

EXHIBIT C-1

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.TBD dated, June 21, 2018, the herein sublease between the City of Huntington Beach and Ruby's Diner Inc., under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
ROBERT BRIAN BUGSCH, Chief
Land Management Division

*Approved 6-0-1
(Sullivan - Absent)*

Dept. ID ED 16-23 Page 1 of 2
Meeting Date: 9/19/2016



CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 9/19/2016

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Fred A. Wilson, City Manager

PREPARED BY: Kenneth A. Domer, Assistant City Manager
Kellee Fritzel, Deputy Director, Business Development

SUBJECT: Approve a New Lease Agreement between the City of Huntington Beach and Ruby's Huntington Beach LTD for Operation of the Ruby's Huntington Beach Pier Restaurant

Statement of Issue:

The City Council is asked to approve a new lease between the City and Ruby's Huntington Beach LTD for the operation of the Ruby's Huntington Beach Pier Restaurant. The lease is proposed for a period of fifteen (15) years from 2016 to 2032. Ruby's will be investing over \$160,000 in tenant improvements to the building and the new lease will include a 0.50% percentage share of rent increase effective beginning June, 2022.

Financial Impact:

Currently, the City receives a minimum monthly rent and a percentage rent based on sales volume through its current lease which is subject to a five (5) year extension than can be invoked by Ruby's in 2017. Based on the current lease, the City is receiving approximately \$520,000 a year in revenue. As proposed under a new lease, in June 2022 the percentage rent will increase by .50%, increasing revenue to the City by a minimum of \$20,000 to \$25,000 a year. In addition, the periodic adjustment to minimum rents will be subject to a 3% increase every third year. The increase in 2022 to the current Percentage Rent to the City by one-half percent would result in an estimated Percentage Rent increase to the City of \$286,000 over the Lease term.

Recommended Action:

- A) Approve "Lease Between the City of Huntington Beach and Ruby's Huntington Beach, LTD. For Operation of A Restaurant on the Huntington Beach Pier," and
- B) Authorize the Mayor and City Clerk to execute the Lease Agreement and other related documents.

Alternative Action(s):

Do not approve the Lease and direct Staff accordingly.

Analysis:

In October 1993, the City approved a lease with Ruby's Diner, Inc. (Ruby's) to operate concessions on the Huntington Beach Pier. The Agreement was for 10 years, with two, five-year extensions, and included the Ruby's building and a coffee shop and a bait/tackle/snack shop. In December

2002, the City Council approved Amendment No. 1 to the Ruby's Lease, which: 1) Extended Ruby's lease-term for an additional 10 years (effectively pushing the lease out to 2022 if all extensions were applied); 2) Removed Ruby's obligation to build two additional concession buildings, and; 3) Reduced Ruby's percentage rent payment by one percent (1%) due to reduction in the concession buildings that Ruby's was obligated to operate. The amendment was based in part on the fact that the City had decided to build the three pier buildings and to lease them independently.

Over the last six months, Ruby's has been discussing plans to improve the restaurant and had asked to invoke the final five-year extension (from 2017 to 2022) and requested an additional ten-year lease extension. The requested increase, if granted, would have taken the current lease to 2032, or 16 additional years from 2016. After deliberating over whether granting a lease was in the best interest of the City, the issue was brought to the City Council's Economic Development Committee. There it was determined that the best course of action was to initiate a new lease to bring the terms up to current City standards and to remain generally within the term remaining, while incorporating the proposed ten-year extension to gain additional tenant improvements to benefit the City. Accordingly, with the new lease, as proposed, the following would occur:

- New, updated lease agreement meeting new City Insurance requirements
- Additional Maintenance Standards, including painting every three-years, if needed, and cleaning of the roof
- Minimum rent will be subject to a 3% increase every third year
- Monthly minimum rent to be paid and a single "true up" at the end of the year (percentage rent)
- Late charge is 1% of any amount due and unpaid
- New Tenant Improvements - over \$160,000 including interior flooring, ceiling, wall material, tables, seating, décor, lighting fixtures, and exterior new trivoli LED lighting on the roof
- Surf City USA Signage on roof
- All improvements must be approved and completed within two years.

Ruby's has been a good partner with the City and the new lease provides for upgrades to the building, enhanced maintenance of the building, and on-going support for a local businesses, all of which is in the City's best interest.

Environmental Status:

Not Applicable

Strategic Plan Goal:

Strengthen Economic and Financial Sustainability

Attachment(s):

1. Lease Between the City of Huntington Beach and Ruby's Huntington Beach, LTD., For Operation of A Restaurant on the Huntington Beach Pier

LEASE BETWEEN THE CITY OF HUNTINGTON BEACH
AND RUBY'S HUNTINGTON BEACH, LTD. FOR OPERATION OF
A RESTAURANT ON THE HUNTINGTON BEACH PIER

THIS LEASE (the "Lease") is made and entered into effective Sept 19, 2016, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City") and RUBY'S HUNTINGTON BEACH, LTD., a California limited partnership ("Lessee").

WHEREAS, City is the owner of the Huntington Beach Pier (the "Pier"), subject to the terms of a Lease dated May 7, 1984 and recorded May 21, 1985 as Instrument Number 85-183878 of Official Records of Orange County, California (the "State Lands Lease"). The term "Premises" as used in this Lease refers to the area of the Pier identified on Exhibits "A-1" and "A-2," attached hereto and incorporated herein by this reference, i.e., the restaurant building located on the Premises and the improvements owned by City therein (collectively, the "Improvements"), but specifically excluding the Pier structure.

Lessee desires to lease the Premises for the purpose of operating a casual full-service restaurant and accessory retail sales.

City desires to lease the Premises to Lessee for such purpose in accordance with the terms and conditions set forth in this Lease.

NOW, THEREFORE, the parties covenant and agree as follows:

SECTION 1. SUPERSEDING OF PRIOR LEASE

This Lease shall superseded and replace any existing lease agreements for the Premises currently entered into by and between the parties and all supplemental agreements entered into by and between the parties regarding the existing lease agreements.

SECTION 2. GRANT OF CONCESSION ON THE PREMISES

City, pursuant to the terms of this Lease, grants to Lessee for the purposes stated herein, the right, privilege and duty to equip, operate, and maintain a restaurant open to the public at the Premises, together with accessory retail sales (hereinafter sometimes referred to as the "Concession"). Lessee shall not use the Premises for any other purpose or business. A map depicting the Premises is set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference. City further grants to Lessee and its agents, representatives, guests, invitees, licensees, employees, successors and assigns the right of access to and from the Premises across City owned, controlled or occupied lands adjacent to the Premises, including without limitation, only between the hours of 5:00 a.m. and 10:00 p.m. Pacific time (except in an emergency), the Pier, for any purpose associated with this Lease; provided, however, access for the purpose of loading and unloading of delivery vehicles shall be on and subject to the terms of Section 59 below. This lease is not intended to confer third-party beneficiary status to anyone.

City covenants and agrees to allow only the following products to be sold from any permanent or temporary concession on the Pier: soft drinks, hot beverages, bottled water, juices, pre-packaged snacks, muffins, cookies, candy and prepackaged sandwiches. In addition the City covenants and agrees not to allow any other food or beverages to be sold from the Pier.

SECTION 3. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

- (a) City expressly reserves all natural resources two hundred fifty (250) feet under the Premises, including, without limitation, oil, coal, natural gas and other hydrocarbons, minerals, aggregates, timber and other geothermal resources, as well as the right to grant leases or other contractual arrangements under or above the Premises for the extraction of such natural resources. However, such leasing or other arrangement shall

be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

- (b) City expressly reserves a right to enter upon the Premises with as much advance written, verbal or electronic notice as possible to Lessee for any reason associated with public health, safety, or welfare, or for the protection of life, limb, or property. In all other cases unless otherwise specifically set forth herein, City reserves the right for such entry but City shall give Lessee at least twenty-four (24) hours advance written, verbal, or electronic notice.
- (c) City expressly reserves the right to lease, convey, or encumber the Pier, in whole or in part, for any purpose not inconsistent or incompatible with, and subject to, the rights or privileges of Lessee under this Lease. In addition, Lessee agrees to subordinate the Lease to any existing or future City financing regarding City's interest in Pier and/or in the leasehold estate created hereby, or any portion thereof. Lessee also agrees to cooperate and provide any documentation reasonably necessary for City to obtain any such financing.
- (d) This Lease is subject to the State Lands Lease and is made without warranty by City of title, condition or fitness of the Premises for the stated or intended use.

SECTION 4. TIME OF ESSENCE

Time shall be of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

SECTION 5. TERM

This Lease shall commence at 12:01 a.m., on 9/1/19, 2016, and shall end at 11:59 p.m., on May 31, 2032.

SECTION 6. CONDITION OF PREMISES AS IS

The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment that the Premises are in good and tenantable condition. Upon taking possession of the Premises, Lessee agrees to accept the Premises in their presently existing condition, "as is," and agrees that City shall not be obligated to make any alterations, additions, or betterments thereto.

SECTION 7. DURATION OF PUBLIC FACILITIES

By entering into this Lease, City makes no stipulation as to the type, size, location or duration of public facilities (excluding the Premises), including, without limitation, any City parking lots to be maintained on property owned, controlled or occupied by City. Subject to the foregoing, Lessee may validate parking tickets for City's parking structure located at the corner of Walnut and 3rd Streets for Lessee's guests, invitees, officers and employees, and City will (a) allow Lessee's guests and invitees one (1) hour of free parking per parking ticket validated by Lessee, up to a maximum of sixty (60) parking card validations per day, and (b) not charge Lessee's employees whose parking tickets are validated with a "Ruby's Employees" stamp for parking but Lessee shall be responsible to pay to City monthly in arrears within thirty (30) days after receipt of City's invoice the daily employee validation amount per the City's parking fee resolution for each employee parking ticket so validated in the prior month.

SECTION 8. ADDITIONS, ALTERATIONS AND REMOVAL

- (a) No modifications, alterations or additions to the Premises, including, without limitation, construction of Improvements or changes to structural design or exterior furnishings shall be constructed or made by Lessee without Lessee first obtaining the prior written approval of City, which will not be unreasonably withheld.

- (b) Except as provided under this Lease, no alteration or removal of existing Improvements on or natural features of the Premises shall be undertaken without Lessee first obtaining the prior written approval of City.
- (c) Lessee's obligation to obtain City's prior written approval is separate and independent of Lessee's obligation to obtain any permits from City, such as, without limitation, a building permit.

SECTION 9. CITY'S CONTRACT ADMINISTRATOR

City's Office of Business Development or its designee shall be the City's Contract Administrator for this Lease with the authority to act on behalf of City for the purposes of this Lease, and all City approvals and notices required to be given herein to City shall be so directed and addressed.

SECTION 10. RENT

10.1 Minimum Base Rent

Lessee agrees to pay to City as rent (the "Rent") for the use and occupancy of the Premises a minimum base Rent as follows:

Lessee shall pay a monthly base rent in advance of the first day of each month of the term, 1/12th as set forth herein (the "Minimum Base Rent"). In addition, Lessee shall pay Percentage Rent (as defined below) at the rates set forth herein. Lessee's obligation to pay Minimum Base Rent and Percentage Rent under this Lease shall begin to accrue on the commencement date set forth in Section 5 above; in the event Lessee has made any payment under the existing Lease on account of any period from and after the commencement date of this Lease, such amounts shall be credited against the first Rents payable hereunder.

The Minimum Base Rent of \$10,455.43 per month is subject to a 2% increase on January 1, 2017. Additional 3% increases occur every third year on January 1, 2020, January 1, 2023, January 1,

2026, and January 1, 2029. Minimum Base Rent adjustments shall take effect January 1st of each such year.

Lessee shall pay the Rent monthly to City at the City Treasurer's Office, P.O. Box 711, Huntington Beach, California, 92648, or at such other place or places as City may from time-to-time designate by written notice delivered to Lessee. Lessee shall pay the Rent, which must be received by the City Treasurer within fifteen (15) calendar days after the end of the month for which the Rent is being paid, or on the next business day if the fifteenth day falls on a weekend or holiday.

