

Robert E. Shannon
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333 West Ocean Boulevard
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1 guarantee of Two Thousand Nine Hundred Dollars (\$2,900). A percentage rent period
2 shall be six calendar months. Payments will be due within the ten (10) days following June
3 ³⁰ 1st and December 31st each year. The minimum rental rate shall be \$2,900 per calendar
4 year. If the sum of payments for a calendar year is less than \$2,900, Permittee will pay the
5 difference within thirty (30) days of the end of the calendar year. Any percentage rent not
6 paid when due shall bear interest at the maximum rate allowed by law until paid.

7 4.1 The term "Gross Sales" shall be construed to include the entire
8 amount of the actual sales price, whether for cash or otherwise, of all sales of
9 merchandise or services and all other receipts whatsoever of all business
10 conducted in or from the permit areas by Permittee. There shall be deductible from
11 Gross Sales the amount of any cash or credit refund made upon any sale in or from
12 the permit areas, previously included in Gross Sales not to exceed the sum so
13 previously included. If Permittee's Gross Sales are required to be reported on any
14 federal, state or municipal sales tax return or any other similar form of return, and
15 Gross Sales as so reported on any said returns shall exceed the Gross Sales as
16 reported by Permittee, then the Gross Sales, adjusted to the Permit definition of
17 Gross Sales in all instances, shall be taken at the higher figure so reported. If any
18 governmental authority shall increase the Gross Sales reported by Permittee on any
19 such tax return, after audit, then Permittee shall notify City within thirty (30) days of
20 such increase and pay any additional percentage rent due at that time. For
21 purposes of this paragraph 4.1, Gross Sales shall mean, if Permittee reports sales
22 from more than one location on any such return, only that portion of the Gross Sales
23 reported as relates to the permit areas.

24 4.2 Permittee shall submit to City on or before the 15th day of each month
25 a written statement showing in reasonable detail the Gross Sales in, at or from the
26 permit areas for the preceding calendar month certified by an officer of Permittee.
27 The foregoing statements shall be in such form and style and contain such detail
28 and breakdown as City may reasonably require.

1 5. Termination. This Permit is revocable by either party for any or no
2 reason upon thirty (30) days written notice to the other party. Upon termination of this
3 Permit, Permittee shall quit and surrender possession of the permit areas and remove their
4 personal property therefrom.

5 5.1 Upon termination of this Permit, Permittee, at its cost, shall remove all
6 alterations or improvements made by it and restore the permit areas to a condition
7 acceptable by the City Manager or his designee. Such removal and restoration
8 shall be made and accomplished by the termination date. If any such alteration or
9 improvement has not been removed and the permit areas not restored to an
10 acceptable condition by the termination date, City shall have the right, but not the
11 obligation, to remove, demolish, and dispose of any such alteration or improvement
12 and to restore the permit areas at Permittee's expense. Permittee shall pay to City,
13 upon demand, all costs incurred by City in removing the improvements and restoring
14 the permit areas, together with interest from the date City incurs any cost or
15 expense at the maximum rate allowed by law on any such sum.

16 5.2 City, at its election, may waive the requirements that Permittee remove
17 all or a portion of its alterations and improvements and that Permittee restore the
18 same, in which event title to all such alterations and improvements, which are to
19 remain on the permit areas, shall vest in the City of Long Beach without the
20 payment of any consideration therefor.

21 5.3 Upon termination of this Permit, Permittee shall pay City fifty percent
22 (50%) of Permittee's Gross Sales (as defined in paragraph 4.1) up to the effective
23 date of termination.

24 6. Interference with Public. Nothing in this Permit shall allow or authorize
25 Permittee to in any manner interfere with or otherwise obstruct the public's use of or
26 passage at Rainbow Harbor or Bluff Park, access to docks or any other uses permitted by
27 City and Rainbow Harbor and Bluff Park shall at all times remain open to the public for its
28 free use and enjoyment.

