

1 B. If any time during the Permit term, or extension thereof, Permittee has
2 less than the minimum required RMUs in operation, City shall have the right to terminate
3 this Permit on thirty (30) days notice to Permittee.

4 4. Permitted Uses. A minimum of seven RMUs, up to a maximum of 19
5 RMUs are allowable for the sale of food, beverages, and miscellaneous items, such as,
6 but not limited to, souvenirs, gifts, novelties, clothing, and jewelry. Each RMU must be
7 pre-approved by the Director of Parks, Recreation and Marine, or his designee.

8 The City at its sole discretion shall have the right to operate one RMU along
9 the Esplanade at no cost to Permittee. City's RMU shall not be included in Permittee's
10 minimum or maximum number of units.

11 5. Storage. Storage of the RMUs is the responsibility of the Permittee.
12 With prior approval of the Director of Parks, Recreation and Marine, or his designee, the
13 RMUs may be stored in place.

14 6. Special Events: City reserves the right to issue other permits for
15 operations along the Esplanade, including but not limited to, retail vendor permits,
16 permits for special events and filming (special events include by way of example, but are
17 not limited to, the Long Beach Grand Prix or filming activities). During special events,
18 Permittee may be prohibited from operating at designated locations or in the sole
19 discretion of the City, may be moved to an alternative location. In the event of a "special
20 event," Permittee agrees that Permittee operations may be temporarily suspended or
21 relocated per instructions issued by the City Manager or designee. The City Manager or
22 designee will endeavor to provide as much advance notification as possible.

23 7. Nuisance. Permittee shall not operate Permittee's concession in any
24 manner that will create a nuisance or unreasonable annoyance to the public and shall not
25 allow any intoxicated person, profane or indecent language, or boisterous, or loud
26 conduct in or around a designated site and shall call on the aid of peace officers to assist
27 Permittee in maintaining the peace.

28 8. Permit Fee. Permittee shall pay to the City of Long Beach (at 2760 N.

1 Studebaker Road to the attention of the Contract Management Division) as a quarterly
2 Permit Fee, five percent (5%) of Permittee's quarterly gross receipts from Permittee's
3 RMU operations. Permittee acknowledges that a payment shall be due after the
4 expiration or revocation of this Permit. Said payment will pertain to the gross receipts of
5 the immediately preceding quarter. Permittee shall pay a late charge of Twenty-five
6 Dollars (\$25.00) when any Permit Fee is not paid when due. If Permittee pays with a
7 check returned for insufficient funds, Permittee shall also pay a service charge of Fifteen
8 Dollars (\$15.00) in addition to applicable late charges.

9 "Gross receipts" shall mean the total of:

10 a. All sales made in, on, through or from a designated site, whether for
11 cash or credit, and whether payment is actually made or not, and whether sales are
12 made by Permittee, Permittee's employees, agents, assignees, licensees,
13 concessionaires, or others;

14 b. All charges for services rendered or orders placed at a designated site
15 whether by Permittee, Permittee's employees, agents, assignees, licensees,
16 concessionaires, or others;

17 c. All sums deposited in any coin-operated machine or device provided at a
18 designated site by, through, or for Permittee, Permittee's employees, agents, assignees,
19 licensees, or concessionaires, regardless of the ownership of the machine or device, or
20 whether such sums are removed and counted by Permittee or others, and regardless of
21 what percentage thereof Permittee is entitled to receive from them.

22 In addition, Permittee shall submit with its quarterly Permit Fee a certified
23 statement, in a form approved by the Director, showing the RMU sales activity for the
24 accompanying month.

25 9. Books and Records. Permittee shall keep or cause to be kept complete
26 books of account and other pertinent records reflecting all transactions conducted in
27 connection with Permittee's RMUs hereunder. Said books of account and records shall
28 not be consolidated with other activities conducted by Permittee, but shall separately

1 reflect only those transactions conducted pursuant to this Permit.