10.2 Percentage Rent

In addition to Minimum Base Rent, during the Term or any extension thereof Lessee shall pay to City a sum ("Percentage Rent") within thirty (30) days after the end of each Operational Year (as defined below), or portion thereof within the term, based on the applicable annual percentage of Gross Sales as shown as Exhibit "B". An "Operational Year" is a one-year period ending December 31. For purposes of computing the Percentage Rent for any partial Operational Year at the beginning or end of the Term or any extension thereof, the volume of Gross Sales for that period shall be adjusted pro rata to the number of months in that partial Operational Year to determine the percentage rate to utilize. With respect to 2016, Gross Sales and Percentage Rent shall be calculated under this Lease commencing on the commencement date hereof, and sales prior to the commencement date of this Lease shall be calculated and payable under the existing lease. Lessee shall undertake a final calculation of rent due under the existing lease within thirty (30) days after the commencement date hereof (in accordance with the gross sales percentages set forth therein), and to the extent such calculation shows that rent paid thereunder exceeded or was less than the amount indicated, the appropriate party shall promptly reimburse the other party for the difference.

To the extent the total Rent paid with respect to an Operational Year is less than the total amount of Rent due taking into account the total annual Gross Sales as finally determined by Lessee

for such Operational Year, Lessee shall pay the difference within thirty (30) days after the end of such Operational Year.

SECTION 11. LATE CHARGE AND PENALTY

If the Rent is not received by the City Treasurer within twenty (20) calendar days after the end of the month for which the Rent is being paid, or the next business day if the twentieth day falls on a weekend or holiday, Lessee shall pay the following late charge and penalty: (1) a late charge in the amount of one percent (1%) of any amount due and unpaid; and (2) one and a half percent (1 ½%) penalty, per month shall be added to each month the rent is due but unpaid. With respect to any payments required by Lessee, a one and a half percent (1 ½%) penalty per month shall be added for each month such payment hereunder is due but unpaid.

SECTION 12. GROSS SALES DEFINED

For the purpose of this Lease, the term "Gross Sales" shall mean the total price of all internet sales processed on site, merchandise, food and beverages, or services sold or rendered, or equipment rented in, on, or from the Premises during the term of this Lease, in each instance by Lessee or anyone contracting with Lessee, including, without limitation, its assignees or sublessees (collectively or individually, "Lessee Party(ies)"), whether wholesale or retail, whether for cash or on credit, and if on credit whether or not paid, and whether in exchange for any other product, commodity, service, commercial paper or forbearance, and shall include, without limitation, the following:

- (a) All revenues, receipts, commissions or proceeds from on-line sales by Lessee Parties, and/or from all public telephones, vending, weighing and all other machines owned, operated, or leased to or by Lessee Parties in, on, or from the Premises;
- (b) All revenues, receipts, commissions or proceeds from sales based on orders solicited or taken, in, on, or from the Premises for merchandise, or services to be delivered or

rendered by Lessee Parties off, or from sources outside, the Premises, including, without limitation, all orders taken in, on, or from the Premises although the orders may be filled elsewhere;

- (c) All revenues, receipts, commissions or proceeds from the renting by Lessee Parties to third parties of equipment of any kind in, on, or from the Premises;
- (d) All revenues, receipts, commissions or proceeds generated offsite by Lessee Parties but delivered through the Concession;
- (e) All revenues, receipts, commissions or proceeds made by Lessee Parties or their employees or others acting on their behalf for the rendition of services of any kind whatsoever, made in, on, or from the Premises (excluding wages, benefits and tips paid to employees); and
- (f) All other revenues, receipts, commissions or proceeds paid to Lessee Parties and generated by, arising or derived whatsoever from the use of the Premises or derived whatsoever from any business conducted in, on, or from the Premises.

For purposes of computing the Gross Sales figure on which to calculate the Rent, the amount of Gross Sales shall start over at zero dollars on the first day of each Operational Year.

SECTION 13. GROSS SALES EXCLUSIONS

Notwithstanding Section 12 above, Gross Sales shall not include the following items, and Lessee may deduct such items from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales on which the Rent has been paid under this Lease to City:

- (a) Sales and use taxes, so-called luxury taxes, consumer's excise taxes, gross receipts taxes, value added taxes and other similar taxes now or in the future imposed on the

sale of merchandise or services, whether sold or rendered, or equipment rented, in, on, or from the Premises where Lessee must account for and remit the taxes to the government entity or entities that impose them whether or not such taxes are added to the selling price or included therein;

- (b) Any transfer of trade inventory from the Premises to the manufacturer or supplier from whom it was obtained by Lessee Parties, and the transfer or exchange of merchandise or inventory between Lessee's restaurants, where such transfers or exchanges of merchandise or inventory are made solely for the convenient operation of Lessee's business;
- (c) Bulk or occasional sales on a non-retail basis of inventory and assets of Lessee, including without limitation, Trade Fixtures (as defined in Section 49 below);
- (d) Sums and credits received in the settlement of claims for loss of or damage to trade inventory or Trade Fixtures;
- (e) Any sales resulting in a cash or credit refund to a customer in the ordinary course of business;
- (f) Any sales of merchandise to City employees, which take place at City Hall;
- (g) Any sales of merchandise to City employees during special events as approved in advance by the City's Office of Business Development, and any other meals, goods, or products provided for promotional or publicity purposes without charge;
- (h) Uncollectible credit accounts and other bad debts, not to exceed 2% of Gross Sales;
- (i) Discounted sales to employees of Lessee, not to exceed 2% of Gross Sales, and meals provided for officers or employees without charge; and
- (j) Amounts paid to charge card or credit card issuers.

SECTION 14. BOOKS AND RECORDS

Lessee shall keep true and accurate books and records showing all of its business transactions in separate records of account for the Concession in a manner reasonably acceptable to City, and City and/or its designated representatives shall have the right, at all reasonable times and upon prior notice, to inspect such books and records including, without limitation, State of California sales or use tax returns or other State return records, and Lessee hereby agrees that all such records and instruments shall promptly be delivered and made available to City and/or its designated representatives within thirty (30) days of receiving written request therefore. Lessee shall furnish to City and/or its designated representatives copies of its quarterly California sales and use tax returns within thirty (30) days after each is filed with the State of California.

The books and records shall show the total amount of Gross Sales made each calendar month in, on, or from the Premises and any exclusions listed in Section 13 above. [All sales and charges shall be recorded by means of a point of sale system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Lessee's sales sufficient to provide determination and verification of Gross Sales and the exclusions and deductions therefrom. Such system shall log in daily sales totals, sales details, and tally total sales for each day. Lessee agrees to maintain on the Premises, or another location subject to the prior written approval of City, all records and books of account, showing, or in any way pertaining to the Gross Sales made in, on, or from the Premises during such calendar month, including, without limitation, State of California sales or use tax returns or other State tax returns, for a period of five (5) years following the close of each calendar month.

SECTION 15. STATEMENT OF GROSS SALES/AUDIT

At the time specified in Section 10 of this Lease for the payment of the Rent, Lessee shall deliver to City a true and accurate statement signed by Lessee or by an authorized employee of Lessee showing the total Gross Sales and any exclusions listed in Section 13 above made during the preceding calendar month and the amount of the Rent then being paid calculated on such Gross Sales pursuant to this Lease. The acceptance by City of any monies paid to City by Lessee as the Rent, as shown by any statement furnished by Lessee, shall not be construed as an admission of the accuracy of the statement, or of the sufficiency of the amount of the Rent payment, and City shall be entitled to review the adequacy of such payment as set forth herein. By the end of each January, Lessee shall deliver to City a year-end statement showing the total amount of Gross Sales made in, on, or from the Premises in each month of the preceding year during the Lease term, the total of any exclusions, the total Rent paid to City for each of those months, all with year-end totals. City may at any time within three (3) years after receiving the year-end statement, at its sole cost and expense, cause all records and books of account for the year purportedly covered by the statement, to be audited by City or an independent accountant selected by City. Lessee shall, within thirty (30) days of receiving written notice of City's desire for such an audit, deliver and make available all such records and books of account to City or its designated representative for City's use in the audit and/or for copying. If the audit discloses that Gross Sales were understated and/or exclusions overstated, Lessee shall immediately pay the additional Rent, together with a penalty thereon from the date it was due at the penalty rate set forth in Section 11 above. Furthermore, Lessee shall promptly on demand reimburse City for the full cost and expense of the audit conducted by any independent accountant should the audit disclose that the questioned year-end statement understated Gross Sales (including an overstatement of exclusions) or the Rent by any greater than Two Hundred and Fifty Dollars (\$250.00). Notwithstanding the foregoing, in the event of any audit by City, Lessee may contest the results of City's audit by performing a confirmatory audit within

thirty (30) days of receipt of City's audit results and supporting evidence, using an independent public accountant reasonably acceptable to City, and the parties shall thereafter meet and confer to reach agreement on the actual amount of overpayment or underpayment by Lessee.

City further reserves the right to examine and audit all such records and books of account at any time during the three year period following the expiration or termination of this Lease. In addition, City shall have the right to enter upon the Premises (or such other location where Lessee's books of account and records are maintained) during business hours and with at least twenty-four (24) hours advance written, verbal or electronic notice to Lessee to perform any audit or inspection function with respect to this Lease.

Lessee, its bookkeeper, and/or accountant shall respond to all questions and inquiries of City with respect to the books, records, statements, and other documentation being examined, and shall promptly provide other further documentation as may be reasonably required by City. City is entitled to take statements by deposition under oath of Lessee, its officers, bookkeepers, and/or accountants or any person who prepared the books, records, statements, and other documentation required to be provided by Lessee under this Lease.

SECTION 16. SECURITY DEPOSIT

Upon execution hereof, Lessee shall pay and maintain at all times during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, a security deposit with City in a sum of not less than Ten Thousand Dollars (\$10,000.00) to guarantee all of Lessee's obligations, liabilities, duties and responsibilities under the Lease, including, without limitation, the repair and maintenance of the Premises as provided herein (amounts held by City under the existing lease shall be credited against such deposit, and any balance refunded to Lessee). Such deposit shall be in the form of cash, a cash bond or an assignment of certificate of deposit (the "CD") or savings account to

City, and shall be provided to the City Treasurer. The form of any such security deposit shall be approved by the City Attorney and the City Treasurer. No interest shall accrue to the benefit of Lessee on cash deposits, but interest shall accrue on a CD or savings account and shall be paid to Lessee under the terms of the CD or savings account. Lessee shall send a copy of each renewal of the CD to the City Treasurer to ensure that City has the records of each active deposit account.

SECTION 17. QUALITY OF SALES, RENTALS AND SERVICES

Lessee, at its sole cost and expense, shall equip, operate, manage, and maintain the Premises and Concession and shall keep the same equipped and maintained in a manner reasonably acceptable to City during the entire term of this Lease or any renewals or extensions thereof or during any holdover period. It is the intent of City that Concession services be provided in a manner to meet the needs of the public, and should City reasonably deem the Concession's hours of operation and/or food, merchandise, services, or rentals inadequate to meet such needs, City may require Lessee to make such changes reasonably requested by City. Lessee shall not use or permit the Premises to be used, in whole or in part, during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, for any purpose other than as herein set forth, without the prior written consent of City.

Lessee shall keep Premises in operation and open to the public for business each calendar day of the year, except Thanksgiving Day, Christmas Day, and Independence Day and two other days approved by City. The restaurant shall serve breakfast, lunch, and dinner, daily, with minimum hours of operation during the months of June, July, and August from 7:00 a.m., to 10:00 p.m., and during the other months from 7:30 a.m., to 9:00 p.m. The operating days and hours may be modified due to weather conditions or unforeseen events. Any modification to the operating days and hours must be approved in advance in writing by the Office of Business Development or its designee.

