor plates are included inside the bearing pedestal. The fans are also more compact and have a smaller footprint than arrangement 9 fans.

Models

Type BCV

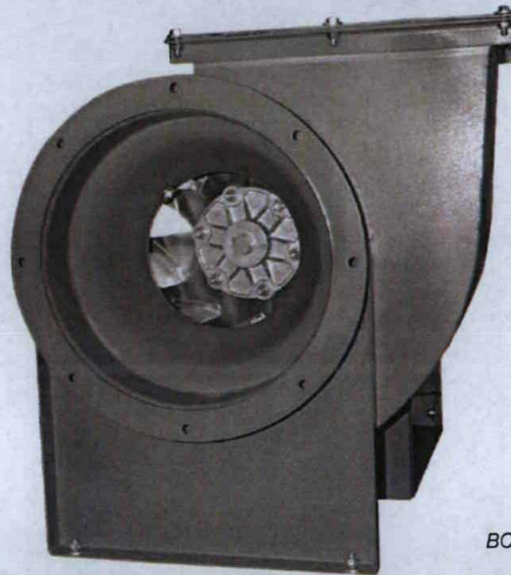
Belt driven model featuring a flat bladed backward inclined wheel. Utilized in applications requiring high CFM at low to medium pressures. Model BCV can handle clean air or corrosive airstreams. Airflow capacity from 690 to 21,900 CFM and static pressures to 8" w.g.

Type BAV

Belt driven model featuring a backward inclined airfoil wheel. Slightly higher efficiencies than the BCV, but recommended for clear air applications only. Airflow capacity from 690 to 32,100 CFM and static pressures to 8" w.g.

Type FCV

Belt driven model featuring a forward curved wheel. Ideal for high volume, low pressure applications. Also suitable for certain high temperature requirements. Airflow capacity from 690 to 21,900 CFM and static pressures to 5" w.g.



BCV, Size 165



Twin City Fan & Blower certifies that the type BCV, BCVU5, BCVU2, BCVSH and BAV fans shown on pages 8 through 13 are licensed to bear the AMCA Seal for Sound and Air. The ratings shown are based on tests and procedures performed in accordance with AMCA Publication 211 and AMCA Publication 311 and comply with the requirements of the AMCA Certified Ratings Program. Refer to Bulletin 306 for sound power levels.



Twin City Fan & Blower certifies that the type FCV fans shown on pages 14 through 16 are licensed to bear the AMCA Seal for Air. The ratings shown are based on tests and procedures performed in accordance with AMCA Publication 211 and comply with the requirements of the AMCA Certified Ratings Program.



Most BCV fans are available for listing under UL 705, UL 762 and UL Emergency Smoke Control Systems.



Twin City Fan & Blower is a registered member of the USGBC, a non-profit community of leaders working to make green buildings available to everyone within a generation.

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Bulletin illustrations cover the general appearance of Twin City Fan & Blower products at the time of publication and we reserve the right to make changes in design and construction at any time without notice.

Twin City Bulletin 600

UL Listed Ventilating Sets

The model BCV utility set is available with three separate UL listing options. Model BCVU5 is UL 705 listed for electrical, model BCVU2 is UL 762 listed for the removal of grease-laden air and model BCVSH is UL listed for Emergency Smoke Control Systems.

MODEL	UL LISTING	TEMPERATURE RATING	WHEEL MATERIAL
BCVU5	UL 705 (File E158680)	Up to 250°F (Aluminum Wheels)	Aluminum - through Size 270, Class I
		Up to 300°F (Steel Wheels)	Steel - Size 300- 365, Class I & All Class II Sizes
BCVU2	UL 762 (File MH25478)	Up to 300°F	Steel
BCVSH	UL Smoke & Heat (File MH29313)	500°F for 4 Hours 1000°F for 1 Hour	Steel

Type BCVU5

BCVU5 packages come complete with V-belt drives, motor, UL weather cover, UL labels and nameplate.

Type BCVU2

BCVU2 packages include V-belt drives, motor, UL weather cover, bolted access door, drain connection, backplate fins, UL 762 labels and nameplate. For UL 762, grease pans, disconnect switches, stacks or fan platforms are not included. Fans must be installed per local codes and NFPA 96.

Type BCVSH

BCVSH fans come standard with V-belt drives with a minimum of two belts, motor, UL weather cover, backplate fins, shaft seal, shaft cooler, high temperature grease, insulated drive stand and UL Emergency Smoke Control Systems labels and nameplate. Fans must be installed per local codes and NFPA 96.



Standard Construction Features – Class I and II

Standard design features common to all Class I and Class II fans:

Shaft

- AISI 1045, turned, ground and polished for accuracy.
- Designed to provide first critical speed of at least 1.43 times the maximum class speed.

Bearings

Heavy duty, grease lubricated pillow block bearings selected for minimum average life (AFBMA L-50) of at least 200,000 hours at maximum class speed.

Drive

Adjustable or fixed pitch, 1.2 or 1.5 service factor V-belt drives with cast iron sheaves, and V-belts designed to be oil and heat resistant, and to dissipate static electricity.

Motor

Available in various sizes, voltages, enclosures, and efficiencies to meet the needs of any application.

Motor/Bearing Pedestal (Class I Shown)

Large open motor compartment allows complete access to motor and motor base for quick and easy servicing and belt tension adjustment.

Shutter

Optional discharge gravity shutter.

Housing

- Rugged, all-welded construction.
- Rotatable to eight standard discharge positions.

Inlet Cone

Deep spun cone, aerodynamically designed for smooth air entry into the wheel, shown here with optional inlet screen.

Construction Features

MODEL	CLASS I			CLASS II		
	BCV	BAV	FCV	BCV	BAV	FCV
Static Pressure	5"	8"	3.5"	8"	8"	5"
Capacities	27,500	29,000	27,500	29,100	32,100	29,100
Wheel Diameters	12.25" to 36.5"			12.25" to 36.5"		
Max. Motor Frame	256T (20 HP)			326T (50 HP)		
Temperatures	to 500°F			to 600°F		
Rotatable	to size 365			to size 365		
Full AMCA Class Rated Performance	Yes			Yes		

Performance Data – BCV / BCVU5 / BCVU2 / BCVSH

270 BCV

Outlet Area - 4.19 ft²

Wheel Dia. - 27.00 inches

Max. BHP = 4.05 (RPM÷1000)³

CFM	OV	0.25"		0.5"		1"		1.5"		2"		3"		4"		5"		6"		7"		8"	
		RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP
3352	800	380	0.22	457	0.36	592	0.72																
4190	1000	437	0.33	504	0.50	621	0.89	726	1.33														
5028	1200	498	0.48	557	0.69	661	1.11	755	1.59	843	2.12												
5866	1400	561	0.68	614	0.91	709	1.40	795	1.92	875	2.48	1026	3.75										
6704	1600	627	0.93	674	1.20	761	1.75	840	2.32	914	2.91	1051	4.21	1184	5.74								
7542	1800	693	1.24	736	1.54	816	2.15	890	2.78	959	3.43	1088	4.82	1206	6.32	1324	8.05	1449	10.16				
8380	2000	761	1.63	800	1.96	874	2.63	943	3.33	1007	4.02	1128	5.49	1241	7.08	1346	8.77	1452	10.68	1564	12.93		
9218	2200	829	2.08	865	2.45	934	3.19	998	3.94	1059	4.70	1174	6.30	1280	7.95	1381	9.72	1476	11.58	1572	13.64	1672	15.99
10894	2600	968	3.28	999	3.71	1058	4.57	1115	5.45	1169	6.33	1272	8.14	1369	10.02	1461	11.95	1549	13.97	1633	16.07	1714	18.25
12570	3000	1108	4.87	1135	5.36	1187	6.36	1238	7.37	1287	8.38	1380	10.42	1469	12.53	1553	14.68	1634	16.88	1712	19.14	1788	21.49
14246	3400	1248	6.91	1272	7.47	1320	8.62	1365	9.75	1409	10.88	1495	13.19	1576	15.53	1654	17.90	1729	20.32	1802	22.81		
15922	3800	1390	9.51	1412	10.14	1454	11.39	1495	12.65	1536	13.94	1614	16.48	1689	19.05	1762	21.70						

MAXIMUM RPM: Class I — 1397 Class II — 1803

300 BCV

Outlet Area - 5.17 ft²

Wheel Dia. - 30.00 inches

Max. BHP = 6.86 (RPM÷1000)³

CFM	OV	0.25"		0.5"		1"		1.5"		2"		3"		4"		5"		6"		7"		8"	
		RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP
4136	800	342	0.27	411	0.45	533	0.89																
5170	1000	393	0.41	453	0.62	558	1.09	653	1.64														
6204	1200	448	0.59	501	0.84	595	1.38	680	1.96	758	2.61												
7238	1400	505	0.84	552	1.12	638	1.73	715	2.36	787	3.05	923	4.63										
8272	1600	564	1.15	606	1.47	684	2.15	756	2.86	823	3.60	946	5.20	1065	7.08								
9306	1800	624	1.53	662	1.90	734	2.65	801	3.44	863	4.24	979	5.94	1085	7.79	1192	9.95	1304	12.53				
10340	2000	685	2.01	720	2.42	786	3.24	848	4.09	906	4.96	1015	6.78	1117	8.75	1212	10.84	1307	13.18	1408	15.98		
11374	2200	746	2.57	778	3.02	840	3.93	898	4.86	953	5.80	1056	7.76	1152	9.81	1242	11.98	1329	14.31	1415	16.84	1505	19.75
13442	2600	871	4.04	898	4.56	952	5.64	1003	6.71	1052	7.81	1145	10.05	1232	12.36	1314	14.73	1394	17.24	1470	19.85	1543	22.55
15510	3000	996	5.99	1021	6.61	1068	7.84	1114	9.09	1158	10.33	1242	12.87	1321	15.43	1397	18.09	1470	20.82	1540	23.59	1609	26.51
17578	3400	1123	8.53	1145	9.23	1187	10.62	1228	12.02	1268	13.43	1345	16.27	1418	19.15	1488	22.08	1556	25.08	1621	28.12		
19646	3800	1250	11.71	1270	12.50	1308	14.05	1345	15.60	1382	17.20	1452	20.32	1520	23.52	1585	26.75						

MAXIMUM RPM: Class I — 1257 Class II — 1623

330 BCV

Outlet Area - 6.26 ft²

Wheel Dia. - 33.00 inches

Max. BHP = 11.05 (RPM÷1000)³

CFM	OV	0.25"		0.5"		1"		1.5"		2"		3"		4"		5"		6"		7"		8"	
		RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP
5008	800	311	0.33	374	0.54	484	1.07																
6260	1000	357	0.49	412	0.75	508	1.33	594	1.99														
7512	1200	407	0.72	455	1.02	541	1.67	618	2.37	690	3.17												
8764	1400	459	1.01	502	1.36	580	2.09	650	2.86	716	3.70	839	5.60										
10016	1600	513	1.39	551	1.78	622	2.60	688	3.47	748	4.35	860	6.30	968	8.56								
11268	1800	567	1.85	602	2.30	668	3.22	728	4.16	785	5.14	890	7.19	987	9.45	1083	12.02	1186	15.19				
12520	2000	623	2.43	655	2.93	715	3.93	771	4.96	824	6.01	923	8.21	1015	10.57	1102	13.13	1188	15.95	1280	19.34		
13772	2200	679	3.12	708	3.66	764	4.77	817	5.89	867	7.04	960	9.39	1047	11.86	1130	14.53	1208	17.31	1286	20.37	1368	23.89
16276	2600	792	4.89	817	5.53	866	6.84	912	8.13	957	9.47	1041	12.17	1120	14.96	1195	17.84	1267	20.85	1336	24.00	1403	27.31
18780	3000	906	7.26	929	8.02	972	9.52	1013	11.01	1053	12.51	1129	15.56	1202	18.73	1271	21.95	1337	25.23	1401	28.61	1463	32.10
21284	3400	1022	10.36	1041	11.17	1080	12.88	1117	14.57	1153	16.26	1223	19.70	1290	23.22	1353	26.73	1415	30.38	1474	34.05		
23788	3800	1137	14.19	1155	15.14	1190	17.04	1224	18.94	1257	20.84	1321	24.65	1382	28.47	1441	32.37						

MAXIMUM RPM: Class I — 1143 Class II — 1475

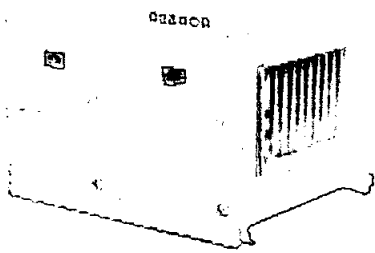
365 BCV

Outlet Area - 7.66 ft²

Wheel Dia. - 36.50 inches

Max. BHP = 19.42 (RPM÷1000)³

CFM	OV	0.25"		0.5"		1"		1.5"		2"		3"		4"		5"		6"		7"		8"	
		RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP	RPM	BHP
6128	800	271	0.38	326	0.65	430	1.27																
7660	1000	312	0.57	359	0.89	445	1.58	527	2.37														
9192	1200	357	0.84	397	1.20	472	1.99	543	2.86	610	3.77												
10724	1400	404	1.19	439	1.60	505	2.48	567	3.41	628	4.44	744	6.63										
12256	1600	453	1.65	483	2.09	542	3.07	598	4.09	653	5.20	758	7.57	859	10.14								
13788	1800	502	2.21	529	2.70	582	3.77	633	4.89	683	6.08	779	8.62	871	11.33	961	14.26						
15320	2000	552	2.91	577	3.46	625	4.61	671	5.82	717	7.09	805	9.79	890	12.68	972	15.70	1053	18.93				
16852	2200	603	3.76	625	4.34	669	5.58	712	6.90	754	8.26	836	11.14	915	14.20	992	17.44	1066	20.75	1139	24.23	1215	28.13
19916	2600	705	5.94	724	6.62	761	8.02	798	9.52	835	11.10	906	14.34	975	17.72	1042	21.26	1108	24.97	1173	28.83	1236	32.73
22980	3000	808	8.86	824	9.62	857	11.24	889	12.89	921	14.63	984	18.27	1045	22.00	1106	25.94	1165	29.99	1222	34.09	1279	38.39
26044	3400	911	12.63	926	13.52	955	15.32	984	17.18	1012	19.07	1068	23.06	1123	27.20	1177	31.44	1231	35.86	1283	40.32		
29108	3800	1015	17.40	1028	18.37	1054	20.35	1080	22.39	1106	24.51	1157	28.87	1206	33.33	1255	37.97						



CGA 2.6



ANSI Z83.8

DESCRIPTION

Reznor® Model HRPD Series Rooftop Dual Duct Furnaces are designed to be used in series as the heating component in a heating, heating/cooling, or makeup air system. Each of the dual furnaces is certified for 80% thermal efficiency for use with either natural or propane gas, as specified. Eight sizes are available from 250,000 through 800,000 BTUH input. Each furnace includes an integral power vent system which provides metered combustion air, dilutes flue products, and eliminates the need for vent caps. The weatherized, aluminized steel cabinets are mounted on 12 gauge zinc grip rails designed for setting directly on a roof or slab surface. A separate blower system, such as Reznor Models RBA and RBL, is required for air delivery (See Catalog RZ-C-PO).

Each furnace has a patented Reznor Thermocore® aluminized steel heat exchanger with venturi-design tubes. The die-formed burners are of aluminized steel and include flared ports with a stainless steel insert.

Standard features for each furnace include a spark-ignited intermittent pilot and a single stage, 24-volt gas valve. Each furnace has all the required limit and safety controls including a vent pressure switch which verifies power vent flow prior to allowing operation of the gas valve.

STANDARD FEATURES

- Orifices for natural gas
- Aluminized steel heat exchangers (When inlet air temperature is below 40°F or temperature rise is less than 40°F, optional stainless steel heat exchanger is recommended.)
- Aluminized steel burners with stainless steel insert
- 120-volt supply voltage
- 24-volt control voltage transformers
- Redundant, single-stage combination gas valves
- Spark-ignited intermittent safety pilots with electronic flame supervision
- High limit safety cutouts
- Power venters
- Differential air pressure switches to verify vent flow
- Terminal block wiring
- Left side access for burners and controls (slide out burner drawers)
- Fan control
- Weatherized cabinet with interlocking joints (U.S. Patent No. 5,373,653) and mounting rails

NOTES:

1. Burner and control access shown left hand side (standard). Specify right hand side for opposite access and connections.
2. Standard airflow as shown. Direction of airflow may be reversed by field relocation of airflow baffles in the heat exchangers. These furnaces must be disassembled to change air flow direction as well as the baffle change.
3. One-inch fiberglass insulation full length and width of top.
4. Approved for installation downstream of an air-conditioning coil (optional stainless steel heat exchangers, stainless steel burners, and stainless steel bottom sections are recommended).
5. Not approved for residential use.