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

16 10. Concession Inspection. The City's authorized representatives shall
17 have access to Permittee's RMUs during business hours and, in the event of an
18 emergency, at any other time for inspection or repair of publicly owned utilities and
19 structures, and for fire and police purposes. The City, acting through the Marine Bureau
20 of the Department of Parks, Recreation and Marine, shall have the right, but not the
21 obligation, to inspect any such RMUs to assure compliance by Permittee with the
22 provisions of this Permit. City shall coordinate inspections with Permittee.

23 Permittee's RMUs shall be subject to inspection at any time by licensed
24 inspectors, including: police, fire, Health Department officials or other City representatives
25 for the purpose of determining whether the Permitted Uses are being conducted in
26 compliance with the requirements of this Permit. The Permittee shall not hinder, impede,
27 interfere with or obstruct any such inspection or observation. During these inspections or
28 observations, City shall have the right to utilize photographic devices or other instruments

1 to record conditions of the operation.

2 11. RMU Design. The City reserves the right to periodically inspect the
3 RMUs to ensure conformance with the design and maintenance specifications. If any
4 RMU permitted herein, in the reasonable judgment of the City, fails to conform with the
5 design or maintenance specifications, and the Permittee, within 48 hours after written
6 notice from City, fails to bring such RMU or RMUs into compliance with either the design
7 or maintenance specifications, the City may require the removal of such RMU or RMUs
8 within 48 hours. If Permittee fails to remove such RMU or RMUs within the
9 aforementioned 48 hour period, City may remove said RMU(s) at Permittee's expense.
10 Said expense incurred by City shall be paid by Permittee within 30 days of invoice by
11 City. City may at its option, use the security deposit or a portion thereof, to cover the
12 expenses incurred by City.

13 12. On-Site Advertising. The Director of Parks, Recreation and Marine, or
14 his designee, must pre-approve all signs and banners within the City-controlled area
15 adjacent to Rainbow Harbor and the Pike.

16 13. Compliance with Law. Permittee shall comply with all applicable
17 municipal, state and federal laws and regulations and with the instructions of the Director
18 or his designee relating to this Permit. Permittee shall obtain and display, as required, all
19 other permits or licenses required by law or regulation for the concession permitted
20 herein, including but not limited to permits from the Long Beach Department of Health
21 and Human Services and business licenses.

22 14. Inspection. Permittee acknowledges that Permittee has inspected the
23 designated sites and accepts them in their present condition. City shall have no
24 obligation to improve or alter any site, nor to provide any utilities or services to any site.

25 15. Equipment. Permittee shall provide, at Permittee's own cost and
26 expense, all furnishings, supplies, equipment and the like necessary for its operation
27 hereunder. Permittee shall obtain the approval of the Director or his designee prior to
28 Permittee's use of any furnishings, supplies, equipment or the like. Permittee shall

1 maintain its furnishing, supplies, equipment and the like in a neat, clean and safe
2 condition.

3 16. Maintenance. The City will be responsible for all routine maintenance
4 along the Esplanade. The Permittee shall be responsible for upkeep and maintenance of
5 the RMUs, to the satisfaction of the Department. Permittee shall also be responsible for
6 keeping the premises within (fifty) 50 feet surrounding each RMU in a clean and sanitary
7 condition.

8 17. Utilities. The City will provide electrical and phone service to enable
9 the merchants to accept credit cards at numerous locations within the Permit Area, where
10 service has been established.

11 18. Indemnity. Permittee shall indemnify and hold harmless the City, its
12 Boards, Commissions, and their officials, employees and agents (collectively in this
13 Section "City") from and against any and all liability, claims, demands, damage, causes of
14 action, proceedings, penalties, loss, costs, and expenses (including attorney's fees,
15 court costs, and expert and witness fees)(collectively "Claims" or individually "Claim").
16 Claims include allegations and include by way of example but are not limited to: Claims
17 for property damage, personal injury or death arising in whole or in part from any
18 negligent act or omission of Permittee, its officers, employees, agents, or anyone under
19 Permittee's control (collectively "Indemnitor"); Permittee's breach of this Agreement;
20 misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating
21 in any way to worker's compensation. Independent of the duty to indemnify and as a
22 free-standing duty on the part of Permittee, Permittee shall defend City and shall continue
23 such defense until the Claim is resolved, whether by settlement, judgment or otherwise.
24 Permittee shall notify the City of any claim within ten (10) days. Likewise, City shall notify
25 Permittee of any claim, shall tender the defense of such claim to Permittee, and shall
26 assist Permittee, as may be reasonably requested, in such defense.