Except as permitted in advance in writing by City, all foods and beverages shall be sold in those disposable containers not limited or prohibited by City ordinance (written notice of which limit and/or prohibition shall be provided to Lessee by City). No pull-top cans or Styrofoam containers are to be vended or dispensed from the Premises. Lessee, wherever feasible, shall eliminate the use of non-recyclable containers and plastics. City may from time to time review the items sold and containers or utensils used or dispensed by Lessee. City reserves the right to prohibit the sale or use of non-recyclable containers or plastics, and Lessee shall comply with City's requirement regarding prohibition of non-recyclable items. Lessee shall comply with any City exclusivity agreement the City may have with any food or beverage sponsor, except to the extent the same conflicts with Lessee's contractual obligations. This paragraph shall apply solely to food and beverages sold or packaged "to go" and not to plates, dishes, utensils, etc., used for food and beverages served and consumed inside the building on the Premises.

City in its reasonable discretion reserves the right to prohibit Lessee's sale, provision or rental of any item or service rendered or performed, which it deems objectionable or offensive, beyond the scope deemed necessary for proper service to the public, inappropriate for sale, provision or rental by the Concession, or of inferior quality.

SECTION 18. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS AGREEMENT

Lessee hereby agrees to protect, defend, indemnify, and hold harmless City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands, and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising out of or in connection with (1) the use or occupancy of the Premises by the public, Lessee's patrons, and/or Lessee and its officers, employees or agents, or (2) the death or injury of any person, including but not limited to the public, Lessee's patrons, or Lessee, or the damage to property caused by a condition of

the Premises, or (3) the death or injury of any person, including but not limited to the public, Lessee's patrons, or Lessee, or the damage to property caused by any act or omission of Lessee, its officers, employees or agents, in each case in or about the Premises, or any failure by Lessee to keep the Premises in a safe condition, or (5) Lessee's (or Lessee's assigns and/or sublessees, if any) performance of this Lease or its failure to comply with any of its obligations contained in this Lease by Lessee, its officers, agents or employees except such loss or damage that was caused by the sole negligence or willful misconduct of City, or (6) if, and only to the extent, that Lessee's obligations pursuant to this clause (6) are covered by Lessee's insurance, any claim by the public, Lessee's patrons or Lessee's employees of any discrimination, misconduct, mistreatment, or other negligence or willful misconduct by Lessee, its officers, employees, or agents in or about the Premises. Lessee shall hold all Trade Fixtures, personal property and trade inventory on the Premises at the sole risk of Lessee and hold and save City harmless from any loss or damage thereto by any cause whatsoever, except to the extent such loss or damage that was caused by the negligence or willful misconduct of City. Lessee will conduct all defense at its sole cost and expense and, unless insurance defense counsel is appointed, City shall reasonably approve selection of Lessee's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Lessee.

SECTION 19. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

INSURANCE

Lessee acknowledges awareness of Section 3700 *et seq.*, of the *California Labor Code*, which requires every employer to be insured against liability for workers' compensation. Lessee covenants that it shall comply with such provisions prior to the commencement of this Lease. Lessee shall obtain and furnish to City evidence of workers' compensation and employers' liability insurance in amounts

not less than the State statutory limits. Lessee shall require all sublessees and contractors to provide such workers' compensation and employers' liability insurance for all of the sublessees' and contractors' employees. Lessee shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and Lessee shall similarly require all sublessees and contractors to waive subrogation.

SECTION 20. GENERAL PUBLIC LIABILITY INSURANCE

In addition to the workers' compensation and employers' liability insurance and Lessee's covenant to defend, hold harmless, and indemnify City, Lessee shall obtain and furnish to City evidence that Lessee maintains a policy of general public liability insurance, including motor vehicle coverage against any and all claims arising out of or in connection with the Premises. This policy shall state that it indemnifies Lessee, its officers, employees and agents, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form, which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name City, its officers, elected and appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Lease shall be deemed excess coverage and that Lessee's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention or any other similar form of limitation on the required coverage, but may include commercially reasonable deductibles.

SECTION 21. PROPERTY INSURANCE

Lessee shall provide before commencement of this Lease and shall obtain and furnish to City, at Lessee's sole cost and expense, property and fire insurance with extended coverage endorsements thereon, by a company acceptable to City authorized to conduct insurance business in California, in an amount insuring for the full insurable value of all Improvements, Trade Fixtures, personal property whether or not owned or leased by Lessee, and all trade inventory in or on the Premises against damage or destruction by fire, theft or the elements. This policy shall contain a full replacement cost endorsement naming Lessee as the insured and shall not contain a coinsurance penalty provision. The policy shall also contain an endorsement naming City as an Additional Insured. The policy shall contain a special endorsement that such proceeds shall be used to repair, rebuild, or replace any such Improvements, Trade Fixtures, and personal property, whether or not owned or leased by Lessee, and all trade inventory so damaged or destroyed; and if not so used, such proceeds (excluding any insurance proceeds for Trade Fixtures and/or personal property, whether or not owned or leased by Lessee, and trade inventory, but only to the extent the insurance proceeds specifically cover those items) shall be paid to City. The policy shall also contain a special endorsement that if the Premises are so destroyed triggering the parties' ability to terminate as set forth in Section 50 (Destruction) below, and either party elects to terminate the Lease, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased by Lessee and trade inventory, but only to the extent the insurance proceeds specifically cover those items) shall be paid to City. The proceeds of any such insurance payable to City may be used, in the sole discretion of City, for rebuilding or repair as necessary to restore the Premises or for any such other purpose(s) as City sees fit.

This policy shall also contain the following endorsements:

- (a) The insurer shall not cancel or reduce the insured's coverage without (30) days' prior written notice to City;
- (b) City shall not be responsible for premiums or assessments on the policy.

A certificate of insurance with all endorsements required by this Section shall be filed with City prior to the execution of this Lease. At least thirty (30) days prior to the expiration or termination of any such policy, a certificate of insurance showing that coverage has been renewed shall be filed with City.

SECTION 22. INCREASE IN AMOUNT OF GENERAL PUBLIC LIABILITY AND
PROPERTY INSURANCE

Not more frequently than once every two (2) years, if, in the sole opinion of City, the amount and/or scope of general public liability insurance in Section 20 above and/or property insurance coverage in Section 21 above at that time is not adequate, Lessee shall increase the insurance coverage as reasonably required by City, not to exceed ten percent (10%) per annum.

SECTION 23. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED
ENDORSEMENTS

Prior to commencement of this Lease, Lessee shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Lease; these certificates shall:

- (a) provide the name and policy number of each carrier and policy;
- (b) shall state that the policy is currently in force; and
- (c) shall promise to provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of City; however ten (10) days' prior written notice in the event of cancellation for nonpayment of premium,

which 10-day notice provision shall not apply to property insurance in Section 21 above.

Lessee shall maintain the foregoing insurance coverages in force during the entire term of the Lease or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverages shall not derogate from Lessee's defense, hold harmless, and indemnification obligations as set forth in this Lease. City or its representatives shall at all times have the right to demand a copy of any or all the policies of insurance. Lessee shall pay, in a prompt and timely manner, the premiums on all insurance herein required.

SECTION 24. INSURANCE HAZARDS

Lessee shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will materially increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Premises or required by this Lease. Lessee shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Premises or required by this Lease necessary for the continued maintenance of these policies at market rates.

SECTION 25. MAINTENANCE OF PREMISES; TENANT IMPROVEMENTS

Subject to this Section 25 and Section 26 below, City has no maintenance responsibilities with respect to the Premises. Lessee agrees to use commercially reasonable efforts to maintain the Premises in good order and repair, at Lessee's sole cost and expense, during the entire term of this Lease or during any holdover period, pursuant to the City's maintenance standards. With respect to maintenance of anything in or about the Premises that is not a Lessee Maintenance Item (as defined herein), and/or any repairs and/or replacement required to maintain the Premises in good order and repair, while the same shall be Lessee's obligation to perform after consultation with City as to the scope and cost of any such

maintenance, Lessee shall be entitled to a rent credit pursuant to Section 26 below. As used herein the term "Lessee Maintenance Items" means, collectively, the interior of the Premises and the exterior walls, windows and trim, and shall include washing bird droppings and dirt off the Premises, including roof, windows, and exterior walls, as needed, but not less than quarterly, and graffiti removal as provided below. A copy of the quarterly evaluation summary sheet setting forth the City's maintenance checklist is attached as Exhibit "C", and incorporated herein by this reference. Except as provided above, Lessee, at its sole cost and expense, shall perform any maintenance and repairs (including, without limitation, facility maintenance) on the Premises.

Lessee's obligation includes, without limitation, maintaining and operating the Premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now, or at any time during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, in force, relating to sanitation or public health, safety or welfare, or for the protection of life, limb or property. Lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto. Lessee shall monitor, inspect and assess the Premises at least daily when the Premises are open for business, and more often as circumstances may warrant, for conditions that would, or could reasonably be expected to, present danger to the public, Lessee's patrons or Lessee. At Lessee's sole cost and expense, Lessee shall remedy without delay any defective, dangerous, or unsanitary condition(s) within the Premises caused by any third party other than City, including but not limited to the public, Lessee's patrons, or Lessee. Lessee shall maintain ADA access around the immediate Premises. Lessee shall install and maintain grease trap(s) or grease interceptor(s) in accordance with the City's requirements set forth in Chapter 14.56 of the Huntington Beach Municipal Code.

Lessee shall paint, stain, or seal the exterior surfaces of the Premises every three (3) years, except as otherwise agreed to by the parties in writing. All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year, except as otherwise agreed to by the parties in writing. Any and all graffiti on the Premises shall be removed by Lessee, at its sole cost and expense, within forty-eight (48) hours of Lessee receiving notice thereof or of Lessee becoming aware of such graffiti. In addition, with or without notice from City, Lessee shall, at its sole cost and expense, repair and/or replace any broken glass as soon as possible, and shall secure the Premises after any glass is broken within forty-eight (48) hours of its becoming broken, regardless of cause, except by fault of City. Except as provided above for graffiti and broken glass, Lessee, at its sole cost and expense and with or without notice from City, shall commence to repair and/or replace all damage or destruction within the Premises caused by act(s) of vandalism as soon as possible but in no event later than fourteen (14) days after the date such damage or destruction occurred. Lessee, at its sole cost and expense but subject to Sections 26 and 51 below, shall commence to repair and/or replace all other damage or destruction to the Premises, regardless of cause, except by fault of City.

Lessee shall provide, on an annual basis upon City's request, records and receipts for all Lease-related maintenance, repair and replacement costs.

Lessee shall comply with all written notices served by City with regard to the care and maintenance of the Premises as required by this Lease or applicable law. Any written notice hereunder shall specify the work to be done and the period of time deemed to be reasonably necessary for completion of such work. Subject to force majeure, should Lessee fail to complete making the necessary repairs within fifteen (15) days after receiving such notice, or within forty-eight (48) hours in the case of broken glass or for removing graffiti, or fail to diligently proceed to complete the necessary repairs within the period of time reasonably specified in the City's notice, City may proceed

to cause the required work to be performed, and Lessee shall promptly reimburse City for the cost of labor and materials thereof and pay City a penalty on such costs at the penalty rate set forth in Section 11 above from the date the costs were incurred by City to the date they are reimbursed to City by Lessee.

City shall, at its expense, operate and maintain the Pier in good order and repair. Lessee hereby expressly waives the right to make repairs to the Pier at the expense of City and the benefit, if any, of the provisions of Sections 1941 and 1942 of the *California Civil Code* relating thereto.

Lessee has proposed improvements to the Premises as set forth in Exhibit "D". City has received and consents to the proposed improvements in Exhibit "D". All proposed improvements in Exhibit "D" shall be submitted to and approved by all City, State, county and/or local entities and comply with all requirements, including, but not limited to plans, specifications, permits, approvals and inspections. All proposed and approved improvements in Exhibit "D" shall be fully completed to the satisfaction of City no later than one year from the date of approval of plans by City.

