

Attachment A - Form Lease Agreement RFP 1617-009

LEASE AGREEMENT

This Lease Agreement ("Lease"), effective _____, 2017 ("Effective Date"), is entered into between the CITY OF AVALON, a municipal corporation ("Lessor"), and _____ ("Lessee"), (each individually a "Party" and collectively the "Parties").

RECITALS

A. Lessor is the owner of certain real property, including the improvements thereon, located in the City of Avalon, referred to as the Casino Dock and more accurately described in Exhibit 1 (the "Property").

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, a portion of the Property as described in more detail in the Lease on the terms and conditions set forth herein.

C. Lessee desires to construct a restaurant building improvements on the Property (the "Restaurant"), which has been approved by Lessor. Lessee shall be solely responsible and bear all costs for the construction, operation and maintenance of the Restaurant in conformity with Lessor's approvals during the term of this Lease, but Lessor shall own the Restaurant during and after the Lease term.

LEASE

NOW THEREFORE, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Property. Lessor leases to Lessee, and Lessee leases from Lessor the Property, described in Exhibit 1 attached hereto and incorporated herein by reference, consisting of approximately 2,000 square feet of interior and/or exterior space. Lessor and Lessee agree that if Lessor makes additional space available to Lessee and Lessee accepts such space, that space shall automatically be included in the Property and the terms of this Lease shall automatically apply thereto, unless otherwise agreed by the Parties.
3. Term.
 - (a) *Initial Term*. This Lease shall be effective and binding from and after the Effective Date and will continue, unless sooner terminated in accordance with the provisions of this Lease, for fifteen (15) years following completion of the Restaurant as defined in Section 8(h) below ("Initial Term"). Within ten (10) days following completion of the Restaurant, as defined in Section 8(h), Lessor and Lessee shall confirm the exact dates of the Initial Term in writing.
 - (b) *Renewal Terms*. Lessor shall have two successive options to renew this Lease, the first for a five (5) year period and the second for a five (5) year period (each period a "Renewal Term") on the same terms and conditions as the Initial Term (except for any exercised Renewal Terms), provided Lessor gives Lessee written

notice of intent to renew the Lease at least sixty (60) days but no more than one hundred eighty (180) days prior to the end of the Initial Term or first Renewal Term, as applicable. Lessor's failure to exercise the first Renewal Term shall waive its right to exercise the second Renewal Term. The Initial Term and Renewal Terms are referred to collectively herein as the "Term."

(c) *Termination.* Lessee may terminate the Lease on sixty (60) days' written notice to the Lessor.

4. Rent.

(a) *A Set Monthly Amount or Calculated on a Percentage of Total Sales Basis.* Lessee shall pay Lessor rent each month, the higher of either:

i. Four thousand (\$4,000) per month as the base rent plus any adjustment pursuant to Section 4(a)(ii) below. This is based on approximately 2,000 square feet of interior/exterior space.

ii. An amount equal to eight percent (8%) of all gross receipts at the Property. Gross receipts shall mean the total amounts received from all revenue sources during the relevant period, except admission taxes, sales taxes, California redemption taxes, City of Avalon Use Taxes/fees, reasonable commissions which are paid to third parties and amounts received from activities upon which City Harbor and Use Fees and Admission Taxes are based. For purposes of calculating Gross Receipts, such commissions paid to third parties shall not exceed 20% of the price paid by the consumer/customer.

In the event that Lessor makes additional space available for Lessee's use, that space may be included in the Property, as defined in Section 1 of this Lease, provided that Lessor and Lessee execute an amendment to the Lease to address any additional terms and conditions, including any increase in rent.

The amount of the base rent in Section 4(a)(i) shall be automatically increased at the start of each fourth year of the Initial Term and continuing for any Renewal Term on July 1 in an amount equal to any increase in the most recent Consumer Price Index (Los Angeles / Long Beach) released annually by the U.S. Bureau of Labor Statistics. In the event the Consumer Price Index decreases, no change in rent shall be made.

(b) *Payment Procedures.* Lessee shall remit its monthly rent by no later than the thirtieth day after the end of each month during the Term of this Lease to Lessor at the address stated herein. There shall be no off-season period where rent is reduced or not due; rent shall be due on the thirtieth day of each month regardless of whether the Property was open for business during the month. Lessee is responsible for making the payments required by this section and Lessor will not and is under no obligation to send monthly invoices to Lessee regarding any such payments.

(c) *Under-Payment Penalties.* In addition to the late payment penalties described in Section 19 of this Lease, if Lessor determines that Lessee has under-

reported its income resulting in a rent payment of less than what it should have paid, the following penalties apply:

(i) If the under-reporting of total sales resulted in a rent payment of greater than 90% of the correct rental amount, Lessee shall immediately pay to Lessor the difference, plus a penalty equal to 10% of the difference.

(ii) If the under-reporting of total sales resulted in a rent payment of less than or equal to 90% of the correct rental amount, Lessee shall immediately pay to Lessor the difference, plus a penalty payment equal to the entirety of that month's rent, for each month the under-reporting occurred.

(d) *Disclosure.* At the time that Lessee is required to pay rent each month pursuant to this Section 4, Lessee must provide Lessor with detailed information regarding the total gross receipts for each month, regardless of whether Lessee is required to pay the base rent in Section 4(a)(i).

(e) *Year-end Annual Reconciliation.* Within 30 days after the end of every calendar year during the Term, based on the information provided by Lessee and any independent audit of Lessor, Lessor shall determine: (1) the amount Lessee would have paid for the entire calendar year if Lessee paid the base rent in Section 4(a)(i) each month; and (2) eight percent (8%) of the Lessee's total gross receipts as defined in Section 4(a)(ii), for the entire calendar year. Lessee is responsible for paying Lessor the higher of the two amounts ("Higher Amount"). If Lessee's monthly rent payments paid to Lessor for the entire year are less than the Higher Amount, Lessee shall pay Lessor the difference between what was paid and the Higher Amount within thirty days of receipt of such information from Lessor. If Lessee's monthly rent payments paid to Lessor for the entire year equal more than the Higher Amount, Lessor shall reimburse Lessee the difference between what was paid and the Higher Amount within thirty days of making the determination in this Section 4(e).