27 19. Insurance. As a condition precedent to the effectiveness of the Permit,
28 Permittee shall procure and maintain at Permittee's expense for the duration of the

1 Permit from an insurance company that is admitted to write insurance in California or
2 from authorized non-admitted insurance companies that have ratings of or equivalent to
3 A:VIII by A.M. Best Company:

4 (a) Commercial general liability insurance (equivalent in scope to ISO
5 form CG 00 01 11 85 or CG 00 01 11 88)(including products and at least Fifty
6 Thousand Dollars [\$50,000] fire legal liability) in an amount not less than One
7 Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000)
8 general aggregate. Such coverage shall include but not be limited to broad form
9 contractual liability, cross liability, independent contractors liability, and products
10 and completed operations liability, and at least \$50,000 fire legal liability. The City,
11 its officials, employees and agents shall be named as additional insureds by
12 endorsement (on the City's endorsement form or on an endorsement equivalent in
13 scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall
14 contain no special limitations on the scope of protection given to the City, its
15 officials, employees and agents.

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

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

22 (d) Commercial automobile liability insurance (equivalent in scope to
23 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not
24 less than Five Hundred Thousand Dollars (\$500,000) combined single limit per
25 accident.

26 Any self-insurance program, self-insured retention, or deductible must be
27 separately approved in writing by City's Risk Manager or designee and shall protect the
28 City, its officials, employees and agents in the same manner and to the same extent as

1 they would have been protected had the policy or policies not contained retention
2 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
3 suspended, voided or canceled by either party except after thirty (30) days prior written
4 notice to City, and shall be primary and not contributing to any other insurance or self-
5 insurance maintained by City, its officials, employees and agents.

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

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

22 Any modification or waiver of the insurance requirements herein shall only
23 be made with the written approval of the City's Risk Manager or designee. Not more
24 frequently than once a year, the City's Risk Manager or designee may require that
25 Permittee, Permittee's contractors and subconcessionaires change the amount, scope or
26 types of coverages required herein if, in his or her sole opinion, the amount, scope, or
27 types of coverages herein are not adequate.

28 The procuring or existence of insurance shall not be construed or deemed

1 as a limitation on liability relating to Permittee's performance of services or as full
2 performance of or compliance with the indemnification provisions herein.

3 20. Holding Over. This Permit shall terminate without any further notice as
4 of the Permit expiration date set forth in Section two above. Any holding over by
5 Permittee after the Permit expiration date shall not constitute a renewal or extension or
6 give Permittee any rights in or at Rainbow Harbor except as expressly provided in this
7 Permit. Any holding over after the Permit expiration date with the consent of City shall be
8 construed to be a tenancy from month to month, at fees equal to the fees due for the last
9 year of the Permit term, and shall otherwise be on the terms and conditions herein
10 specified.

11 21. Damage to Site. With the exception of ordinary wear and tear,
12 Permittee shall be liable for any and all loss, injury or damage to a designated site when
13 operating hereunder, by or on account of any act or omission by Permittee, Permittee's
14 officers, partners, employees, agents, invitees, or licensees.

15 22. Standards of Service. Permittee shall operate the RMUs in a manner
16 acceptable to the Director and shall maintain a level of quality and safety acceptable to
17 the Director.

18 23. Cleanliness. Permittee shall keep the designated sites clean and
19 sanitary and in a condition satisfactory to the Director. No offensive or refuse matter, no
20 substance constituting a fire hazard and no hazardous material as that term is defined
21 under federal or state law shall be deposited on or remain on a site. All refuse and waste
22 material created by Permittee's operations shall be removed daily in plastic bags ten mils
23 or thicker. Waste food and garbage shall be deposited in large container trash bins
24 provided by City. Permittee must provide additional trash bags for any overflow.