1 7. Laws and Ordinances. Permittee shall comply with all applicable
2 municipal, state and federal laws and regulations, including but not limited to Coastal
3 Commission regulation, and with instructions of the City relating to the activities or
4 operations permitted herein, which are in existence at the time this Permit is issued or
5 which may be enacted, promulgated or amended at any time during the term of this Permit.

6 8. Licenses and Permits. Permittee shall obtain and display, as required,
7 all permits or licenses required by law or regulation for the permitted use herein, including
8 but not limited to business licenses, if applicable.

9 9. Inspection of Operation. Permittee's coin-operated telescopes shall
10 be subject to inspection at any time by License Inspectors, Police or Fire Officers, Health
11 Department Officials or other City or State representatives for the purpose of determining
12 whether the permitted activity is being conducted in compliance with the requirements of
13 this Permit. The Permittee shall not hinder, impede, interfere or obstruct any such
14 inspection. City shall have the right to utilize photographic devices or other instruments to
15 record said conditions.

16 10. Indemnification. Permittee shall defend, indemnify and hold harmless
17 the City of Long Beach, its officials, employees and agents from and against any and all
18 liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs,
19 and expenses (including attorney's fees, court costs, and expert and witness fees)
20 (collectively "Claims" or individually "Claim"). Claims include by way of example but are not
21 limited to: Claims for property damage, personal injury or death arising in whole or in part
22 from the negligent act or omission of Permittee, its officers, employees, agents, contractors
23 or anyone under Permittee's control (collectively "Indemnitor"); Permittee's breach of this
24 Permit; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor
25 relating to workers' compensation. Independent of the duty to indemnify and as a free-
26 standing duty on the part of Permittee, Permittee shall defend the City and shall continue
27 such defense until the Claim (including allegations in a Claim) is resolved, whether by
28 settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or

1 the like on the part of Indemnitor shall be required for the duty to defend to arise.
2 Permittee shall notify the City of any Claim within ten (10) days. Likewise, City shall notify
3 Permittee of any Claim and shall assist Permittee, as may be reasonably requested, in
4 such defense.

5 11. Insurance. Concurrent with the execution of this Permit and as a
6 condition precedent to the effectiveness of this Permit and in partial performance of the
7 obligations assumed by Permittee, Permittee shall procure and maintain at Permittee's
8 expense for the duration of this Permit from an insurance company that is admitted to write
9 insurance in California or from authorized non-admitted insurance companies that have a
10 rating of or equivalent to A:VIII by A.M. Best Company:

11 (a) Commercial general liability insurance (equivalent in scope to ISO
12 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million
13 Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general
14 aggregate. Such coverage shall include but not be limited to broad form contractual
15 liability, cross liability, independent contractors liability, and products and completed
16 operations liability, and at least \$50,000 fire legal liability. The City, its officials,
17 employees and agents shall be named as additional insureds by endorsement (on
18 the City's endorsement form or on an endorsement equivalent in scope to ISO form
19 CG 20 10 11 85 or CG 20 26 11 85), and this insurance given to the City, its
20 officials, employees and agents.

21 (b) Workers' compensation insurance as required by the California Labor
22 Code and employer's liability insurance in an amount not less than One Million
23 Dollars (\$1,000,000) per accident.

24 (c) "All Risk" property insurance in an amount sufficient to cover the full
25 replacement value of Permittee's personal property, improvements and equipment
26 at a designated site.

27 (d) Commercial automobile liability insurance (equivalent in scope to ISO
28 form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less

1 than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

2 Any self-insurance program, self-insured retention, or deductible must be
3 separately approved in writing by City's Risk Manager or designee and shall protect the
4 City, its officials, employees and agents in the same manner and to the same extent as
5 they would have been protected had the policy or policies not contained retention
6 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
7 suspended, voided or cancelled by either party except after thirty (30) days prior written
8 notice to City, and shall be primary and not contributing to any other insurance or self-
9 insurance maintained by City, its officials, employees and agents.

10 Permittee shall require that all contractors and subconcessionaires which
11 Permittee uses in the performance of services under the Permit maintain insurance in
12 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
13 designee.