SECTION 26. RENT CREDIT

After the proposed tenant improvements, a Rent credit may be available for some or all of any tenant improvements performed by Lessee upon prior written approval by the Office of Business Development or its designee. The terms of payment of any Rent credit will be determined by the Office of Business Development. City shall give Lessee Rent credit if Lessee undertakes (1) maintenance, repair and/or replacement of the structure and/or roof of the building in which the Premises are located and/or of utilities (water, sewer, gas and electrical) up to the point of connection to the Premises (and if separately metered to the Premises the "point of connection" shall be the point at which such separate meter is installed) or (2) any work City in its sole discretion deems necessary and appropriate; provided, however, if sewer blockage is caused by improper grease trap maintenance and/or use of plumbing facilities within the Premises, the cost of removal of such blockage shall be borne by Lessee and not

eligible for a Rent credit hereunder. Prior to Lessee undertaking any such work, City must agree (not to be unreasonably withheld, conditioned or delayed) in writing to the amount of and procedures for the Rent credit, the work to be done by Lessee and the cost of such work.

SECTION 27. DAMAGE, DESTRUCTION OR NUISANCE

Lessee shall not commit or permit the commission by others of any damage or destruction of, on, or to the Premises and/or Concession. Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 and/or Section 3480 of the *California Civil Code* on the Premises; and Lessee shall not use or permit the use of the Premises for any unlawful purpose.

SECTION 28. TAXES

In the event that this Lease creates a taxable possessory interest in property, Lessee agrees to pay taxes levied on the leasehold interest created by this Lease, at its sole cost and expense. Lessee also agrees to pay, at its sole cost and expense, before becoming delinquent all other lawful taxes, assessments or charges, which at any time may be levied by any governmental agency including, without limitation, the State, County, City, or any tax or assessment levying body upon any interest in this Lease, or any possessory right which Lessee may have in or to the Premises, by reason of Lessee's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on Trade Fixtures, personal property and trade inventory in, on, or about the Premises. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment. Lessee shall comply with all laws, regulations, and ordinances regarding the collection of taxes due a government agency.

SECTION 29. PAYMENT OF OBLIGATIONS

Lessee shall promptly pay, at its sole cost and expense, before they become delinquent, any and all bills, debts, liabilities, and obligations incurred by Lessee in connection with Lessee's occupation

and use of the Premises and/or operation of the Concession. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment.

SECTION 30. UTILITIES AND SERVICES

Lessee shall be responsible for the payment of all utility charges, including, without limitation, gas, electricity, water, telephone service, cable TV service, and the furnishing of all necessary refuse and garbage containers and the removal and disposal of all rubbish, refuse and garbage resulting from the operation of the Premises and/or the Concession. All such rubbish, refuse, and garbage removed shall be disposed of in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened and located to the satisfaction of City. For the purposes of this Section, sewage disposal shall be construed as a utility. All such charges shall be paid by Lessee directly to the provider of the service and shall be paid as they become due and payable. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment. Lessee shall use good energy practices as described in the State of California Flex Your Power Best Practice Guide.

SECTION 31. BUSINESS LICENSE

Lessee shall maintain a business license from City during the entire term of this Lease and during any holdover period.

SECTION 32. SIGNS, ADVERTISING AND APPROVAL OF NAME

City shall have the right to approve, at its sole discretion, and at any time, or require Lessee to change or remove signs, kiosks, names, placards, decorations, or advertising placed on, or inscribed, painted, or affixed upon the Premises. No outdoor sales are allowed by Lessee unless prior written approval is obtained from the Office of Business Development or its designee. All outdoor kiosks, displays or banners must first be approved in writing by the Office of Business Development or its designee. Should City approve of any sign, name, placard, decoration, or advertising, Lessee shall maintain the same at all times during the entire term of this Lease or any renewals or extensions thereof

or during any holdover period in good appearance and repair. All signs, kiosks, names, placards, decorations, or advertising must comply with all Code requirements of City and any other governmental authority with jurisdiction. Notwithstanding anything to the contrary herein, Lessee may maintain all existing signage, decorations and lighting that is in or about the Premises as of the commencement of this Lease.

SECTION 33. NO ASSIGNING, SUBLEASING OR ENCUMBERING

(a) Prohibition of Assignment. The parties acknowledge that City is entering into the Lease in reliance upon the experience and abilities of Lessee and its principals. Consequently, Lessee shall not voluntarily assign, encumber, or otherwise transfer its interest in the Lease or in the Premises, sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises (except Lessee's authorized representatives) without the prior written consent of City, which consent shall not be unreasonably withheld. The City's consent shall not relieve Lessee from any and all of its obligations, liabilities, duties or responsibilities under this Lease. Any assignment, encumbrance, occupation or use, sublease, or other transfer without the City's written consent shall be voidable and, at City's sole discretion, shall constitute a Default of this Lease.

(b) Consent to Transfer. City's consent to any assignment, encumbrance, occupation or use, sublease or other transfer is subject to Lessee providing City with evidence satisfactory to City that the proposed, assignee, encumbrancer, occupier or user, sublessee or other transferee has suitable financial strength, experience, and character for operation and control of the Premises and the Concession and that the use of the Premises by the proposed assignee, encumbrancer, occupier or user, sublessee or other transferee is consistent with that specified herein, and is commercially reasonable.

Any proposed assignee, encumbrancer, occupier or user, sublessee or other transferee shall agree to abide by the terms and conditions of the Lease including, without limitation, all the obligations, liabilities, duties and responsibilities of Lessee, and other conditions imposed upon it pursuant to law. An approval by City to one assignment, encumbrance, occupation or use, sublease or other transfer shall not be deemed to be an approval to any other assignment, encumbrance, occupation or use, sublease or other transfer.

- (c) Voluntary Assignment Defined. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, or reorganization of Lessee, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Lessee (other than a transfer by will, devise, bequest, intestate succession, a transfer to or between the family members of Lessee, or a transfer to or between one or more trusts for the benefit of Lessee and/or Lessee's family members, where applicable) shall be deemed a voluntary assignment.
- (d) Exceptions. Notwithstanding the foregoing paragraphs or anything to the contrary contained herein, City's consent shall not be required for an assignment or subleasing to an Affiliate, Subsidiary or Successor of Lessee (for purposes hereof, an "Affiliate," a "Subsidiary" and a "Successor" of Lessee are defined as follows: (1) an "Affiliate" is any corporation which directly or indirectly controls or is controlled or is under common control with Lessee (for this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise); (2) a "Subsidiary" shall mean any corporation or partnership

not less than twenty- five percent (25%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Lessee and which is at least as creditworthy as Lessee, and (3) a "Successor" shall mean (i) a limited liability company, corporation or partnership in which or with which Lessee is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations, or a limited liability company, corporation or partnership acquiring a substantial portion of the property and assets of Lessee with respect to the Premises and the Concession and/or (ii) a bona fide franchisee of the "Franchisor" (Ruby's Franchise Systems, Inc., a California corporation, and an affiliate of Lessee) who has proven retail food service experience and has participated in the Franchisor's training programs prior to the effective date of such assignment or subletting, or, upon termination of any franchise agreement with a franchisee of Franchisor that is a Successor, to Franchisor.

SECTION 34. TERMS BINDING ON SUCCESSORS

All the terms, covenants, and conditions of this Lease shall inure to the benefit of and be binding upon the parties and their successors, including, without limitation, their assignees, encumbrancers, occupiers or users, sublessees or other transferees. The provisions of this Section shall not be deemed as a (1) waiver of any of the prohibitions and conditions against assignments, encumbrances, occupations or uses, subleases or other transfers hereinbefore set forth, or (2) City's consent thereto. If more than one lessee is a party to this Lease, the obligations of the lessees shall be joint and several. Even if City's consent is not required, Lessee shall immediately provide City with written notice of any, assignment, encumbrance, occupation or use, sublease or other transfer.

SECTION 35. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default and breach ("Default") of this Lease by Lessee:

- (a) Lessee's failure to make any payment of the Rent or other payment required to be made by Lessee within the time required for payment under this Lease.
- (b) Lessee's failure to obtain or maintain the insurances and/or the security deposit as required under this Lease.
- (c) Lessee's vacating or abandonment of the Premises during the entire term of this Lease or any renewals or extensions thereof or during any holdover period. Closure of the Concession for more than a combined total of sixty-five (65) days in a calendar year, minus any days of closure of the Concession caused or permitted by City, shall be deemed an abandonment of the Premises.
- (d) Lessee's violation of Section 19 (Indemnification, Defense and Hold Harmless Agreement), Section 34 (No Assigning, Subleasing or Encumbering), Section 47 (Hazardous Substances), Section 48 (Nondiscrimination), Section 49 (Sale of Alcoholic Beverages and Entertainment Prohibited), Section 62 (Conflict of Interest) or Section 64 (Compliance with Laws).
- (e) The insolvency of Lessee as evidenced by a receiver being appointed to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, or the making by Lessee of a general arrangement or assignment for the benefit of creditors, or Lessee's filing a petition in bankruptcy, whether voluntary or involuntary, or the attachment, execution or the judicial seizure of substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in the Lease.

- (f) Lessee's failure to observe or perform any other term, covenant, obligation, duty, responsibility or condition of this Lease, including those contained in Section 25 for example, to be observed or performed by Lessee when such failure shall continue for a period of thirty (30) days after City's giving written notice to Lessee, or such earlier period if specifically set forth in this Lease; however, if the nature of such failure is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee notifies City of the length of the additional time required to cure and receives City's written approval of the additional time required, which approval will not be unreasonably withheld, and commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion during such additional time period approved by City.

SECTION 36. REMEDIES

- (a) Cumulative Nature of Remedies. In the event of any Default by Lessee, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative:
- (1) Reentry without Termination. City may at City's sole discretion reenter the Premises, and, without terminating the Lease, at any time and from time to time relet the Premises or any part or parts of them for the account and in the name of Lessee or otherwise. Any reletting may be for the remainder of the term or for a longer or shorter period. City may in City's sole discretion eject all persons or eject some and not others or eject none. In addition, City may in its sole discretion remove some or all of the Trade Fixtures, personal property and trade inventory from the Premises. City may store such removed Trade Fixtures, personal property and trade inventory in a public warehouse or other location

at the sole cost, expense and risk of Lessee, and for the account of and in the name of Lessee. City shall apply all rents from reletting as follows: first, to the payment of reasonable expenses (including brokers' commissions) paid or incurred by or on behalf of City in recovering possession, placing the Premises in good condition, and preparing or altering the Premises for reletting; second, to the reasonable expense of securing new subtenants; third, to the fulfillment of Lessee's covenants to the end of the term. City may execute any leases or subleases made under this provision either in City's name or in Lessee's name and City shall be entitled to all rents from the use, operation or occupancy of the Premises. Lessee shall nevertheless pay to City on the dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus City's expenses, less the proceeds of any reletting or attornment.

- (2) Termination. In the event of a Default by Lessee, City may at City's sole discretion terminate this Lease by giving Lessee written notice of termination. In the event City terminates this Lease, City may recover possession of the Premises (which Lessee shall immediately surrender and vacate upon demand) and remove all persons therefrom, and Lessee shall comply with, without limitation, Sections 54 and 55 below. City also shall be entitled to recover as damages all of the following:

- (A) The worth at the time of the award of any unpaid Rent or other charges which have been earned at the time of termination;
- (B) The worth at the time of the award of the amount by which the unpaid Rent (each month's Rent would be calculated as the average Rent for

that same month in the preceding years, or if Lessee did own/operate the Concession in the preceding years, then each month's Rent would be calculated as the average of all months Lessee owned/operated the Concession) and other charges that would have been earned after termination until the time of the award exceeds the amount of the loss of such rental and other charges that Lessee proves could have been reasonably avoided;

- (C) The worth at the time of the award of the amount by which the unpaid Rent (each month's Rent would be calculated as the average Rent for that same month in the preceding years, or if Lessee did not own/operate the Concession in the preceding years, then each month's Rent would be calculated as the average of all months Lessee owned/operated the Concession) and other charges for the balance of the term after the time of the award exceeds the amount of the loss of such rental and other charges that Lessee proves could have been reasonably avoided;
- (D) Any other amount necessary to compensate City for the detriment proximately caused by Lessee's failure to perform its obligations, liabilities, duties or responsibilities under this Lease; and
- (E) At City's sole discretion, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in Sections 36(a)(2)(A) and (B) above, the "worth at the time of the award" shall be computed by allowing interest at the rate of twelve percent (12%) per annum. As used in

Section 36(a)(2) (C) above, the "worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). The amount recoverable by City pursuant to Section 36(a)(2)(D) above shall include, without limitation, any costs or expenses incurred by City in maintaining or preserving the Premises after such Default.