25 24. Nondiscrimination. Subject to applicable laws and regulations, neither
26 Permittee nor any employee of Permittee shall, in the operation of RMUs hereunder,
27 discriminate against person or group on the basis of race, religion, national origin, color,
28 age, sex, sexual orientation, AIDS, HIV status, handicap, or disability. Permittee shall not

1 discriminate against any employee or applicant for employment on any of these bases
2 and shall take affirmative action to insure employment without regard to these bases.

3 25. Assignment or Transfer. Permittee shall not assign or transfer this
4 Permit nor shall any interest herein be assignable or transferable by operation of law or
5 by any process or proceedings of any court or otherwise. Any attempted transfer or
6 assignment shall be void and confer no rights whatsoever upon a transferee or assignee.

7 Notwithstanding the foregoing, Permittee may grant subpermits or licenses
8 to others provided Permittee shall first obtain the written consent of the City Manager or
9 designee. The Manager shall not be required to give any consent to a proposed
10 subpermitting or licensing or rights, unless and until Permittee has submitted to the
11 Manager such additional information regarding the identity of proposed subpermittee or
12 licensee, including the terms and conditions of the proposed transaction as may be
13 required by the Manager to make a determination to grant or withhold such consent.
14 Further, the Manger shall have the right to impose such further conditions in connection
15 with the granting of consent as may be required to assure that public health, safety,
16 welfare and convenience will be best served by the proposed subpermit or licensing.

17 If Permittee shall be adjudicated a bankrupt or become insolvent or if any
18 interest in this Permit becomes taken by virtue of attachment, execution, or receivership,
19 the City may terminate this Permit upon five (5) days written notice to Permittee.

20 26. Revocation. This Permit may be revoked immediately by the Director
21 at any time 1) that the Director determines that Permittee has violated or failed to comply
22 with any provision of this Permit; 2) that the City has evidence of misrepresentation or
23 fraud involved in the application for this Permit, or evidence of unfair or bad faith in
24 dealing with the public; 3) that Permittee operated an RMU at a non-designated site; or
25 4) that it is in the City's best interest to do so.

26 27. No Liability. City shall not be liable for and Permittee hereby waives all
27 claims against the City, their officials and employees for loss or damage to Permittee's
28 personal property, or to Permittee's business, or for injury to or death of persons due to

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

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

6 29. City Work at Site. City reserves the right to do any work at a
7 designated site for its preservation, maintenance and operation. City shall give Permittee
8 notice when such work is necessary provided, however, that if an emergency exists as
9 determined by the City, City shall not be required to give notice. Permittee shall adjust
10 Permittee's operations so City may proceed expeditiously with City's work.

11 30. Notice. Notice shall be in writing and personally served or deposited in
12 the U. S. Postal Service, first class, postage prepaid to: Director of Parks, Recreation and
13 Marine, 2760 Studebaker Road, Long Beach, California 90807 and to Permittee at the
14 address first stated above. Change of address shall be given in the same manner as
15 stated herein for notice. Notice shall be deemed given on the date deposited in the mail
16 or on the date personal service is obtained, whichever first occurs.

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

21 32. Alterations. Permittee shall not make any alterations, additions,
22 modifications or improvements to any designated site without the prior written approval of
23 the Director. Permittee shall pay the cost of any approved alterations, additions,
24 modifications or improvements. If said alterations, additions, modifications or
25 improvements are of a permanent nature, they shall become the property of the City at
26 the expiration or sooner revocation of this Permit.

27 33. Continuation. Termination or expiration of this Permit shall not
28 terminate the rights or liabilities of either party which rights or liabilities accrued or existed

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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during the term of this Permit and prior to its termination or expiration.

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

HARBOR BREEZE CORPORATION, a
California Corporation

March 16th, 2008

By Rahel D. P. G.