OPTIONAL FEATURES - FACTORY INSTALLED

- Orifices for propane gas
- Elevations to 9,000 ft
- 409 or 321 stainless steel heat exchangers
- 409 stainless steel burners
- 409 stainless steel bottom pans
- Burner Controls for Recirculated Heating
 - Two-stage gas valve on each furnace (operate in tandem from 2-stage room thermostat)
 - Electronic modulation, 50-100% tandem operation from room thermostat
- Gas Controls for Makeup Air
 - Two-stage operation with 1-stage gas valve and 2-stage ductstat (50 or 100%)
 - Four-stage operation with 2-stage gas valves controlled from 2-stage ductstats with either unit-mounted controls or remote electronic controls with or without display module
 - Mechanical modulation (50 to 100%) with unit-mounted controls (50-100°F) with or without high fire bypass
 - 4:1 Turndown Electronic modulation (25% of full output) with duct probe (55-90°F) with unit setpoint, with remote adjustment, or with signal conditioner for customer-provided computer control
 - 8:1 Turndown Electronic modulation (12% of full fire output) 20-100% firing rate on first furnace controlled from ductstat with remote adjustment and 2-stage with outside air stat on second furnace or same turndown capability with signal conditioner for customer-provided computer control -- 8:1 turndown electronic modulation requires stainless steel heat exchangers, burners, and bottom pans (8:1 turndown not available on Size 700)
- Voltage supply, 208, 230, or 460 single phase
- Intermittent spark pilots with timed lockout
- Right side controls (right when facing airstream)
- High and low gas pressure switches
- Airflow proving switch
- Curb cap base

OPTIONAL FEATURES - FIELD INSTALLED

- Vent extension kits
- 24V, one or two stage, heating only or heating/cooling thermostats
- Room override thermostat for electronic modulation
- Thermostat guard with locking cover
- Packaged switches, 2 or 3 position
- Disconnect switch (UL listed)

Model HRPD - TECHNICAL DATA

SIZE		250	300	350	400	500	600	700	800
Input Heating Capacity	BTUH	250,000	300,000	350,000	400,000	500,000	600,000	700,000	800,000
	kw	73.3	87.9	102.6	117.2	146.5	175.8	205.1	234.5
^A Output Heating Capacity (80%)	BTUH	200,000	240,000	280,000	320,000	400,000	480,000	560,000	640,000
	kw/h	58.6	70.3	82.1	93.8	117.2	140.6	164.1	187.6
Std Full Load Amps	120V	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8
Std Control Amps	24V	1.66	1.66	1.66	1.66	1.66	1.66	1.66	1.66
Temperature Rise Range (two furnaces @ full rate)		40°F - 100°F							
Air Volume Range	cfm	1,855-4,630	2,225-5,555	2,595-6,480	2,965-7,405	3,705-9,255	4,445-11,110	5,185-12,960	5,925-14,815
	m3/hr	3,147-7,866	3,775-9,440	4,406-11,011	5,034-12,585	6,293-15,731	7,550-18,878	8,809-22,024	10,068-25,171
Net Weight	lbs	402	434	434	494	590	590	666	722
	kg	182	196	196	224	268	268	302	328
Shipping Weight	lbs	464	528	528	566	666	666	744	806
	kg	210	240	240	257	302	302	337	366
^B Gas Connection	Natural	inches	1/2	1/2	1/2	1/2	1/2	1/2	1/2
	Propane	inches	1/2	1/2	1/2	1/2	1/2	1/2	1/2

^A Ratings are to 2000 ft elevation. In the United States, above 2000 ft derate is by office change; 4% for each 1000 ft above sea level. In Canada, above 2,000 ft to 4,500 ft, derate is by 10% of maximum input.

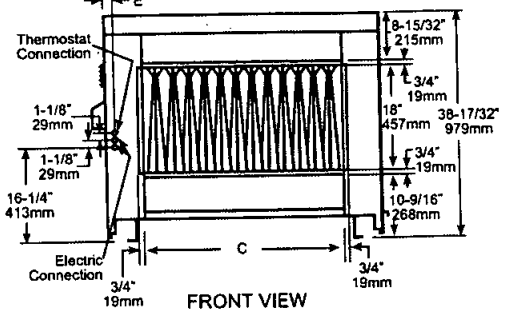
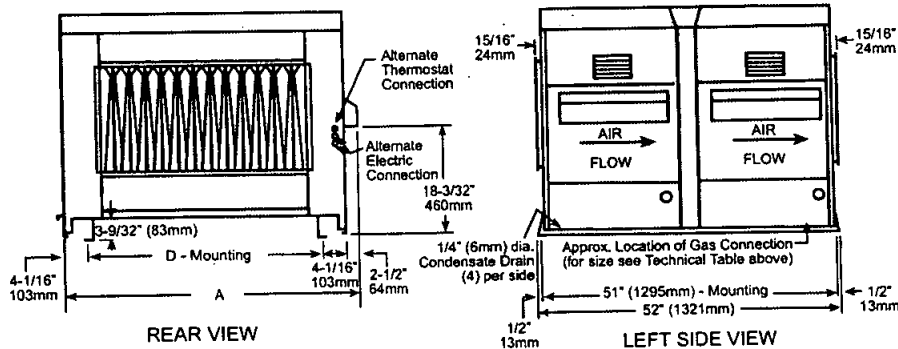
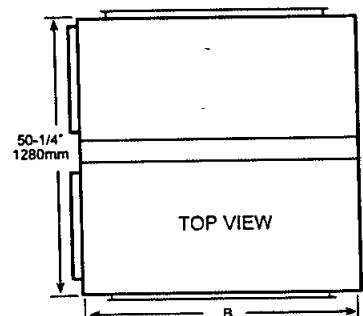
^B Units are manifolded to single gas connection.

Dimensions (inches)

Size	A	B	C	D	E
250	30-15/16	28-1/2	15-1/4	20-5/16	3-3/32
300	36-7/16	34	20-3/4	25-13/16	1-21/32
350	36-7/16	34	20-3/4	25-13/16	1-21/32
400	41-15/16	39-1/2	26-1/4	31-5/16	1-21/32
500	50-3/16	47-3/4	34-1/2	39-9/16	1-21/32
600	50-3/16	47-3/4	34-1/2	39-9/16	1-21/32
700	55-11/16	53-1/4	40	45-1/16	1-21/32
800	61-3/16	58-3/4	45-1/2	50-9/16	1-21/32

Dimensions (mm)

Size	A	B	C	D	E
250	786	724	387	516	79
300	926	864	527	656	42
350	926	864	527	656	42
400	1065	1003	667	795	42
500	1275	1213	876	1005	42
600	1275	1213	876	1005	42
700	1414	1353	1016	1145	42
800	1554	1492	1156	1284	42

**CLEARANCES TO COMBUSTIBLES**

	inches	mm
Top	36	914
Side opposite controls	6	152
Control side - unit width plus	6	152
Bottom - Unit is certified for installation on a combustible surface when equipped with standard heater mounting rails.		

APPENDIX C – CALCULATIONS

Dahl Taylor & Associates, Inc.

9466 Black Mountain Road, Suite 230
Santa Ana, CA 92705-5824
(949) 756-8654 Fax: (858) 653-4774

Date: July 11, 2011
Job No: 3.11.003
By: RG
Sheet No. 1

Pool Evaporation Calculation - Mission Beach Plunge, San Diego, CA

DESIGN CRITERIA

ASHRAE 62.1-2007 Ventilation for Acceptable Indoor Air Quality
ASHRAE Handbook HVAC Applications Chapter 4, 1991 & 2003
ASHRAE Handbook Fundamentals Weather Design Data, 2005

SCOPE OF WORK

- (1) Determine water evaporation rate from swimming pool
- (2) Determine recommended air flow for removal of water vapor

DESIGN ASSUMPTIONS

- (1) Indoor Pool Room Conditions: Temperature = 80°F, Relative Humidity = 60%
- (2) Pool Water Temperature = 84°F
- (3) Outdoor Air Conditions for Summer Season: Temperature = 78.9°F, Relative Humidity = 54.5%
- (4) Outdoor Air Conditions for Winter Season: Temperature = 44.8°F, Relative Humidity = 31%

CALCULATIONS

From ASHRAE Handbook HVAC Applications Chapter 4 Natatoriums

$$w_p = 0.1 A(p_w - p_a)$$

where:

w_p = evaporation of water, lb/h

A = water surface area of pool, ft²

p_a = saturation pressure at room air dew point, in Hg

p_w = saturation vapor pressure taken at the surface water temperature, in Hg

$$A = 60.5\text{ft} \times 175.5\text{ft} = 10,618 \text{ ft}^2$$

$$p_a = 1.03298 \text{ in Hg}$$

$$p_w = 1.17606 \text{ in Hg}$$

$$w_p = 0.1 (10,618 \text{ ft}^2) (1.17606 - 1.03298) = 151.9 \text{ lb/h}$$

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Date: July 11, 2011
Job No: 3.11.003
By: RG
Sheet No. 2

Pool Evaporation Calculation - Mission Beach Plunge, San Diego, CA

The minimum air quantity required to remove this evaporated water during summer season:

$$Q = w_p / 60p (W_i - W_o)$$

Where:

Q = quantity of air, cfm

w_p = evaporation of water, lb/h

p = standard air density, 0.075 lb/ft³

W_i = humidity ratio of pool air at design criteria, lb/lb = 0.0131567 lb/lb

W_o = humidity ratio of outdoor air at design criteria, lb/lb = 0.011497 lb/lb

$$Q = 151.9 \text{ lb/h} / 60(0.075 \text{ lb/ft}^3) (0.0131567 \text{ lb/lb} - 0.011497 \text{ lb/lb})$$

$$Q = 20,338 \text{ cfm}$$

The minimum air quantity required to remove this evaporated water during winter season:

W_i = humidity ratio of pool air at design criteria, lb/lb = 0.0118962 lb/lb

W_o = humidity ratio of outdoor air at design criteria, lb/lb = 0.0019363 lb/lb

$$Q = 151.9 \text{ lb/h} / 60(0.075 \text{ lb/ft}^3) (0.0118962 \text{ lb/lb} - 0.0019363 \text{ lb/lb})$$

$$Q = 3,008 \text{ cfm}$$

ANALYSIS

During the summer months in San Diego, the outdoor temperatures and relative humidity will be very similar to the temperatures and relative humidity inside the indoor pool room of the Mission Beach Plunge. This is reflected in the high required air flow of 20,338 cfm for the water vapor removal. The moisture content in the outdoor air 54.9% RH(relative humidity) is very close to the indoor design conditions of 60%RH. These conditions would indicate that the outdoor air differential from the indoor conditions of approximately 5% is very small which results in a large air quantity for moisture removal.

Conversely, during the winter season the outdoor temperatures and relative humidity are conducive to moisture removal. The moisture content in the outdoor air 31% RH(relative humidity) is low compared to the indoor design conditions of 60%RH. These conditions would indicate that the outdoor air differential from the indoor conditions of about 30% is significant which results in a small air quantity for 3,008 cfm for moisture removal.

This analysis is evaluated for the worst and best conditions for the water vapor removal in the indoor pool area.

Dahl Taylor & Associates, Inc.

9466 Black Mountain Road, Suite 230
Santa Ana, CA 92705-5824
(949) 756-8654 Fax: (858) 653-4774

Date: July 11, 2011
Job No: 3.11.003
By: RG
Sheet No. 3

Pool Evaporation Calculation - Mission Beach Plunge, San Diego, CA

The total available supply air ventilation is:

S-1 10,900	cfm
S-2 10,900	cfm
F 7,400	cfm
Total 29,200	cfm

The total available exhaust is:

EF-1 5,000	cfm
EF-2 5,000	cfm
EF-3 5,000	cfm
EF-4 5,000	cfm
EF-5 5,000	cfm
EF-6 5,000	cfm
Total 30,000	cfm

Net air flow is:

$$29,200 \text{ cfm} - 30,000 \text{ cfm} = - 800 \text{ cfm}$$

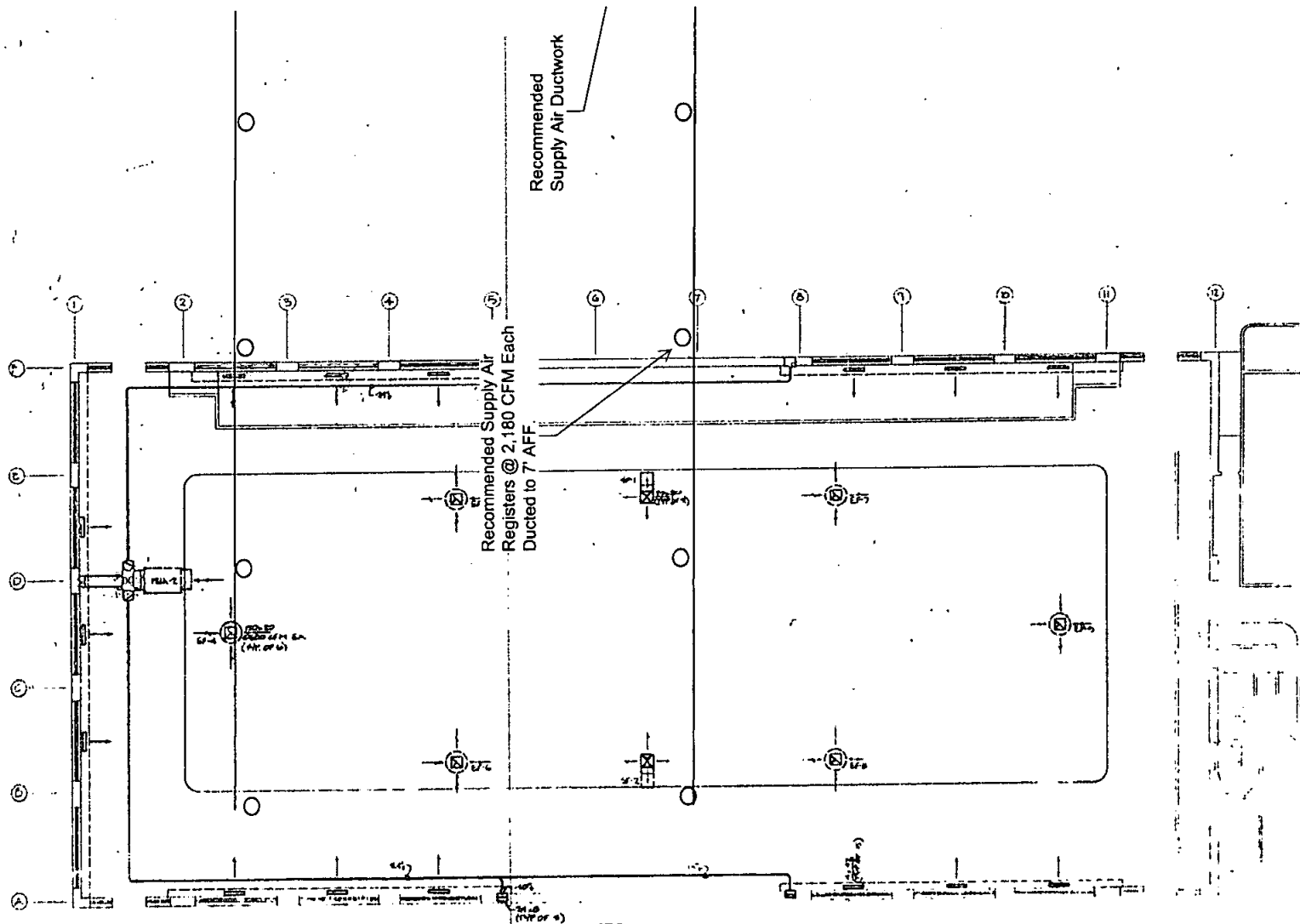
All the air volumes are estimates based on the specifications and sizes of the equipment. Brochures of the existing equipment are provided. The model and size are noted or highlighted in the brochures. Measurement of the actual air volumes for each fan should be performed by a testing and balancing contractor.