- (3) Use of Personal Property. City may at City's sole discretion use the Trade Fixtures, personnel property and/or trade inventory located on, about or appurtenant to the Premises without compensation and without liability for use or damage, or store them in a public warehouse or other location at the sole cost, expense and risk of Lessee, and for the account of and in the name of Lessee.
- (b) Election of Remedy. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.
- (c) City's Right to Cure Lessee's Default. Upon continuance of any Default, City may at its sole discretion, but is not obligated to, cure such Default at Lessee's sole cost and expense. If City at any time, by reason of such Default by Lessee, pays any sum or does any act, the sum paid by City plus the reasonable cost of performing such act, together with a penalty thereon at the penalty rate set forth in Section 11 above from the date the costs were incurred or the act performed by City to the date they are reimbursed to City by Lessee, shall be due as additional rent not later than five (5) days after service of a written demand therefore on Lessee, including reasonably detailed documentation of the amount owed. No such payment or act shall constitute a waiver of Default or of any remedy for Default or render City liable for any loss or damage resulting from any such act.

- (d) Waiver of Rights. Lessee hereby waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Lessee is evicted or City takes possession of the Premises by reason of any Default by Lessee hereunder.
- (e) Other Rights of City. No act of City, including, without limitation, City's entry on the Premises, efforts to relet the Premises, or maintenance of the Premises, shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Lessee by City or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding, if City elects to continue the Lease in full force and effect after a Default by Lessee and to relet the Premises, City may at any time after such reletting elect to terminate this Lease for any such Default.

SECTION 37. CUMULATIVE REMEDIES

The remedies given to City in this Lease shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease. City shall have the right to exercise any other right or remedy which City may have at law or in equity including, without limitation, City's rights under the unlawful detainer laws.

SECTION 38. WAIVER OF DEFAULT

The waiver by City of any Default by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent Default by Lessee either of the same or another provision of this Lease.

SECTION 39. CITY'S DEFAULTS/LESSEE'S REMEDY

In the event City fails to perform any material obligation of City under the Lease within sixty (60) days after receiving written notice from Lessee specifying the nature of such default, or, if the

nature of City's obligation is such that more than sixty (60) days are required for its performance, if City fails to commence such performance within such sixty (60) day period and thereafter diligently prosecute the same to completion, then City shall be in default of this obligation. If City's default materially interferes with Lessee's use of the Premises for its intended purpose, Lessee shall have the option to terminate the Lease by giving City at least sixty (60) days' written notice of its intent to terminate. In such a situation, Lessee must still comply with all of its obligations, liabilities, duties and responsibilities under the Lease, including, without limitation, paying any Percentage Rent due up to the time of termination and surrendering the Premises pursuant to Sections 54 and 55 below, except as otherwise provided herein. During such sixty (60) days period, Lessee's obligation to pay Minimum Base Rent shall be abated. Subject to the immediately preceding sentence, the remedy of termination afforded Lessee in this Section 39 is Lessee's sole and exclusive remedy for a default by City.

SECTION 40. CONSENT

When City's consent/approval is required under this Lease, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event, unless otherwise expressly stated in the consent.

SECTION 41. HOLDOVER

Should Lessee hold over and continue in possession of the Premises after expiration or termination of this Lease, with or without the express prior written consent of City, Lessee's continued occupancy of the Premises shall constitute a month-to-month tenancy, subject to all the terms and conditions of this Lease, at a monthly rent of one hundred ten percent (110%) of the previous calendar year's annual Minimum Base Rent divided by twelve (12) (or the average monthly Minimum Base Rent for all months Lessee owned/operated the Concession if Lessee has owned/operated the Concession for less than one (1) year) or that month's actual Minimum Base Rent, whichever is greater, and shall not constitute a renewal or extension of the Lease term.

SECTION 42. WAIVER OF CLAIMS

Lessee hereby waives any claim against City, its officers, elected or appointed officials, employees, agents or volunteers for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Lease, or any part thereof, or caused by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the Lease or any part thereof from being carried out.

SECTION 43. INSPECTION OF PREMISES

Upon at least twenty-four (24) hours advance written, verbal or electronic notice given by City to Lessee, Lessee shall permit City or City's agents, representatives or employees to enter the Premises at all reasonable times for the purpose of inspecting, investigating and surveying the Premises to determine whether Lessee is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect City's interest in the Premises or to perform City's duties under this Lease. City may make quarterly physical inspections of the Premises and may direct that interior maintenance or outdoor painting repairs are to be performed where such work is necessary to protect the Premises or to provide a clean, attractive and well-maintained Premises. Lessee shall perform those maintenance and repairs that it is responsible for within thirty (30) calendar days. City also shall have the right at its sole discretion to do any and all work of any nature necessary for the preservation, maintenance, and operation of property owned, controlled or occupied by City. Lessee shall be given reasonable notice when such work becomes necessary, in accordance with Section 57 below, and Lessee shall adjust the operation of the Concession in such a manner that City may proceed expeditiously.

SECTION 44. QUIET POSSESSION

Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

SECTION 45. PHOTOGRAPHY

Lessee acknowledges and agrees that City may grant permits to third parties engaged in the production of still and motion pictures and related activities to take photographs or videos of or on the Premises when such permission shall not interfere with the primary business of Lessee, all without providing Lessee with notice or requiring consent by Lessee.

SECTION 46. HAZARDOUS SUBSTANCES

Lessee represents and warrants that its use or occupation of the Premises shall not generate any Hazardous Substance (as defined below in this Section), and it shall not store or dispose on the Premises nor transport to or over the Premises any Hazardous Substance during the entire term of this Lease or any renewals or extensions thereof or during any holdover period. The foregoing restrictions shall not be deemed to restrict or prohibit the use by Lessee of ordinary food preparation, cleaning and maintenance products as customarily used in Lessee's ordinary course of business at the Concession, provided that Lessee complies with all provisions of law as to the use, storage and disposal of such products. Lessee further agrees to clean up and remediate any such Hazardous Substance on the Premises, and agrees to protect, defend, indemnify and hold harmless City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising out of, or in connection with, any such Hazardous Substance and any damage, loss, or expense or liability resulting from any such Hazardous Substance including, without limitation, all attorney's fees, costs

and penalties incurred as a result thereof except any release caused by the sole negligence or willful misconduct of City. Lessee will defend City at its sole cost and expense and City shall approve selection of Lessee's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Lessee. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as a hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, highly combustible or flammable fluid or material, or other similar term, by any Federal, State or local environmental law, regulation or rule presently in effect or promulgated in the future, as such law, regulation or rule may be amended from time to time; and it shall be interpreted to include, without limitation, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

SECTION 47. NONDISCRIMINATION

Lessee and its employees shall not discriminate because of race, ethnicity, religion, color, ancestry, sex, sexual orientation, age, national origin or physical handicap against any person by refusing to furnish such person any accommodation, facility, rental, service or privilege offered to or enjoyed by the general public, nor shall Lessee or its employees publicize the accommodation, facilities, rentals, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, ethnicity, religion, color, ancestry, sex, sexual orientation, age, national origin or physical handicap.

In the performance of this Lease, Lessee shall not discriminate against any employee or applicant for employment, because of race, ethnicity, religion, color, ancestry, sex, sexual orientation, age, national origin or physical handicap. Lessee shall take affirmative action to ensure that applicants

are employed and that employees are treated during employment, without regard to their race, ethnicity, religion, color, ancestry, sex, sexual orientation, age, national origin or physical handicap. Such action shall include, without limitation, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including, without limitation, apprenticeship. Lessee shall post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this Section.

Lessee shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by City, the State Fair Employment Practices Commission, or any other agency with jurisdiction over these matters, for the purpose of investigation to ascertain compliance with this Section.

City may determine a violation of this Section to have occurred upon receipt of a final judgment having that effect from a court in an action to which Lessee was a party, or upon receipt of a written notice from the State Fair Employment Practices Commission, or other government agency with jurisdiction over these matters that it has investigated and determined that Lessee has knowingly and willfully violated the Fair Employment Practices Act or other applicable discrimination law and has issued an order which has become final, or obtained an injunction, in each case which violation related to the Premises. In the event of violation of this Section, City shall have the right to terminate this Lease.

SECTION 48. LIENS

Lessee shall keep the Premises free and clear from any and all liens, including, without limitation, mechanics' or materialmen's liens, claims and demands for work performed, materials furnished, or operations conducted on or about the Premises or by reason of any use or occupancy by

Lessee, or any person claiming under Lessee. When applicable, Lessee shall cause a notice of nonresponsibility to be posted and recorded pursuant to California Civil Code Section 3094.

SECTION 49. INSTALLATION AND REMOVAL OF TRADE FIXTURES

Lessee shall have the right during the entire term of this Lease at Lessee's sole cost and expense, to install or affix in, to, or on the Premises any machinery, equipment and other objects (the "Trade Fixtures"), for use in Lessee's trade or business as Lessee may deem advisable. Any and all such Trade Fixtures that can be removed without structural damage to the Premises shall, subject to Section 55 below, remain the property of Lessee and may be removed by Lessee at any time prior to the expiration or termination of this Lease, provided Lessee repairs any damage caused by the removal. Upon execution of this Lease and every anniversary, Lessee shall provide City with a list of all Trade Fixtures on the Premises.

SECTION 50. DESTRUCTION

Should the Premises be partially destroyed, this Lease shall continue in full force and effect, and Lessee, at Lessee's sole cost and expense, shall complete the work of repairing and restoring the Premises to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) days after the occurrence of the event. Should the Premises be so far destroyed that in City's reasonable judgment they cannot be repaired or restored to their former condition within one hundred eighty (180) days, City shall give Lessee notice of such determination in writing and each party may, in that party's sole discretion:

- (a) Continue this Lease in full force and effect in which case Lessee shall repair and restore, at Lessee's sole cost and expense, the Premises to its former condition; or
- (b) Terminate this Lease by giving the other party thirty (30) days' written notice of such termination within sixty (60) days after the date that City gives Lessee notice that the

Premises cannot be repaired or restored to their former condition within one hundred eighty (180) days. In the event that either party elects to terminate this Lease, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased by Lessee, trade inventory, business interruption insurance, and the like, but only to the extent that the insurance proceeds specifically cover those items) shall be paid to City. The proceeds of any such insurance payable to City may be used, in the sole discretion of City, for rebuilding or repair as necessary to restore the Premises or for any other such purpose(s) as City sees fit. In addition, if Lessee elects to terminate the Lease, Lessee must still comply with all of its obligations, liabilities, duties and responsibilities under the Lease, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises, pursuant to Sections 54 and 55 below.

In the event of the damage or destruction of Improvements, Trade Fixtures and/or personal property located on the Premises not giving rise to a termination of this Lease, Lessee shall, at its sole cost and expense, replace and repair the same as soon as reasonably possible to permit the prompt continuation of Lessee's business at the Premises.

SECTION 51. NO ABATEMENT OF RENT DURING REPAIR WORK

If and only to the extent that Lessee is entitled to reimbursement for Rent, taxes, insurance and other obligations payable hereunder from and after any casualty under the insurance policies Lessee is required to maintain under this Lease, the rent shall not be abated for the time Lessee is prevented from using the whole or a portion of the Premises nor shall Lessee shall not be excused from the payment of taxes, insurance or any other obligations for the time Lessee is prevented from using the whole or a portion of the Premises; subject to the foregoing, Rent and all other payments required of Lessee

hereunder shall be abated if and to the extent that Lessee is unable to operate its business from the Premises.