"Permittee"

CITY OF LONG BEACH
By [Signature] ASSISTANT

April 8, 2008

[Signature]
City Manager

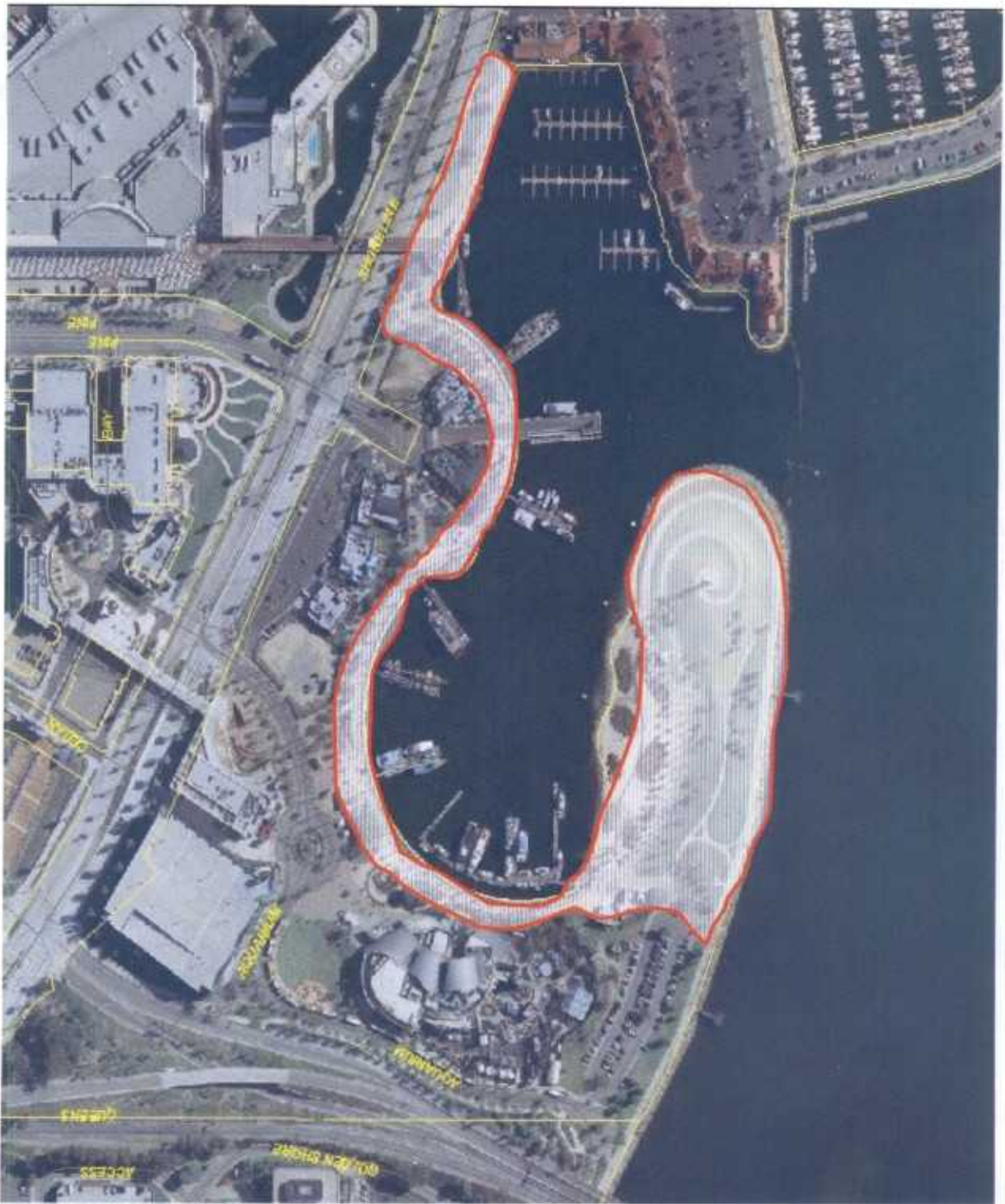
"City" EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Permit is hereby approved as to form on April 1, 2008.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

GJA:lk 12/20/07
07-04038



Retail Merchandising Units – Rainbow Harbor
and Shoreline Park