5. Use.

(a) *Use.* Lessee shall occupy and use the Property for restaurant purposes, including the installation, maintenance and use of furniture fixtures and improvements necessary to provide and accommodate the preparation of food and beverages, conduct food and beverage sales and consumption and for no other purpose whatsoever. After its construction, the Restaurant shall be open for business at least nine (9) months each year for the Term of the Lease and Lessee may determine their own hours and days of operation. Lessee shall endeavor to keep the restaurant open for a longer period of time subject to favorable weather and business conditions.

(b) *Compliance with Law.* Lessee shall, at all times and at Lessee's expense, comply with all applicable federal, state and local laws, rules, regulations, and orders, and all covenants and restrictions of record regulating the Property and Lessee's use of the Property, including but not limited to any license or permit issued by the Alcohol and Beverage Control Division regarding the Property. Lessee shall not use nor permit the use of the Property in any manner that will violate the same or disturb other property owners or tenants in the areas surrounding the Property or Property.

(c) *Condition of Property.* Lessee has examined the Property and agrees to take possession in an “as is” condition. Lessee acknowledges and agrees that Lessor has made no representations, guarantees or warranties regarding the Property, or its fitness for any particular purpose, or regarding any common areas or improvements thereon, nor has Lessor made representations, guarantees or warranties regarding whether the Property and common areas and improvements thereon comply with applicable laws, rules, regulations, orders, or any covenants or restrictions of record in effect at the Effective Date of this Lease. Lessee assumes all responsibility regarding the California Occupational Safety Health Act, the legal use and adaptability of the Property and compliance with all applicable laws, rules, regulations, orders and covenants or record in effect during the Term of this Lease relating to the Property except as otherwise specifically stated in this Lease.

6. Hazardous Waste and Trash Disposal. Lessee shall not use, generate, store or dispose of any Hazardous Materials on the Property or permit the contamination of the Property by Hazardous Materials. For the purpose of this section, Hazardous Materials shall include, without limitation, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances,” hazardous wastes,” “extremely hazardous wastes” or “restricted hazardous wastes” or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. sections 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. sections 1317, *et seq.*; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time. Notwithstanding any other provision of this Lease, Lessee agrees to comply promptly, and at Lessee’s sole cost, with all applicable federal, state and local laws, rules regulations, permits and orders governing the use, management, storage, handling, cleanup, removal, disposal and shipping of Hazardous Materials. Lessee shall dispose of all trash and waste generated at the Property in a trash container at a location designated by Lessor.

7. Special Conditions.

(a) *Outdoor Dining Tables and Chairs.* Outdoor dining tables and chairs on the Property are not required to be brought indoors during hours in which the Lessee is not operating a business on the Property.

(b) *Compliance with City Outdoor Dining Guidelines.* Lessee must comply with all of the requirements of the City of Avalon’s current Guidelines for Outdoor Dining as approved by the City Council.

8. Construction of Restaurant.

(a) General. Lessee shall have the right, at Lessee's sole cost and expense, to construct the Restaurant and related improvements on the Property in accordance with the provisions of this Section 8.

(b) Approvals. Lessee shall construct the Restaurant in conformity with the permits and approvals issued by City of Avalon. Lessee shall use reasonable efforts to apply for and obtain any additional final licenses, permits, authorizations, consents, certificates, waivers and approvals required by (i) applicable government and private agencies or boards having jurisdiction, and (ii) any utility provider (each individually, an "Approval Authority"), as may be necessary for the development, construction and operation of the Restaurant on the Property, including, but not limited to, environmental licenses, permits, authorizations, consents, certificates, waivers and approvals, land development approvals, site plan approvals, zoning permits, use permits, building permits, occupancy permits, zoning changes, zoning relief (such as variances and special exceptions), any modifications or amendments to existing agreements or approvals with any Approval Authority as may be necessary for the development, construction and operation of the Restaurant, and any easements (that do not burden the Property, unless approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed) necessary in connection with such development, construction and operation of the Restaurant (collectively, the "Approvals").

(c) Lessor's Review of Plans. Prior to commencing any construction, Lessee shall comply with the following:

i. Lessee shall submit to Lessor schematic drawings depicting in concept the new construction. Lessor shall not unreasonably withhold its approval in concept. Any disapproval shall be in writing and shall specify the reasons therefor, and failure to so disapprove within twenty (20) business days after delivery of such schematics to Lessor shall constitute approval.

ii. Lessee shall submit to Lessor for Lessor's approval a copy of Lessee's complete final construction plans and specifications, a copy of Lessee's contract with the general contractor, evidence of the general contractor's financial condition and satisfactory evidence that Lessee has obtained all necessary governmental permits and approvals necessary for the construction of the improvements in accordance with Lessee's complete final construction plans and specifications.

(i) Final working plans and specifications shall substantially conform to the schematic plans previously approved by Lessor. Changes from the schematic plans shall be considered to be within the scope of the schematic plans and shall not require Lessor's approval if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for a permit or approval.

(ii) Lessor and Lessee shall execute, enter into and deliver to each other, originals of an assignment of plans and specifications which shall give Lessor the right but not the obligation to acquire Lessee's rights and to assume Lessee's obligations with respect thereto should Lessee default. Lessee shall deliver to Lessor an original of an architect's consent and certification duly executed and entered into by Lessee's architect.

(iii) The contract shall give Lessor the right but not the obligation to acquire Lessee's rights and to assume Lessee's obligations under that

contract should Lessee default. Lessor and Lessee shall execute, enter into and deliver to each other, originals of an Assignment of Construction Contract as to each contract to which Lessee is a party, and Lessee shall deliver to Lessor an original of a Contractor's Consent and Certification as to each party who contracts with Lessee, duly executed and entered into by such party.

(iv) The plans and specifications and construction contract shall bear evidence of having been approved by Lessee's construction lender, if any.