If all air systems are activated and perform to the rated capacities, the desired negative room pressure is achieved. This also indicates that the furnace unit (F) should also be on during normal business hours. The furnace should not be in heating mode, if the thermostat is operating properly.

RECOMMENDATIONS

All of the existing supply fans, exhaust fans and furnace should be checked and serviced for proper maintenance and operations. Determine the actual air volumes of each equipment by consulting with a test and balancing contractor.

APPENDIX D- RECOMMENDED SUPPLY AIR DUCTS



ENGINEER'S CONSTRUCTION COST ESTIMATE							
DAHL, TAYLOR & ASSOCIATES		DATE: August 2, 2011		SHEET 1 OF 1			
PROJECT NAME: Mission Beach Plunge Supply Air Ductwork				DESIGN		XX	PRELIMINARY DESIGN
							DEVELOPMENT
							CONSTRUCTION DOCS
ENGINEER: RG CHECKED: RG		QUANTITY		MATERIAL & LABOR			
DESCRIPTION: NO.		OF	UNIT			PER	TOTAL
		UNITS				UNIT	TOTAL
GENERAL WORK:							
Man Lift rental		3	WK			\$1,700.00	\$5,100.00
NEW WORK:							
MECHANICAL							
18" diameter sheet metal duct		290	LF			\$30.00	\$8,700.00
24" diameter sheet metal duct		40	LF			\$42.00	\$1,680.00
30" diameter sheet metal duct		40	LF			\$54.00	\$2,160.00
32" diameter sheet metal duct		40	LF			\$60.00	\$2,400.00
36" diameter sheet metal duct		40	LF			\$70.00	\$2,800.00
Reducer fittings		8	EA			\$210.00	\$1,680.00
Tee fittings		6	EA			\$400.00	\$2,400.00
Diffusers		10	EA			\$400.00	\$4,000.00
Insulation		1125	SF			\$2.50	\$2,812.50
Hangers and supports		12	EA			\$250.00	\$3,000.00
Test and Balance		1	LS			\$1,500.00	\$1,500.00
SUB-TOTAL						\$0.00	\$38,232.50
10% CONTINGENCY						\$0.00	\$3,823.25
SUB-TOTAL						\$0.00	\$42,055.75
7.75% TAXES							\$3,259.32
SUB-TOTAL							\$45,315.07
15% OH & PROFIT							\$8,156.71
TOTAL ESTIMATED COST							\$53,471.78

City of San Diego Wavehouse Plunge Structure Corrosion Condition Assessment

Prepared for: Daniel Lee, P.E., Harris & Associates

Prepared by: Noy Phannavong, V&A

Reviewed by: Klaus Jeppesen, V&A

Date: June 29, 2011

INTRODUCTION

V&A Consulting Engineers (V&A) was retained by Harris & Associates (H&A) to perform a corrosion condition assessment on the Wavehouse Plunge (Plunge) building located in the Mission Beach area of San Diego, California. The steel framing structure of the Plunge has experienced significant corrosion due to its service environment. The objective of the assessment was to quantify the extent of corrosion on the structural elements of the steel framing by evaluating the remaining steel thicknesses of those members. This report summarizes the methods used in the evaluation, the findings from the evaluation, and provides recommendations for the short term and long term rehabilitation of the Plunge structure.

On June 22 and 23, 2011, V&A conducted a corrosion condition assessment consisting visual assessments with photo documentations, coating system evaluations, coating sample lead analyses, steel ultrasonic thickness testing, and steel pit-depth measurements on the Plunge building framing structure. The evaluation methods were conducted on the beams, columns, beam-column connection components, open truss roof framing, clearstory framing and window mullions and bracing.

V&A's corrosion condition assessment was conducted in conjunction with a structural assessment by Simon Wong Engineering (SWE). Wavehouse maintenance staff exposed several beam-column connections and two full length columns for the assessment. A 44-foot reach man-lift and operator on-site provided access to elevated parts of the building framing. The clearstory framing was accessed from the top of the roof.

Listed below is a brief summary of the findings from the Plunge structure assessment. More detailed results are provided in the Findings Section of this report.

- ❖ The existing coating systems found on the Plunge structure are inadequate for protecting the steel surfaces in the service environment. The existing coal tar coating found on some of the building columns and beams contains a significant amount of lead. The removal of this coal tar will require lead abatement procedures.
- ❖ With the exception of Location 8 (as shown in Figure 1), the columns, beams and connection components of Locations 2, 3, 4, 5, 6, and 10 have undergone minor to moderate corrosion. The members of Location 1 and Location 4 were in the worst condition with wall thickness losses up to 21 percent and 32 percent, respectively. The moment frame at Location 8 was in good condition with negligible corrosion. The beams and columns of the building framing should be recoated with a moisture and chloride resistant coating for the long term protection of the structure.

- ❖ Overall, the roof truss framing members were observed to have minor to moderate corrosion occurring on their surfaces. However, there was a truss member and a gusset plate that was found to have severe corrosion and wall thickness loss. The roof framing truss members should be recoated with a moisture and chloride resistant coating.
- ❖ The window mullions did not show signs of corrosion. However, the brackets securing the mullions to the lateral-brace tubes were corroded through at most locations. These brackets should be replaced. The lateral-brace tubes exhibited corrosion nodules that reveal moderate pitting after removing the corrosion products. The window support components should be recoated with a moisture and chloride resistant coating.
- ❖ The clearstory structure has sustained severe corrosion with a wall thickness loss ranging from 25 percent to 100 percent. The clearstory framing requires immediate attention. Any loose corrosion products should be thoroughly removed. The longitudinal beams, transverse beams and pipe columns of the clearstory should be considered for replacement. All tie-rods and the pipe column at the northwest corner of Bay 6 should be replaced. The beams and columns of the building framing should be recoated with a moisture and chloride resistant coating after the corrosion products have been removed.

BACKGROUND

Plunge Structure Information

Built in 1925, the Plunge is an indoor pool facility located on the boardwalk of Mission Beach. The Plunge was used as a saltwater pool until 1940, when it was converted to a heated fresh water pool. The building structure is approximately 218 feet long by 103 feet wide with enclosed steel columns, spaced approximately 20 feet apart. The walls consist of glazed windows and/or metal stud walls with gypsum board interior and stucco exterior coverings. The roof, which consists of metal decking topped with plywood, is supported by an open steel truss frame consisting of steel angle members. A 136-foot long by 10-foot wide by 6-foot tall clearstory structure located at the center of the roof provides natural lighting for the building.

In 1987, the Plunge structure was seismically retrofitted by replacing some of the existing beams and columns with steel moment frames in each of the building's four walls (north, south, east, and west sides). On the east and west walls, the columns on Line 5 through Line 8 (Figure 1) were replaced with steel moment frames. On the north and south sides, the four (out of six) inner columns were retrofitted with steel moment frames. During the retrofit process, various truss framing members and other building framing members were also replaced.

Figure 1 through Figure 3 provide plan and section views of the building framing system from the 1987 retrofit. The locations where V&A's field engineer conducted corrosion evaluations are shown on the plans and sections for reference.

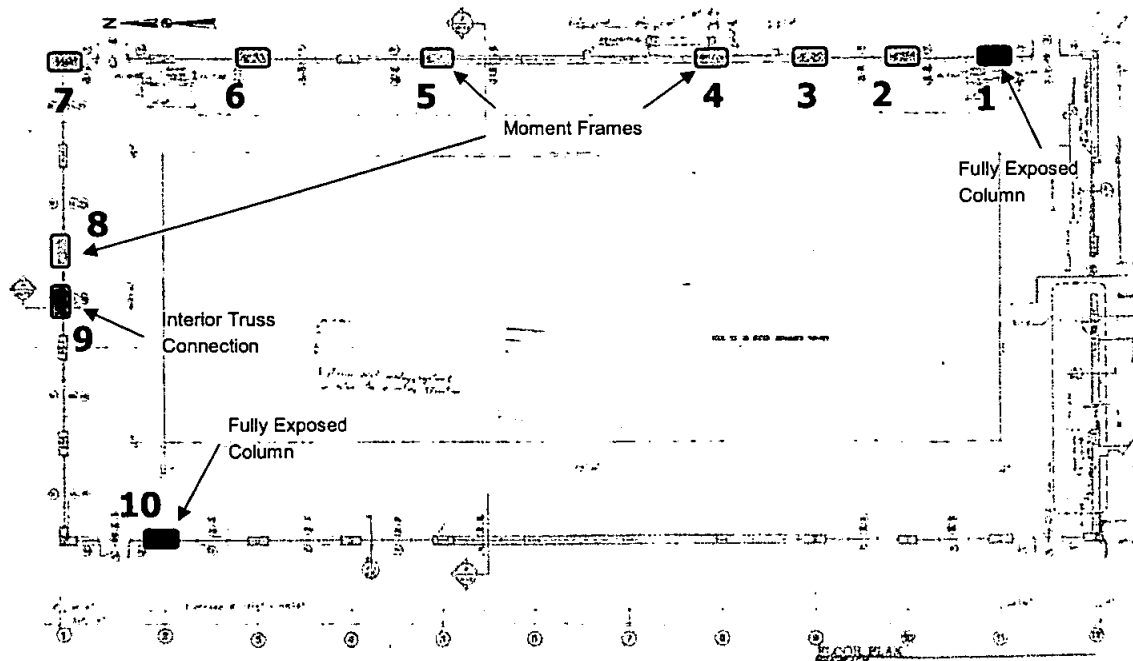


Figure 1. Floor Plan Showing Locations of Columns Evaluated

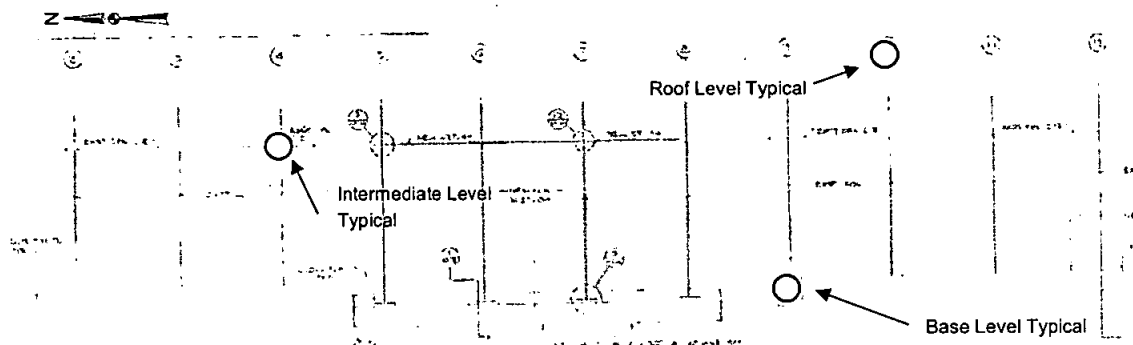


Figure 2. Longitudinal Building Section (East Wall)

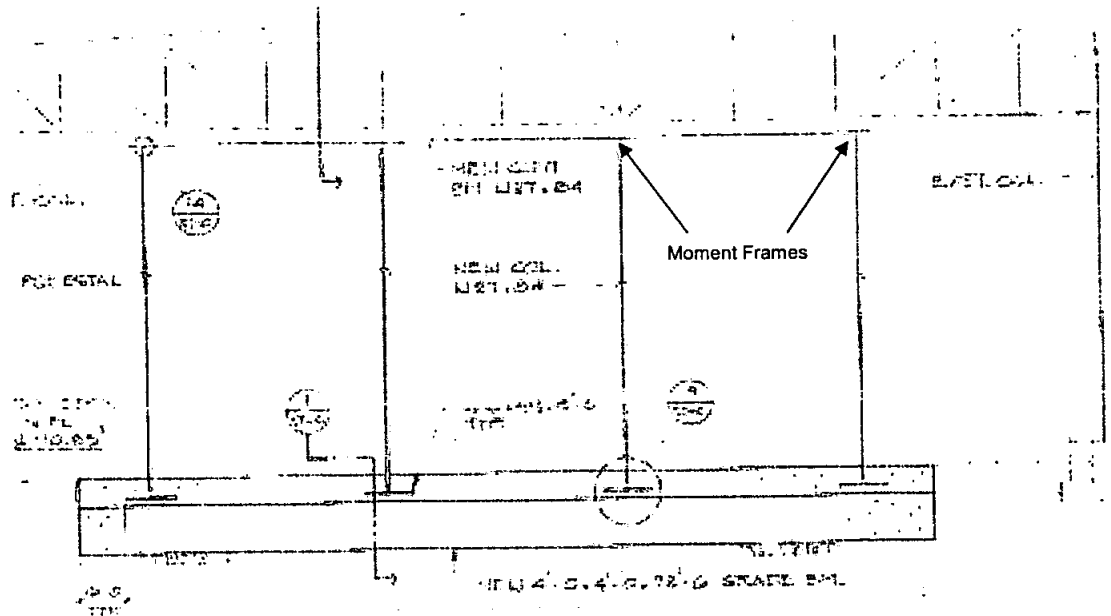


Figure 3. Transverse Building Section, Line Column 1 (North Wall)

Service Environment

The Plunge facility is constantly subjected to an atmosphere containing high humidity and high chloride content. Not only is the Plunge situated in a marine environment that has a significant presence of coastal fog, the chlorinated and heated water in the swimming pool adds to the corrosive effect that this type of environment has on steel.

Atmospheric corrosion is both a chemical and electrochemical process defined as the corrosion or degradation of material exposed to the air and its pollutants. Atmospheres can be classified into three categories: industrial, marine, and rural. In marine environments, the rate at which steel will corrode is based on atmospheric factors such as relative humidity, time of wetness (TOW), chloride concentration in the air and air temperature. Generally, the corrosion rate increases with increasing relative humidity, TOW, chloride concentration, and decreasing temperatures.

Time of wetness determines the duration of the electrochemical process and is the most important factor in atmospheric corrosion. Relative humidity is a critical factor influencing the time of wetness. The critical relative humidity is the humidity under which water will not form on a clean metal surface. The actual critical relative humidity will change depending on the surface conditions of the metal. For steel, the critical relative humidity is around 60 percent. At 75 to 80 percent relative humidity the corrosion rate increases sharply due to the capillary condensation of moisture within corrosion products. Above 90% relative humidity there is another increase in corrosion rate corresponding to the vapor pressure of ferrous sulfate. Surface temperature affects the kinetics of the corrosion process as well as the time of wetness. Corrosion rate will rise sharply as temperature increases up to the point where the electrolyte evaporates, and then the rate falls off rapidly. Other factors that contribute to time of wetness include

condensation, dew, naturally and artificially cooled surfaces (the top of a building under a clear night sky or a compressor tank as it loses pressure) and moistened surfaces (exhaust vents). Surfaces that trap and pond water increase the time of wetness, especially in cold environments where evaporation is low.

ASSESSMENT METHODS

Visual Observations

The primary investigative method consisted of conducting visual examinations and documenting observations with digital photographs. The visual assessment focused on the condition of coating systems and corrosion of steel surfaces. Qualitative measurements such as steel ultrasonic thickness tests and pit-depth measurements were performed to determine the extent of corrosion on applicable surfaces. It should be noted that much of the condition assessment data is subjective and based upon the evaluator's expertise.

Metal Evaluation Techniques

Ultrasonic Thickness Tests

Ultrasonic thickness (UT) testing is a non-destructive evaluation technique that allows for the determination of metal wall thickness. High frequency sound waves are transmitted through one side of a metal wall from a transducer. When sound waves reach the other side of the metal wall, a fraction of the waves will echo back to the transducer. The metal thickness is determined by recording the time it takes for the sound wave to travel through the metal and return. A Panametrics 37DL Plus UT gauge was utilized to obtain thickness measurements for the metal components. Prior to taking measurements, the gauge was calibrated to the velocity of sound in steel (0.2345 inches per microsecond). Figure 4 shows a picture of the instrument.



**Figure 4. Panametrics
UT Meter**

VANDA™ Metal Condition Rating System

The VANDA™ Metal Condition Index was created by V&A to provide consistent reporting of metal corrosion damage based on qualitative, objective criteria. Condition of metal can vary from Level 1 to Level 4 based upon visual observations and field measurements, with Level 1 indicating the best case and Level 4 indicating severe damage. Table 1 shows the metal condition index system.