14 Prior to the start of performance under the Permit, Permittee shall deliver to
15 City certificates of insurance and required endorsements, including any insurance required
16 of Permittee's contractors and subconcessionaires, for approval as to sufficiency and form.
17 The certificates and endorsements shall contain the original signature of a person
18 authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at
19 least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the
20 City certificates of insurance and endorsements evidencing renewal of such insurance.
21 City reserves the right to require complete certified copies of all policies of Permittee or
22 Permittee's contractors or subconcessionaires, at any time. Permittee shall make available
23 to the City all books, records and other information relating to the insurance coverage
24 required herein during normal business hours.

25 Any modification or waiver of the insurance requirements herein shall only
26 be made with the written approval of the City's Risk Manager or designee. Not more
27 frequently than once a year, the City's Risk Manager or designee may require that
28 Permittee, Permittee's contractors and subconcessionaires change the amount, scope or

1 types or coverages required herein if, in his or her sole opinion, the amount, scope, or
2 types of coverages herein are not adequate.

3 The procuring or existence of insurance shall not be construed or deemed
4 as a limitation on liability relating to Permittee's performance of services or as full
5 performance of or compliance with the indemnification provisions herein.

6 12. Assignment. Neither this Permit nor any interest herein nor any part
7 hereof may be assigned or otherwise transferred by Permittee, whether by operation of law
8 or otherwise, without the prior written consent of the City.

9 13. Other Permits. City reserves the right to issue other permits for
10 operations at Rainbow Harbor and Bluff Park, including but not limited to, Retail Vender
11 Permits, Retail Merchandising Units, permits for Special Events and Filming (special events
12 include by way of example, but are not limited to, the Long Beach Grand Prix or filming
13 activities). In the event of a "Special Event" taking place, Permittee agrees that Permittee
14 operations may be temporarily suspended per instructions issued by the City Manager or
15 his/her designee.

16 14. Cleanliness. Permittee shall keep the premises within fifty (50) feet
17 surrounding each coin-operated telescope in a clean and sanitary condition to the
18 reasonable satisfaction of the City.

19 15. Cleanliness of Rainbow Harbor. Permittee understands that the water
20 area within Rainbow Harbor is subject to collection of refuse and waste material from Los
21 Angeles river runoff. City shall not be liable and Permittee waives any and all claims for
22 damage to its permitted operations resulting from the condition of the water within the
23 Rainbow Harbor.

24 16. Damage to Facilities. Permittee shall not install, erect or construct any
25 permanent building, improvement or structure without the written consent of the City
26 Manager or his/her designee. With the exception of ordinary wear and tear incident to the
27 use and occupancy of the areas permitted herein, Permittee shall be liable for and shall
28 indemnify City in full for any and all loss, injury or damage to said areas from the operation

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1 permitted herein, by or on account of any act or omission on the part of Permittee, its
2 agents, employees, invitees, licensees, or any person or persons granted or given
3 permission to use said areas.

4 17. Non-Discrimination. Subject to applicable laws and regulations,
5 neither Permittee nor any employee of Permittee shall, in the operation of the coin-
6 operated telescopes, discriminate against any person or group on the basis of race,
7 religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or
8 disability.

9 18. Notice. That any notice, demand, request, consent, or communication
10 that either party desires or is required to give to the other party or any other person shall
11 be in writing and either served personally or sent by prepaid first-class mail addressed as
12 follows:

13 To City: City Manager
14 13th Floor, City Hall
333 West Ocean Boulevard
15 Long Beach, California 90802

16 With a Copy to: Director of Parks, Recreation and Marine
2760 Studebaker Road
17 Long Beach, California 90815

18 To Permittee: Sight Instruments
2655 St. Louis Avenue
19 Signal Hill, CA 90806

20 Either party may change its address by notifying the other party of the change
21 of address. Notice shall be deemed communicated within forty-eight (48) hours from the
22 time of mailing if mailed as provided in this paragraph.

23 19. Relocation Benefits. Permittee expressly waives any rights to
24 relocation benefits, if any, or other compensation pursuant to the California Relocation Act
25 or applicable laws governing eminent domain upon the termination of this Permit.