(v) If Lessor does disapprove any item submitted for its approval, it shall state the specific reasons therefor in writing, and the failure to so disapprove within twenty (20) business days after delivery to Lessor shall constitute approval.

(d) Notice of Nonresponsibility. No work of any kind shall be commenced on and no building or other materials shall be delivered for any improvements, nor shall any other building or land development work be commenced or building materials be delivered to the Property until at least ten (10) days after written notice has been given by Lessee to Lessor of the anticipated commencement of such work or the anticipated delivery of such materials. Lessor shall, at any and all times during the term of his Lease, have the right to enter the Property and to post and maintain on the Property and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. The work prohibited by this section until ten (10) days' written notice thereof has been given to Lessor includes actual construction work, any site preparation work, installation of utilities, street construction or improvement work, or any grading or filling of the Property.

(e) Compliance. All work done pursuant to this Section 8 shall be done in full compliance with all applicable statutes, regulations, ordinances, orders, rules, conditions, codes and other laws pertaining to such work. Lessee specifically acknowledges that construction on the Property will be subject to the Americans with Disabilities Act (the "ADA") and all regulations issued pursuant thereto. All work performed on the Property shall be done in good workmanlike manner and only with materials of good quality and high standard.

(f) Clean Up. Lessee shall at all times keep the Property free from unreasonable or hazardous accumulations of waste materials and/or rubbish caused by any work on the Property. Immediately after full and final completion of the work, Lessee shall remove from and about the Property all waste materials and rubbish and all tools, construction equipment, construction machinery and surplus materials. All work required by this section shall be done at Lessee's sole cost.

(g) Notice. Should any claims of lien be filed against the Property or the improvements located thereon, or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

(h) Completion. Lessee shall diligently pursue completion of the construction of all improvements, additions and alterations. Lessee shall complete

construction within one hundred eighty (180) days after the commencement of construction; provided, however, that the time for completion shall be extended for as long as Lessee shall be prevented from completing the construction by Lessor Delay or Force Majeure. However, regardless of cause, failure to complete all construction within one (1) year following commencement of construction shall at Lessor's election terminate this Lease. For the purposes of this Lease, construction shall be deemed to have been completed when a valid certificate of occupancy has been issued for such improvements and Lessee's architect shall have furnished Lessor with a written certification that the improvements were completed substantially in accordance with the approved final plans and specifications.

i. Lessor Delay. "Lessor Delay" shall mean any delays caused in whole or in part by or through Lessor and/or Lessor's employees, representatives or agents, including, without limitation, Lessor's failure to reasonably cooperate with Lessee in the procurement of Approvals, and/or failure to approve any item requiring Lessor's approval in the timeframes provided (and if no timeframe is provided, than in a reasonable timeframe), and/or any unreasonable interference by any of Lessor's employees, representatives and/or agents with any obligations to be performed on the part of Lessee. In the event Lessee notifies Lessor of circumstances that could result in a potential delay in the construction of the Restaurant, Lessor and Lessee shall at all times act reasonably and cooperate with each other to mitigate such delay.

ii. Force Majeure. "Force Majeure" shall mean an act of God, an act of the public enemy, strike, lockout, boycott, picketing, riot, insurrection, fire, or any governmental law, order, rule, regulation or ordinance, or any other occurrence not within the reasonable control of the party claiming Force Majeure, excluding financial inability to pay debts. Any prevention, delay, nonperformance or stoppage due to Force Majeure shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance or stoppage, except the obligations imposed by this Lease for the payment of rent, taxes, insurance or other monetary obligations, provided the party claiming such excuse notifies the other party of the force majeure event allowing the excuse within ten (10) business days of the first day of the event.

(i) As-Built Plans. Within ninety (90) days after completion of construction, Lessee shall furnish Lessor, at Lessee's expense, with one set of Mylar or Cronoflex "As-Built" plans, according to scale, showing such improvements as constructed in detail, including the location of underground and above ground utility lines.

(j) Indemnity. Lessee shall, to the maximum extent permitted by law, indemnify, defend and hold Lessor harmless from any and all claims, demands, liens, damages, losses, actions, liabilities, injuries and/or expenses (including, without limitation, reasonable attorneys' fees), in any manner related to, arising out of and/or resulting from, the performance or nonperformance of any work done pursuant to this Lease by or on behalf of Lessee, or the payment or nonpayment therefor. Lessor's indemnity rights under this section shall also inure to the benefit of any and all of Lessor's employees, agents, trustees, heirs, beneficiaries, trusts, successors, assigns, transferees and representatives, and to the benefit of any and all persons and/or legal entities who are, could be, or are alleged to be, liable for the obligations of Lessor and all of Lessor's employees, agents, trustees, heirs, beneficiaries, trusts, successors, assigns, transferees

and representatives. The rights and obligations of indemnity provided in this section shall not be exclusive and shall be in addition to such other rights and obligations as otherwise exist independent of the provisions of this section. The rights and obligations created by this section shall survive the completion of the construction and installation work, the payment therefor, and the acceptance thereof.

(k) Alterations. Lessee shall make no alterations to the completed improvements without the prior written consent of Lessor which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee shall be entitled to make alterations which are neither structural nor visible from the exterior or which cost less than TEN THOUSAND DOLLARS (\$10,000) without Lessor's consent, so long as Lessee gives Lessor at least ten (10) days advance written notice of its intention to make such alterations.

(l) Mechanics' Liens. At all times during the term of this Lease, Lessee shall keep the Property and all building and improvements now or hereafter located on the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property.

i. Should Lessee fail to pay and discharge or cause the Property to be released from any such lien or claim within twenty (20) days after service on Lessee of written request from Lessor to do so, Lessor may pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as Lessor may deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by Lessor, reimburse Lessor for the full amount paid by Lessor in paying, adjusting, compromising, and discharging such lien or claim of lien, including any attorney's fees or other costs expended by Lessor, together with interest at the rate of ten percent (10%) per annum from the date of payment by Lessor to the date of repayment by Lessee.

ii. Lessee agrees to and shall defend, indemnify, protect and save Lessor harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under it and from any other matter arising out of or in connection with the design or construction of any improvements under this Lease; provided, however, that nothing in this section shall be construed as a provision, clause, covenant or agreement which, under the provisions of Civil Code Section 2782 would be against public policy and void and unenforceable. All indemnity rights and duties shall survive the expiration or termination (for any cause) of the term of this Lease.

iii. In the event any lien is recorded, Lessee shall, within thirty (30) days after receipt of notice thereof, furnish the bond described in California Civil Code Section 3143 or any successor statute, which results in the removal of such lien from the Property.