Table 1.
VANDA™ Metal Condition Index Rating System

Condition Rating	Description	Representative Photograph
Level 1	Little or No Corrosion Loss of Wall Thickness %: None Pitting Depth (as % of Wall Thickness): None to Minimal Extent (Area) of Corrosion: None	
Level 2	Minor Surface Corrosion Loss of Wall Thickness %: < 25% Pitting Depth (as % of Wall Thickness): < 25% Extent (Area) of Corrosion: Localized	
Level 3	Moderate to Significant Corrosion Loss of Wall Thickness %: 25%-75% Pitting Depth (as % of Wall Thickness): 25%-75% Extent (Area) of Corrosion: 25%-75%	
Level 4	Severe Corrosion; Immediate Repair/Replacement Needed Loss of Wall Thickness %: > 75% Pitting Depth (as % of Wall Thickness): 75% or More Extent (Area) of Corrosion: Affects Most or All of Surface	
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FINDINGS

Coating Assessment

The older columns and beams (pre 1987 retrofit) were coated with coal tar, but the coating has failed and is non-existent on most of the column and beam surfaces. A coal tar coating sample was collected from the column at Location 1 (as shown in Figure 1) and tested by Curtis & Tompkins, Ltd. in Berkeley, California, revealed a significant concentration of lead (17,000 mg/kg).

The removal of this coal tar will require lead abatement procedures. A yellow protective coating was applied to the new (post 1987 retrofit) columns and beams. The coating on the newer members showed signs of deterioration in the form of spot blisters and corrosion staining. Photo 1 and Photo 2 show the coatings of the columns and beams.

The open truss members and clearstory framing members were coated with a thin white paint. It was evident that this coating was applied directly over corroded steel surfaces without proper surface preparation. This results in the coating having poor adhesion to the steel substrate, voids due to a rough and uneven application surface, and cracks due to the expansive forces of the corroding steel beneath. A paint sample collected from a truss member tested for a negligible concentration of lead (7.9 mg lead/kg sample). Photo 3 and Photo 4 show the coating on the truss framing and clear story framing.



Photo 1. Coal tar coating on column at Location 1.



Photo 2. Yellow coating on post 1987 retrofit moment frame with spot blistering.



Photo 3. Delaminating white coating on truss frame, corrosion underneath coating.



Photo 4. Peeling white coating on clearstory frame, corrosion underneath coating.

Thickness Measurements

As a result of the coating failure, building framing members with bare steel exposed exhibited minor to moderate corrosion. The extent of corrosion can be qualitatively described as a percent loss of wall thickness. Nominal thicknesses used for the percent loss of wall thickness calculations were assumed based on the recorded average thickness measurements. Steel thickness measurements were recorded on corroded members with an ultrasonic metal thickness gauge or a pit-depth gauge. Table 2 summarizes the thickness data recorded on the building framing members. Refer to Figure 1 in the Plunge Structure Information Section for location references.

Table 2.
Summary of Thickness Data Recorded from Building Frame Connections

Element	Average, inches	Minimum, inches	Maximum, inches	Nominal (assumed)	% Loss of Wall Thickness
Location 1: Roof Connection					
Column Flange	0.354	0.331	0.366	0.375	11%
Column Web	0.349	0.333	0.359	0.375	4%
Stiffeners	0.579	0.540	0.629	0.563	9%
Doubler Plate	0.358	0.341	0.367	0.375	6%
Gusset Plate	0.419	0.412	0.440	0.438	10%
Angle L5"x4"	0.540	0.508	0.562	0.563	19%
Angle L4"x3"	0.278	0.255	0.293	0.313	10%
Channel Beam	0.226	0.224	0.228	0.250	11%
Location 1: Intermediate Connection					
Column Flange	0.362	0.359	0.365	0.375	4%
Column Web	0.312	0.312	0.312	0.375	17%
Gusset Plate	0.303	0.279	0.310	0.313	11%
L8"x6"x4" Bracket	0.317	0.288	0.347	0.313	8%
Location 1: Lateral Mullion Tube Brace Level					
Column Flange	0.342	0.309	0.364	0.375	18%
Column Web	0.356	0.333	0.374	0.375	11%
Mullion Brace	0.380	0.293	0.449	0.438	33%
Location 1: Base Level, up to 6 feet above base					
Column Flange	0.314	0.295	0.348	0.375	21%
Column Web	0.356	0.339	0.365	0.375	10%
Vertical Gusset Plate	0.325	0.301	0.348	0.375	20%
Location 2: Base Level, up to 6 feet above base					
Column Flange	0.357	0.348	0.362	0.375	7%
Vertical Gusset Plate	0.353	0.350	0.355	0.375	7%
Location 3: Base Level, up to 6 feet above base					
Column Flange	0.363	0.363	0.364	0.375	3%
Column Web	0.370	0.369	0.370	0.375	2%
Vertical Gusset Plate	0.359	0.358	0.360	0.375	5%
Location 4: Intermediate Level Beam Connection (moment frame)					
Column Flange	0.609	0.548	0.647	0.640	14%
Beam Flange	0.438	0.438	0.438	0.640	32%
Beam Web	0.453	0.449	0.454	0.460	2%
Panel Zone Web	0.451	0.445	0.455	0.460	3%

Element	Average, inches	Minimum, inches	Maximum, inches	Nominal (assumed)	% Loss of Wall Thickness
Panel Zone Flange	0.549	0.489	0.601	0.640	24%
Double Angle L6"x4"	0.319	0.307	0.319	0.438	30%
Channel Beam (from south)	0.278	0.257	0.289	0.313	18%
Location 5: Intermediate Level Beam Connection (moment frame)					
Beam Flange	0.580	0.571	0.590	0.640	11%
Beam Web	0.463	0.462	0.464	0.460	0%
Panel Zone Web	0.454	0.449	0.456	0.460	2%
Panel Zone Flange	0.617	0.601	0.630	0.640	6%
Shear Tab	0.369	0.369	0.371	0.375	2%
Double Angle L6"x4"	0.465	0.446	0.498	0.438	none
Channel Beam (from north)	0.320	0.289	0.349	0.313	8%
Location 5: Roof Connection (moment frame)					
Gusset Plate	0.414	0.401	0.440	0.438	8%
Location 6: Roof Connection					
Column Flange	0.370	0.359	0.381	0.375	4%
Column Web	0.356	0.346	0.367	0.375	8%
Doubler Plate	0.347	0.341	0.354	0.375	9%
Gusset Plate	0.358	0.352	0.363	0.375	6%
Location 7: Intermediate Level Connection					
Column Flange	0.369	0.362	0.388	0.375	3%
Channel Beam Web	0.288	0.287	0.290	0.313	8%
Column Beam Gusset Plate	0.307	0.306	0.307	0.313	2%
Location 8: Truss Connection, Internal Wall Connection Above Moment Frame					
Angle L5"x4"	0.500	0.492	0.519	0.500	2%
Angle L3"x1.5"	0.319	0.309	0.330	0.313	1%
Gusset Plate	0.347	0.328	0.357	0.375	13%
Location 9: Truss Connection					
Angle L5"x3"	0.323	0.321	0.325	0.313	none
Angle L4"x3"	0.245	0.242	0.250	0.250	3%
Vertical Gusset Plate	0.256	0.252	0.260	0.250	none
Rear Vertical Gusset Plate	0.425	0.365	0.445	0.438	17%
Horizontal Gusset Plate	0.325	0.325	0.326	0.313	none
Location 10: Base Level, up to 6 feet above base					
Column Flange	0.362	0.361	0.364	0.375	4%
Column Web	0.368	0.343	0.375	0.375	9%
Vertical Gusset Plate	0.383	0.381	0.384	0.375	none

Building Framing Columns/Beams

The steel columns and beams have experienced minor pitting to moderate exfoliation. The framing elements at Location 1 (see Figure 1) in the East Wall, 1st column north of the Southeast Corner, was in worst condition with significant exfoliation (flaking) of steel occurring on the entire length of the column. A massive pile of exfoliated steel, likely from the column, had collected at the base of the column. UT measurements recorded on this column revealed a maximum amount of wall loss of 21 percent and 17 percent for the flange and web, respectively. The beams and connection elements at Location 1 exhibited pitting and exfoliation similar to that of the column at this location. Photo 5 through Photo 9 show the corrosion features of the Location 1 framing members.

The moment connection at Location 4 showed corrosion pitting and exfoliation occurring at locations where the coating has deteriorated. Significant wall thickness losses of 32 percent and 24 percent were measured on the beam flange and panel zone flange, respectively. Photo 10 through Photo 12 show the corrosion features of Location 4.

Other exposed column-beam connection locations exhibited a lesser degree of corrosion than that of Locations 1 and 4. The columns, beams and connection components revealed wall thickness losses less than 12 percent. Photo 13 and Photo 14 show typical observations of Locations 2, 3, 5, 6, 8, and 10.

With the exception of Location 8, the columns, beams and connection components of Locations 2, 3, 4, 5, 6, and 10 were in fair condition in terms of steel deterioration and are assigned a VANDA Level 2 metal condition rating. However, the members of Location 1 and Location 4 were in the worst condition with wall thickness losses up to 21 percent and 32 percent, respectively. The moment frame at Location 8 was in good condition and is assigned a VANDA Level 1 metal condition rating. The beams and columns of the building framing should be recoated with a moisture and chloride resistant coating.

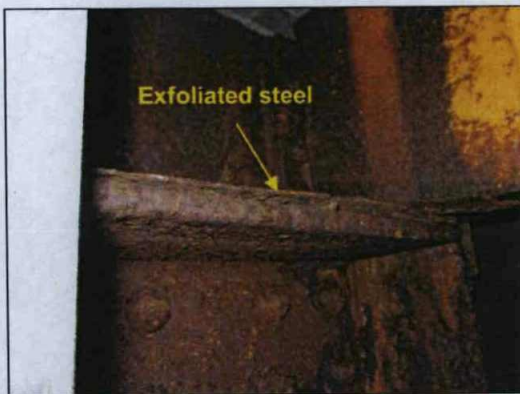


Photo 5. Roof column-beam connection at Location 1 with pitted and exfoliated steel.



Photo 6. Column at Location 1, looking down at intermediate level beam connection.



Photo 7. Intermediate level column-beam connection at Location 1 with pitted steel.



Photo 8. Intermediate level column-beam connection at Location 1 with pitted steel.



Photo 9. Base of column at Location 1 with massive pile of exfoliated steel at base.



Photo 10. Intermediate moment frame connection at Location 4 with pitted beam.



Photo 11. Intermediate moment frame connection at Location 4 with pitting in panel zone.



Photo 12. Intermediate moment frame connection at Location 4 with exfoliated steel at top of beam.



Photo 13. Intermediate moment frame connection at Location 8 in good condition.



Photo 14. Intermediate column-beam connection at Location 6.

Roof Truss Framing

The bottom chord and diagonal truss members showed corrosion spots with pitting on approximately 25 percent of the surface area of the angle members. Since the corroded surfaces of the truss frame were coated, the corroded surfaces could be greater than 25 percent. Investigating the corroded spots on the truss members revealed minimum thicknesses of 0.242 inches for L4"x3" members, 0.309 inches for L5"x3" members and 0.492 inches for L5"x4" members. Based on the recorded wall thicknesses, the maximum wall thickness loss is 3 percent.

A double angle (L6"x4") member at the top of the intermediate moment frame at Location 4 showed exfoliation and a wall thickness of 0.307 inches. Assuming a nominal thickness of 0.438 inches, the amount of wall thickness loss of this member is 30 percent.

The top truss chords showed corrosion spots similar to that of the bottom chords with the corrosion covering approximately 25 percent of its surface area. The loss of steel thickness on the top chord is estimated to be less than 15 percent. Photo 15 through Photo 18 show the corrosion features of the truss framing.

A gusset plate connecting the bottom chord truss members was observed to have severe pitting. Pit-depth measurements on this gusset plate revealed a 1-inch diameter pit with a maximum pit depth of 0.150 inches. Assuming a nominal thickness of 0.250 inches, this plate has lost 60 percent of its original wall thickness. Photo 19 and Photo 20 show the corrosion defects on this gusset plate.

Overall, the roof truss framing members were in fair condition with most members in a VANDA Level 2 metal condition. However, a truss member and a gusset plate were found to be in a VANDA Level 3 metal condition rating. The roof framing truss members should be recoated with a moisture and chloride resistant coating.



Photo 15. Corrosion spots on diagonal truss members.



Photo 16. Corrosion spots on diagonal truss members with pitted steel.



Photo 17. Corrosion spot on bottom chord truss members with minor pitting.



Photo 18. Corrosion spots on top chord truss members.



Photo 19. Bottom chord gusset plate with moderate pitting.



Photo 20. Bottom chord gusset plate pit-depth measurement at approximately 0.150 inches deep.

Window Mullions and Lateral Bracing Tube

The window mullions did not show signs of corrosion. However, the brackets securing the mullions to the lateral-brace tubes were corroded through at most locations and are assigned a VANDA Level 4 metal condition. The lateral-brace tubes exhibited corrosion nodules that reveal moderate pitting after removing the surface corrosion products. Pit-depth measurement of a 1-inch diameter pit showed wall thickness loss of 0.155 inches or 36 percent (assuming a nominal wall thickness of 0.460 inches). Due to moderately deep pitting occurring on its surface, the lateral-brace tubes are in a VANDA Level 3 metal condition. Photo 21 through Photo 24 show the corrosion features of a typical mullion and lateral-brace tube.

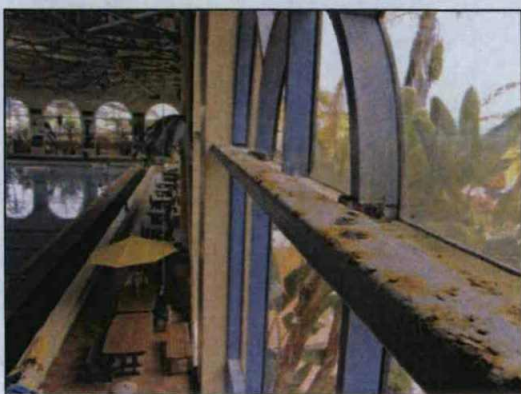


Photo 21. Corrosion nodules on lateral-brace tube.



Photo 22. Detail of corrosion nodules on lateral-brace tube after removal of corrosion products (weakened steel).

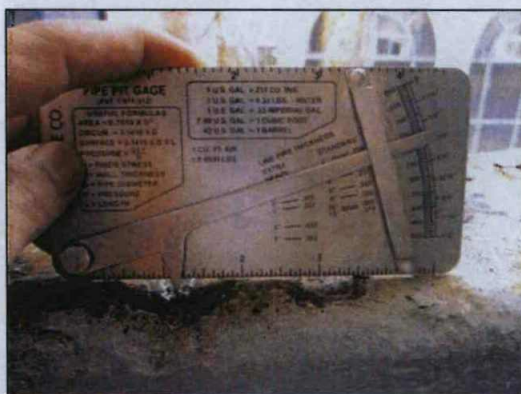


Photo 23. Pit-depth measurement of corrosion nodule shows a maximum pit depth of 0.155 inches.



Photo 24. Lateral-brace tube bracket corroded through.

Clearstory Framing

The clearstory framing appears to have experienced the most severe degree of corrosion throughout the Plunge building. The top and bottom longitudinal beams of the clearstory were severely exfoliating at the flanges. Similarly, the top and bottom (diagonal) transverse beams of the clearstory were severely exfoliating at the flanges at the beam connections and bearing points. After removing corrosion products (weakened steel) from the exfoliated areas, the beam flanges showed wall thickness loss of 25 percent to 100 percent. The area with 100 percent loss in flange thickness occurred at the bearing point of the transverse diagonal beam and bottom longitudinal beam on the southeast corner of Bay 2 (Bay 1 through Bay 7 from north to south).

Sheets of exfoliated steel were observed to be hanging from the flanges on the bottom longitudinal beam. These sheets present an immediate safety hazard for persons below and should be removed. Similarly, the tie-rods bracing the clear story in the east/west direction are severely corroded. Some of the tie-rods have corroded through their cross sectional area. These tie-rods should also be removed and replaced.

The pipe columns supporting the clearstory roof were severely pitted and exfoliated at the top and bottom connections points. The pipe column on the northwest side of Bay 6 was corroded through about 270 degrees around.