SECTION 52. EMINENT DOMAIN

If, during the term of this Lease or any renewals or extensions thereof or during any holdover period, City's real property (whether held by City in fee simple, an easement interest or otherwise) and/or the Premises is taken in eminent domain, the entire award (that is, all forms) of compensation, other than as provided herein, shall belong to and be paid to City. In the event of condemnation, Lessee shall be entitled to an award of only the following forms of compensation, if any, from the condemning authority: compensation for loss of business goodwill; compensation for the value of any of Lessee's Trade Fixtures; compensation for the value of any of Lessee's personal property; compensation for the value of any of Lessee's trade inventory; and compensation for relocation benefits as authorized by law. All other forms of compensation, such as, for example, but not by way of limitation, any bonus value of Lessee's interest in this Lease, shall belong to and be paid to City. In the event of condemnation, unless Lessee is allowed by the condemning authority to continue its operations on the Premises, the Lease shall terminate on the earliest of the following dates: the date the condemning authority obtains a prejudgment order for possession; the date title to the Premises vests in the condemning authority; or the date when Lessee is required by the condemning authority to cease its operations. This Section shall not apply to a condemnation by City of any of Lessee's property and/or interest in this lease.

SECTION 53. RELOCATION AND ASSISTANCE, BUSINESS GOODWILL AND LEASEHOLD BONUS VALUE

Upon expiration or termination of this Lease for any reason, but excluding eminent domain, Lessee shall not be entitled to any relocation rights or benefits, business goodwill or bonus value attributable to this Lease, and Lessee expressly waives any claim to the same.

SECTION 54. QUITCLAIM DEED

Upon expiration or termination of this Lease as provided for herein, Lessee shall execute and deliver to City within thirty (30) days thereof, a good and sufficient quitclaim deed to the rights and interests of Lessee in the Premises and the Lease. Should Lessee fail or refuse to deliver to City this quitclaim deed, City may record in the Orange County Recorder's Office a written notice reciting the failure of Lessee to execute and deliver this quitclaim deed. The date of recordation of this notice by City shall be conclusive evidence against Lessee and all persons claiming under Lessee of the expiration or termination of this Lease and any rights or interests of Lessee in the Premises and/or the Lease. Lessee also agrees to execute, acknowledge, and deliver to City any other instrument requested by City as necessary to perfect City's right, title and interest to the Premises.

SECTION 55. RESTORATION AND SURRENDER OF PREMISES/TITLE TO

IMPROVEMENTS TO THE BUILDING

On expiration or termination of this Lease, Lessee shall, without compensation to Lessee, promptly surrender and deliver the Premises to City in as good condition as such were at the commencement date of this Lease, ordinary wear and tear excepted. Lessee also shall, without compensation to Lessee, surrender all Improvements to the building to City in good condition and repair, ordinary wear and tear excepted, free and clear of all liens and encumbrances. Lessee also shall remove all Trade Fixtures, personal property and trade inventory. City may in its sole discretion accept all or any portion of the Premises, as then improved with Improvements and no sum whatsoever shall be paid to Lessee or any other person; or City may require Lessee to remove all or any portion of such Improvements to the building performed by Lessee during the Term hereof, at Lessee's own risk and cost and expense; or City may itself remove or have removed all or any portion of such Improvements to the building, at Lessee's own risk and cost and expense. If required by City to do so, in removing

any such Improvements to the building, Lessee shall restore the Premises as nearly as possible to the conditions existing prior to their installation or construction. All such removal and restoration shall be to the satisfaction of City and shall be completed within thirty (30) days of the expiration or termination of this Lease; provided, however, that Lessee shall be considered a holdover tenant (pursuant to Section 41 above) after expiration or termination of the Lease until the time Lessee completes this removal and restoration work, including, without limitation, the removal of any Trade Fixtures, personal property and trade inventory left on the Premises. In addition, any Trade Fixtures, personal property or trade inventory left on the Premises after the expiration of this 30-day period (and any ensuing holdover), regardless of cause, shall be deemed abandoned by Lessee. In City's sole discretion, it may choose to do one or more of the following: (1) take any or all of such Trade Fixtures, personal property and trade inventory as City property; (2) store any or all of such Trade Fixtures, personal property and trade inventory in a public warehouse or other location at the sole cost, expense and risk of Lessee, and for the account and in the name of Lessee; or (3) dispose of any or all of such Trade Fixtures, personal property and trade inventory without any liability to Lessee. In addition, Lessee's indemnification, hold harmless and defense obligations set forth in this Lease shall apply to such Trade Fixtures, personal property and/or trade inventory, and to City's actions with respect thereto.

SECTION 56. FORCE MAJEURE - UNAVOIDABLE DELAYS

Should the performance of any act required by this Lease to be performed by either City or Lessee be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act shall be extended for a period equivalent to the period of delay and performance of the act during the period of delay shall be excused. Nothing contained in this Section shall excuse the prompt payment of the

Rent or other consideration by Lessee as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of the party, City or Lessee, required to perform the act, except as otherwise specifically provided in this Lease.

SECTION 57. CITY'S OPTION TO CLOSE THE PREMISES

Initial IB

City may close the Premises without liability and without advance notice to Lessee therefor at any time as City in its sole discretion deems necessary for the protection of life, limb or property, or for public health, safety or welfare purposes, or upon reasonable notice to effect any repair, remodeling or rebuilding deemed necessary by City in its sole discretion. City retains the right to close the pier and Premises for emergencies without any notice to Lessee, for any extent of time and without compensation or credit. In those cases where there is a City-planned pier closure, or other City activities or special events that will restrict access to the Premises, Lessee will be given a ten (10) business day notice. Except if and only to the extent that Lessee is entitled to reimbursement for Rent, taxes, insurance and other obligations payable hereunder from and after any casualty under the insurance policies Lessee is required to maintain under this Lease, Rent and such other amounts as Lessee may be required to pay City pursuant to this Lease shall be abated during any such period.

SECTION 58. CITY DAYS

City shall have the right to utilize the second floor of the Restaurant (the "Space") for City related purposes not more than twelve (12) days during each Lease Year, for a period of not more than five (5) hours on each such day, provided that City may only use the Space for one (1) day per year during the period from June 15 to September 15, subject to the terms and conditions of this Section 58. City shall provide Lessee with not less than thirty (30) days prior written notice of its intent to utilize the Space pursuant to this Section 58. Said written notice shall provide a reasonably detailed account of the date and time during which City intends to utilize the Space and will describe the purpose and

manner of such use. The parties shall reasonably cooperate with one another to accommodate scheduling conflicts, taking into account Lessee's pre-existing commitments and other reasonable customer service and economic considerations.

In utilizing the Space, City shall use its best efforts to minimize, to the greatest extent possible, interference with Lessee's use of, and business operations at, the Premises. Rent and all other charges under the Lease shall be reduced equitably to reflect the extent to which City's use of the Space materially interferes with Lessee's use of the Premises or its business operations at the Premises. City shall indemnify, hold harmless, protect and defend (with counsel reasonably acceptable to Lessee) Lessee from and against any and all injuries, liabilities, claims, demands, penalties, costs and expense whatsoever to persons or property caused by, arising from, related to or in connection with the use of the Space by City, its officers, agents, employees, representatives, invitees, guests, licensees, assignees using the Space during any City Day. City hereby covenants and agrees, at City's sole cost and expense, to (i) immediately undertake, and prosecute diligently to completion, the repair and restoration of any damage, injury or excessive wear and tear caused to the Space, the Premises or any of Lessee's personal property (including, but not limited to, equipment, fixtures, decorative items and furniture) during any City Day, to their condition prior to such damage or injury, and (ii) replace any of Lessee's personal property that is lost or stolen during any such City Day, whether such damage or loss is caused by City, its officers, agents, employees, representatives, invitees, guests, licensees or assignees using the Space during such City Day.

SECTION 59. DELIVERIES OF SUPPLIES

The City Manager or his/her designee may establish the days and times deliveries of supplies may be made, consistent with Huntington Beach Municipal Code Section 13.08.290(g), and shall

not unreasonably interfere with the conduct of Lessee's business in connection therewith, and advise Lessee in writing thereof.

SECTION 60. EMPLOYEE PARKING

All employee parking shall comply with Huntington Beach Municipal Code Section 13.08.290(d) and (g).

SECTION 61. CONFLICT OF INTEREST

Lessee warrants and covenants that no official or employee of City, nor any business entity in which an official or employee of City is interested, (1) has been employed or retained by Lessee to solicit or aid in the procuring of this Lease; or (2) shall be employed by Lessee in the performance of this Lease without the immediate written divulgence of such fact to City. In the event City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee, upon request of City, shall terminate such employment immediately. For breaches or violation of this Section, City shall have the right both to terminate this Lease without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee or business entity. No official or employee of City shall have any financial interest in this Lease in violation of the applicable provisions of the California Government Code.

SECTION 62. NOTICE

Unless specifically providing for verbal or electronic notice, all notices, certificates, or other communications required to be given hereunder shall be in writing and made in the following manner, and shall be sufficiently given and deemed received when (a) personally delivered; or (b) three (3) business days after being sent via United States certified mail -return receipt requested; or (c) one (1) business day after being sent by reputable overnight courier, in each case to the addresses specified below;

provided that City and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

CITY:

City of Huntington Beach
ATTN: Deputy Director, Office of Business Development
P.O. Box 190
Huntington Beach, CA 92648

LESSEE:

Ruby's Huntington Beach, Ltd.
ATTN: Doug Cavanaugh
201 Shipyard Way, Suite E
Newport Beach, CA 92663

SECTION 63. COMPLIANCE WITH LAWS

Lessee, at its sole cost and expense, shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, including, without limitation, Federal, State, county or municipal, relating to Lessee's use and occupancy of the Premises and/or operation of the Concession whether such statutes, ordinances, regulations and requirements be now in force or hereinafter enacted. This Lease is expressly subject to the laws, regulations and policies of City. Lessee shall deliver to City a copy of any notice from any governmental entity received by Lessee regarding any alleged violation of law regarding the Lease, Premises or the Concession or from any person allegedly entitled to give notice under any conditions, covenants, or restrictions binding or affecting the Premises. The judgment of any court of competent jurisdiction, or the admission by Lessee in a proceeding brought against Lessee by any government entity, that Lessee has violated any such statute, ordinance, regulation or requirement shall be conclusive as between City and Lessee and shall be grounds for termination of this Lease by City.

SECTION 64. INTERPRETATION OF THIS LEASE

The language of all parts of this Lease shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Lease is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the enforcement of any of the remaining covenants and provisions of this Lease. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Lease, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Lease which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

SECTION 65. SURVIVAL

Terms and conditions of this Lease, which by their sense and context survive the expiration or termination of this Lease, shall so survive.

SECTION 66. MODIFICATION

No waiver or modification of any language in this Lease shall be valid unless in writing and duly executed by both parties.

SECTION 67. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Lease are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do

not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Lease.

SECTION 68. BROKERS

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

SECTION 69. INDEPENDENT CONTRACTOR

Lessee is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee or agent of City. Lessee shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Lessee and its officers, agents and employees and all business licenses, if any, in connection with the Lease and/or any services to be performed hereunder.

SECTION 70. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Lease or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

SECTION 71. LEGAL SERVICES SUBCONTRACTING PROHIBITED

Lessee and City agree that City is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. Lessee understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for City; and City shall, subject to Section 70 above, not be liable for payment of any legal services expenses incurred by Lessee.

SECTION 72. GOVERNING LAW

This Lease shall be governed and construed in accordance with the laws of the State of California.

SECTION 73. DUPLICATE ORIGINAL

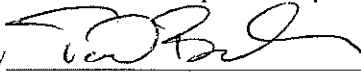
The original of this Lease and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who signed it.