(m) Ownership of Improvements. Lessor shall own all improvements built on the Property after their completion as defined in Section 8(h).

(n) Inspection by Certified Access Specialist. Lessor discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) of which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Lessee acknowledges and agrees that, if Lessee wishes to have the Premises inspected by a CASp: (i) Lessee must notify Lessor on or before the date when Lessee executes this Lease pursuant to the election below; (ii) the inspection will be at Lessee's sole cost and expense; (iii) the inspection must be scheduled through Lessor and in coordination with the Property's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Lessee's responsibility of ; and (v) Lessee must provide a copy of the CASp report to Lessor on completion. By initialing below, Lessee represents that:

Lessee wishes to have a CASp inspection of the Premises Initials: _____

Lessee hereby waives its right to have a CASp inspection of the Premises Initials: _____]

9. Lessee's Repair and Maintenance Obligations.

(a) Lessee shall keep in good order, condition and repair, and shall replace, if necessary, the Property and every part thereof, structural and nonstructural occupied or used by Lessee, whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements, or the age of such portion of the Property. This includes, but is not limited to, glazing, plumbing, heating, air conditioning, ventilation, electrical and lighting fixtures and facilities, all equipment within the Property, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, tree-trimming, and all fences and signs located on the Property, as well as the outdoor seating area.

(b) The paint color of the exterior of the Property shall at all times be the colors to which the Lessor has chosen at the time of execution of this Agreement. If Lessor changes the color of the Casino Dock building at any time during the Term, Lessee is required, upon thirty (30) day written notice by the Lessor, to paint the exterior of the Property to be the same color as the new color of the Casino Dock identified in the notice at Lessee's own cost.

(c) To the extent that any such repairs, maintenance, or painting obligations imposed by this Section 9 involve, in the determination of the Lessor, the leased property of another tenant(s) of Lessor who leases space in the same building,

such as a common roof, Lessee's obligations under this Section 9 will be divided proportionately between Lessee and the other tenants of Lessor, if any, based on the number of square feet leased by each.

10. Surrender; Ownership of Improvements and Fixtures. On the last day of the Term of this Lease, or on the date this Lease is earlier terminated, Lessee shall surrender the Property to Lessor in an operable, well-maintained condition, ordinary wear and tear and damage by casualty excepted, clean and free of debris. Notwithstanding the fact that Lessee shall be constructing the improvements to the Property, from and after the commencement date of the Lease, Lessor shall own all improvements and fixtures constructed or placed on, under and above the Property by Lessee, and Lessee's interest shall be a leasehold interest in the Property. Lessor shall have no obligation to maintain the improvements or the Property during the Lease Term. Lessee hereby agrees to indemnify and defend Lessor against, and hold it harmless from, any damage or liability incurred by Lessor as a result of the Property not being in good condition, normal wear and tear excepted, upon Lease Termination. Lessee's improvements and fixtures shall remain on the Property following the expiration or the earlier termination of this Lease and shall be surrendered to Lessor. However, any restaurant-related fixtures such as ovens, stoves, and freezers shall be the property of Lessee, except that upon expiration or the earlier termination of the Lease. Lessor shall have the option to purchase the restaurant-related fixtures for their fair market value as calculated at the time of Lease expiration or termination. In the event Lessor does not purchase the restaurant-related fixtures, Lessee may remove such restaurant-related fixtures and shall repair any damage to the Property occasioned by such removal.

11. Lessor's Right to Undertake Lessee's Obligations. If Lessee fails to perform any of Lessee's obligations under any section of this Lease, Lessor may, at its option (but shall not be required to), enter upon the Property after ten (10) days' prior written notice to Lessee (except in the case of an emergency, as determined by Lessor, in its sole discretion, in which case no notice shall be required), and perform such obligations on Lessee's behalf. Any costs incurred by Lessor pursuant to this section, including interest thereon, shall become due and payable to Lessor together with Lessee's next rent installment.

12. Damage to Property. In the event that repairs are necessary to alleviate structural hazards because the Property is damaged by circumstances not caused by the negligence or willful misconduct of Lessee, its employees, contractors, agents, invitees or guests, Lessee shall inform Lessor in writing of such necessity.

(a) Lessor's Obligation to Rebuild Premises. On any damage due to fire or other casualty, Lessor will, at its expense and subject to receipt of insurance proceeds under Section 15, restore the Premises (including Lessee leasehold improvements but excluding Lessee's trade fixtures, inventory, and other personal property), the building in which the Premises are located, and all common area improvements to substantially their condition prior to such casualty. Lessor will undertake such restoration with due diligence and in any event will commence restoration within 60 days after such casualty and complete such restoration within 180 days after such casualty. The dates by which Lessor is to begin and complete said repairs or restoration may be deferred to the extent due to an event of force majeure.

Provided the restoration is not so delayed, the restoration will be completed within 270 days after the fire or casualty.

(b) Damage During Last 18 months of Term. Despite the foregoing, if the Premises are totally destroyed, or if the Property is destroyed to an extent of at least 20 percent (20%) of the then full replacement cost thereof as of the date of destruction, then if the destruction occurs during the last 18 months of the Term, Lessor and Lessee will each have the right to terminate this Lease; provided that if Lessor elects to terminate, such cancellation will be of no force and effect if Lessee gives Lessor written notice within thirty (30) days after receipt of Lessor's notice of termination that Lessee elects to renew this Lease under Section 3 above. On any such renewal, this Lease will remain in full force and effect, and the Premises will be restored in accordance with the terms and conditions of this Section 12. In each case, the termination right may be exercised by the terminating party giving written notice to the other party within thirty (30) days after the date of destruction.