The clearstory structure has sustained severe corrosion with an extent of corrosion that ranges from VANDA Level 3 to VANDA Level 4 metal condition. The clearstory framing requires immediate attention. Any loose corrosion products should be thoroughly removed. The longitudinal beams, transverse beams and pipe columns of the clearstory should be considered for replacement. The tie-rods and the pipe column at the northwest corner of Bay 6 should be replaced. Photo 25 through Photo 32 show the corrosion defects of the clearstory.

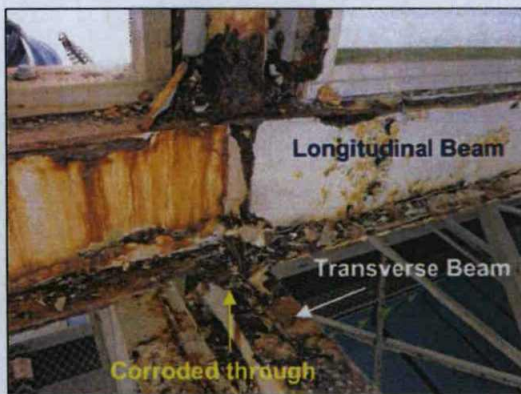


Photo 25. Bottom longitudinal beam, bottom transverse beam, and pipe column with severely exfoliated steel. Bay 2 shown.



Photo 26. Bottom longitudinal beam and bottom transverse beam severely exfoliated steel. Bay 2 shown.



Photo 27. Typical exfoliation of beam flanges at bearing point between bottom longitudinal and transverse beams.



Photo 28. Typical exfoliation of beam flanges at connection point between top longitudinal and transverse beams.



Photo 29. Detail of typical exfoliation of beam flanges at connection point between top longitudinal and transverse beams.



Photo 30. Sheets of exfoliated steel hanging at the flange of a bottom longitudinal beam.



Photo 31. Pipe column in Bay 6 corroded through about 270 degrees of circumference.



Photo 32. Severely corroded tie-rods.

RECOMMENDATIONS

Based on the Plunge corrosion assessment findings, V&A presents the following recommendations for the short and long term rehabilitation of the Plunge.

Short Term

- ❖ Remove steel corrosion products from the clearstory structure. SSPC SP2 Hand Tool Clean (wire brush, chisel, etc.) and SSPC SP3 Power Tool Clean (rotary brush, needle gun, etc.) the surfaces of the steel to remove loose corroded steel and existing coating. Blow down surfaces with compressed air. Apply two coats of a surface tolerant polyamide epoxy, Devoe Bar Rust 231, PPG Amercoat Amerlock 400, or equal, at 4 to 6 mils Dry Film Thickness (DFT) per coat.
- ❖ Replace tie-rods and pipe column in Bay 6 of the clearstory structure.
- ❖ Consider replacing the longitudinal beams, transverse beams, and pipe columns of the clearstory structure.

Long Term

The Plunge building framing should be adequately coated to resist the corrosive effects of its service environment by applying the following coating systems.

- ❖ New steel should be coated with 2 to 3 mils DFT of a zinc-rich primer, 4 to 6 mils DFT of a polyamide epoxy, and 3 to 4 mils DFT of an aliphatic polyurethane. Coating system may be Carboline Carbozinc 859 primer, Carboguard 890 epoxy, and Carbothane 134 aliphatic polyurethane or equal.
- ❖ Existing steel should be abrasive blasted per SSPC SP6 Commercial Abrasive Blast and coated with 1 coat of surface tolerant polyamide epoxy Devoe Bar Rust 231, PPG Amercoat Amerlock 400, or equal, at 4 to 6 mils Dry Film Thickness (DFT) per coat. A finish coat of 3 to 4 mils DFT of an aliphatic polyurethane, Devoe Devthane 379, Amershield, or equal, shall be applied.
- ❖ Lead abatement procedures should be followed for the removal of any existing coal tar coatings and primers within the Plunge building.

Exhibit E: Form of Use & Occupancy Permit

**CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT**

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and _____, a _____ ("PERMITTEE"), to be effective as of _____ (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:

1.1 **"Monthly Rent"** shall mean monetary consideration to CITY as follows:

1.1.1 _____ per month;

1.1.2 _____ per month; and

1.1.3 _____ per month.

1.2 **"Permit Area"** shall mean _____, commonly known as _____, consisting of _____ and more particularly described in Exhibit Z: **Permit Area**, attached hereto.

1.3 **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Six Hundred Dollars (\$600).

1.4 **"Permit Use"** shall mean the non-exclusive use of the Permit Area solely for _____.

1.5 **"PERMITTEE's Address for Notices"** shall be: _____

1.6 **"Security Deposit"** shall mean an amount equal to _____ (\$_____).

1.7 **"Term"** shall mean [*up to two (2) years*], commencing on the Effective Date.

2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY's prior written consent in each instance. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.
4. Public Use. The general public shall have access to the Permit Area for the uses allowed under this Permit during PERMITTEE's hours of operation. The general public shall not be wholly or permanently excluded from any portion of the Permit Area. PERMITTEE may apply reasonable restrictions for the general public's use of the Permit Area so such use does not unreasonably conflict with PERMITTEE's use of the Permit Area as allowed by this Permit.
5. Signs. PERMITTEE shall install and at all times during the Term maintain a CITY-approved sign identifying the Permit Area as CITY-owned and available for public use consistent with the terms of this Permit. The sign shall be installed by PERMITTEE at a location approved by CITY. Other than signage currently installed on the Permit Area, PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE's cost.
6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
7. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein or required by law.
8. Term. The Term may be extended by agreement of the parties; however, the Term shall not exceed two (2) years unless authorized by the San Diego City Council.
9. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) if for CITY's convenience, upon sixty (60) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred

by PERMITTEE as a result of such revocation or the termination of this Permit.

9.1 PERMITTEE's Waiver. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S REVOCATION OR TERMINATION OF THIS PERMIT.

10. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis using up to one hundred twenty-five percent (125%) of the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.
11. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted.
12. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
13. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon execution of this Permit.
14. Rent. PERMITTEE shall pay the Monthly Rent in advance on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.
15. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

16. Delinquent Payments. If PERMITTEE fails to make any payment under this Permit when due, PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
17. Security Deposit. Upon execution of this Permit, PERMITTEE shall deliver the Security Deposit to CITY as security for the performance of PERMITTEE's obligations under this Permit. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the Security Deposit, but shall be and remain the property of CITY. All or any portion of the Security Deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, or for expenses incurred by CITY as a result of PERMITTEE's breach or default of this Permit. PERMITTEE shall maintain the Security Deposit throughout the Term. Notwithstanding any other provision of this Permit to the contrary, if PERMITTEE fails or refuses to deposit or maintain the Security Deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach.

Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.

17.1 Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon ten (10) days prior written notice, PERMITTEE shall reimburse the Security Deposit to the full required amount.

17.2 Increase. Upon thirty (30) days prior written notice by CITY, PERMITTEE shall deliver to CITY such additional funds as CITY may reasonably require to adequately secure PERMITTEE's obligations under this Permit.

17.3 Return. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the Security Deposit, or any balance thereof, to PERMITTEE within sixty (60) days after the expiration or termination of this Permit.

18. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times.
19. Inspection. CITY may at all times enter and inspect the Permit Area.
20. Utilities. PERMITTEE shall order, obtain and pay for all utilities and all utility service and installation charges in connection with its use of the Permit Area. All newly-installed utilities shall be subject to CITY's prior approval and, at CITY's option, installed underground.
21. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
22. Improvements and Personal Property.
 - 22.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.

- 22.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
- 22.3 Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area, under the same terms and conditions of this Permit, after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.
- 22.4 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Permit.
- 22.5 CITY's Right to Acquire Personal Property. If PERMITTEE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.
23. Insurance. Prior to the Effective Date of this Permit, PERMITTEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance and all relevant endorsements for each of the following:
- (a) Commercial General Liability Insurance, providing coverage on the Permit Area for bodily injury, including death, personal injury and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy;
 - (b) Automobile Liability Insurance, providing coverage on the Permit Area for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired and non-owned vehicles) operated in performing any and all

work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

- (c) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- 23.1 Additional Insureds. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by PERMITTEE or on PERMITTEE behalf, (b) PERMITTEE products, (c) PERMITTEE work, including but not limited to PERMITTEE completed operations performed by PERMITTEE or on PERMITTEE behalf, or (d) premises owned, leased, controlled or used by PERMITTEE.
- 23.2 Primary & Non-Contributory. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- 23.3 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 23.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 23.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance

coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

- 23.6 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances or CITY's reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.
- 23.7 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information
- 23.8 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
24. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

25. Compliance with Laws. PERMITTEE shall at all times in its use and occupancy of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).
26. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation CITY.
27. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, PERMITTEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by PERMITTEE, PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at PERMITTEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 27.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of PERMITTEE information requested pursuant to the CPRA.
- 27.1.1 PERMITTEE's Waiver. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
28. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national

origin, ethnicity, age, marital status or disability in PERMITTEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.

29. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
30. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
31. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code", as defined in Title 24 of the California Health and Safety Code); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
 - (a) PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
 - (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
 - (c) PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

- (d) Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
- (e) PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

- 32. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
- 33. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 34. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.
- 35. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
- 36. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
- 37. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE'S use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and

against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.

38. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
39. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- 39.1 Release. For purposes of this Permit, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- 39.2 Hazardous Substance. For purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 39.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.

- 39.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. Upon CITY's request, PERMITTEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 39.5 Indemnity. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 39.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.
- 39.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area ("PERMITTEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional

Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's Operations on, in, from or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

40. Water Quality Assurances. PERMITTEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. PERMITTEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

40.1 NPDES. PERMITTEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Permit (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

40.2 Stormwater Management. PERMITTEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by CITY, in its governmental capacity, under its Stormwater Management Program.

41. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding

the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

42. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
43. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
44. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
45. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
46. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
47. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
48. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally, delivered by a nationally recognized courier service, or by the United States Postal Service ("USPS"), postage prepaid. If Notice is given by USPS, it shall be deemed given as of the date four (4) USPS business days after the postmark date, unless the postmark is illegible or a return receipt is requested, in which event it shall be effective when received. Notices shall be addressed to PERMITTEE's Address for Notices and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

49. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
50. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

THE CITY OF SAN DIEGO

SYMPHONY ASSET POOL XVI LLC,
a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Environmental Analysis Section Environmental Clearance:

Date: _____

BY: _____

Name: _____

Title: _____

Approved as to form and legality this

_____ day of _____, 201__.

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: _____

Exhibit A-1: Permit Area

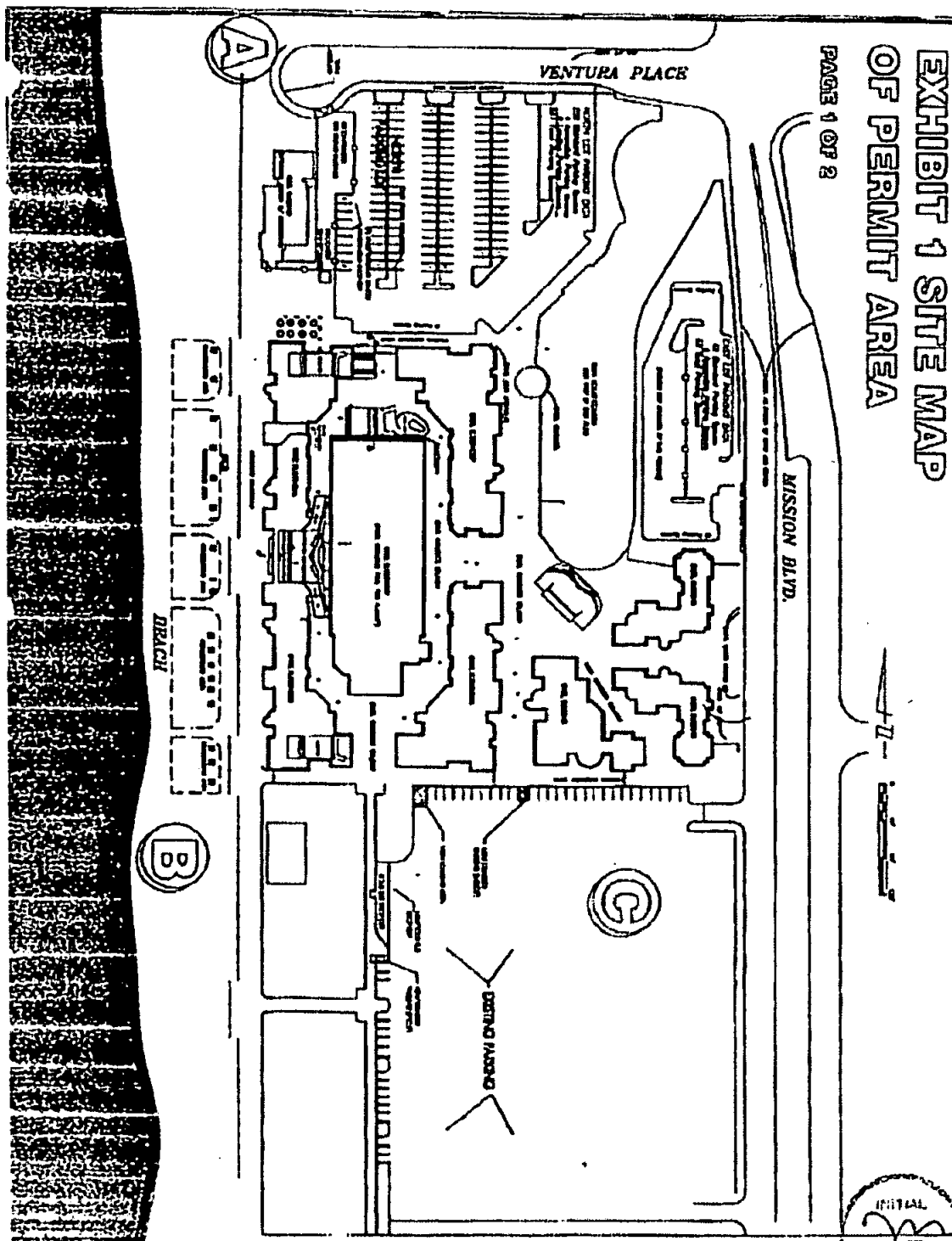


Exhibit F: \$18M -Improvement Obligation

Completed Improvements: 2012 – Aug. 2014

A. Restaurants – Bldg. 5

- Cannonball – Phase I: Construct south rooftop deck with pavers/drain board, tiled parapet coping and glass windscreen. New outdoor bar at South roof deck. New rooftop restroom facilities;
- Draft venue: New restaurant and bar T.I. New expanded kitchen and back of house facilities.

Total Cost -\$5,500,000

B. Midway Common Areas & Food Court

- Exterior Façade: Remodel parapets, window moldings and finishes. New midway exterior signage package.
- Food Court Venues: New Hot dog on a Stick. Renovate Belmont Burger. New Coca-Cola cool spot and Dole Whip venues.
- Common area improvements: – Sidewalk, lighting, etc. New walkway hardscape and landscape. New area lights, decorative lighting and security cameras.

Total Cost -\$3,700,000

C. Midway Arcade, Games & Attractions.

- Arcade & Gaming: New arcade and laser tag T.I. New arcade exterior signage. New gaming booths.
- Attractions: New zip line attraction. New climbing wall features. New Tiki golf attraction.

Total Cost -\$2,300,000

D. Community Room & Coaster Terrace

- Bldg. 7: Construct rooftop deck with pavers/drain board, parapet coping and glass windscreen at north end. Construct new community room with raised flat parapet roof at north deck. Construct exterior stairs at north, east and west ends. Construct new interior elevator to access roof deck.

Total Cost -\$3,900,000

E. New Public Restrooms

- Bldg. 7 (north end) -New expanded restroom facilities. New restroom vestibule with lockers and vending amenities. New storage, mop sink and maintenance room.