26 20. Liability. City shall not be liable for and Permittee hereby waives all
27 claims against the City, its officials, employees and agents for loss or damage to
28 Permittee's personal property, or to Permittee's business, or for injury to or death of

1 persons due to theft, fire, flood, burglary, vandalism, or any other cause whatsoever, at the
2 location designated herein, except to the extent caused by City's gross negligence or willful
3 misconduct.

4 21. City Improvements. City shall have no duty to make any
5 improvements or repairs to the permit area or the improvements thereon. Permittee's sole
6 and exclusive remedy by reason of any condition of the permit areas (whether such
7 condition now or hereafter exists) shall be the termination of this Permit and vacation of the
8 permit areas. Any and all uses of the permit areas by Permittee, its agents, contractors,
9 and their employees shall be at their sole risk, cost, and expense.

10 22. Possessory Interest. This Permit may create a possessory interest
11 subject to taxation and, if so, Permittee shall pay said tax prior to delinquency. Evidence
12 of payment shall be given to City upon demand.

13 23. City Work at Site. City reserves the right to do any work at a
14 designated site for its preservation, maintenance and operation. City shall give Permittee
15 notice when such work is necessary provided, however, that if an emergency exists as
16 determined by the City, City shall not be required to give notice in accordance with Section
17 18 hereof. Permittee shall adjust Permittee's operations so City may proceed expeditiously
18 with City's work.

19 24. No Waiver. The acceptance of any payment by City shall not operate
20 as a waiver of any provision of this Permit, or of any right to indemnity. The waiver of any
21 violation or noncompliance of this Permit, if given, shall be in writing and shall not
22 constitute a waiver of any other or subsequent violation or noncompliance.

23 25. Books and Records. Permittee shall keep or cause to be kept
24 complete books of account and other pertinent records reflecting all transactions
25 conducted in connection with Permittee's operation hereunder. Said books of account and
26 records shall not be consolidated with other activities conducted by Permittee, but shall
27 separately reflect only those transactions conducted pursuant to this Permit.

28 The City Auditor or his/her designee shall have the right to inspect or audit,

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1 at any reasonable time during the term of this Permit and for a period not to exceed one
2 year after the termination or sooner revocation of this Permit, said books of account and
3 records. Permittee shall give access to said books of account and records and shall
4 cooperate with the City in its inspection of them. City shall determine the scope and
5 procedures necessary for any inspection or audit and shall have the right to photocopy and
6 extract such information as it deems necessary. If the inspection or audit discloses that
7 there has been a deficiency in payment of Permit Fees hereunder, then Permittee shall
8 immediately pay to the City of Long Beach that deficiency together with interest at ten
9 percent (10%) per annum from the date of City's demand for payment. In addition, if the
10 amount of any deficiency exceeds three percent (3%) of the Permit Fees paid by
11 Permittee, then Permittee shall pay the costs of City's audit. If the inspection or audit
12 discloses that Permittee has overpaid its Permit Fees, then City shall refund that
13 overpayment to Permittee without interest.

14 26. Miscellaneous. This Permit shall be governed by and construed in
15 accordance with the laws of the State of California. This Permit constitutes the entire
16 understanding between the parties and supersedes all other agreements, oral or written,
17 with respect to the subject matter herein. Revocation or termination of this Permit shall not
18 affect rights or liabilities that accrued hereunder prior to such revocation or termination.
19 This Permit shall not be construed or interpreted against either the City or the Permittee
20 as the drafter. This Permit is not intended or entered for the purpose of creating any
21 benefit or right for any person or entity that is not a signatory to this Permit.

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Permittee consents to and agrees to perform the terms, covenants, and conditions imposed on Permittee under this Permit.

SIGHT INSTRUMENTS, a California corporation

JUN 10 2004

_____, 2004

By 


_____, 2004

By _____

"Permittee"

CITY OF LONG BEACH, a municipal corporation

Aug 15, 2004 ¹⁶

By 
City Manager

"City"

Approved as to form this 12th day of August 15, 2004.