(c) Distribution of Proceeds. In the event of the termination of this Lease under this Section 10, all proceeds from the Fire and Extended Coverage insurance carried under Section 15 and all insurance covering the Premises and Restaurant, Lessee's leasehold improvements, but excluding proceeds for trade fixtures, merchandise, signs, and other personal property, will be disbursed and paid to Lessor. In the event that this Lease is not terminated, the proceeds of the property insurance described in Section 9 applicable to the Lessee's Work and Lessee's leasehold improvements including proceeds, if any, for trade fixtures, merchandise, signs, and other personal property will be promptly made available and released to Lessee, and the proceeds of the property insurance described in Section 17 applicable to the Property, including the Premises (other than the nonstructural improvements installed by Lessee, trade fixtures, merchandise, signs, and other personal property), will be promptly made available and released to Lessor.

(d) Abatement. In the event of repair, reconstruction, and restoration, as provided in this Section 12, base rent payable under this Lease will be abated proportionately with the degree to which Lessee's use of the Premises is impaired during the remainder of the period of repair, reconstruction, and restoration. Lessee will not be entitled to any compensation or damages from Lessor for loss of use of the whole or any part of the Premises or the building of which the Premises are a part, Lessee's personal property, or any inconvenience or annoyance occasioned by such damage, repair, reconstruction, or restoration. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition and repair.

13. Alterations and Additions. Except for the placement of tables, chairs and umbrellas as approved by the City Manager and provided that such placement is consistent with the City of Avalon's current Guidelines for Outdoor Dining, Lessee shall not make any alterations, improvements, additions, Utility Installations exceeding \$5,000 (Five Thousand Dollars) in value, hang or paint any signs visible from the exterior of the Property, or make any change to the exterior of the Property, without Lessor's prior written consent. The term "Utility Installation" shall mean installation of carpeting, window

coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and structural changes. If Lessor authorizes any alterations, improvements, additions, or Utility Installations, all such improvements and any required Approvals shall be Lessee's sole responsibility and such improvements shall be installed and removed at Lessee's sole cost and expense. Upon the removal of any improvement, alteration, addition or Utility Installation, Lessee shall restore the Property to its prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements. Should Lessee make any alternations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee immediately remove any or all of the same.

14. Release of Claim For Relocation Benefits. Lessee hereby acknowledges and agrees that Lessee has no claim or right to relocation benefits or compensation of any kind or nature upon termination of this Lease for any reason, even if such termination was made by the unilateral election of Lessor in its sole discretion. Lessee expressly waives any and all claims or rights to receive relocation benefits or compensation of any kind or nature. Lessee acknowledges that Lessor would not enter into this Lease but for this acknowledgment and waiver by Lessee. During any period of repair or reconstruction by Lessor during the Term of this Lease that requires Lessee to vacate the Property, Lessor shall be under no obligation to provide alternative space to Lessee, but Lessee shall be relieved of the obligation to pay rent during such time that Lessee is unable to utilize the Property. Lessee shall vacate the Property within sixty (60) days' written notice to vacate for such purpose and shall be solely responsible for all costs of vacating from and relocating to reconstructed or newly constructed space, if any is available.

15. Insurance. The Lessee shall provide the Lessor with a copy of insurance upon execution of the Lease and upon renewal of insurance as follows:

(a) Workers Compensation Insurance. The Lessee is required to provide evidence of workers' compensation coverage as follows:

- i. Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- ii. Employers Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.
- iii. The policy must include a written waiver of the insurer's right to subrogate against the City of Avalon.

(b) Liability Insurance. For the Term of the Lease, Lessee shall maintain and keep in full force Commercial General Liability Insurance no less broad than ISO form CG 00 01 against any liability arising out of the ownership, use occupancy, or maintenance of the Property, and operation of Lessee's business at the Property and all appurtenant thereto when used by Lessee. Such insurance be no less than the following:

- i. Minimum Limits: 1,000,000 per Occurrence; 2,000,000 General Aggregate; the General Aggregate shall apply separately to each location.
- ii. Prior written consent is required if the insurance has a deductible or self-insured retention in excess of \$25,000.
- iii. The City of Avalon must be an additional insured for liability arising out the ownership, maintenance or use of that part of the premises leased to the Tenant/Lessee/Concessionaire (ISO form CG 20 11 or equivalent).
- iv. The insurance provided to the City of Avalon as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by the City of Avalon.
- v. The policy must cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

(c) Property Insurance.

- i. Prior to Lessee's entry upon the Property and for the Term of the Lease, Lessee shall obtain and keep in full force and effect a policy of insurance covering loss or damage to the Property, in the amount of the full replacement value thereof, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, commonly known as "broadform coverage." Lessee shall provide Lessor a copy of this insurance policy upon execution of this Lease.
- ii. Lessee shall also insure its fixtures, equipment and Lessee improvements on the Property at its sole cost and expense.
- iii. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.
- iv. Lessee must name the City as Loss Payee on its property policy.

(d) *Course of Construction.* Until construction is completed on the Property, or during any improvements construction, Course of construction insurance in an amount not less than the full value of the improvements constructed on the Property covering all construction activities on the Property.

(e) Restrictions; Endorsements.

- i. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies during the Term of this Lease.

All policies of insurance shall be endorsed to: (1) name Lessor (and at Lessor's option, any additional parties designated by Lessor) as an additional insured; (2) provide that such insurance is primary to any policy of Lessor, which shall not be called upon to contribute in any way; and (3) provide that the policy shall not be cancelled, terminated or modified without first providing thirty (30) days' prior written notice to Lessor.

- ii. All insurance policies must be issued by an insurer with an A.M. Best rating of at least A:VII. Lessee shall provide immediate written notice if (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.

16. Indemnification and Release.

(a) *Indemnification.* Lessee shall indemnify, defend, reimburse and hold harmless Lessor from and against any and all demands, claims, losses, damages or liabilities of any kind or nature, including claims for damage to property or persons, including wrongful death ("Claim"), arising from or in connection with any act or omission of Lessee, including Lessee's active and passive negligence or Lessee's use of the Property or Property under this Lease, including, without limitation, any activity, work or things done, permitted or suffered by Lessee in or about the Property or elsewhere on the Property and any breach or default by Lessee of this Lease. If any action or proceeding is brought against Lessor by reason of any such Claim, Lessee's obligation to defend the same shall be done with counsel approved in advance by Lessor.

(b) *Release.* Lessee hereby agrees that Lessor shall not be liable for, and hereby waives and releases Lessor from, any injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, agents, invitees, guests, or any other person on the Property, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents, contractors, guests or invitees caused by any reason whatsoever, including without limitation, by fire, steam, electricity, gas, water, rain, the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures on the Property or Property, or from any other cause or condition arising upon the Property or upon other portions of the Property which the Property are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee except to the extent such injury or loss is caused by Lessor's sole gross negligence or willful misconduct. Lessor shall not be liable for any damages arising from any act or neglect of any other lessees or possessors, if any, of the Property.

17. Utilities. Lessee shall arrange and timely pay for all gas, heat, light, disposal, power, and any other utilities and services needed or supplied to the Property, together with any taxes thereon.

18. Assignment and Subletting.

(a) Except as otherwise provided below, Lessee shall not convey, assign, transfer, mortgage, pledge, sublet or encumber any interest in the Property during the Term of this Lease, nor allow any other person (the employees, agents, servants and invitees of Lessee excepted) to occupy or use the Property, or any portion thereof, without Lessor's prior written consent, which may not be unreasonably withheld.

(b) Any attempted conveyance, assignment, transfer, mortgage, pledge, sublet, or encumbrance shall be void where such consent has not been obtained, and the original Lessee shall remain responsible for any unpaid rents, fines, fees, or other liabilities arising from or related to the Property.

(c) Any subletting approved by Lessor shall not relieve Lessee of any of its obligations or liabilities under this Lease, and both Lessee and any subsequent lessor(s) will be deemed to be bound by this Lease.

(d) Any dissolution, merger, consolidation, or other reorganization of Lessee or sale which results in a change of controlling persons shall be deemed an assignment of this Lease. Any such assignment or subletting without advance written consent of Lessor shall be void, and shall, at the option of the Lessor, constitute a default under the terms of this Lease.

(e) Lessee may transfer this Lease upon the sale of the business or other transfer of substantially all of the assets of Lessee in connection with the business at the Property, including but not limited to the restaurant business, the good will associated with the restaurant business, equipment, and furniture, provided Lessee first (1) provides Lessor with a copy of any purchase and sale agreement; (2) obtains Lessor's written consent, which shall not be unreasonably withheld; and (3) pays to Lessor a lease transfer fee equal to five percent (5%) of the sale price of Lessee's business ("Transfer Fee"). The Transfer Fee shall not apply to a transfer of this Lease upon the transfer of a controlling interest in Lessee's business to a member of the immediate family of such controlling person, or to a transfer of the controlling interest to an inter vivos trust in which such controlling person is the trustee of the trust and a member of the immediate family. "Immediately family" means spouse, parents, children, and brothers and sisters.

19. Defaults and Remedies.

(a) *Defaults.* In addition to those items already designated to be a breach or default of this Lease elsewhere in the Lease, the occurrence of any of the following events shall be a material breach of this Lease and shall constitute an event of default:

i. Abandonment, vacation, or surrender of the Property by Lessee without Lessor's prior written consent (failure to occupy and/or operate the Property for ten (10) consecutive days shall be deemed an abandonment and vacation, unless at least ten (10) days before failing to occupy or operate the Property Lessee gives Lessor written notice that Lessee intends to continue using the Property and will continue maintaining the Property while it is vacant, or the dispossession of Lessee from the Property (other than by Lessor by process of law or otherwise).

ii. The failure by Lessee to make any payment of rent or any reimbursement or payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Lessee.

iii. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, if the failure has continued for a period of ten (10) days after Lessor demands in writing that Lessee cure the failure, provided however, that if the nature of Lessee's default is such that more than ten (10) days are reasonably required for its cure, in Lessor's sole discretion, Lessee shall not be deemed to be in default if Lessee commenced such cure within said 10-day period and thereafter diligently prosecutes such cure to completion to the satisfaction of Lessor.

iv. The making by Lessee of any general arrangement or assignment for the benefit of any creditor, Lessee becoming a "debtor" as defined in 11 U.S.C. 101; the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(b) *Remedies.* In the event of any such material breach or default by Lessee, Lessor may at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach, do any of the following:

i. Terminate the Lease on thirty (30) days' written notice to Lessee, in which case Lessee shall immediately surrender possession of the Property to Lessor on the termination date specified by Lessor. In such event, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Property, including all attorneys' fees and court costs incurred, if any; expenses of reletting, including necessary renovation and alteration of the Property, reasonable attorneys' fees, and any real estate commission actually paid in connection with such reletting; the value of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessor proves could not reasonably be avoided; and that portion of the leasing commission, if any, paid by Lessor for the unexpired Term of this Lease.

ii. Pursuant to California Civil Code section 1951.4, maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned or vacated the Property. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

iii. Pursue any other remedy available to Lessor at law or in equity.

20. Encumbrances Of Leasehold Estate; Mortgagee Protection.

(a) Leasehold Mortgage Authorized; Fee Not Subordinated. Lessee may, at any time and from time to time during the term of this Lease, encumber Lessee's leasehold estate in favor of a "Lender," as hereinafter defined, under a leasehold mortgage, deed of trust or mortgage or other security instrument (collectively the "mortgage") without the consent of Lessor, so long as such leasehold estate is the primary security for the debt evidenced thereby.

(b) The mortgage, deed of trust or other security instrument shall affect only Lessee's leasehold estate, and shall be subject to all of the terms and provisions of this Lease. In that regard, Lessor's fee interest shall not be encumbered or subordinated.

(c) As used in this Lease, the term Lender shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university real estate investment trust or pension fund, or any other lender of substance which performs functions similar to any of the foregoing and has assets in excess of SEVENTY-FIVE MILLION DOLLARS (\$75,000,000.00) at the time of the lending.

(d) Notice to and Service on Lender. Lessor shall mail to Lender a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee pursuant to or relating to this Lease. Lessee shall at all times keep Lessor informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lender by Lessor shall be deemed duly served on or given to Lender when deposited in the United States mail, first-class, postage prepaid, addressed to Lender at the last mailing address for Lender furnished in writing to Lessor by Lessee or Lender. Lessor's failure to send notice to Lender shall in no way invalidate any action taken with respect to Lessee, or extend any cure period which Lessee might otherwise have had.

21. Real Property Taxes. Lessee hereby recognizes that this Lease may create a possessory interest subject to property taxation pursuant to Revenue and Taxation Code section 107.6, and that Lessee may be subject to the payment of property taxes levied on such interest.

22. Late Charges. Lessee acknowledges that late payment of rent or any sums due under this Lease will cause Lessor to incur costs not contemplated herein, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any sum due from Lessee is not received by the day it is due, then without requirement for notice to Lessee, Lessee shall pay a late charge of ten percent (10%) per month, plus interest at the rate of ½ of 1% (.005%) per month or portion thereof, from the date the rent becomes due. The Parties agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment. Acceptance of such late charge shall in no event constitute a waiver of Lessee's default, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. In the event that a late charge is payable for three (3) consecutive installments of rent, then the minimum monthly rent

shall automatically become due and payable quarterly in advance, rather than monthly. The quarterly advance payments of rent will continue until Lessor notifies Lessee in writing.

23. Severability. If any portion of this Lease is ruled by a court of competent jurisdiction to be invalid, the remaining portions shall remain in full force and effect.

24. Entire Agreement; Amendments. This Lease contains all agreements of the Parties with respect to the Property. No prior agreement or understanding pertaining to any such matter shall be effective, whether oral or in writing. This Lease may only be modified in writing, signed by the Parties.

25. Notices. Any notice required or permitted to be given under this Lease shall be in writing and given by personal delivery or by first class mail to the address and person below. Either Party may, by notice to the other, specify a different address for notice purposes. Notice given by personal delivery shall be deemed received upon personal delivery. Notice given by mail shall be deemed received three (3) days after deposit in the U.S. Mail.

Lessor:	City of Avalon P.O. Box 707 Avalon, California 90704 Tele: (310) 510-0220 Fax: (310) 510-2478 Attention: Administration- Leases
Lessee:	Tele: Fax: Attention:

26. Waivers. The waiver or failure to enforce any provision of this Lease by Lessor shall not be deemed to be a waiver of any future breach of that same provision or of any other provision of this Lease. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any provision of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

27. Holding Over. Lessee has no right to retain possession of the Property or any part thereof beyond the expiration or termination of this Lease. If Lessee, with Lessor's consent, remains in possession of the Property or any part of the Property after the expiration or termination of the Term of this Lease, such occupancy shall be a tenancy from month to month subject to all the provisions of this Lease.

28. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law or in equity.

29. Binding Effect; Choice of Law. This Lease shall be binding upon and inure to the benefit of the Parties, their personal representatives, heirs, successors and assigns. This Lease shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Los Angeles County.

30. Attorneys' Fees and Costs. If either Party brings an action to enforce the Terms of this Lease or declare the rights of the Parties under this Lease, the prevailing Party shall be entitled to recover all costs and expenses incurred in such action, including reasonable attorneys' fees as fixed by the court or arbitrators.

31. Right to Enter Property. Lessor and Lessor's agents shall have the right to enter the Property, at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Property or Property as Lessor may deem necessary or desirable. Lessor may, at any time, place on or about the Property any "For Sale" signs and Lessor may, at any time, during the last 120 days of the Term of this Lease place on or about the Property any "For Lease" signs.

32. Records; Audit. Lessee shall keep records, reports and books of account substantially in accordance with general accepted accounting principles to reflect accurately the gross receipts, expenditures and net income of Lessee concerned with and related to its operations and activities under this Lease. Lessor shall have the right to inspect and audit Lessee's financial accounts, books and records to ensure Lessee's compliance with this Lease, at any time during the Term of this Lease. Lessor will provide a minimum written notice of the request to audit forty-eight (48) hours in advance of the audit.

33. Nondiscrimination. Lessee covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the use, occupancy, tenure, or enjoyment of the Property, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of employees, contractors or vendors in the Property.

34. Quiet Possession. Upon Lessee's payment of the rent for the Property and observing and performing all of the covenants, conditions and provisions to be observed and performed under this Lease, Lessee shall be entitled to have quiet possession of the Property for the Term of this Lease subject to all of the provisions of this Lease.

35. Compliance with Lessor's Rules for Use of Property. Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management of the Property, including, without limitation,

the delivery of supplies, the parking of vehicles and the preservation of the good order. The violations of any such rules and regulations shall be deemed a material breach of this Lease.

36. Third-Party Beneficiaries. There are no intended or incidental third-party beneficiaries of this Agreement.

37. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument and a fully executed Lease.

38. Compliance with California Civil Code Section 1938. Pursuant to and in compliance with California Civil Code section 1938, Lessee is notified that the Property has not undergone inspection by a Certified Access Specialist.

39. Authority to Execute. The individuals executing this Lease on behalf of each Party represent and warrant that they are fully authorized and legally capable of executing this Lease on behalf of that respective Party, and binding that Party thereto.

40. Memorandum of Lease. Lessor and Lessee, at the request of either Party, will promptly execute and deliver to the requesting Party a Memorandum of Lease, duly acknowledged and in recordable form in substantially the same form as that attached as Exhibit 2. The Memorandum of Ground Lease may be recorded by either Lessor or Lessee, at Lessee's cost.