Total Cost -\$400,000

F. Wavehouse

- Renovation and T.I.: Construct new cabanas and deck platforms. Construct new handicap access ramp and lift. Construct new glass windscreen along perimeter site wall.
- Remodel entry gates and renovate raised event area in the North East corner. Renovate restroom facilities.
- Repair and maintenance of wave machines

Total Cost -\$2,200,000

Exhibit G: Public Improvements

Site improvements (public and private)	\$1,503,549
Public Improvements:	
Locker room	\$597,692
Plunge Building	\$2,364,590
Plunge T.I.'s	\$100,000
Life guard station addition	\$251,537
Life guard remodels	\$76,530
Restroom remodels	\$77,396
Seal and restripe	\$141,733
Total:	<u>\$5,113,027</u>

Exhibit H: Form of Acknowledgment of Artist

[TO FOLLOW BEHIND THIS PAGE]

ACKNOWLEDGMENT OF ARTIST

1. Acknowledging Symphony. _____ (Artist) shall use the Artist's best efforts in any public showing or on a résumé to give acknowledgment to Symphony Asset Pool XVI, LLC (Symphony) in substantially the following credit line: "An artwork commissioned by Symphony Asset Pool XVI, LLC." The Artist understands and acknowledges that the _____ artwork (Artwork) was not commissioned by the City of San Diego (City) for installation and display on the Premises and agrees not to make such a claim during the term of the Amended and Restated City of San Diego Percentage Lease by and between the City and Symphony, dated _____ (Lease).

2. City's License to Reproduce. The Artist grants the City, and other parties duly authorized by the City, a nonexclusive irrevocable and royalty-free license to reproduce the Artwork for all standard City educational, public relations, tourism and arts promotional purposes including, but not limited to, displaying the Artwork, lending the Artwork, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions of the Artwork, and displaying, distributing, transmitting such reproductions or images to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities. Any such authorized reproduction by the City or others under its control shall credit the Artist.

3. Reproductions for Commercial Purposes. If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, T-shirts, postcards or posters, the parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive. The Artist, in the Artist's sole discretion, may decline to authorize any reproduction which the Artist believes harmful to the Artist's professional reputation.

4. Credit for Reproductions. The City agrees that, unless the Artist requests to the contrary in writing, all formal references to, and reproductions of the Artwork shall credit the Artist with © [Artist's Name & Date of Completion].

5. Limited Visual Arts Rights Act Waiver. In consideration of the mutual covenants and conditions in the Lease, and except as otherwise provided for in the Lease, the Artist agrees to waive any right that the Artist may have under the Visual Arts Rights Act (VARA) to prevent the removal of the Artwork, or the destruction, distortion, mutilation, or other modification of the Artwork which arises from, is connected with, or is caused or claimed to be caused by the

removal, repair, conservation, maintenance or storage of the Artwork by Symphony or its officers, employees, agents, or representatives, or by the presence of the Artwork at the Premises.

6. California Civil Code Section 987 Waiver. The Artist and Symphony acknowledge that the Artist may have certain rights under California Civil Code Section 987 which are not preempted by VARA. In consideration of the mutual covenants and conditions in the Lease, the Artist waives any rights which the Artist or the Artist's heirs, beneficiaries, devisees, or personal representatives may have under California Civil Code Section 987 to prevent the removal, defacement, mutilation, alteration, or destruction of the Artwork.

7. Rights of Artist's Heirs, Successors and Assigns. The Artist's VARA rights under the Lease shall cease with the Artist's death and do not extend to the Artist's heirs, successors or assigns.

8. Conflict. This clause is intended to replace and substitute for the rights of the Artist under VARA and the California Civil Code Section 987 to the extent that any portion of the Lease is in direct conflict with those rights. The parties acknowledge that the Lease supersedes those laws to the extent that the Lease is in direct conflict therewith.

IN WITNESS WHEREOF, this Acknowledgment is executed to be made as of _____ day of _____, 20__.

BY: _____

Name: _____

Exhibit I: \$2.5M Coaster Improvement Obligation

1. Museum, ticketing and information center relocation
2. New ride attraction – Dollywood
3. Lighting system – LED light system installation
4. Repairs and maintenance
5. Trash enclosure relocation
6. New fencing
7. New landscaping

Commencement

Completion – Within 5 years of Initial Revised Term

Total Cost - \$2,500,000

EXHIBIT J

Lease Suspension and Termination Agreement

[TO FOLLOW BEHIND THIS PAGE]

LEASE SUSPENSION AND TERMINATION AGREEMENT

This Lease Suspension and Termination Agreement [Agreement] is hereby entered into by and between the City of San Diego [City], a municipal corporation, and the San Diego Coaster Company, a California corporation [Lessee] [collectively referred to herein as the "Parties"], to be effective on the Suspension Date (as hereafter defined).

RECITALS

A. City and Lessee entered into that certain *City of San Diego Percentage Lease by and between City and San Diego Seaside Company, Inc., a California corporation*, on file with the Office of the San Diego City Clerk as Document No. RR-274204, as amended or consented to by the following documents: (1) that certain letter amendment dated September 13, 1990, on file with the Office of the San Diego City Clerk as Document No. RR-274204-1; (2) that certain *Operating Memorandum to Percentage Lease* dated February 25, 1991, on file with the Office of the San Diego City Clerk as Document No. 769766; and (3) that certain City of San Diego Consent to Stock Purchase and Sale Agreement dated November 7, 2014, [collectively, the "Lease"], by which Lessee leased from City certain real property [Premises], as more fully set forth in Exhibit A attached hereto.

B. City and Symphony Asset Pool XVI, LLC, a Delaware limited liability company ("Symphony"), have entered into that certain *Amended and Restated City of San Diego Percentage Lease*, for Belmont Park which incorporates the Premises in Section 11 thereof (the "New Lease") upon the Suspension Date (as hereafter defined).

C. City and Lessee desire to suspend and hold in abeyance (but not terminate) the Lease and the Lessee's tenancy thereunder immediately effective upon the date of the later to occur of either (1) the authorization by the San Diego City Council of the New Lease; (2) on the

date the New Lease (including, without limitation, the provisions of paragraph 11.2 and its subparagraphs) becomes fully enforceable, effective and binding on the City and Symphony; and (3) the last date evidenced by the signatures of the Parties hereto and approval by the City Attorney following the authorization by the San Diego City Council of this Agreement [Suspension Date].

D. Upon the occurrence of one or more of the events described in Section 2 hereof, City and Lessee desire to terminate the Lease and the Lessee's tenancy thereunder.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and of the mutual benefits and obligations of the Parties set forth in this Agreement, the Parties agree as follows:

1. Suspension of Lease. The Lease shall be suspended and held in abeyance (but not terminated) as of the Suspension Date, subject to the following terms and conditions:

A. Release. On the Suspension Date and for so long as the New Lease is in effect (including Section 11.2 thereof), City and Lessee are released from their respective rights and obligations under the terms and conditions of the Lease, except as to any monetary obligations, claims and remedies accrued thereunder and rights and obligations that shall normally survive the suspension of the Lease, including, but not limited to, indemnity.

B. Surrender. On the Suspension Date and for so long as the New Lease is in effect (including Section 11.2 thereof), Lessee shall vacate the Premises and suspend all rights of Lessee in and to the Premises, however acquired, together with all of its right and interest, and title, if any, in and to all improvements, equipment affixed to the Premises, and all fixtures (except any and all trade fixtures) contained in the Premises, and all of the rights of Lessee in

and to the Lease, except any rights that survive the suspension of the Lease according to its terms.

C. Lessee's Release of Claims. Except as otherwise provided in this Agreement and for so long as the New Lease is in effect (including Section 11.2 thereof), Lessee, for itself and its successors and assigns forever releases City from any claim, demand, or cause of action against City, its successors and assigns, arising after the Suspension Date out of the Lease or its use and occupancy of the Premises or the suspension of the Lease and surrender of the Premises.

D. Acceptance of Suspension and Surrender. City, for itself and its successors and assigns, accepts the suspension of the Lease and the surrender of the Premises by Lessee and acknowledges that the Premises are in good condition and repair.

E. Effect of Suspension. City and Lessee agree that the Lease is suspended and held in abeyance (but not terminated) as of the Suspension Date.

F. After the Final Judgment (as defined in the New Lease) or in the event the New Lease is enjoined by a court of competent jurisdiction prior to the Final Judgment, and for so long as Symphony is unable to lease and operate the Premises under the New Lease: (1) Lessee shall lease and operate the Premises under the Lease, and (2) the parties agree that such lease shall be deemed to be reinstated and revived as further set forth in Section 11.2.16 of the New Lease for so long as Symphony is unable to lease and operate the Premises under the New Lease. At anytime Symphony is able to lease and operate the Premises under the New Lease (each time, the "Re-Surrender Date), once again: (a) Lessee shall vacate the Premises and suspend all rights of Lessee in and to the Premises, and (b) the Lease shall be suspended and held in abeyance (but not terminated).

2. Termination of Lease.

A. Date of Termination. The Lease shall terminate on the earliest of the following to occur [Termination Date]: (1) the effective date of a termination of the New Lease by the CITY under Section 6.2 thereof as a result of a default by Symphony under Section 6.1 thereof; or (2) the expiration of the term of the Lease including all extension rights therein, if any (provided, however, any rights of first refusal of Lessee, if any, in the Lease shall survive in accordance with the terms of the Lease).

B. Release. On the Termination Date, City and Lessee are released from their respective rights and obligations under the terms and conditions of the Lease, except as to any monetary obligations, claims and remedies accrued thereunder and rights and obligations that shall normally survive the termination of the Lease, including, but not limited to, indemnity.

C. Surrender. On the Termination Date, Lessee shall vacate the Premises and surrender to City all rights of Lessee in and to the Premises, however acquired, together with all of its right and interest, and title, if any, in and to all improvements, equipment affixed to the Premises, and all fixtures (except any and all trade fixtures) contained in the Premises, and all of the right of Lessee in and to the Lease, except any rights that survive the termination of the Lease according to its terms.

D. Lessee's Release of Claims. Except as otherwise provided in this Agreement, Lessee, for itself and its successors and assigns forever releases City from any claim, demand, or cause of action against City, its successors and assigns, arising after the Termination Date out of the Lease or its use and occupancy of the Premises or the termination of the Lease and surrender of the Premises.

E. Acceptance of Termination. City, for itself and its successors and assigns, accepts the termination of the Lease and the surrender of the Premises by Lessee and (1) in the event Lessee never leases and occupies the Premises after the Suspension Date, City acknowledges that Lessee shall have no liability with respect to the Premises or condition thereof; and (2) on any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date, Lessee shall surrender the Premises each time in accordance with the terms and conditions of Section 2.03 of the Lease and, thereupon City acknowledges that Lessee shall have no liability with respect to the Premises or condition thereof.

F. Effect of Termination. City and Lessee agree that the Lease, and all of the obligations thereunder, is to be canceled and the term brought to an end as of the Termination Date with the same force and effect as if the term of the Lease were fixed to expire on the Termination Date by the provisions of the Lease.

3. Lessee's Warranties. Lessee warrants to City that:

A. It is the legal and equitable owner of Lessee's interest in the Lease with full power and authority to terminate it.

B. The Lease is not and has not been assigned or transferred and is not and has not been hypothecated, pledged, mortgaged, or in any way encumbered.

C. All subleases, concessions, and other agreements for use and occupancy of the Premises, insurance policies, and maintenance and service contracts which, prior to this Agreement, have been legally terminated or assigned to, and assumed by, Symphony as Lessee under the New Lease and all charges paid in full (or assumed by Symphony), and that no cause of action against City exists as of the date of this Agreement nor will exist subsequent to this

Agreement in any party to a sublease, concession, agreement for use or occupancy, or insurance policy, or maintenance or service contract, based on inducing the breach of contract with respect to it.

D. All rent due on the Lease will be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

E. All charges for utility service (gas, water, electricity, etc.) will be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

F. There are no outstanding contracts for the supply of labor or materials as of the date of this Agreement or that will not be assumed by Symphony, and no work has been done or is being done and no have materials been delivered to the Premises for which full payment has not been made (or assumed by Symphony) or for which a mechanic's lien or stop notice could be asserted or foreclosed under the laws of California.

G. Lessee has not done or permitted anything that would result in the Premises or City's title to the Premises being in any manner encumbered or charged.

H. All taxes, charges, assessments, levies or impositions required by the Lease to be paid by Lessee have been paid in full (or assumed by Symphony) as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date. Notwithstanding the foregoing, those taxes, charges, assessments, levies or impositions approved by City to be prorated, shall be prorated and paid in full as of the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

I. The Premises are now and will be in a decent, safe and sanitary condition on the Suspension Date, any Re-Surrender Date and the Termination Date if Lessee is leasing and occupying the Premises on the Termination Date.

4. Indemnification. Lessee agrees to defend and indemnify City and its elected officials, officers, employees, representatives and agents [City Indemnified Parties] from all loss or damage sustained by City Indemnified Parties, and all expenses, costs, and attorney's fees of City Indemnified Parties in any action or defense undertaken by City Indemnified Parties to protect themselves from such loss or damages, resulting from any breach by Lessee of the representations and warranties made in this Agreement; from Lessee's suspension and termination of the Lease; or from any claim against the City Indemnified Parties for which Lessee is responsible.

5. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, successors and assigns.

6. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the matters covered in this Agreement. There have been no other statements, promises, or representations made by the Parties that are intended to alter, modify, or complement this Agreement. Any further amendments to the Lease, Termination Date or the Suspension Date shall require the prior written authorization of the Parties.

7. Titles. The section titles in this Agreement are used for the convenience of the Parties and are not to be taken as part of the instrument or used to interpret this Agreement.

8. Governing Law. This Agreement is governed and construed in accordance with California law.

9. Jurisdiction and Venue. The venue for any suit concerning this Agreement, the interpretation or application of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF, this Lease Suspension and Termination Agreement is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Resolution No. R-_____, authorizing such execution, and by the San Diego Coaster Company acting by and through its legally authorized representative(s).

THE CITY OF SAN DIEGO

SAN DIEGO COASTER COMPANY

By: _____

By: _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____

Approved as to form this

_____ day of _____, 201__.

JAN I. GOLDSMITH, City Attorney

BY: _____

Hilda Mendoza

Deputy City Attorney

LEGAL DESCRIPTION

All that portion of Pueblo Lot 1803 of Pueblo Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, now known as Miscellaneous Map No. 36, and the unnumbered Tract of Mission Beach according to Map thereof No. 1809, filed in the Office of the County Recorder of San Diego County, more particularly described as follows:

Beginning at City Survey Monument "BELMONT" at the intersection of Ventura Place and Ocean Front Walk as shown on said Map of Mission Beach; thence South 17°33'57" East 59.92 feet; thence North 86°57'43" East 377.62 feet; thence South 03°02'17" East 6.00 feet; thence South 83°06'55" East 48.54 feet; thence South 03°02'17" East 15.35 feet to the TRUE POINT OF BEGINNING; thence South 75°50'22" West 2.48 feet; thence South 84°54'14" West 8.27 feet; thence South 60°55'41" West 16.35 feet; thence South 44°59'16" West 16.67 feet; thence South 26°39'19" West 16.17 feet; thence South 07°38'23" West 16.24 feet; thence South 00°08'13" East 7.96 feet; thence South 11°55'16" East 16.51 feet; thence South 19°16'16" East 39.37 feet; thence South 65°32'18" West 7.24 feet; thence South 28°07'54" West 16.54 feet; thence South 11°33'28" West 16.04 feet; thence South 42°31'53" West 22.28 feet; thence North 49°19'28" West 3.43 feet; thence South 42°14'42" West 41.48 feet; thence South 46°32'33" East 3.49 feet; thence South 42°04'28" West 37.12 feet; thence South 01°31'54" West 52.83 feet to a point in a non-tangent 20.00 foot radius curve concave Westarly, a radial line to said point bears North 10°02'02" East; thence Southerly along said curve through a central angle of 135°11'04" an arc distance of 47.19 feet; thence along a non-tangent line South 02°56'09" East 148.09 feet; thence South 44°27'04" East 8.93 feet; thence South 37°14'33" East 24.47 feet; thence South 65°19'34" East 24.49 feet; thence North 85°00'57" East 24.31 feet; thence North 61°42'41" East 16.27 feet; thence North 35°12'19" East 24.54 feet; thence North 05°35'18" East 32.32 feet; thence North 02°52'15" West 119.94 feet to the beginning of a tangent 120.00 foot radius curve concave Southeasterly; thence Northeasterly along said curve through a central angle of 30°21'47" an arc distance of 63.59 feet; thence tangent to said curve North 27°02'27" East 94.78 feet; thence North 27°06'20" East 15.98 feet; thence North 19°41'45" East 17.70 feet to the beginning of a tangent 54.00 foot radius curve concave Southwesterly; thence Northerly and Westerly along said curve through a central angle of 111°05'58" an arc distance 104.71 feet; thence tangent to said curve South 88°35'47" West 5.46 feet to the TRUE POINT OF BEGINNING.