SECTION 74. ENTIRETY

The parties acknowledge and agree that they are entering into this Lease freely and voluntarily following extensive arm's length negotiations, and that each has had the opportunity to consult with legal counsel prior to executing this Lease. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party, or anyone acting on that party's behalf, which are not embodied in this Lease, and that that party has not executed this Lease in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Lease. The Lease, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Lease, the Premises, the leasing of the Premises to Lessee, or the lease term created under this Lease and supersede all prior understandings and agreements, whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized officers the day, month and year first above written. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

LESSEE
RUBY'S HUNTINGTON BEACH, LTD.,
a California limited partnership

By 
Tad Belshe, EVP and Secretary of Ruby's
Diner, Inc., Manager of Ruby's SoCal Diners,
LLC, General Partner of Lessee

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

Mayor

City Clerk

INITIATED AND APPROVED:

Deputy Director of Business
Development

Assistant City Manager

APPROVED AS TO FORM:

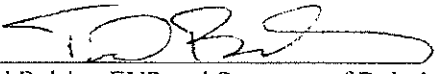
City Attorney

REVIEWED AND APPROVED:

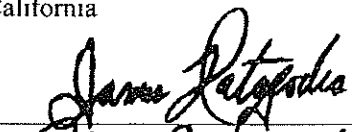

City Manager

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized officers the day, month and year first above written. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.


LESSEE
RUBY'S HUNTINGTON BEACH, LTD.,
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By 
Tad Belshe, EVP and Secretary of Ruby's
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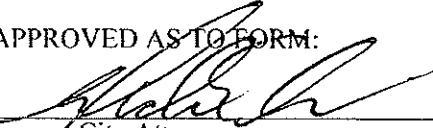

Mayor

City Clerk

INITIATED AND APPROVED:


Deputy Director of Business
Development


Assistant City Manager

APPROVED AS TO FORM:


City Attorney

REVIEWED AND APPROVED:

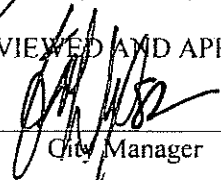
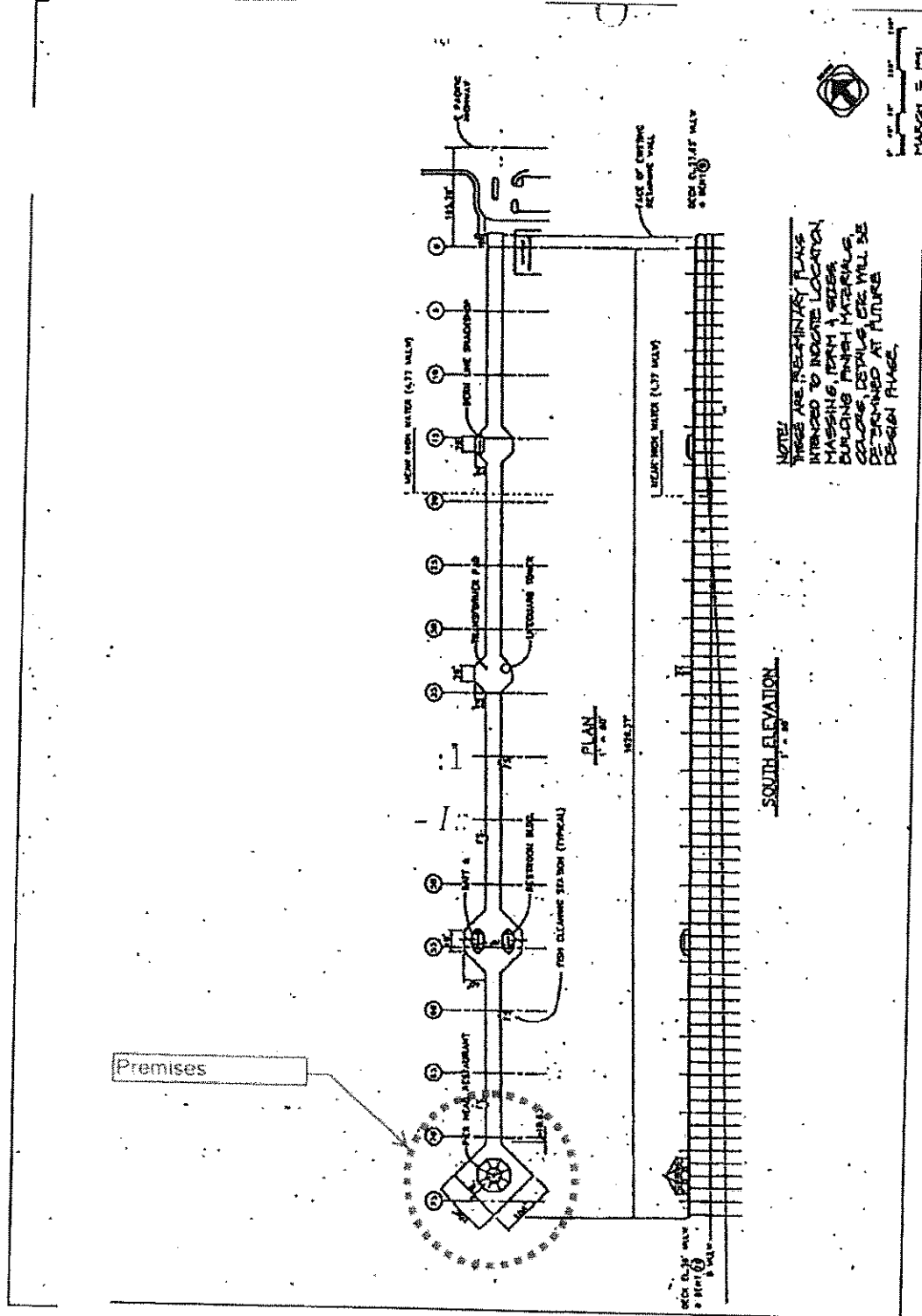
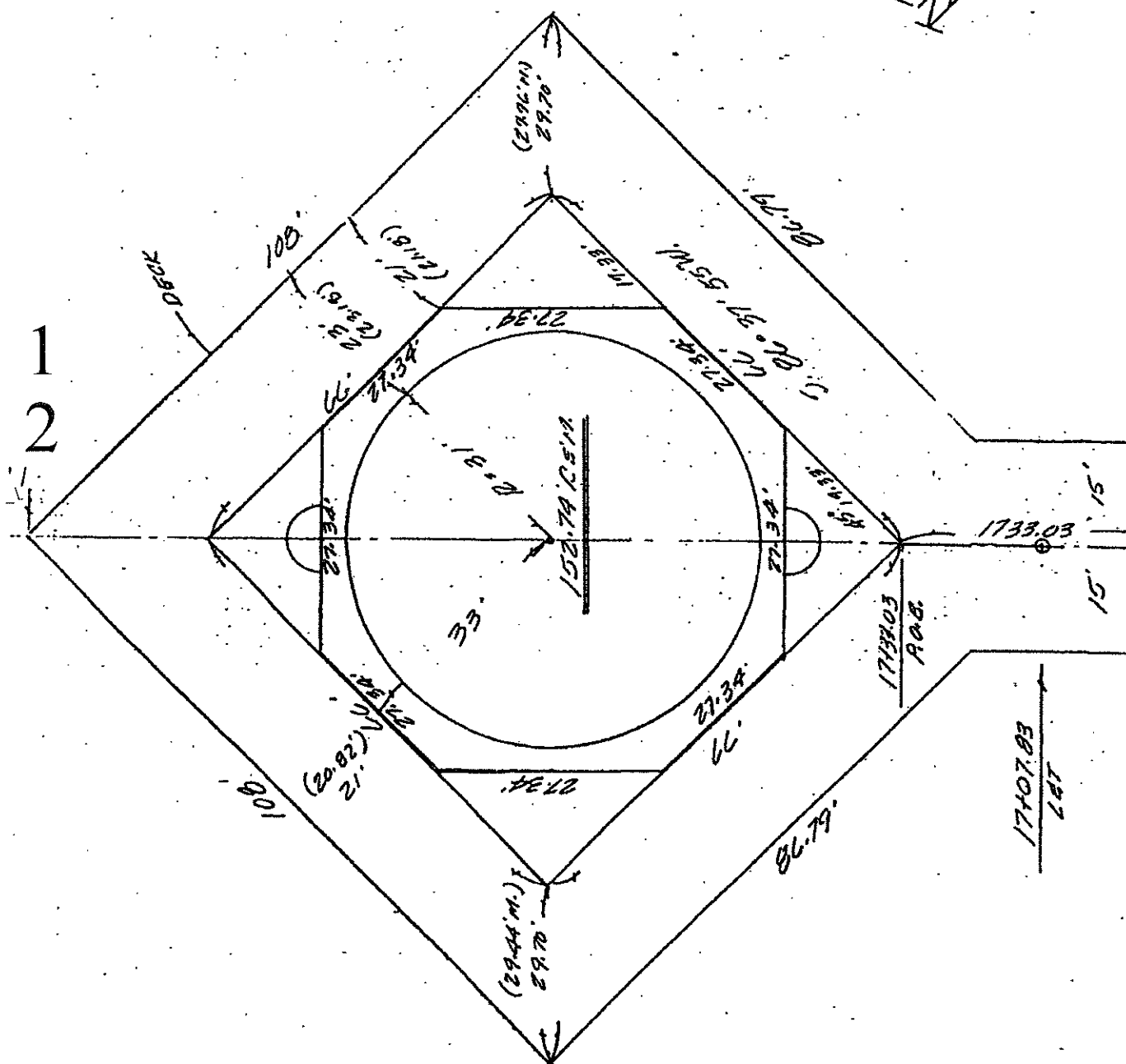

City Manager

EXHIBIT "A - 1"





17179, 70



EXHIBIT "B"

Percentage Rent will be based on the following annual Gross Sales percentages:

<u>Initial Term: Commencement - 5/3/2022</u>	
Annual Sales Volume	Percentage
\$0 - \$800,000.00	6%
\$800,001.00 - \$1,300,000.00	7%
\$1,300,001.00 - \$2,000,000.00	9%
\$2,000,001.00 and above	11%

<u>Extension Term: June 1, 2022 - May 31, 2032</u>	
Annual Sales Volume	Percentage
\$0 - \$800,000.00	6.5%
\$800,001.00 - \$1,300,000.00	7.5%
\$1,300,001.00 - \$2,000,000.00	9.5%
\$2,000,001.00 and above	11.5%

EXAMPLE FOR PERCENTAGE RENT CALCULATIONS:

Assumptions – Annual Gross Sales of \$4,500,000; Minimum Base Rent of \$10,455.43 per month or \$125,465.16 annually.

(Annual Gross Sales Calculation)

<u>Initial Term:</u>	
6% x \$800,000.00	\$ 48,000.00
7% x \$500,000.00	\$ 35,000.00
9% x \$700,000.00	\$ 63,000.00
11% x \$2,500,000.00	\$ 275,000.00
Percentage of Gross Sales	\$ 421,000.00
Annual Minimum Base Rent	\$ (125,465.16)
PERCENTAGE RENT	\$ 295,534.84

<u>Extension Term:</u>	
6.5% x \$800,000.00	\$ 52,000.00
7.5% x \$500,000.00	\$ 37,500.00
9.5% x \$700,000.00	\$ 66,500.00
11.5% x \$2,500,000.00	\$ 287,500.00
Percentage of Gross Sales	\$ 443,500.00
Annual Minimum Base Rent	\$ (125,465.16)
PERCENTAGE RENT	\$ 318,034.84

EXHIBIT "C"

Quarterly Evaluation

Month _____ Year _____ Today's Date _____

_____ Inspected By: _____

Needs Attention:

Doors & Locks	_____	_____
Exterior Walls	_____	_____
Exterior Area	_____	_____
Graffiti Removal	_____	_____
Grease Trap	_____	_____
Hood Grease Filters	_____	_____
Interior Walls	_____	_____
Removal of Bird Droppings	_____	_____
Rest Room	_____	_____
Roof	_____	_____
Rust	_____	_____
Signage	_____	_____
Trash	_____	_____
Trim	_____	_____
Windows	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____

COMMENTS:

ACTION REQUIRED:

AGREED TO: -----

DEFINITIONS

Doors and Locks

Clean and in operable position and condition. All locks shall be regularly checked and maintained. Absolutely no chain locks are allowed. Locks shall only be used on authorized locations.

Exterior Walls

Clean and smooth, void of rust, graffiti, stickers, etching, or other materials or marks that were not originally placed on the walls.

Exterior Area

Outside area around concession building that is utilized by the concessionaire.

Graffiti Removal

All graffiti shall be removed within forty-eight hours including painted or sprayed graffiti, magic markers, stickers, etching, and surf wax. The building shall be kept free of graffiti. Interior rest room graffiti shall be removed on a regular basis not to exceed forty-eight hours.

Grease Trap

Free and clear flowing with regularly scheduled maintenance to prevent buildup or clogging.

Hood Grease Filter

Removed and cleaned a minimum of every three months, and checked regularly and cleaned more often if necessary. Filters shall be replaced at such time as required where volumes are no longer maintained.

Interior Walls

Clean and smooth, void of dirt or corrosion. All fire-rated walls shall be solid and unpenetrated.

Removal of Bird Dropping

The building in its entirety shall be cleaned a minimum of every three months to remove all bird droppings. If bird droppings present a health problem, they shall be removed prior to the minimum three month periods.

Rest Rooms (Plumbing)

Entry mats, floors and carpets shall be kept clean. Walls shall be kept fingermark free. Tile and wall surfaces shall be kept clean. Toilet bowls, rims, tank tops, and bodies shall be kept clean. Mirrors shall be kept clean and streak free. Soap dispensers clean and full. Paper towel dispensers clean and full. Toilet paper dispensers clean and full. All sink and faucet fixtures clean and rust free. Light fixtures clean and functioning. Air fresheners functioning. Trash receptacles clean, lined and emptied regularly.

Roof

Free of debris and cleaned regularly as needed to remove bird droppings, graffiti or vandalism. Roof leaks shall be reported immediately to the Community Services Department.

Rust

No accumulation or degeneration to interior or exterior surfaces. Rusted areas shall be cleaned and painted on a regular basis to avoid long term damage.

Signage

Clean, readable and in good condition. Bulbs in lighted signs shall be replaced as needed within twenty-four hours. No unauthorized signs shall be posted.

Trash

Deposited in designated containers. There shall be no buildup of cardboard boxes, unused equipment, unwanted decorator items, etc. within the trash areas. Trash areas shall be secured from public use to avoid deposit of fish remains.

Trim

Clean and smooth, void of corrosion and rust.

Windows

Clean and void of cracks. No commercial stickers shall be used on windows.

EXHIBIT "D"



Huntington Beach Pier
Remodel Budget Estimate
2016

Flooring	\$25,000
Ceiling	\$5,000
Wall Material	\$5,000
Trim	\$500
Tables	\$13,000
Seating (Upholstery- Stools-Chairs)	\$27,300
Lighting Fixtures	\$6,000
Decor (Art and Misc Decor)	\$5,000
Electrical	\$700
Signage	\$7,000
Lighting	\$30,000
Ruby's Design & Construction Coordination	\$24,000
Permits	\$2,500
Contingency	\$10,000

Cost estimates based on currently know specs and labor rates. Estimates subject to change based on final specs selected, current prevailing rates, and market conditions





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/01/2016

PRODUCER

THADDEUS W. SMITH & ASSOCIATES
3151 AIRWAY AVE. #A2
COSTA MESA, CA 92626
714/241-3072

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Gemini Insurance Company

10833

INSURER B: Liberty International Underwriters

19917

INSURER C:

INSURER D:

INSURER E:

INSURED

RUBY'S HUNTINGTON BEACH, LTD
RUBY'S DINER, INC., ETAL
201 SHIPYARD WAY #E
NEWPORT BEACH, CA 92663

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE TYPE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> DEDUCTIBLE \$25,000 <input type="checkbox"/> PER OCCURRENCE GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	VCGP022601	09/01/16	09/01/17	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	VCGP022601	09/01/16	09/01/17	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EAACC \$ AGG \$
B <input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	1000061619-08	09/01/16	09/01/17	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 EXCESS OF \$1,000,000 \$ OVER PRIMARY \$ WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/>
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
OTHER				

APPROVED AS TO FORM

By:
MICHAEL E. GATES
CITY ATTORNEY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
RE: Ruby's Diner located at Huntington Beach Pier, Huntington Beach, CA.

The City of Huntington Beach, its officers, elected or appointed officials, employees agents, volunteers are included as Additional Insured Lessor as respects liability arising out of action performed by or on behalf of Ruby's Diner, Inc., etal, products and completed operations of Ruby's Diner, Inc. etal, premises owned, occupied or used by Ruby's Diner, Inc. etal. Primary and Non-Contributory Coverage is included. Endorsements #CG2013, CG2011, CG2404 & CG2001 attached.

CERTIFICATE HOLDER

City of Huntington Beach
2000 Main St
Huntington Beach CA 92648

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~WHICH SHALL BE THE LAST NOTICE OF CANCELLATION~~

~~WHICH SHALL BE THE LAST NOTICE OF CANCELLATION~~

AUTHORIZED REPRESENTATIVE

Thaddeus W. Smith

Policy: VCGP022601
Insured Name: Ruby's Diner, Inc.
Number: 40

CG 20 11 04 13

Effective Date: 09/01/2016

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):

All locations for which you and the additional insured have agreed in writing in a contract prior to an occurrence that causes "bodily injury", "property damage" or "personal and advertising injury".

Name Of Person(s) Or Organization(s) (Additional Insured):

Any person or organization when you and such person or organization have agreed in writing in a contract, prior to an occurrence that causes "bodily injury", "property damage" or "personal and advertising injury", that such person or organization be added as an additional insured on your policy.

Additional Premium: \$ incl.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Policy: VCGP022601
Insured Name: Ruby's Diner, Inc.
Number: 41

CG 20 13 04 13

Effective Date: 09/01/2016

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE
OR GOVERNMENTAL AGENCY OR SUBDIVISION
OR POLITICAL SUBDIVISION – PERMITS
OR AUTHORIZATIONS RELATING TO PREMISES**

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

Any State or Government Agency when you and such Agency have agreed in writing in a contract, prior to an occurrence that causes "bodily injury", "property damage" or "personal and advertising injury", that such person or organization be added as an additional insured on your policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
2. The construction, erection or removal of elevators; or
3. The ownership, maintenance or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

Policy Number: VCGP022601
Insured Name: Ruby's Diner, Inc.
Number: 47

CG 24 04 05 09

Effective Date: 09/01/2016

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:
Commercial General Liability Coverage Part

SCHEDULE

Name Of Person Or Organization: Any person or organization when you and such person or organization have agreed in writing in a contract, prior to an occurrence that causes "bodily injury", "property damage" or "personal and advertising injury", that you would provide such person or organization a waiver of transfer of rights of recovery against others to us on your policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Policy: VCGP022601
Insured Name: Ruby's Diner, Inc.
Number: 39

CG 20 01 04 13

Effective Date: 09/01/2016

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



CERTIFICATE OF PROPERTY INSURANCE

DATE
09/01/2016

PRODUCER

Thaddeus W. Smith & Associates
3151 Airway Ave. #A-2
Costa Mesa CA 92626
(714) 241-3072 - Phone
(714) 754-1391 - Fax

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A ARCH SPECIALTY INSURANCE COMPANY

COMPANY B

COMPANY C

COMPANY D

INSURED

RUBY'S HUNTINGTON BEACH, LTD
RUBY'S DINER, INC. ETAL
201 SHIPYARD WAY #E
NEWPORT BEACH, CA 92663

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
A	<input checked="" type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> EARTHQUAKE <input checked="" type="checkbox"/> FLOOD <input checked="" type="checkbox"/> REPLACEMENT COST	ESP0051572-04 LOSS OF RENTS COVERAGE - INCLUDED PER POLICY FORM	09/01/16	09/01/17	<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> PERSONAL PROPERTY <input checked="" type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input type="checkbox"/> BLANKET BLDG & PP <input checked="" type="checkbox"/> Demolition <input checked="" type="checkbox"/> Utility Serv	\$ \$ 5,000,000 \$ Included \$ Included \$ \$ \$ \$ 1,000,000 \$ 500,000
	<input type="checkbox"/> INLAND MARINE TYPE OF POLICY CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER					\$ \$ \$ \$ \$
	<input type="checkbox"/> CRIME TYPE OF POLICY					\$ \$ \$
	<input type="checkbox"/> BOILER & MACHINERY					\$
	<input type="checkbox"/> OTHER					\$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

RE: RUBY'S DINER LOCATED AT HUNTINGTON BEACH PIER, HUNTINGTON BEACH, CA

APPROVED AS TO FORM

By:

MICHAEL E. GATES

CITY ATTORNEY

SPECIAL CONDITIONS/OTHER COVERAGES

Deductibles: \$10,000 Per Occurrence except: 5% Earthquake - minimum \$100,000; 5% Flood - minimum \$25,000 in special flood hazard areas) per unit.

CERTIFICATE HOLDER

CITY OF HUNTINGTON BEACH
2000 MAIN ST.
HUNTINGTON BEACH, CA 92648

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Thaddeus W. Smith

© ACORD CORPORATION 1995



CERTIFICATE OF LIABILITY INSURANCE

09/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Self Insured Solutions

Administrator, California Restaurant Mutual Benefit Corp.

430 N Vineyard Ave.. #102

Ontario, CA 91764

CONTACT

NAME:

PHONE

(800) 592-0047

FAX

(800) 592-2541

(A/C, No, Ext):

E-MAIL ADDRESS: siscerts@selfinsuredsolutions.com

ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: California Restaurant Mutual Benefit Corp.*

12831

INSURER B: State National Insurance Co.

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Ruby's Diner, Inc. Ruby's Diner

Affiliate of California Restaurant Mutual Benefit Corp.

201 Shipyard Way Ste E

Newport Beach, CA 92663

CERTIFICATE NUMBER:**REVISION NUMBER:****COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
							PRODUCTS - COMP/OP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						\$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						\$
	<input type="checkbox"/> OTHER						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ANY OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N		4517-0933	01/01/2016	12/31/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED?	<input checked="" type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$1,000,000.00
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE \$1,000,000.00
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$1,000,000.00
B	EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY			NDE-0812463-15	01/01/2016	01/01/2017	Applicable to WC Statutory Limits and Employers Liability Limits.

DESCRIPTION OF OPERATIONS / LOCATION / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required)

All California Operations

** Waiver of Subrogation applies - see attached **

*Complies with the requirements of the Director of Industrial Relations under the provisions of Sections 3700 to 3705, inclusive, of the Labor Code of California, as amended, and the holder of Master Certificate of Consent to Self-insure No. 4517

APPROVED AS TO FORM

By:

MICHAEL E. GATES

CITY OF HUNTINGTON BEACH

CERTIFICATE HOLDER

City of Huntington Beach
2000 Main St.
Huntington Beach, CA, 92648

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

A. Seegmiller

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

We have the right to recover our payments from anyone liable for a covered injury. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Name of Person or Organization:

City of Huntington Beach
2000 Main St.
Huntington Beach, CA 92648

Insured: Ruby's Diner, Inc.
Ruby's Diner

Policy No.: 4517-0933



City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648
(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk
Robin Estanislau, City Clerk

September 23, 2016

Ruby's Huntington Beach, Ltd.
ATTN: Doug Cavanaugh
201 Shipyard Way, Suite E
Newport Beach CA 92663

Dear Mr. Cavanaugh:

Enclosed for your records is a fully executed copy of the "Lease Between the City of Huntington Beach and Ruby's Huntington Beach, Ltd. For Operation of a Restaurant on the Huntington Beach Pier," approved by the Huntington Beach City Council on September 19, 2016.

Sincerely,

Robin Estanislau, CMC
City Clerk

RE:pe

Enclosure