[Signatures to Lease Agreement on Next Page]

Signature Page to Lease Agreement

The Parties hereto have executed this lease on the date stated below:

Dated: _____

Lessee

By: _____

Its: _____

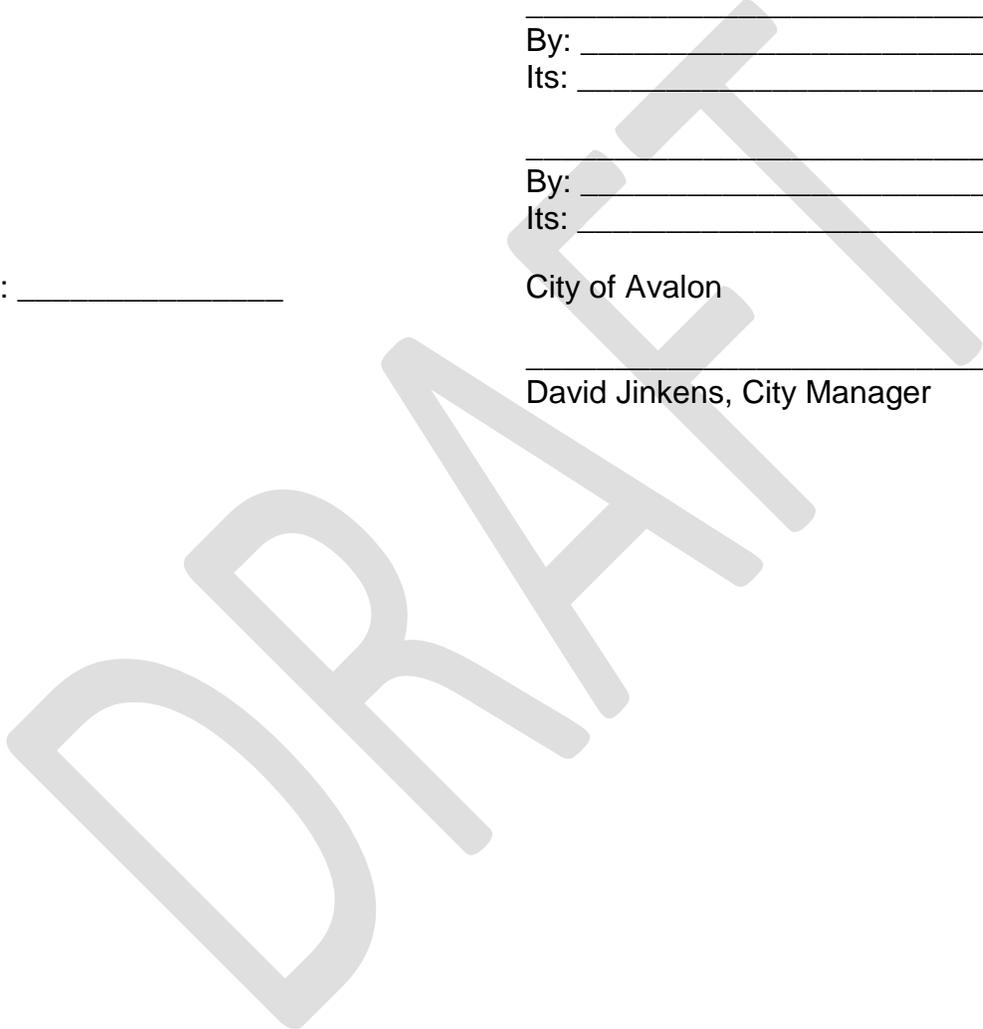
By: _____

Its: _____

Dated: _____

City of Avalon

David Jinkens, City Manager



**EXHIBIT 1
to
Lease Agreement**

**LEGAL DESCRIPTION OF PROPERTY
[Insert behind this page]**

DRAFT

EXHIBIT 2
to
Lease Agreement

FORM OF MEMORANDUM OF LEASE

Return original to and
Recording Requested by:

City of Avalon
410 Avalon Canyon Road
P.O. Box 707
Avalon, California 90704

Attn: Planning Director

No Recording Fee Required -
Government Code Section 6103

MEMORANDUM OF LEASE

THIS MEMORANDUM OF GROUND LEASE (this “**Memorandum**”) is entered into as of the ____ of _____, 20____, by and between CITY OF AVALON, a municipal corporation (“Lessor”), and _____ (“Lessee”), (each individually a “Party” and collectively the “Parties”).

1. **Ground Lease; Premises.** Lessor leases to Lessee, and Lessee leases from Lessor, on the terms and conditions set forth in that certain ground lease dated _____, 2016 (the “**Lease**”), certain property as more particularly described on Exhibit A attached hereto and in the Lease (the “**Property**”). The provisions of the Lease are incorporated herein.
2. **Term.** This Lease will be effective and binding from and after the Effective Date and will continue for fifteen (15) years following completion of the Restaurant.
3. **Extended Term.** There are two options to extend the Term of the Lease for a period of five (5) years each which may be exercised by Lessor.
4. **Permitted Use.** Lessee shall occupy and use the Property for restaurant purposes, including the installation, maintenance and use of furniture fixtures and improvements necessary to provide and accommodate the preparation of food and beverages, conduct food and beverage sales and consumption and for no other purpose whatsoever. After its

construction, the Restaurant shall be open for business at least nine (9) months each year for the Term of the Lease and Lessee may determine their own hours and days of operation.

5. Counterparts. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.
6. Successors and Assigns. This Memorandum shall be binding upon and inure to the benefit of the respective successors in interest and assigns of the parties hereto.
7. Provisions Binding on Parties. The provisions of the Lease to be performed by Lessor and/or Lessee are intended to and shall bind or benefit the respective parties and their assigns or successors, as applicable, at all times.
8. Purpose of Memorandum of Lease. This Memorandum is prepared solely for purposes of recordation, and in no way modifies the provisions of the Lease.

LESSOR:

City of Avalon

David Jinkens, City Manager

LESSEE:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____