Exhibit 1: Description of Premises

**LEGAL DESCRIPTION
BELMONT PARK**

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 36, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO SURVEY MONUMENT "BELMONT" AT THE INTERSECTION OF VENTURA PLACE AND OCEAN FRONT WALK AS SHOWN ON SAID MAP OF MISSION BEACH, SAID MONUMENT HAVING THE NAD83 COORDINATES OF NORTH 1862178.44 AND EAST 6253378.64; THENCE SOUTH 16°37'33" EAST 59.92 FEET; THENCE NORTH 87°54'07" EAST 95.24 FEET, TO THE TRUE POINT OF BEGINNING; THENCE NORTH 87°54'07" EAST 282.37 FEET TO A POINT WHICH BEARS SOUTH 58°19'53" WEST 117.98 FEET FROM FOUND CITY ENGINEERS DISK, HAVING THE NAD83 COORDINATES OF NORTH 1862186.79 AND EAST 6253873.66; THENCE SOUTH 2°05'28" EAST 8.00 FEET; THENCE SOUTH 82°10'35" EAST 48.54 FEET; THENCE SOUTH 2°06'02" EAST 15.35 FEET; THENCE SOUTH 76°46'12" WEST 2.48 FEET; THENCE SOUTH 85°50'44" WEST 8.27 FEET; THENCE SOUTH 61°52'00" WEST 16.35 FEET; THENCE SOUTH 45°55'46" WEST 16.67 FEET; THENCE SOUTH 27°35'45" WEST 16.17 FEET; THENCE SOUTH 8°34'44" WEST 16.24 FEET; THENCE SOUTH 0°48'23" WEST 7.96 FEET; THENCE SOUTH 10°58'52" EAST 16.51 FEET; THENCE SOUTH 18°19'55" EAST 39.37 FEET; THENCE SOUTH 66°29'00" WEST 7.24 FEET; THENCE SOUTH 29°04'14" WEST 16.54 FEET; THENCE SOUTH 12°29'57" WEST 16.04 FEET; THENCE SOUTH 43°28'16" WEST 22.28 FEET; THENCE NORTH 48°23'47" WEST 3.43 FEET; THENCE SOUTH 43°11'04" WEST 41.48 FEET; THENCE SOUTH 45°36'13" EAST 3.49 FEET; THENCE SOUTH 43°00'50" WEST 37.12 FEET; THENCE SOUTH 2°28'19" WEST 52.83 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 20.00 FEET, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°58'26" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.19 FEET, THROUGH A CENTRAL ANGLE OF 135°11'04"; THENCE SOUTH 1°59'46" EAST 148.09 FEET; THENCE SOUTH 43°30'22" EAST 8.93 FEET; THENCE SOUTH 36°18'07" EAST 24.47 FEET; THENCE SOUTH 64°23'15" EAST 24.49 FEET; THENCE NORTH 86°57'19" EAST 24.31 FEET; THENCE NORTH 82°39'09" EAST 16.27 FEET; THENCE NORTH 36°08'36" EAST 24.54 FEET; THENCE NORTH 6°31'45" EAST 32.32 FEET; THENCE NORTH 1°55'51" WEST 119.94 FEET; THENCE NORTH 2°22'56" WEST 63.36 FEET TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 120.00 FEET, CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87°37'04" WEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 63.59 FEET, THROUGH A CENTRAL ANGLE OF 30°21'47"; THENCE NORTH 27°58'51" EAST 94.78 FEET; THENCE NORTH 28°02'49" EAST 15.98 FEET; THENCE NORTH 20°38'12" EAST 17.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 64.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 69°21'52" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.70 FEET, THROUGH A CENTRAL ANGLE OF 10°17'47"; THENCE NORTH 81°24'11" EAST 7.51 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF MISSION BOULEVARD; THENCE SOUTH 8°36'03" EAST 71.87 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1,980.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 81°23'57" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 224.82 FEET, THROUGH A CENTRAL ANGLE OF 8°30'00"; THENCE SOUTH 2°08'03" EAST 383.91 FEET; THENCE SOUTH 87°50'57" WEST 511.36 FEET; THENCE NORTH 2°01'38" WEST 532.19 FEET; THENCE NORTH 87°58'21" EAST 75.73 FEET; THENCE NORTH 2°02'55" WEST 92.48 FEET; THENCE NORTH 87°58'16" EAST 19.82 FEET; THENCE NORTH 2°03'45" WEST 129.99 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION, LYING BELOW THE MEAN TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THEREFROM ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE AND THE SAME AS RESERVED BY THE STATE OF CALIFORNIA BY CHAPTER 119 STATUTES OF 1943, RECORDED SEPTEMBER 3, 1986 AS FILE NO. 86-385271 OF OFFICIAL RECORDS.

DESCRIBED PARCEL CONTAINS 7.19 ACRES MORE OR LESS AND AS SHOWN ON ATTACHED EXHIBIT 'A-1' AND BY THIS REFERENCE MADE A PART HEREOF.

L. DePrin 07/14/14
LORNE L. DePRON, P.L.S. 7824 DATE



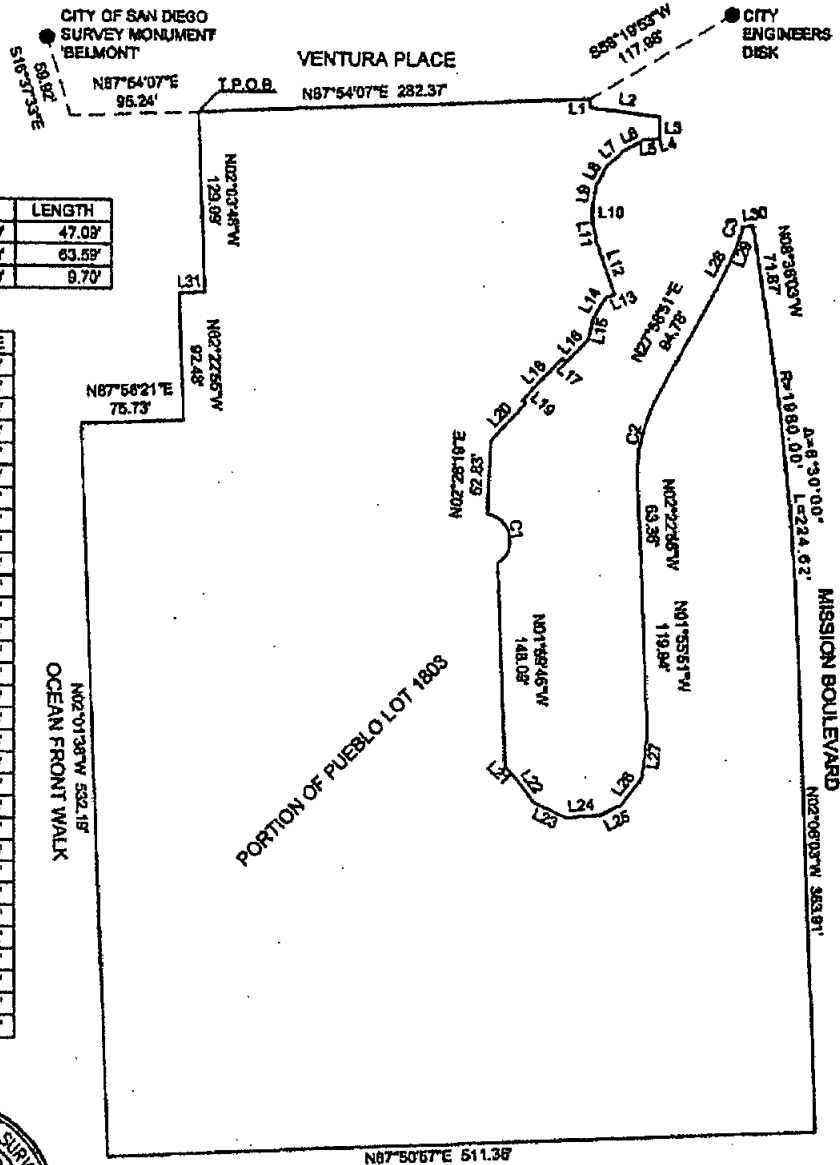
EXHIBIT 'A-1'
BELMONT PARK



SCALE 1"=100'

LINE	DELTA	RADIUS	LENGTH
C1	135°11'04"	20.00'	47.09'
C2	30°21'47"	120.00'	63.59'
C3	10°17'47"	54.00'	9.70'

LINE	BEARING	DISTANCE
L1	S02°05'28"E	6.00'
L2	S82°10'36"E	48.54'
L3	S02°08'02"E	15.36'
L4	S76°48'12"W	2.48'
L5	S85°50'44"W	8.27'
L6	S61°52'00"W	16.35'
L7	S45°55'48"W	16.67'
L8	S27°35'45"W	16.17'
L9	S08°34'44"W	16.24'
L10	S00°48'23"W	7.95'
L11	S10°58'52"E	16.51'
L12	S18°19'55"E	39.37'
L13	S86°29'00"W	7.24'
L14	S29°04'14"W	16.54'
L15	S12°29'57"W	16.04'
L16	S43°28'16"W	22.28'
L17	N48°23'47"W	3.43'
L18	S43°11'04"W	41.48'
L19	S45°35'13"E	3.49'
L20	S43°00'50"W	37.12'
L21	S43°30'22"E	8.83'
L22	S36°18'07"E	24.47'
L23	S84°23'18"E	24.49'
L24	N88°57'18"E	24.31'
L25	N52°39'09"E	16.27'
L26	N36°08'38"E	24.54'
L27	N06°31'45"E	32.32'
L28	N28°02'49"E	15.88'
L29	N20°38'12"E	17.70'
L30	N81°24'11"E	7.51'
L31	N87°58'18"E	19.82'



**LEGAL DESCRIPTION
SOUTH PEDESTRIAN ACCESS**

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 38, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO SURVEY MONUMENT "BELMONT" AT THE INTERSECTION OF VENTURA PLACE AND OCEAN FRONT WALK AS SHOWN ON SAID MAP OF MISSION BEACH, SAID MONUMENT HAVING THE NAD83 COORDINATES OF NORTH 1862178.44 AND EAST 6253378.64; THENCE SOUTH 18°37'33" EAST 59.92 FEET; THENCE NORTH 87°54'07" EAST 95.24 FEET TO THE TRUE POINT OF BEGINNING OF A GROUND LEASE RECORDED APRIL 16, 2005 AS DOCUMENT NO. 2005-0314987; THENCE ALONG SAID GROUND LEASE, NORTH 87°54'07" EAST 282.37 FEET TO A POINT WHICH BEARS SOUTH 58°19'53" WEST 117.98 FEET FROM FOUND CITY ENGINEERS DISK, HAVING THE NAD83 COORDINATES OF NORTH 1892196.79 AND EAST 6253873.55; THENCE SOUTH 2°05'28" EAST 6.00 FEET; THENCE SOUTH 82°10'35" EAST 48.54 FEET; THENCE SOUTH 2°08'02" EAST 15.35 FEET; THENCE SOUTH 78°46'12" WEST 2.48 FEET; THENCE SOUTH 85°50'44" WEST 8.27 FEET; THENCE SOUTH 81°52'00" WEST 16.35 FEET; THENCE SOUTH 45°55'46" WEST 16.67 FEET; THENCE SOUTH 27°35'45" WEST 16.17 FEET; THENCE SOUTH 8°34'44" WEST 16.24 FEET; THENCE SOUTH 0°48'23" WEST 7.96 FEET; THENCE SOUTH 10°58'52" EAST 16.51 FEET; THENCE SOUTH 18°19'55" EAST 38.37 FEET; THENCE SOUTH 66°29'00" WEST 7.24 FEET; THENCE SOUTH 29°04'14" WEST 16.54 FEET; THENCE SOUTH 12°29'57" WEST 16.04 FEET; THENCE SOUTH 43°28'16" WEST 22.28 FEET; THENCE NORTH 48°23'47" WEST 3.43 FEET; THENCE SOUTH 43°11'04" WEST 41.48 FEET; THENCE SOUTH 45°36'13" EAST 3.49 FEET; THENCE SOUTH 43°00'50" WEST 37.12 FEET; THENCE SOUTH 2°28'19" WEST 52.83 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 20.00 FEET, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°58'26" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.19 FEET, THROUGH A CENTRAL ANGLE OF 135°11'04"; THENCE SOUTH 1°59'46" EAST 148.09 FEET; THENCE SOUTH 43°30'22" EAST 8.93 FEET; THENCE SOUTH 36°18'07" EAST 24.47 FEET; THENCE SOUTH 64°23'15" EAST 24.49 FEET; THENCE NORTH 85°57'19" EAST 24.31 FEET; THENCE NORTH 62°39'09" EAST 16.27 FEET; THENCE NORTH 36°08'38" EAST 24.54 FEET; THENCE NORTH 6°31'45" EAST 32.32 FEET; THENCE NORTH 1°55'51" WEST 119.94 FEET; THENCE NORTH 2°22'56" WEST 63.36 FEET; TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 120.00 FEET,

CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87°37'04" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 63.59 FEET, THROUGH A CENTRAL ANGLE OF 30°21'47"; THENCE NORTH 27°58'51" EAST 94.78 FEET; THENCE NORTH 28°02'48" EAST 15.98 FEET; THENCE NORTH 20°38'12" EAST 17.70 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 64.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 69°21'52" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.70 FEET, THROUGH A CENTRAL ANGLE OF 10°17'47"; THENCE NORTH 81°24'11" EAST 7.51 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF MISSION BOULEVARD; THENCE SOUTH 8°36'03" EAST 71.87 FEET; TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1,980.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 81°23'57" EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 224.62 FEET, THROUGH A CENTRAL ANGLE OF 6°30'00"; THENCE SOUTH 2°08'03" EAST 363.91 FEET; THENCE SOUTH 87°50'57" WEST 511.36 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID GROUND LEASE SOUTH 2°01'38" EAST 12.00 FEET; THENCE NORTH 87°50'57" EAST 40.03 FEET; THENCE NORTH 02°09'03" EAST 12.00 FEET; THENCE NORTH 87°50'57" EAST 62.20 FEET; THENCE NORTH 02°18'18" WEST 24.00 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID GROUND LEASE WHICH BEARS SOUTH 87°50'57" WEST 511.36 FEET; THENCE ALONG SAID SOUTH LINE SOUTH 87°50'57" WEST 102.14 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION, LYING BELOW THE MEAN TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THEREFROM ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE AND THE SAME AS RESERVED BY THE STATE OF CALIFORNIA BY CHAPTER 119 STATUTES OF 1943, RECORDED SEPTEMBER 3, 1988 AS FILE NO. 86-385271 OF OFFICIAL RECORDS.

DESCRIBED PARCEL CONTAINS 0.03 ACRES MORE OR LESS AND AS SHOWN ON ATTACHED EXHIBIT 'A-2' AND BY THIS REFERENCE MADE A PART HEREOF.