ROBERT E. SHANNON, City Attorney

By 
Deputy City Attorney

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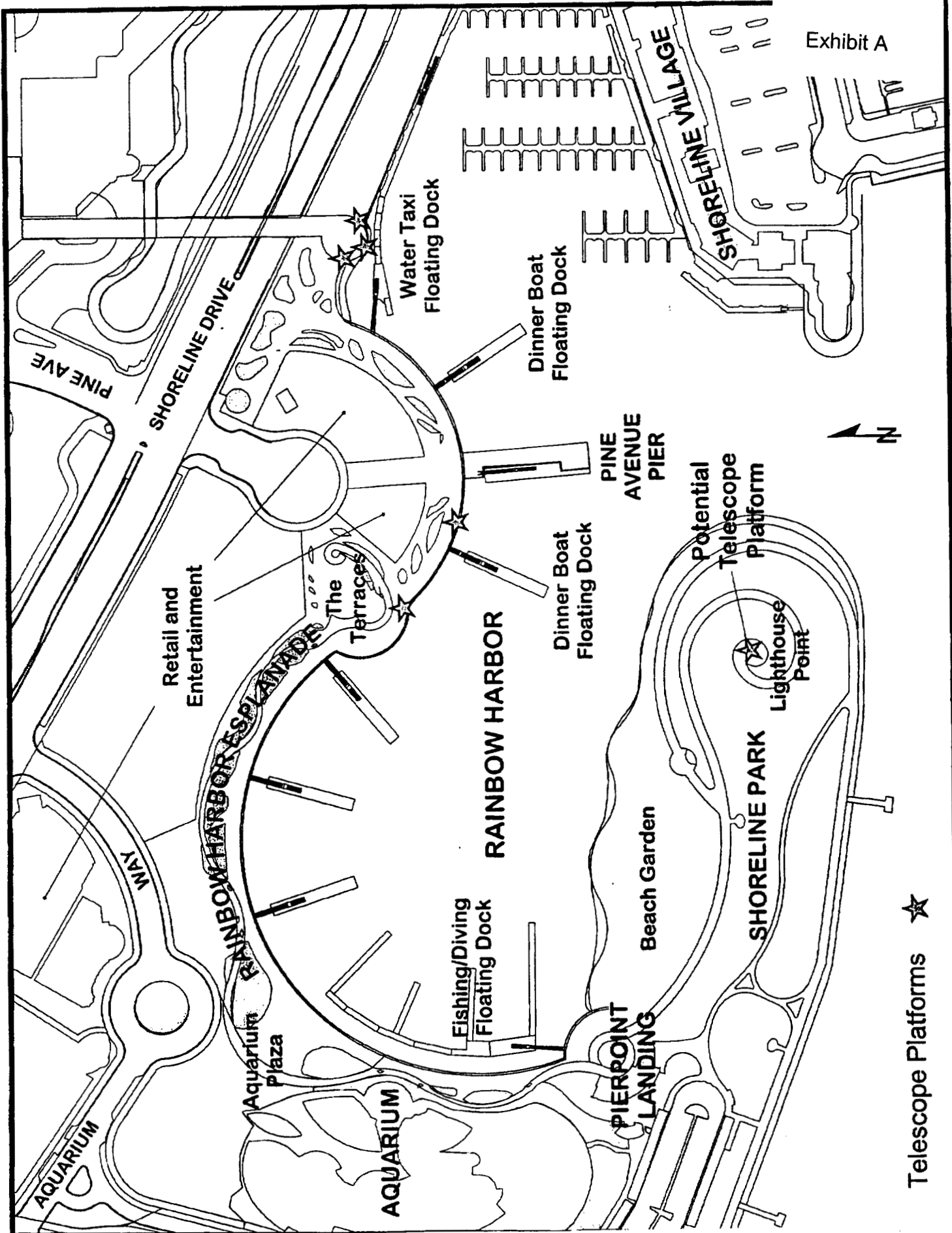
ATTACHMENTS

Exhibit "A" = Map of Rainbow Harbor and Bluff Park with areas designated

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Exhibit A



Telescope Platforms ★



Telescope Platforms