L. DaPrun 07/14/14
 LORNE L. DaPRON, P.L.S. 7824 DATE



VENTURA PLACE

VENTURA PLACE

N87°54'06"E 282.97'

358°19'53"W
117.98' ---● CITY
ENGINEERS
DISK

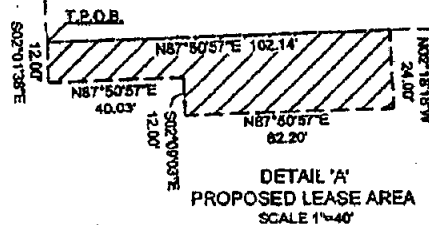
SCALE 1"=100'

LINE	BEARING	DISTANCE
L1	S02°30'25"E	8.00'
L2	S82°10'35"E	48.64'
L3	S02°06'02"E	19.35'
L4	S76°48'12"W	2.48'
L5	S68°50'44"W	8.27'
L6	S61°52'00"W	16.35'
L7	S45°56'46"W	15.67'
L8	S27°55'45"W	18.17'
L9	S08°34'44"W	18.28'
L10	S00°48'23"W	7.88'
L11	S10°58'52"E	36.31'
L12	S18°19'54"E	39.37'
L13	S68°29'00"W	7.24'
L14	S28°04'14"W	18.54'
L15	S12°29'07"W	16.04'
L16	S43°28'16"W	22.28'
L17	N48°25'47"W	3.43'
L18	S43°11'04"W	41.43'
L19	S45°38'13"E	3.49'
L20	S43°09'50"W	37.12'
L21	S43°30'22"E	8.93'
L22	S35°18'07"E	24.47'
L23	S64°23'15"E	24.49'
L24	N85°57'19"E	24.51'
L25	N62°38'09"E	18.27'
L26	N38°08'30"E	24.54'
L27	N06°31'45"E	32.32'
L28	N28°02'49"E	15.88'
L29	N20°38'12"E	17.70'
L30	N01°24'11"E	7.51'

LINE	BEARING	DISTANCE
L1	S02°30'25"E	8.00'
L2	S82°10'35"E	48.64'
L3	S02°06'02"E	19.35'
L4	S76°48'12"W	2.48'
L5	S68°50'44"W	8.27'
L6	S61°52'00"W	16.35'
L7	S45°56'46"W	15.67'
L8	S27°55'45"W	18.17'
L9	S08°34'44"W	18.28'
L10	S00°48'23"W	7.88'
L11	S10°58'52"E	36.31'
L12	S18°19'54"E	39.37'
L13	S68°29'00"W	7.24'
L14	S28°04'14"W	18.54'
L15	S12°29'07"W	16.04'
L16	S43°28'16"W	22.28'
L17	N48°25'47"W	3.43'
L18	S43°11'04"W	41.48'
L19	S45°38'13"E	3.49'
L20	S43°09'50"W	37.12'
L21	S43°30'22"E	8.93'
L22	S35°18'07"E	24.47'
L23	S64°23'15"E	24.49'
L24	N85°57'19"E	24.51'
L25	N62°38'09"E	18.27'
L26	N38°08'30"E	24.54'
L27	N06°31'45"E	32.32'
L28	N28°02'49"E	15.88'
L29	N20°38'12"E	17.70'
L30	N01°24'11"E	7.51'

PORTION OF PUEBLO LOT 1803

N87°50'57"E 511.38'



**LEGAL DESCRIPTION
COASTER**

ALL THAT PORTION OF PUEBLO LOT 1803 OF PUEBLO LANDS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, NOW KNOWN AS MISCELLANEOUS MAP NO. 36, AND THE UNNUMBERED TRACT OF MISSION BEACH ACCORDING TO MAP THEREOF NO. 1809, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO SURVEY MONUMENT "BELMONT" AT THE INTERSECTION OF VENTURA PLACE AND OCEAN FRONT WALK AS SHOWN ON SAID MAP OF MISSION BEACH, SAID MONUMENT HAVING THE NAD83 COORDINATES OF NORTH 1882178.44 AND EAST 6253378.64; THENCE SOUTH 18°37'33" EAST 58.82 FEET; THENCE NORTH 87°54'07" EAST 95.24 FEET TO THE TRUE POINT OF BEGINNING OF A GROUND LEASE RECORDED APRIL 15, 2005 AS DOCUMENT NO. 2005-0314967; THENCE ALONG SAID GROUND LEASE, NORTH 87°54'07" EAST 282.37 FEET TO A POINT WHICH BEARS SOUTH 58°19'53" WEST 117.98 FEET FROM FOUND CITY ENGINEERS DISK, HAVING THE NAD83 COORDINATES OF NORTH 1862196.79 AND EAST 6263873.55; THENCE SOUTH 2°05'26" EAST 8.00 FEET; THENCE SOUTH 82°10'35" EAST 48.54 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 2°08'02" EAST 15.35 FEET; THENCE SOUTH 76°46'12" WEST 2.48 FEET; THENCE SOUTH 86°50'44" WEST 8.27 FEET; THENCE SOUTH 61°52'00" WEST 18.35 FEET; THENCE SOUTH 45°55'46" WEST 16.67 FEET; THENCE SOUTH 27°35'45" WEST 16.17 FEET; THENCE SOUTH 8°34'44" WEST 16.24 FEET; THENCE SOUTH 0°48'23" WEST 7.98 FEET; THENCE SOUTH 10°58'52" EAST 16.51 FEET; THENCE SOUTH 18°19'55" EAST 39.37 FEET; THENCE SOUTH 68°29'00" WEST 7.24 FEET; THENCE SOUTH 29°04'14" WEST 18.54 FEET; THENCE SOUTH 12°29'57" WEST 16.04 FEET; THENCE SOUTH 43°28'16" WEST 22.28 FEET; THENCE NORTH 48°23'47" WEST 3.43 FEET; THENCE SOUTH 43°11'04" WEST 41.48 FEET; THENCE SOUTH 45°38'13" EAST 3.49 FEET; THENCE SOUTH 43°00'50" WEST 37.12 FEET; THENCE SOUTH 2°28'19" WEST 52.83 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 20.00 FEET, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 10°58'26" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.19 FEET, THROUGH A CENTRAL ANGLE OF 135°11'04"; THENCE SOUTH 1°59'48" EAST 148.09 FEET; THENCE SOUTH 43°30'22" EAST 8.93 FEET; THENCE SOUTH 36°18'07" EAST 24.47 FEET; THENCE SOUTH 64°23'15" EAST 24.48 FEET; THENCE NORTH 85°57'19" EAST 24.31 FEET; THENCE NORTH 82°39'09" EAST 16.27 FEET; THENCE NORTH 36°08'36" EAST 24.54 FEET; THENCE NORTH 6°31'45" EAST 32.32 FEET; THENCE NORTH 1°55'51" WEST 118.94 FEET; THENCE NORTH 2°22'56" WEST 63.38 FEET, TO THE BEGINNING OF A CURVE, HAVING A RADIUS

OF 120.00 FEET, CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87°37'04" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 63.59 FEET, THROUGH A CENTRAL ANGLE OF 30°21'47"; THENCE NORTH 27°58'51" EAST 94.78 FEET; THENCE NORTH 28°02'49" EAST 15.98 FEET; THENCE NORTH 20°38'12" EAST 17.70 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE, HAVING A RADIUS OF 54.00 FEET, CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 89°21'52" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.70 FEET, THROUGH A CENTRAL ANGLE OF 10°17'47"; THENCE NORTH 81°24'11" EAST 7.51 FEET; THENCE NORTH 03°54'36" WEST 27.91 FEET; THENCE NORTH 08°17'17" WEST 7.70 FEET; THENCE NORTH 82°24'43" WEST 2.90 FEET; THENCE NORTH 03°54'36" WEST 27.91 FEET; THENCE NORTH 21°48'17" WEST 6.50 FEET; THENCE NORTH 08°18'26" WEST 6.77 FEET; THENCE NORTH 44°07'10" WEST 39.71 FEET; THENCE NORTH 87°04'23" WEST 30.13 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION, LYING BELOW THE MEAN TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPTING THEREFROM ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS WITH THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE AND THE SAME AS RESERVED BY THE STATE OF CALIFORNIA BY CHAPTER 119 STATUTES OF 1943, RECORDED SEPTEMBER 3, 1988 AS FILE NO. 86-385271 OF OFFICIAL RECORDS.

DESCRIBED PARCEL CONTAINS 1.06 ACRES MORE OR LESS AND AS SHOWN ON ATTACHED EXHIBIT 'A-3' AND BY THIS REFERENCE MADE A PART HEREOF.

LORNE L. DaPRON 7/14/2017
LORNE L. DaPRON, P.L.S. 7824 DATE



EXHIBIT 'A-3'
COASTER



SCALE 1"=100'

LINE	DELTA	RADIUS	LENGTH
C1	135°11'04"	20.00'	47.09'
C2	30°21'47"	120.00'	63.59'
C3	10°17'47"	54.00'	9.70'

LINE	BEARING	DISTANCE
L1	S02°05'28"E	8.00'
L2	S82°10'35"E	48.54'
L3	S02°06'02"E	15.35'
L4	S78°46'12"W	2.48'
L5	S86°50'44"W	8.27'
L6	S81°52'00"W	16.35'
L7	S45°55'46"W	18.87'
L8	S27°36'45"W	18.17'
L9	S08°34'44"W	18.24'
L10	S00°48'23"W	7.95'
L11	S10°58'52"E	18.51'
L12	S18°19'56"E	39.37'
L13	S88°29'00"W	7.24'
L14	S29°04'14"W	18.54'
L15	S12°28'57"W	18.04'
L16	S43°28'16"W	22.28'
L17	N48°23'47"W	3.43'
L18	S43°11'04"W	41.48'
L19	S45°38'13"E	3.49'
L20	S43°00'50"W	37.12'
L21	S43°30'22"E	8.93'
L22	S38°18'07"E	24.47'
L23	S64°23'15"E	24.49'
L24	N85°57'19"E	24.31'
L25	N62°39'09"E	16.27'
L26	N38°08'35"E	24.64'
L27	N08°31'45"E	32.32'
L28	N28°02'48"E	15.98'
L29	N20°38'12"E	17.70'
L30	N81°24'11"E	7.51'
L31	N03°54'39"W	27.91'
L32	N08°17'17"W	7.70'
L33	N82°24'43"W	2.90'
L34	N21°48'17"W	6.50'
L35	N08°18'28"W	8.77'
L36	N44°07'10"W	39.71'
L37	N87°04'23"W	30.13'

CITY OF SAN DIEGO
SURVEY MONUMENT
'BELMONT'
S16°31'35"E
88.92'

VENTURA PLACE

N87°54'07"E 282.37'

550°19'53"W
117.68'

CITY
ENGINEERS
DISK

T.P.O.B.

OCEAN FRONT WALK

PORTION OF PUEBLO LOT 1803

MISSION BOULEVARD



RESOLUTION NUMBER R- 309579

DATE OF FINAL PASSAGE APR 22 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE AMENDED AND RESTATED CITY OF SAN DIEGO PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND SYMPHONY ASSET POOL XVI, LLC TO LEASE THE PROPERTY COMMONLY KNOWN AS BELMONT PARK AND POTENTIALLY THE MISSION BEACH ROLLER COASTER.

WHEREAS, the City of San Diego ("City") and Belmont Park Associates entered into a Percentage Lease dated March 14, 1987, on file in the Office of the City Clerk as Document No. RR-266064, for the development and operation of Belmont Park. This lease was amended by the following agreements: an Operating Memorandum to the Percentage Lease dated December 23, 1987; a Second Operating Memorandum to Percentage Lease dated December 11, 1990; a Third Operating Memorandum to Percentage Lease dated February 25, 1991; a Fourth Operating Memorandum to Percentage Lease dated August 12, 1991; and a Fifth Operating Memorandum to Percentage Lease dated June 26, 2000, on file in the Office of the City Clerk as Document No. RR-293393 (collectively the "Original Lease"); and

WHEREAS, the Original Lease was assigned from Belmont Park Associates to PARS Belmont Park pursuant to that certain Lessor Consent, Estoppel and Non-Disturbance Agreement dated December 1, 1995; PARS Belmont Park subsequently assigned its interests to Wave the Planet, LLC, pursuant to that certain Assignment of Ground Lease dated June 22, 2000, with the written consent and approval of City pursuant to the Consent to Assignment of Ground Lease dated June 23, 2000; thereafter Wave the Planet, LLC assigned its interests to Wave House

San Diego, LLC by that certain Settlement and Mutual Release Agreement dated May 13, 2002, with the written consent and approval of City pursuant to the Consent to Assignment of Ground Lease dated May 20, 2002; and, thereafter, Wave House San Diego, LLC assigned its interests to Wave House Belmont Park, LLC ("Wave House"), pursuant to that certain Acceptance and Assignment of Ground Lease dated August 22, 2004, with the written consent and approval of City pursuant to the Consent to Assignment of Lease Agreement dated October 8, 2004; and

WHEREAS, a dispute arose between Wave House and City regarding rental charges and Plunge maintenance responsibilities under the Original Lease, which were resolved by way of a settlement; and

WHEREAS, East West Bank ("Bank"), was a lender to Wave House and related entities and individuals holding the first priority security interests pursuant to a deed of trust ("Deed of Trust") in Wave House's interest in the Original Lease and other security instruments and agreements (collectively the "Bank Loan Agreements"). Symphony Asset Pool XVI LLC ("Symphony") purchased the Bank Loan Agreements from Bank and, as a result thereof, stepped into the position of Bank in connection with the Bank Loan Agreements. Symphony acquired Wave House's interest in the Original Lease as part of the agreement with Wave House that allowed for the foreclosure of Symphony's security interest. Symphony duly noticed and conducted a trustee's sale pursuant to the Deed of Trust. Symphony was the successful bidder at the trustee's sale and on or about November 16, 2012 became the lessee under the Original Lease; and

WHEREAS, pursuant to a separate agreement between Symphony and Wave House, Symphony had, under a certain set of conditions and for a limited amount of time, the right to

direct Wave House to dismiss its lawsuit against City (Wave House Belmont Park, LLC v. City of San Diego, San Diego Superior Court case number 37-2011-00102475 ("Lawsuit")); and

WHEREAS, in consideration for Symphony's act of immediately directing Wave House to dismiss the Lawsuit with prejudice, City agreed to negotiate in good faith a new lease with Symphony consistent with the terms of the Letter of Intent dated July 16, 2013 ("LOI"); and

WHEREAS, Symphony has requested an amended and restated lease ("Amended Belmont Lease") consistent with the LOI, to facilitate Symphony's intentions to improve Belmont Park by investing in capital improvements and upgrades to Belmont Park and the parking lot adjacent to the southern boundary of Belmont Park, for a twenty-three (23) year term, with a first option to revise the term to an additional forty (40) years from the first of the month following the date of Symphony's written request to revise the term if Symphony has fully satisfied its obligation to provide \$18,000,000 in capital improvements and upgrades to Belmont Park and the Plunge Swimming Pool and Plunge Swimming Pool Building, and with a second option to revise the term to an additional ten (10) years from the then remaining term if Symphony has fully satisfied its obligation to provide an additional \$5,000,000 in capital improvements and upgrades to the premises; and

WHEREAS, Symphony has acquired all the outstanding stock of the San Diego Coaster Company. San Diego Coaster Company is the current lessee under that certain City of San Diego Percentage Lease by and between the City and San Diego Seaside Company, Inc., on file with the Office of the City Clerk as Document No. RR-274204 ("Roller Coaster Lease"), which lease authorizes San Diego Coaster Company to operate the Mission Beach Roller Coaster

and the improvements and structures associated with the operation of the roller coaster, located adjacent to Belmont Park ("Roller Coaster"); and

WHEREAS, Symphony has requested that City allow the Roller Coaster Lease to become part of, and subject to, the terms and conditions of the Amended Belmont Lease, including the new term thereof, upon the termination of the Roller Coaster Lease; and

WHEREAS, City staff has negotiated proposed terms and conditions for the Amended Belmont Lease with Symphony wherein Symphony would pay the City a base annual rent of Nine Hundred Thousand Dollars (\$900,000), which will be adjusted upward two and one-half percent (2.5%) annually. Said base annual rent will be increased to One Million Twenty Four Thousand Dollars (\$1,024,000), which will be adjusted upward two and one-half percent (2.5%) annually, upon the termination of the Roller Coaster Lease and its inclusion in the Amended Belmont Lease. Said base annual rent will be subject to a further upward adjustment if Symphony exercises the proposed first and second options to revise the Amended Belmont Lease's term; and

WHEREAS, as appraised by City staff, the market value of Belmont Park is approximately \$19,724,000 and the market value of the Roller Coaster is \$7,200,000; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Amended and Restated City of San Diego Percentage Lease by and between the City of San Diego and Symphony Asset Pool XVI, LLC, for the lease and operation of Belmont Park, and potentially the Roller Coaster, as more fully set forth in Document No. RR- 309579 on file with the City Clerk.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force only upon the final passage of Resolution R- 309580, approving the Lease Suspension and Termination Agreement between the City and San Diego Coaster Company, a California corporation, on file as Document No. RR- 309580, but in no event earlier than the date of final passage of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Hilda R. Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM: mcm
7/14/2014
09/19/14 Cor. Copy
01/06/15 Cor. Copy 2
03/19/15 Cor. Copy 3
Or.Dept:Real Estate Assets Dept.
Doc. No. 866503_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 06 2015.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 4/21/15
(date)

[Signature]
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 06 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☐	☒	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☒	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage APR 22 2015

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309579

Passed by the Council of The City of San Diego on April 6, 2015, by the following vote:

YEAS: **ZAPF, GLORIA, COLE, CATE, KERSEY, SHERMAN, EMERALD.**

NAYS: **LIGHTNER, ALVAREZ.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Mary Fernandez**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-309579**, approved by Council on **April 6, 2015**. The date of
final passage is **April 22, 2015.**

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy